



# Ministry of Justice

**Date: 31<sup>st</sup> March 2023**

## **Contract for the Provision of Catering Services**

Between

The Lord Chancellor

And

Compass Contract Services (UK) Limited

Internal

Official Sensitive

## **PARTIES:**

(1) THE LORD CHANCELLOR of 102 Petty France, London, SW1H 9AJ (the "**Authority**");

## **AND**

(2) COMPASS CONTRACT SERVICES (UK) LIMITED a company registered in England and Wales under number 02114954 whose registered office is Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, West Midlands B45 9PZ (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

## **WHEREAS**

A. This Contract is for the provision of food and beverages at the Premises.

B. The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**NOW IT IS HEREBY AGREED as follows:**

## **TERMS OF CONTRACT**

### **1. Definitions and Interpretations**

1.1. Unless the context otherwise requires the following terms shall have the meanings given to them below:

"**Applicable Laws**" means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services and/or the operation of the applicable Court.

"**Approval**" and "**Approved**" means the prior written consent of the Authority (which is not to be unreasonably withheld or delayed).

"**Asset Register**" means a definitive list of all Authority Equipment at the Premises and its current condition drawn up by the Authority prior to the Commencement Date and handed to the Contractor for review/agreement.

"**Authority**" means the Lord Chancellor of 102 Petty France London SW1H 9AJ acting through the authorised representative(s).

"**Authority Data**" means:

- a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - i. supplied to the Contractor by or on behalf of the Authority; or
  - ii. which the Contractor is required to generate, process, store or transmit pursuant to the Contract; and/or
- b) any Personal Data Processed by (or on behalf of) either Party under, or in connection with, the Contract

**“Authority Equipment”** means any and all equipment which the Authority makes available for use by the Contractor in performance of the Contract.

**“Authority Premises”** means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

**“Authority System”** means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services

**“BPSS”** means the HMG Baseline Personnel Security Standard for Government employees

**“Capital Investment”** means an amount up to [REDACTED] (exclusive of VAT) which shall be expended by the Contractor in accordance with clause 13B

**“Capital Projects”** has the meaning given in clause 13B.1

**“Capital Project Assets”** means any assets forming part of the Capital Projects and purchased with the Capital Investment

**“Capital Project Works”** means any works forming part of the Capital Projects and paid for with the Capital Investment

**“Catering Services”** means the canteen catering services as more particularly described in Part 1 of Schedule B

**“Commencement Date”** means the date specified in clause 3.2 of the Contract.

**“Commercially Sensitive Information”** means the information listed in Schedule D (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor’s business and investment plans, which the Contractor has informed the Authority would cause the Contractor significant commercial disadvantage or material financial loss if it was disclosed.

**“Confidential Information”** means any information which is designated by either Party as confidential or which, by its nature is or ought to be considered as confidential (whether or not it is so marked) and includes all personal data, and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of either Party.

**“Contract”** means this Concession Agreement.

**“Contracting Authority”** means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

**“Contractor”** means Compass Contract Services (UK) Limited of Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, West Midlands B45 9PZ

**“Contractor Equipment”** means any and all equipment which the Contractor owns and uses in performance of the Contract

**“Contractor Personnel”** means any person employed by the Contractor for the performance of this Contract.

**“Controller”** means as it is defined in the UK GDPR.

**“Court”** means Royal Courts of Justice, Strand, London WC2A 2LL at which the Services are to be provided.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

**“Data Loss Event”** means any event which results, or may result, in unauthorised access to Personal Data held by the Contractor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data;

**“Data Protection Law”** means:

- a. all applicable UK Law relating to the processing of Personal Data and privacy; including the UK GDPR and the DPA 2018 to the extent it relates to Processing of Personal Data and privacy; and
- b. (to the extent that it applies) the EU GDPR.

**“Data Protection Officer”** means as it is defined in the UK GDPR;

**“Data Subject”** means as it is defined in the UK GDPR;

**“Data Subject Access Request”** means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Law to access their Personal Data;

**“Default”** means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

**“DPA 2018”** means the Data Protection Act 2018;

**“Due Diligence Information”** has the meaning given in clause 3.7.2

**“EIR”** means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Equipment”** means both Authority Equipment and Contractor’s Equipment”.

**“EU GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal

Data and on the free movement of Personal Data (General Data Protection Regulation) as it has effect in EU law.

**"Expiry Date"** means the date which this Contract expires

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**"Force Majeure"** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, but excluding: any industrial action occurring within the Contractor's or any sub-contractor's organisation; or the failure by any sub-contractor to perform its obligations under any sub-contract.

**"General Anti-Abuse Rule"** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

**"Government Buying Standards"** means all guidance and best practice issued by the Food Standards Agency or equivalent body from time to time. **"Halifax Abuse Principle"** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**"Hospitality Services"** means the hospitality services as more particularly described in Part 2 of Schedule B which may be called-off by the Authority from time to time in accordance with Schedule F

**"Information"** has the meaning given under section 84 of the FOIA.

**"Information Commissioner Office"** means the UK Information Commissioner's Office, or any successor or replacement body from time to time.

**"Intellectual Property Rights"** means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**"IP Materials"** means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Contractor by or on behalf of the Authority.

**"NICs"** means National Insurance Contributions.

**"Occasion of Tax Non-Compliance"** means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax

related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

**“Personal Data”** means as it is defined in the UK GDPR;

**"Premises"** means the catering area within the Court building where the Services are to be performed, as nominated and specified by the Authority.

**“Processor”** means as it is defined in the UK GDPR;

**"Prohibited Act"** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted;

**"Regulations"** means the Public Contract Regulations 2015 (SI 2015/102).

**"Regulatory Body"** means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of

practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

**"Relevant Requirements"** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**"Relevant Tax Authority"** means HMRC or, if applicable, a tax authority in the jurisdiction in which the Service Provider is established

**"Replacement Contractor"** means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**"Required Insurances"** has the meaning given in clause 10.4

**"Security Policy Framework"**<sup>1</sup> means the HMG Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated and notified to the Contractor in writing from time to time.

**"Services"** means together the Catering Services and Hospitality Services to be provided by the Contractor at the Court, the scope of which shall be according to Schedule B and as agreed with the Authority.

**"Service Transfer"** means any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Contractor or a Replacement Sub-Contractor.

**"Service Transfer Date"** means the date of a Contractor or, if more than one, the date of the relevant Service Transfer as the context requires.

**"Staff"** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's directors, officers, servants, agents, consultants, contractors, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

**"Transferring Contractor Employees"** means those employees of the Contractor and/or the Contractor's Sub-Contractors to whom TUPE will apply on the Service Transfer Date

**"Termination Costs"** means, in relation to the dismissal by the Contractor of any Previous Contractor Employees, any statutory or contractual redundancy payments; any payments made in lieu of statutory or contractual notice; and any payment of accrued but untaken holiday pay due under Regulation 14 of the Working Time Regulations 1998

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any successor legislation.

**"UK GDPR"** means the UK General Data Protection Regulation.

**"Utilities"** means the gas, electricity and water to be provided by the Authority into the Premises.

**"Vetting Procedures"** means the personnel vetting and security checks required by the Authority from time to time as notified by the Authority to the Contractor in writing

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;

- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words "other", "in particular", "for example", "including" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (i) references to the Contract are references to the Contract as amended from time to time.

## 2. The Authority's Obligation

- 2.1. Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor .
- 2.2. The Authority shall comply with the requirements of the Modern Slavery Act 2015.

## 3. Contractor's Status

- 3.1. The Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract. The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority. Contract Period and Services
- 3.2. The Contract shall take effect on 31<sup>st</sup> March 2023 (the "**Commencement Date**") and end on the date 30<sup>th</sup> March 2026, being 3 years from and including the Commencement Date (the "**Contract Period**") unless terminated earlier in accordance with the terms of this Contract.
- 3.3. The Contract may be extended for up to a maximum of 2 years with both party's written agreement.
- 3.4. The Authority shall appoint the Contractor on an exclusive basis, and the Contractor shall provide, the Catering Services within the café area at the Premises, pursuant to the terms and conditions of this Contract. The parties shall work together and cooperate in good faith to deliver a successful food and beverage service at the Premises for the Court users.
- 3.5. The Contractor and the Authority shall provide the Services according to Schedule B.
- 3.6. The Contractor will review and update any risk assessments on an annual basis. The Authority will also complete their own risk assessments in accordance with statutory compliance which may require the co-operation and assistance of the Contractor, which will not be unreasonably withheld.

3.7. The Contractor acknowledges that:

- 3.7.1. the Authority has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;
- 3.7.2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to the Contractor by or on behalf of the Authority prior to the Commencement Date (the "**Due Diligence Information**"); and
- 3.7.3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the Contract and the operating processes and procedures and the working methods of the Authority.

3.8. The Contractor shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges arising as a result of any misinterpretation of the Contract or any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

#### 4. Contractor's Obligations

- 4.1. The Contractor shall fulfil its obligations under the Contract with: (a) all reasonable skill, care and diligence to the reasonable satisfaction of the Authority; (b) in accordance with good industry practice; and (c) all Applicable Laws.
- 4.2. The Contractor shall produce good quality food and beverages at the Premises. The Contractor shall operate the Services at the Court between the hours of 9am through to 3pm on each day that the Court is open. The Contractor shall (and shall procure that all Contractor Personnel shall) comply with: -
  - 4.2.1. all Applicable Laws; the Contractor shall, at the reasonable request of the Authority, provide reasonable evidence of its compliance including by way of example, making its health and safety policy statement available (as required by the Health and Safety at Work Act 1974);
  - 4.2.2. be responsible for obtaining all licences, permits and consents required to operate and provide the Services, including (if relevant) any liquor licences, but for the avoidance of doubt, such liquor licences shall be in the name of the Authority;
  - 4.2.3. any policies and procedures in place at the Court and the Premises as may be notified to the Contractor in writing by the Authority from time to time
  - 4.2.4. any reasonable instructions of the Authority (or the Authority's representatives. provided that, if the Contractor so requires, any such instruction will be dealt with as if it were a variation to the Contract
  - 4.2.5. all guidance and best practice issued by the Food Standards Agency or equivalent body from time to time; and shall;
  - 4.2.6. ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 4.3. If any of the Contractor Personnel should become involved in a case that is being held at the Court as either a defendant or party to a case, they must advise the Authority as soon as they become aware.
- 4.4. While at the Premises and, more generally, the Court, the Contractor shall comply and shall ensure that its Personnel comply with, any specific health and safety requirements, including

requirements of any relevant health and safety laws or as notified to it by the Authority in writing.

- 4.5. The Contractor will comply with all Authority policies and procedures, notified to it in writing, in relation to health and safety, fire and security in the operation of the Services and in fulfilling the Contract, this shall include not wedging open fire doors whilst on the Premises and providing input into the Authority's Fire Risk Assessments. Annual confirmation is required by the Contractor that all Contractor Personnel have undertaken an appropriate level of fire awareness training, ensuring that they are all appropriately trained and are competent in the use of fire extinguishers appropriate to the equipment that they are using i.e. deep fat fryers.
- 4.6. The Contractor shall be responsible for registering the catering services at the Premises with the relevant local authority or such other regulatory bodies as required by Applicable Laws and arranging for hygiene inspections at the Premises to be undertaken. The Contractor shall promptly after each inspection display the resulting food hygiene standards rating at the Premises so that all end users of the Services shall be able to view it.
- 4.7. The Contractor shall adhere to, and comply with, the Government Buying Standards in relation to Food and Catering Services (as updated from time to time) when performing the Services.
- 4.8. The Contractor shall perform its obligations under the Contract in accordance with the principles of the Authority's Greening government Commitments, environmental policies and environmental strategies as directed by the Authority from time to time, which are to conserve energy, carbon, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and single use plastics and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 4.9. The Contractor shall comply with the Vetting Procedures in respect of all persons employed or engaged in the provision of the Services and the Contractor shall (and shall ensure its Personnel shall) cooperate with any Authority security staff. Contractor Personnel may be excluded permanently from the Premises at the Authority's sole discretion.
- 4.10. In addition to undertaking and complying with the Vetting Procedures, the Contractor shall ensure that all persons it employs or engages in the provision of the Services has passed a Disclosure and Barring Service (DBS) check.
- 4.11. The Contractor shall be responsible for cleaning the areas within the Premises where it provides the Services and any other areas associated with the provision of the Services together with any associated Equipment. Where the Contractor undertakes deep cleans, any costs associated shall be agreed between the parties and any apportionment determined at that time. The Authority may engage a third party to undertake such cleaning (because of being unsatisfied with the standard of cleaning undertaken by the Contractor). In such circumstances the Contractor shall promptly reimburse the Authority for all costs associated with such engagement. Further, the Contractor shall be responsible for the safe disposal of all waste generated by the Services in compliance with the Authority's waste disposal procedures.
- 4.12. The Contractor shall report any incident, accident or complaint to the Authority's local representative.
- 4.13. The Contractor must not use any metal cutlery in any area that the public has access. They must also ensure that any catering knives are stored and used in such a way as they cannot be stolen or forcibly taken. All catering knives must be securely locked away at the end of the day. Attention to good housekeeping and safe/appropriate storage of items is to be adhered to at all time.
- 4.14. The Contractor and the Authority shall agree to meet and undertake a contract review, not less than every 6 weeks. Both parties shall discuss the services currently on offer, including

any seasonal or promotional offers and customer feedback or complaints. The Contractor shall also provide profit and loss data for the previous 6 weeks.

- 4.15. It is important to the Authority that the Services remain current, relevant and appealing to Court users. The Contractor shall, therefore, operate the Services in such a manner that it is continually looking for and implementing ways of improving the Services and the way (and the standards to which) it operates and provides the Services.
- 4.16. Notwithstanding the generality of the above clause, the Contractor shall formulate and provide no fewer than two service innovations each calendar year to refresh the service provision. By way of example only, such innovations could include new and interesting menu options, themes etc.
- 4.17. The parties shall discuss service improvements and innovations as part of the general governance/ review meetings and how such innovations will be implemented.
- 4.18. During the Contract Period, the Contractor shall not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- 4.19. The Authority may inspect the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Authority shall not disrupt the Contractors provision of the Services when carrying out its inspection. The Contractor shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection.
- 4.20. The Contractor shall provide notice of any proposed Sub-Contractor to the Authority for the Authority's approval, such approval not to be unreasonably withheld.
- 4.21. The Contractor shall not enter into any sub-contracts without express approval of the authority. The terms of any sub-contract to be agreed between parties at the time.
- 4.22. The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- 4.23. Not used
- 4.24. The Contractor shall ensure that all Sub-Contracts contain:
  - 4.24.1. a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
  - 4.24.2. not used

## **5. Equipment**

- 5.1. The Authority shall provide an Asset Register to the Contractor within 10 working days of contract signature. This Asset Register shall then form part of the Contract at Schedule C.
- 5.2. The Authority permits the Contractor to use any Authority's Equipment listed on the Asset Register (Schedule C), but the Authority shall retain ownership of their equipment. The Authority gives no warranties or commitments as to the condition or suitability of the Authority's Equipment, and shall have no liability to repair and/or replace any of the Authority's Equipment, subject to Schedule F. Should any further equipment be required to deliver the Services at any time, it shall be the responsibility of the Contractor to provide this equipment. All

Contractor's Equipment provided by the Contractor remains the Contractor's property and shall be removed from site upon expiry/termination of the Contract.

- 5.3. If the Contractor provides Contractor Equipment, the Contractor shall confirm to the Authority that each item is either less than 12 months old and so still maintains its manufacturer's warranty, or if it is older than 12 months, that it has been appropriately safety tested.
- 5.4. The Contractor shall maintain all items of Contractor Equipment within the Premises in a safe, serviceable and clean condition and in accordance with Applicable Laws and shall maintain such Contractor Equipment at its own cost. The Contractor shall maintain all items of Authority Equipment within the Premises in a safe, serviceable and clean condition and in accordance with Applicable Laws and shall maintain such Authority Equipment at its own cost, subject to Schedule F.
- 5.5. If, during the Contract Period, any Authority's Equipment becomes faulty and is beyond economical repair, with agreement of the Authority, the Contractor can elect to either i) purchase a replacement item, at their cost, the new equipment remaining the Contractor's property thereafter, or ii) decline to replace it, if the effectiveness and efficiency of the Service is not adversely affected or iii) with the approval of the Authority, purchase a replacement item, at the Contractors cost, but recharge that cost in accordance with Schedule F. This option (iii) will apply at the start of the contract where both parties have agreed an Asset replacement schedule any further Asset replacements identified during the period of the subsidy provision, will be subject to negotiation with the Authority at that time.
- 5.6. Not used.
- 5.7. All Contractor Equipment brought onto the Premises is at the Contractor's own risk and the Authority has no liability for any loss of or damage to any Contractor Equipment unless the Contractor demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Contractor Equipment when no longer required at its sole cost.
- 5.8. The Contractor shall, at the Authority's written request, at its own expense (subject to the terms of Schedule F) and as soon as reasonably practicable:
  - a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - b) replace such item with a suitable substitute item of Equipment.
- 5.9. Within 20 Working Days of the end of the Contract Period, the Contractor shall remove the Contractor Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. Save to the extent that the Contractor is able to demonstrate that such damage was caused or contributed to by the Authority's Default, the Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Contractor Personnel. For the avoidance of doubt both parties shall within 10 working days of contract signature meet on site and agree any existing damage which shall be recorded on Schedule C. This shall be updated by the Authority if further damage is identified, the details of which will be agreed by both parties through a contract change notice.

## **6. Authority Obligations**

- 6.1. In consideration of the provision of the Services the Authority shall make the Premises available to the Contractor on a non-exclusive licence basis without payment of any rent and shall also provide the Utilities for use at the Premises without recharge to the Contractor.
- 6.2. The Contractor shall use the Premises solely for performing its obligations under the Contract. The Contractor shall have the use of the Premises as licensee and shall vacate the same on

expiry or termination of the Contract (and at such point it shall deliver all keys/security passes etc back to the Authority).

- 6.3. The Premises, together with its fixtures and fittings, shall be at the risk of the Contractor and shall, during the Contract Period, be kept by the Contractor (subject to fair wear and tear) in good repair and decorative condition to the reasonable satisfaction of the Authority.
- 6.4. The parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or any Contractor Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner the Authority sees fit.
- 6.5. The Authority makes no representations, guarantees, warranties or commitments in relation to expected revenue volumes to be generated from the Services or the footfall at the Premises/Court. Any information provided to the Contractor in relation to historical revenue volumes and /or indicative footfall are indicative only and have been provided solely for planning and information purposes.
- 6.6. The Contractor therefore accepts and acknowledges that any change to the revenue volumes and footfall, including changes to Court listings, shall be at the Contractor's risk, and that it may affect the level of revenue the Contractor receives from the Services or the need for the Services. The Contractor accepts and acknowledges that any such changes shall be at the Contractor's risk and shall not necessitate any subsidies or payments to be made by the Authority to the Contractor.
- 6.7. The Authority shall remain solely responsible for the operation, repair and maintenance of the Premises. The Authority shall operate and maintain the Premises and any other premises to which the Contractor and its Staff shall have access for any purpose related to the Services so that it and they are at all times a safe working environment for the Contractor and its Staff.
- 6.8. In consideration of the provision of the Services, the Authority shall make the Premises and Utilities available to the Contractor (pursuant to the terms of this Contract) free of charge.

## **7. Employment**

- 7.1. The parties shall act in accordance with the provisions as set out in the Schedule A to this agreement.
- 7.2. The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority Premises:
  - a) any member of the Contractor Personnel; or
  - b) any person employed or engaged by any member of the Contractor Personnel, whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.
- 7.3. Where security requirements of the Authority dictate, the Authority may search those persons or vehicles to whom such requirements relate and who are engaged or used by the Contractor at the Authority Premises.
- 7.4. The Contractor shall not, and shall procure that all Contractor Personnel shall not, take photographs on the Authority Premises without Approval.
- 7.5. Subject to data protection requirements, at the Authority's written request, the Contractor shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all persons who may require admission to the Authority Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- 7.6. The Contractor shall ensure that all Contractor Personnel who have access to the Authority Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.
- 7.7. The Contractor shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:
- a) use reasonable endeavours to make available any Contractor Personnel requested by the Authority to attend an interview for the purpose of an investigation; and
  - b) provide documents, records or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority's behalf, for the purposes of an investigation.

## **8. Charges**

- 8.1. The parties agree that Schedule F sets out the financial arrangements which shall apply to this Agreement.

## **9. Audit**

- 9.1. The Authority may at its sole cost, inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours subject to reasonable notice, and the Contractor shall provide the Authority with access to such books, accounts and records subject to redaction of any commercially sensitive information, and to its Personnel as the Authority shall request reasonably from time to time.

## **10. Liability and Insurance**

- 10.1. The Contractor shall indemnify the Authority against all claims, damages and any other liabilities which may arise as a result, directly of the performance or purported performance of the Contract.
- 10.2. The Contractor's liability (if any) to the Authority:
- a) for loss of or damage to any tangible property shall be limited to the cost of replacing or repairing the same (whichever shall be the lesser cost) but shall be capped at £10 million;
  - b) for any other damages, costs, claims, expenses, interest or other liability arising out of or under the Contract (whether arising in contract, tort, indemnities provided under the Contract by virtue of negligence or otherwise) shall be limited to £500,000 in the aggregate.
  - c) Neither party shall have any liability to the other party for any damage or loss arising out of or in connection with the Contract (whether by virtue of negligence or otherwise) which falls within any of the following categories: loss of business opportunity; loss of anticipated savings; loss of profits, indirect economic loss; damage to goodwill; or indirect or consequential loss.
- 10.3. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance for the duration of the Contract Period, including but not limited to public and product Liability insurance, and insurances required by law in the United Kingdom in such sums as will enable the Contractor to comply with its obligations under the Contract, including the indemnity in the previous paragraph. The Contractor is to provide written evidence of such insurance by way of a brokers certificate, as and when required by the Authority, including evidence that the premiums have been paid in full and shall ensure that the certificate is clearly displayed.
- 10.4. Without prejudice to any liability it may have to the Authority under this Contract or otherwise, the Contractor shall for the Contract Periods take out and maintain or procure the taking out and maintenance of the insurances as required by the Authority any other

insurances as may be required by Law (together the "**Required Insurances**"). The Contractor shall ensure that each of the Required Insurances is effective not later than the date on which the relevant risk commences.

- 10.5. The Required Insurances shall be taken out and maintained with insurers who (in the reasonable opinion of the Authority) are of good financial standing and of good repute in the United Kingdom insurance market.
- 10.6. The Contractor shall ensure in respect of the public and products liability and employer's liability insurances that the policies of insurance shall contain an indemnity to principals clause (or additional insureds equivalent) under which the Authority shall be indemnified in respect of claims, made against the Authority arising from death or bodily injury or property damage and for which the Contractor is legally liable in respect of this Contract.
- 10.7. The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract it has not committed any fraud;
  - (c) as at the Commencement Date, all information provided by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
  - (d) it has notified the Authority in writing of any claim being asserted and any litigation, arbitration or administrative proceeding that is in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
  - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
  - (f) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
  - (g) in the 3 years (or period of existence if the Contractor has not been in existence for 3 years) prior to the date of the Contract:
  - (h) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (i) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (j) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
  - (k) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
  - (l) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.
- 10.8. The Contractor confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in

connection with the subject matter of the Contract except those expressly set out in the Contract and the Contractor hereby waives and releases the Authority in respect thereof absolutely.

## **11. Default, Disruption and Termination**

- 11.1. The Contractor shall use all reasonable endeavours to ensure that, in the performance of its obligations under the Contract, it does not disrupt the operations of the Court, the Authority, or any Authority Personnel. The Authority shall not be liable to the Contractor for any disruption to the Services that occurs in the ordinary course of business of the Court.
- 11.2. The Authority shall have the right to terminate the Contract, with no liability or cost to the Authority, at any time by giving at least three (3) months' written notice to the Contractor.
- 11.3. The Contractor shall have the right to terminate the Contract at any time by giving at least three (3) months' written notice to the Authority.
- 11.4. The Authority may terminate the Contract, with no liability and cost to the Authority, with immediate effect by notice in writing where the Contractor is (a) the subject of proceedings under the Insolvency Act 1986; (b) is otherwise subject to any similar insolvency or financial procedure (c) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; (d) being an individual, is deemed either unable to pay its debts or as having company or limited and no reasonable prospect of so doing, in either case, within the meaning of s268 of the Insolvency Act 1986; or (e) being a partnership has any partner to whom any of the foregoing apply.
- 11.5. If the Contractor commits a material breach of the Contract (which, where remediable, it fails to remedy within ten (10) Working Days of written notice from the Authority), the Authority may elect at its sole discretion to either (a) take over the provision of some or all of the Services itself at the Contractor's cost; or (b) partially terminate the Contract and procure a third party to provide that part of the Services at the Contractor's cost; or (c) terminate the whole of the Contract and re-procure the Services. The costs incurred in relation to such re-procurement shall be reimbursed to the Authority by the Contractor.
- 11.6. On the termination or expiry of the Contract for any reason, the Contractor shall at its own cost and expense:
- a) Immediately return, deliver or make available to the Authority all property (including Authority Equipment, materials, documents, information and access keys) provided to the Contractor for the purposes of the Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear) together with any Confidential Information and any information concerning the provision of the Services which may reasonably be requested by the Authority and which is in its possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
  - b) remove any Contractor Equipment together with any other materials supplied by the Contractor to provide the Services and shall leave the Premises in a clean, safe and tidy condition
  - c) undertake a deep clean of the kitchen area as detailed in section 3 of Schedule B to the Contract.
  - d) assist and co-operate with the Authority and any incoming supplier to ensure an orderly transition of the provision of the Services and/or the completion of any work in progress;

**11A Force Majeure** 11.A1 Provided it has complied with clause 11.A2, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by Force Majeure (**Affected Party**), the Affected Party shall not be in breach of this Contract or

otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended by a reasonable period.

11.A2 Save for any obligation to pay any amount owed under the Contract, the corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party under clause 11.A1.

11.A3 The Affected Party shall:

11.A3.1 as soon as reasonably practicable after the start of the Force Majeure but no later than 7 days from its start, notify the other Party in writing of the Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Force Majeure on its ability to perform any of its obligations under the Contract; and

11.A3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure on the performance of its obligations.

11.A4 If the Force Majeure prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, either Party may terminate this Contract by giving 14 days written notice to the other Party.

## **12. Protection of Personal Data**

12.1. The Parties acknowledge that for the purposes of Data Protection Law, the Authority is the Controller and the Contractor is the Processor. The only processing which the Authority has authorised the Contractor to do is described in the Schedule D.

12.2. The Contractor shall:

- a) notify the Authority immediately if it considers any Authority instructions infringe the Data Protection Law;
- b) process Personal Data only in accordance with the Contract unless the Contractor is required to do otherwise by law. If it is so required, the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by law;
- c) ensure that it has in place Protective Measures which have been approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the nature of the data to be protected, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures;
- d) ensure that any Contractor staff do not process Personal Data except in accordance with the Contract;
- e) take all reasonable measures to ensure the reliability and integrity of any Contractor staff who have access to Personal Data and have undergone adequate training in the use, care, protection and handling of Personal Data;
- f) at the direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by law to retain it;
- g) subject to clause 12.3, notify the Authority immediately if it:
  - i. receives a Data Subject Access Request;
  - ii. receives a request to rectify, block or erase any Personal Data;
  - iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Law;
  - iv. receives any communication from the Information Commissioner's Office or any other regulatory authority relating to Personal Data processed under the Contract;
  - v. receives a request from any third party for disclosure of Personal Data where compliance with the request is required or purported to be required by law; or
  - vi. becomes aware of a Data Loss Event.

12.3 The Contractor's obligation to notify under clause 12.2.g includes the provision of further information to the Authority in phases as details become available.

- 12.4 Considering the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under the Data Protection Law and any complaint, communication or request made under clause 12.2.g.
- 12.5 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 12.2.g and allow the Authority to audit its Data Processing activity on reasonable notice.
- 12.6 The Contractor shall designate a Data Protection Officer if required by the Data Protection Law.

### **13 Handover and Exit Management**

- 13.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services or source a new provider of the Services, including:
- a) details of the Services;
  - b) an inventory of the Authority Data in the Contractor's possession or control;
  - c) a list of any ongoing and/or threatened disputes in relation to the Services;
  - d) to the extent permitted by applicable Law, all information relating to Transferring Contractor Employees required to be provided by the Contractor under the Contract; and
  - e) such other material and information as the Authority shall reasonably require.
- 13.2 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to the Authority; and that they shall not use it for any other purpose.
- 13.3 The Contractor indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause 13.1.
- 13.4 Upon termination or expiry of the Contract for any reason, the Contractor shall render all reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in this clause 13.
- 13.5 Where the Authority requires a continuation of all or any of the Services on expiry or termination of the Contract, either by performing them itself or by engaging a Replacement Contractor to perform them, the Contractor shall co-operate fully with the Authority and any Replacement Contractor and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

### **13A Intellectual Property**

- 13A.1 Subject to the rights of third parties all rights (including all copyright) in any technical know how and data including but not limited to systems, concepts or brands, reports, drawings, specifications, technical manuals, designs, inventions, computer software or other material (including displays and promotional material) produced or acquired, developed, installed or introduced by the Contractor will vest in and remain the sole property of the Contractor. For the avoidance of doubt, the contractor will have the right to remove all such items from the Premises upon termination of this Agreement (however and whenever occurring).

## 13B Capital Expenditure

13B.1 From the Commencement Date, the Contractor shall make the Capital Investment available to expend on capital projects to improve the catering areas to be undertaken by or on behalf of (through use of the Contractor's approved suppliers) the Contractor, provided that such projects shall be designed and intended to maximise the turnover and profitability of the Services (the "Capital Projects").

13B.2 The specific nature, extent and timing of the Capital Projects shall be agreed between the Contractor and the Authority (neither Party unreasonably withholding or delaying its approval) prior to the Contractor incurring such expenditure.

13B.3 The Authority warrants and represents that it shall not prevent, inhibited, hinder or restrict the Contractor from using those areas of the catering areas that are enhanced or improved by the Capital Projects in order to maximise the turnover and profitability of the Services.

13B.4 The Contractor and the Authority agree that beneficial title to and ownership of the Capital Project Assets shall remain with the Contractor but that the Authority shall have the right upon expiry or termination of the Agreement (subject to payment being made in full in accordance with clause 13B.9 or 13B.10 (as applicable)) to commence to use (without restrictions and with the right to sub-licence such rights) the Capital Project Assets until such time as they reach the end of their useful life (the "Period") by way of a licence (the "Licence") on the payment of £1 (inclusive of VAT) per annum by the Authority to the Contractor.

13B.5 If at any time during the Period the Authority intends to terminate the Licence, then the Authority shall notify the Contractor of the proposed termination one (1) month before the date of the proposed termination. The Authority shall be responsible for the removal and disposal of the Capital Project Assets at its sole cost and any consideration received by the Authority as a result of such removal and disposal may be utilised by the Authority to off-set such costs.

13B.6 During:

13B.6.1 the period of this Agreement, the Capital Project Assets and the Capital Project Works shall be maintained and replaced (repairing and renewing where necessary) by the Contractor; and

13B.6.1 the period after expiry or termination of the Agreement, the Contractor shall be under no obligation to maintain or replace the Capital Project Assets and/or the Capital Project Works.

13B.7 The Capital Investment shall be depreciated on a straight line basis from the date of first use of the relevant Capital Project Works and or Capital Project Assets to the end of the 31 March 2026.

13B.8 The cost of depreciation of the Capital Investment shall constitute "Costs of the Services" and shall be accounted for by the Contractor in accordance with Schedule F of this Agreement.

13B.9 Subject to clause 13B.10, if the Agreement is terminated earlier than the end of the 31 March 2026 for any reason, the Authority shall, within thirty (30) days of the date of termination, pay to the Contractor an amount equal to A (plus any applicable VAT) where

$$(B \div C) \times D = A$$

and:

B = the number of days between the date of termination and 31 March 2026 (both dates inclusive);

C = the number of days between the date of first use of the relevant Capital Project Works and or Capital Project Assets and 31 March 2026 (both dates inclusive); and

D = the amount of the Capital Investment that has been expended at the date of termination.

13B.10 For the avoidance of doubt, if the Agreement is terminated earlier than 31 March 2026 and as at the date of termination any amount of the Capital Investment has been expended by the Contractor

but has not begun being depreciated in accordance with clause 13B.7, the Authority shall, within thirty (30) days of the date of termination, pay to the Contractor an amount equal to such amount (plus any applicable VAT).

#### **14 Dispute Resolution**

14.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [insert role] of the Contractor and the HMCTS Director of Operations on behalf of the Authority.

14.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

14.3 Subject to clause 14.2, the Parties shall not institute court proceedings until the procedure set out in clause 14.1 has been concluded.

#### **15 General**

15.1 Neither Party shall assign or sub-contract any obligations under the Contract without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed

15.2 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.3 The Contractor shall be an independent contractor and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor.

15.4 Subject to clause 15.1, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

15.5 The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract is to be governed and construed according to English Law.

**This Contract has been entered into on the date first stated above.**

Signed for and on behalf of the **Lord Chancellor**

<b>Authorised Signatory</b>	
<b>Name</b>	
<b>Title/Position</b>	
<b>Date</b>	

Signed for and on behalf of **Compass Contract Services (UK) Limited**

<b>Authorised Signatory</b>	
<b>Name</b>	
<b>Title/Position</b>	
<b>Date</b>	

## Schedule A – TUPE and Employees

### 1. Definitions

For the purpose of this **Schedule A (TUPE and Employees)**, unless the context otherwise requires:

<b>"Contractor Personnel"</b>	means the personnel of the Contractor and those of any Employing Sub-Contractor who are directly employed, assigned or engaged in providing the Services (or relevant part thereof) under this Contract;
<b>"Employee Liability Information"</b>	Has the same meaning as in regulation 11(2) of TUPE;
<b>"Employing Sub-Contractor"</b>	means any sub-contractor of the Contractor which becomes the employer of any Previous Contractor Transferring Employee or any other person who is assigned to carry out the Services to be carried out by the Contractor under this Contract;
<b>"Employment Codes of Practice"</b>	means the Cabinet Office Statement of Practice dated January 2000 entitled Staff Transfers in the Public Sector as amended or replaced from time to time;
<b>"Initial Sub-Contractor"</b>	means an Employing Sub-Contractor to which any Previous Contractor Transferring Employees transfer on a Relevant Transfer Date;
<b>"Previous Contractor"</b>	Means any provider of services that are being replaced by the Services to be delivered by the Contractor under this Contract; (or any sub-contractor thereof)
<b>"Previous Contractor Transferring Employees"</b>	means an employee who immediately before the Relevant Transfer Date is an employee of a Previous Contractor and assigned to carry out the Services to be carried out by the Contractor under this Contract;
<b>"New Contractor"</b>	means any contractor who provides the Services subsequent to the Contractor
<b>"Relevant Date"</b>	means each date with effect from which the provision of any of the Services under this Contract terminate;
<b>"Relevant Employees"</b>	means those individuals who immediately prior to the Relevant Date are employed, assigned or engaged in the provision of the Services or, in the case of the termination of the provision of part but not all of the Services, the relevant part of the Services and who become employees of the New Contractor on the Relevant Date;

<b>"Relevant Transfer"</b>	means the transfer to the Contractor or an Employing Sub-Contractor (as applicable) of Previous Contractor Transferring Employees pursuant to this Contract or TUPE or any successor legislation, as applicable;
<b>"Relevant Transfer Date"</b>	means the date on which a Relevant Transfer is affected for the Previous Contractor Transferring Employees;
<b>"Subsequent Relevant Transfer"</b>	means a transfer of employees assigned, engaged or employed in the provision of the Services or part of the Services from the Contractor or any Employing Sub-Contractor to a New Contractor or a sub-contractor of a New Contractor pursuant to this Contract and/or TUPE;
<b>"Subsequent Transfer Date"</b>	means the date on which a Subsequent Relevant Transfer of a Subsequent Transferring Employee takes place under this Contract and/or TUPE;
<b>"Subsequent Transferring Employee"</b>	means an employee assigned, engaged or employed in the provision of the Services or part of Services who is transferred pursuant to this Contract and/or TUPE from the Contractor or an Employing Sub-Contractor to a New Contractor or a sub-contractor of a New Contractor;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any successor legislation.

## 2. TUPE and Employees

### **Transfer of Previous Contractor Transferring Employees from a Previous Contractor**

- 2.1 If, as a result of the Contractor providing the Services to the Authority under this Contract, TUPE applies such that there is a Relevant Transfer of Previous Contractor Employees from the Previous Contractor to the Contractor or to any Employing Sub-Contractor (but not otherwise), paragraphs 2.2 to 2.12 shall apply.
- 2.2 Subject to **paragraph 2.5 (Transfer of Employees from a Previous Contractor)**, the Contractor shall on the Relevant Transfer Date become the employer of the Previous Contractor Transferring Employees and all of the Previous Contractor's rights, duties, powers, liabilities and obligations in respect of any contract of employment with the Previous Contractor Transferring Employees still in force immediately before the Relevant Transfer Date (including but not limited to collective agreements with recognised unions) shall transfer to the Contractor and the Contractor shall comply with all the requirements and obligations which TUPE, or any successor legislation or any Employment Codes of Practice or other relevant Government guidance imposes on a transferee both before and after a Relevant Transfer.
- 2.3 Subject to **paragraph 2.5 (Transfer of Employees from a Previous Contractor)** the Authority shall procure that all salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to retirement benefit schemes, allowances, expenses and bonus and commission payments relating

to the Previous Contractor Transferring Employees and appertaining to the period up to the Relevant Transfer Date shall be borne by the Previous Contractor. All salaries and other emoluments relating to the Previous Contractor Transferring Employees and appertaining to the period from and including the Relevant Transfer Date shall be borne by the Contractor.

- 2.4 In the event that the Contractor does not commence provision of the Services on the date specified in the Contract as the Service Commencement Date , the Contractor shall be liable to the Authority and to the Previous Contractor for all costs and liabilities incurred in respect of the employment by the Previous Contractor of the Previous Contractor Transferring Employees during the period between the date specified in the Contract as the Services Commencement Date and the date on which the Contractor commences provision of the Services (inclusive).
- 2.5 If the Previous Contractor Transferring Employees or any of them transfer to any Employing Sub-Contractor by virtue of the operation of TUPE, any successor legislation or otherwise, the Contractor shall procure that such employer of the Previous Contractor Transferring Employees shall comply with and discharge the obligations of the Contractor set out in **paragraph 2.1 to 2.4 (Transfer of Employees from a Previous Contractor)**.
- 2.6 No less than one month prior to the Relevant Transfer Date, the Authority shall provide the Contractor with the information listed in **Appendix 1 of this Schedule A (Personal Working at: Royal Courts of Justice, Strand, London WC2A 2LL** together with the Employee Liability Information in respect of the Previous Contractor Transferring Employees to the extent that such information and Employee Liability information has been provided to the Authority by the Previous Contractor.
- 2.7 The Authority shall provide the Contractor with any update to the information provided under **paragraph 2.6 (Transfer of Employees from a Previous Contractor)** as soon as is reasonably practicable to the extent that updates have been provided to the Authority by the Previous Contractor.
- 2.8 The Authority does not warrant the accuracy of the information provided under **paragraph 2.6 (Transfer of Employees from a Previous Contractor)** or as updated under **paragraph 2.7 (Transfer of Employees from a Previous Contractor)** but hereby assigns to the Contractor the benefit of the warranty and indemnity regarding the completeness and accuracy of the information provided by the Previous Contractor, which are contained in the agreement between the Authority and the Previous Contractor, insofar as it relates to the information provided under **paragraph 2.6 (Transfer of Employees from a Previous Contractor)** or as updated under **paragraph 2.7 (Transfer of Employees from a Previous Contractor)**.
- 2.9 The Contractor shall indemnify and keep indemnified the Authority and any Previous Contractor against any costs, losses, expenses, claims, liabilities, awards or damages in connection with or as a result of:
  - 2.9.1 Any claims or proceedings by any Previous Contractor Transferring Employees or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority or any Previous Contractor at any time arising out of or in connection with any acts or omissions of the Contractor or any Employing Sub-Contractor on or after the Relevant Transfer

Date including, without limitation, claims for breach of contract, loss of office, unfair dismissal, redundancy, sex or race discrimination, loss of earnings, non-payment of pension contributions or otherwise (and all costs and expenses thereof);

- 2.9.2 the Contractor's or any Employing Sub-Contractor's failure or alleged failure to comply with its/their obligations to inform or consult or both with the Previous Contractor Transferring Employees or any other employee of the Contractor or any Employing Sub-Contractor or their employee or trade union representatives pursuant to TUPE or any successor legislation;
  - 2.9.3 any substantial change made or proposed to be made by the Contractor or any Employing Sub-Contractor in the terms of employment or working conditions of any of the Previous Contractor Transferring Employees which is detrimental to any of the Previous Contractor Transferring Employees;
  - 2.9.4 any substantial change made or proposed to be made by the Contractor or any Employing Sub-Contractor in the terms of employment or working conditions of any person who would have been a Previous Contractor Transferring Employee and/or any person who would have transferred under TUPE and/or this Contract but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Relevant Transfer Date as a result of any such changes;
  - 2.9.5 a change in the identity of the employer of all or any of the Previous Contractor Transferring Employees where that change is a significant change and to the detriment of all or any of the Previous Contractor Transferring Employees;
  - 2.9.6 a change in the identity of the employer of any person who would have been a Previous Contractor Transferring Employee and/or any person who would have transferred under TUPE and/or this Contract but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Relevant Transfer Date as a result of the change of employer;
  - 2.9.7 the Contractor's failure to procure any Employing Sub-Contractor's compliance with paragraph 2.5 (Transfer of Employees from a Previous Contractor); or
  - 2.9.8 any breach by the Contractor of its obligations under paragraphs 2.2 to 2.4 (Transfer of Employees from a Previous Contractor).
- 2.10 The Authority hereby assigns to the Contractor the benefit of the Previous Contractor's agreement, in its contract with the Authority, to indemnify and keep indemnified and hold the Authority and the Crown (both for themselves and the Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or the Contractor may suffer or incur as a result of or in connection with:
- 2.10.1 any claim or demand by any Previous Contractor Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Previous Contractor or any of its sub-contractors in respect of

any Previous Contractor Transferring Employee on or before the Relevant Transfer Date; and

- 2.10.2 any failure by the Previous Contractor or any of its sub-contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Contractor to comply with its duties under Regulation 13 of the Regulations; and
- 2.10.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Previous Contractor Transferring Employee arising from or connected with any failure by the Previous Contractor or any of its sub-contractors to comply with any legal obligation to such trade union, body or person; and
- 2.10.4 any claim by any person who is transferred by the Previous Contractor to the Contractor whose name is not included in the list of Previous Contractor Transferring Employees (such list to be incorporated into Appendix 1)

#### **Post Transfer Reporting**

2.11 The Contractor shall notify the Authority of the following information relating to the Previous Contractor Transferring Employees as part of the normal monthly reporting regime of the Contract and in a format agreed between the Contractor and the Authority from time to time (or failing such agreement, in such form as may be required by the Authority):

- 2.11.1 proposed, agreed or imposed changes to terms and conditions of service in respect of Previous Contractor Transferring Employees;
- 2.11.2 disputes relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements which are regarded as unresolved by a recognised Trades Union and/or employee representative;
- 2.11.3 any court action or tribunal proceedings relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements;
- 2.11.4 completed court action or tribunal proceedings relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements;
- 2.11.5 "out of court" settlements relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements; and
- 2.11.6 proposed dismissals of any Previous Contractor Transferring Employees by reason of redundancy (whether voluntary or otherwise),

such reports to also include information relating to staff transferred under TUPE or any successor legislation to any Employing Sub-Contractors as a result of this Contract.

2.12 The information referred to in **paragraph 2.11 (Post Transfer Reporting)** may also be used in considering the Contractor's bid at re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

### **Information on Re-tender, Expiry or Termination**

- 2.13 During the period of eighteen months preceding the Expiry Date or at any other time as directed by the Authority or once notice to terminate this Contract or the provision of part of the Services under this Contract has been given (for whatever reason) or where there is a reasonable expectation on the part of the Authority that a Subsequent Relevant Transfer may take place, the Contractor shall:
- 2.13.1 upon the Authority's request, fully and accurately disclose to the Authority the information listed in Appendix 2 to this Schedule A (TUPE and Employees) relating to the Contractor Personnel that are employed, assigned or engaged in the provision of the Services (or part of the Services which is subject to the Subsequent Relevant Transfer)
  - 2.13.2 provide the information promptly and in any event not later than one month from the date when a request for such information is made and at no cost to the Authority;
  - 2.13.3 permit the Authority to use the information for informing any tenderer for any services which are substantially the same as any part of the Services provided pursuant to this Contract; and
  - 2.13.4 enable and assist the Authority, any tenderer or potential tenderer and such other persons as the Authority may determine to communicate with and meet the Contractor Personnel (as required) and their trade union or other employee representatives.
- 2.14 During the period of three months preceding the Expiry Date or at any other time as directed by the Authority or once notice to terminate this Contract or the provision of part of the Services under this Contract has been given (for whatever reason) or where there is a reasonable expectation on the part of the Authority that a Subsequent Relevant Transfer may take place, the Contractor shall:
- 2.14.1 upon the Authority's request fully and accurately disclose to the Authority such information listed in Appendix 2 to this Schedule A (TUPE and Employees) relating to the Contractor Personnel that are employed, assigned or engaged in the provision of the Services (or part of the Services which is subject to the Subsequent Relevant Transfer);
  - 2.14.2 provide the information promptly and in any event not later than one month from the date when a request for such information is made and at no cost to the Authority;
  - 2.14.3 permit the Authority to use the information for informing any tenderer for any services which are substantially the same as any part of the Service provided pursuant to this Contract; and
  - 2.14.4 enable and assist the Authority, any tenderer or potential tenderer and such other persons as the Authority may determine to communicate with and meet the Contractor Personnel (as required) and their trade union or other employee representatives.

- 2.15 The Contractor shall indemnify and keep the Authority and any New Contractor indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information by the Contractor under **paragraphs 2.13 and 2.14 (Information on Re-tender, Expiry or Termination)**, inaccuracies in the information provided by the Contractor under **paragraphs 2.13 and 2.14 (Information on Re-tender, Expiry or Termination)** or the Contractor's failure to provide information under **paragraphs 2.13 and 2.14 (Information on Re-tender, Expiry or Termination)**.
- 2.16 Once the information referred to at **paragraph 2.13 (Information on Re-tender, Expiry or Termination)** has been passed to the Authority during the eighteen (18) months preceding the Expiry Date or once notice to terminate this Contract or provision of part of the Services under this Contract has been given (for whatever reason) or within six months of the Expiry Date, (whichever is the earlier), the Contractor shall not and shall procure that any third party (including any Employing Sub-Contractor) shall not:
- 2.16.1 materially amend the rates of remuneration, terms of employment or hours to be worked by Contractor Personnel, including holidays; or
  - 2.16.2 replace, dismiss (other than by reason of gross misconduct) or redeploy any of the Contractor Personnel, or increase the number of Contractor Personnel assigned to the provision of the Services or relevant part of the Services; or
  - 2.16.3 reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services or relevant part of the Services any duties unconnected with the Services or relevant part of the Services under this Contract,
- without the prior written agreement of the Authority, such agreement not to be unreasonably withheld.
- 2.17 Without prejudice to paragraphs 2.14 to 2.15, the Contractor agrees to provide the Employee Liability Information in relation to the Contractor Personnel to the Authority (and/or, where relevant, the New Contractor) at such time or times as are required by TUPE, and, at the time of providing such Employee Liability Information, the Contractor shall warrant that the Employee Liability Information:
- 2.17.1 is complete and accurate at the time it is provided to the Authority or the New Contractor, as appropriate;
  - 2.17.2 will be updated to take account of any changes to such information, as required by TUPE.
- 2.18 The Authority may assign the benefit of the warranty in paragraph 2.17 to a New Contractor.
- 2.19 The Contractor shall (and shall ensure that any Sub-Contractor shall) upon the reasonable request of the Authority enable and assist the Authority and such other persons as the Authority may reasonably determine, including any New Contractor, to communicate with and meet the Contractor Personnel and their representatives as, when and where the Authority determines.

3. The Contractor agrees that a New Contractor can elect to consult representatives of the Contractor Personnel before the Subsequent Relevant Transfer. If such election is made, the Contractor will provide information and such other reasonable assistance, including access

to the Contractor Personnel and their representatives, as the New Contractor reasonably requires in order to assist the New Contractor to comply with collective consultation requirements under section 198A and/or section 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 ("**TULR(C)A**") as amended or TUPE. **Indemnities on expiry, termination or cessation of the Contract**

3.1 Where the Contractor or any Employing Sub-Contractor shall cease (for whatever reason and whether directly or indirectly) to provide the Services (or part thereof) to be provided under this Contract, the Contractor shall indemnify and keep indemnified the Authority and any New Contractor against any costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof):

3.1.1 where there is a Subsequent Relevant Transfer, by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority and/or a New Contractor at any time arising out of or in connection with any acts or omissions of the Contractor or any Employing Sub-Contractor which occurred on or prior to the Subsequent Transfer Date including without limitation claims for breach of contract, loss of office, unfair dismissal, redundancy, sex, race or other discrimination, loss of earnings, non payment of pension contributions or otherwise (and all costs and expenses thereof) provided that such claims, losses, costs, expenses and liabilities are not payable as a result of any act or omission of the Authority or a New Contractor;

3.1.2 by any person or persons (or by their appropriate representative (as defined in TUPE or any successor legislation)) who are not Subsequent Transferring Employees or who are not disclosed as such to the Authority in accordance with **paragraph 2.14 (Information on Re-tender, Expiry or Termination)** who claims that his or her or their contracts of employment or liability in relation to their contracts of employment are or have been transferred to the Authority or a New Contractor in accordance with TUPE or any successor legislation including, for the avoidance of doubt,

- (a) the reasonable cost to the Authority or the New Contractor of employing such person or persons for any period during which statutory redundancy consultation must be undertaken plus a period of up to one month prior to the termination of their employment; and
- (b) the cost to the Authority or the New Contractor arising out of the dismissal of such person or persons (such dismissal costs to be limited to the payment of contractual notice and contractual redundancy payments),

provided that such person or persons are given notice by the Authority or the New Contractor to terminate their employment within one month of the Authority or the New Contractor becoming aware of such claim; or

3.1.3 by any Subsequent Transferring Employee or any other employee of the Contractor or any Employing Sub-Contractor or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority and/or the New Contractor at any time as a result of

the Contractor's or any Employing Sub-Contractor's failure or alleged failure to comply with its/their obligations to inform or consult or both pursuant to TUPE or any successor legislation.

- 3.2 The Contractor shall be responsible for all emoluments and outgoings in respect of the Contractor Personnel and the Subsequent Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to, and including, the Subsequent Transfer Date (including any bonuses or commission which are payable after the Subsequent Transfer Date but attributable in whole or in part to the period on or before the Subsequent Transfer Date) and the Contractor will indemnify the Authority and the Crown (both for themselves and any New Contractor) against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred or suffered by the Authority or any New Contractor in respect of the same.
- 3.3 Where the Contractor or any Employing Sub-Contractor shall cease (for whatever reason and whether directly or indirectly) to provide the Services (or part thereof) to be provided under this Contract and there is no Subsequent Relevant Transfer, the Contractor shall have sole responsibility for all costs and liabilities (of whatever kind) of dismissing the Contractor Personnel, and all costs and liabilities arising from their employment with the Contractor, and shall indemnify and keep indemnified the Authority and any New Contractor against any costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof) made against the Authority or any New Contractor by any Contractor Personnel.

#### 4. **Contracts (Rights of Third Parties) Act 1999**

- 4.1 A New Contractor may enforce the terms of **paragraph 2.13 and 2.14 (Information on Re-tender, Expiry or Termination)** and **paragraph 3.1 and 3.2 (Indemnities on expiry, termination or cessation of the Contract)** against the Contractor or any Employing Sub-Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 4.2 The consent of a New Contractor or any of its sub-contractors is not required to rescind or vary or terminate this Contract.

#### 5. **Further assistance**

- 5.1 The Contractor shall procure that any Employing Sub-Contractor complies with and discharges the obligations imposed on the Contractor in this Schedule as if those obligations applied directly to that Employing Sub-Contractor.

**APPENDIX 1: PERSONNELL WORKING AT**

**ROYAL COURTS OF JUSTICE, STRAND, LONDON WC2A 2LL**

## **APPENDIX 2 : EMPLOYEE INFORMATION**

### **PART 1**

Name (Surname, forename, title and initials)

Date of Birth

Home address

Job title

Work location

National Insurance Number

National Insurance contribution rate

Annual salary and rates of pay band/grade

Shifts, unsocial hours or other premium rates of pay

Conditioned hours of work

Overtime history for preceding 12-month period

Allowances and bonuses for preceding 12-month period

Tax Code

For pension purposes the notional reckonable service date

Annual leave reckonable service date

Pensionable pay history for 3 years to date of transfer

Percentage of any pay currently contributed under additional voluntary contribution arrangements

Any other voluntary deductions from pay

Bank/building society account details for payroll purposes

Annual holiday entitlement and accrued holiday entitlement

Details of any active disciplinary/inefficiency or grievance proceedings

All documents, manuals, codes, handbooks, procedure guides publication agreements (including collective agreements)

Current terms and conditions of employment and benefits (including retirement benefits), any other letters or documents or collective agreements affecting terms and conditions of employment

Whether registered disabled

Any performance assessment details

Existing training or sponsorship commitments

Outstanding loan/advances on salary or debts

Those currently on maternity leave or other long-term leave of absence

Sickness and absence records for the immediately preceding 4-year period

Emergency contact details

5 months' copy pay slip data

Cumulative pay for tax and pension purposes

Cumulative tax paid

Any other information requested by the Authority

## **PART 2**

1. Total number of individual members of staff that currently undertake the work and who may therefore be transferred. Alternatively, the contractor should provide information why any of their staff or those of any Employing Sub-Contractors who currently undertake the work will not transfer

2. The total number of posts or proportion of posts expressed as full-time equivalent value that currently undertakes the work that is to transfer.

3. The preceding 12 months total pay costs – pay, employee/employer ERNIC and overtime

4. Total redundancy liability

5. Additional information about factors that may influence staffing levels and costs.

6. Contractor's and Employing Sub-Contractor's general employment terms and conditions applicable to those members of staff identified at 1.

In respect of those members of staff included in the total at 1. above:

1. Age (not date of birth)

2. Employment status (i.e. Fixed term, casual, permanent)

3. Length of current period of continuous employment

4. Weekly conditioned hours of attendance (gross)

5. Standard annual holiday entitlement (not "in year" holiday entitlement that may contain

carry over or deficit from previous leave years)

6. Pension scheme membership

7. Pension and redundancy liability information

8. Annual salary

9. Details of any regular overtime payments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment)

10. Details of attendance patterns that attract enhanced rates of pay or allowances

11. Regular/recurring allowances

12. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants)

13. Any other information requested by the Authority

### **PART 3**

1. Total number of individual members of staff that currently undertake the work and who may therefore be transferred. Alternatively, the contractor should provide information why any of their staff or those of any Employing Sub-Contractors who currently undertake the work will not transfer

2. The total number of posts or proportion of posts expressed as full-time equivalent value that currently undertakes the work that is to transfer.

3. The preceding 12 months total pay costs – pay, employee/employer ERNIC and overtime

4. Total redundancy liability

5. Additional information about factors that may influence staffing levels and costs.

6. Contractor's and Employing Sub-Contractor's general employment terms and conditions applicable to those members of staff identified at 1.

In respect of those members of staff included in the total at 1. above:

1. Employee's full name

2. Age (not date of birth)

3. Employment status (i.e. Fixed term, casual, permanent)

4. Length of current period of continuous employment

5. Weekly conditioned hours of attendance (gross)

6. Standard annual holiday entitlement (not "in year" holiday entitlement that may contain

carry over or deficit from previous leave years)

7. Pension scheme membership

8. Pension and redundancy liability information

9. Annual salary

10. Details of any regular overtime payments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment)

11. Details of attendance patterns that attract enhanced rates of pay or allowances

12. Regular/recurring allowances

13. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants)

14. Information of any disciplinary procedure taken against an employee within the previous two years

15. Information of any grievance procedure taken by an employee within the previous two years

16. Information of any court or tribunal case, claim or action brought by an employee against the transferor within the previous two years

17. Information of any court or tribunal case, claim or action that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee's employment with the transferor

18. Information of any collective agreement which will have effect after the transfer, in its application in relation to the employee

19. Details of long term or serious ill-health or disability affecting any employee's capacity to work; and

20. Any other information requested by the Authority

## **Schedule B – Court Site Requirements**

### **Part 1 – Catering Services**

#### **Breakfast 08:00 -10:30**

Hot handheld Breakfast

Grab & Go “Cereals, Birchers, Granola & fruit pots

Morning baked goods

#### **Lunch 11:30 14:00**

Soup & freshly baked bread

Baguettes / Sandwiches/ Wraps / Boxed Salads

Savoury Bakery

Jacket Potato & Toppings

Hot one pot offer to include vegetarian

Panini / Toasties / Hot sandwiches

#### **All Day Part offer 08:00 15:00**

Indulgent bakery lines

Hot beverages / cold Beverages

Snacks / Retail confectionery

Savoury chilled goods

Fresh Fruit

### **Part 2 – Hospitality Services**

The Authority may request the provision of the Hospitality Services on an ad-hoc basis.

The Contractor shall provide the Authority with a quote for the Hospitality Service, and if accepted such quote shall set the charges for the Hospitality Service, or, if a definitive value cannot be set, the rates at which any variable elements of the Hospitality Services called off shall be priced.

The Contractor shall raise an invoice detailing the Contractors charges for the Hospitality Service following each separate provision of the Hospitality Services and such invoice shall be payable by the Authority to the Contractor within 30 days of the date of the invoice and the provisions of paragraphs 1A.8 and 1A.9 shall apply to such payment.

In order to maintain and ensure compliance with health and safety legislation and/or regulations, any third party engaged to provide hospitality services by the Authority, shall have no access to the kitchen spaces within the Premises which are occupied by the Contractor in the provision of the Services.

For the avoidance of doubt, the provision of the delivered in hospitality services pursuant to this clause, by the third party caterer, does not constitute the Services and shall fall outside of the scope of this Agreement and be a matter entirely between the Authority and the third party caterer, and, the Contractor shall have no liability whatsoever in respect of any liabilities, losses, costs, claims, damages and expenses arising from the acts or omissions of the third party caterer appointed to undertake the delivered in hospitality services and/or from such third party caterer's provision of catering at the Premises including, without limitation, for any breaches of legislation or statutory regulations.

**Hospitality 08:00 15:00 (24hr notice on beverages 72hr food)**

Breakfast

Hot & Cold Beverages

Working lunches

Bespoke event menu's with pre-arranged notice - In the event the Authority wishes to arrange events or private dining that fall out of the scope of this Agreement, the Authority may request such services from the Contractor. The Contractor shall develop a proposal to provide such requested hospitality services taking into account an adjusted labour provision, a suitable food and beverage offering and associated tariff's. Any additional provision of Hospitality Services shall be mutually agreed in writing, For the avoidance of doubt, the Contractor shall not be obliged to provide the requested services.

## **Schedule C – Asset Register**

To be agreed post signature

## **Schedule D – Processing, Personal Data and Data Subjects**

### **Authority Data**

#### **1.1. The Contractor shall:**

- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise Approved;
- (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
- (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
- (d) to the extent that Authority Data is held and/or Processed by the Contractor, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
- (e) perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request;
- (f) ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework<sup>1</sup>;
- (g) without prejudice to Schedule D (Data Protection) and the Contractor's obligation to implement Protective Measures and protect against a Data Loss Event on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of Personal Data, and its procedures for reducing risk;
- (h) without prejudice to Schedule D (Data Protection) and the Contractor's obligation to notify the Authority immediately or at least within 12 hours of becoming aware of any Data Loss Event, notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and

#### **1.2. Subject to Schedule D (Data Protection) and specifically the terms relating to notification and handling a Personal Data Breach, if Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:**

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

#### **1.3. Subject to Schedule D (Data Protection) and specifically the terms relating to notification and handling a Personal Data Breach and liability in relation thereto, if, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of**

reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

## **2. Official Secrets Acts and Finance Act**

2.1. The Contractor shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

## **3. Confidential Information**

3.1.1. Except to the extent set out in this paragraph 3 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

3.1.2. The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority or the Contractor redacted, including any Commercially Sensitive Information) including from time to time agreed changes to the Contract, to the general public.

3.1.3. If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause 3.1.3.

3.1.4. If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

3.1.5. The Contractor may disclose the Authority's Confidential Information only to the Staff who are directly involved in providing the Services and who need to know the information and

shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

3.1.6. The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.

3.1.7. Clause 3.1.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

3.1.8. Nothing in clause 3.1.1 prevents the Authority disclosing any Confidential Information obtained from the Contractor:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) to Parliament and Parliamentary committees;
- (d) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- (e) to any consultant, contractor or other person engaged by the Authority in connection with the Services provided these parties are not a competitor of the Contractor.

provided that in disclosing information under clauses 3.1.8(d) and 3.1.8(e) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

3.1.9. Nothing in clauses 3.1.1 to 3.1.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

3.1.10. The Authority shall ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information

is disclosed pursuant to clause 3.1.6 is made aware of the Authority's obligations of confidentiality.

3.1.11. If the Contractor does not comply with clauses 3.1.1 to 3.1.6 the Authority may terminate the Contract immediately on notice to the Contractor.

3.1.12. If the Authority does not comply with paragraph 3, the Contractor may terminate the Contract immediately on notice to the Authority.

3.1.13. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Parties shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

3.1.14. The Contractor shall immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

3.1.15. The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause 3.1.13.

#### **4. Freedom of Information**

4.1.1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

4.1.2. The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:

- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

4.1.3. The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

#### **5. Publicity, Media and Official Enquiries**

5.1.1. Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations or any policy requirements as to transparency, the Contractor shall

not make any press announcement or publicise the Contract or any part thereof in any way, without the written consent of the Authority.

5.1.2. The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with 5.1.1.

The Contractor shall comply with any further written instructions with respect to processing by the Authority.

Any such further instructions shall be incorporated into this Schedule.

Subject matter of the processing	Supplier sales data showing categories of sales, price points, total sales, profit and loss for the period including VAT.
Duration of the processing	Provided every 6 weeks for the duration of the contract and the 6 weeks following the expiry or termination showing the last 6 weeks of trading
Nature and purposes of the processing	<p>Data is used to determine the value of the Concession Contract which is required under the Concession Contracts Regulations 2016.</p> <p>Data will also help to identify demand, profitable products, loss making products and price points so decisions can be made by the Authority around future provision, investment etc.</p>
Type of Personal Data	Personal Data would include TUPE related data that the supplier may need to provide upon contract exit.
Categories of Data Subject	Data would be in line with TUPE regulations
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>Personal Data will be transferred to any future operator where TUPE applies</p> <p>Sales statistics will be held by MOJ indefinitely as will form historic trend analysis for future strategies.</p>

## Schedule E Statutory Obligations

### 1 What the Authority expects from the Contractor

- 1.1 In September 2017, Her Majesty's Government published a Supplier Code of Conduct (the "Code") setting out the standards and behaviours expected of suppliers who work with government. The Code can be found online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-3\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-3_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)

- 1.2 The Authority expects the Contractor and its Sub-Contractors to comply with their legal obligations and to meet the standards set out in the Code as a minimum. The Authority also expects the Contractor and its Sub-Contractors to use reasonable endeavours to comply with the standards in Part 2 of this Schedule E.

## PART 1 Statutory Obligations

### 2 Equality and Accessibility

- 2.1 The Contractor shall:

(a) perform its obligations under the Contract in accordance with:

- i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
- ii) the Authority's equality, diversity and inclusion policy as given to the Contractor from time to time;
- iii) any other requirements and instructions which the Authority reasonably imposes regarding any equality obligations imposed on the Authority at any time under applicable equality law; and

(b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### 3 Modern Slavery

- 3.1 The Contractor shall, and procure that each of its Sub-Contractors shall, comply with:

(a) the Modern Slavery Act 2015;

- 3.2 The Contractor shall:

- (a) implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
- (b) respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
- (c) prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- (d) maintain a complete set of records to trace the supply chain of all Services provided to the Authority regarding the Contract;
- (e) report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Authority and to the Modern Slavery Helpline; and
- (f) implement a system of training for its employees to ensure compliance with the Modern Slavery Act 2015 including highlighting to its employees the existence and contact details

of the Modern Slavery Helpline.

3.3 The Contractor represents, warrants and undertakes throughout the Contract Period that:

- (a) it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Modern Slavery Act and all analogous legislation in place in any part of the world;
- (b) its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
- (c) neither the Contractor nor any of its Sub-Contractors, nor any other persons associated with it:
  - i) has been convicted of any offence involving slavery and trafficking; or
  - ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

3.4 The Contractor shall notify the Authority as soon as it becomes aware of:

- (b) any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.

3.5 If the Contractor notifies the Authority pursuant to paragraph 3.4 of this Schedule E, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

3.6 If the Contractor is in Default under paragraphs 3.2 or 3.3 of this Schedule E the Authority may by notice:

- (a) require the Contractor to remove from performance of the Contract any Sub-Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

#### **4 Income Security**

4.1 The Contractor shall:

- (a) ensure that all pay and benefits paid for a standard working week meet, at least, national legal standards in the country of employment;
- (b) provide all Contractor Staff with written and readily understandable information about their employment conditions in respect of pay before they enter employment and about their pay for the pay period concerned each time that they are paid;
- (c) not make deductions from pay:
  - (i) as a disciplinary measure;
  - (ii) except where permitted by Law and the terms of the employment contract; and
  - (iii) without express permission of the person concerned
- (d) record all disciplinary measures taken against Staff.

#### **5 Working Hours**

5.1 The Contractor shall ensure that:

- (a) the working hours of Contractor Staff comply with the law, and any collective agreements;
- (b) the working hours of Contractor Staff, excluding overtime, is defined by contract, do not

exceed 48 hours per week unless the individual has agreed in writing, and that any such agreement is in accordance with the law;

- (c) overtime is used responsibly, considering:
  - (i) the extent;
  - (ii) frequency; and
  - (iii) hours worked;
- (d) the total hours worked in any seven-day period shall not exceed 60 hours, except where covered by paragraph 5.1 (e);
- (e) working hours do not exceed 60 hours in any seven-day period unless:
  - (i) it is allowed by law;
  - (ii) it is allowed by a collective agreement freely negotiated with a worker's organisation representing a significant portion of the workforce;
  - (iii) appropriate safeguards are taken to protect the workers' health and safety; and
  - (iv) the Contractor can demonstrate that exceptional circumstances apply such as during unexpected production peaks, accidents or emergencies;
- (f) all Contractor Staff are provided with at least:
  - (i) 1 day off in every 7-day period; or
  - (ii) where allowed by law, 2 days off in every 14-day period.

## **6 Right to Work**

6.1 The Contractor shall:

- (a) ensure that all Staff, are employed on the condition that they are permitted to work in the UK, and;
- (b) notify the authority immediately if an employee is not permitted to work in the UK.

## **7 Health and Safety**

7.1 The Contractor shall perform its obligations under the Contract in accordance with:

- (a) all applicable law regarding health and safety; and
- (b) the Authority's Health and Safety policies and procedures, as directed and notified to the Contractor in writing from time to time, while at the Authority's Premises.

7.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary safety measures in order to manage the risk.

## **9 Fraud and Bribery**

9.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act.

9.2 The Contractor shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 9.3 The Contractor shall, during the Contract Period:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - (b) have in place reasonable prevention measures (as defined in section 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Contractor do not commit tax evasion facilitation offences as defined under that Act;
  - (c) keep appropriate records of its compliance with its obligations under paragraphs 9.3(a) 9.3(b) and make such records available to the Authority on request; and
  - (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.
- 9.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of paragraphs 9.1 and/or 9.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 9.5 If the Contractor notifies the Authority pursuant to paragraph 9.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.
- 9.6 If the Contractor is in Default under paragraphs 9.1 and/or 9.2, the Authority may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract.
- 9.7 Any notice served by the Authority under paragraph 9.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract terminates).

## **PART 2 Corporate Social Responsibility**

### **10 Zero Hours Contracts**

- 10.1 Any reference to zero hours contracts, for the purposes of this Contract, means as they relate to employees or workers and not those who are genuinely self-employed and undertaking work on a zero hours arrangement.
- 10.2 When offering zero hours contracts, the Contractor shall consider and be clear in its

communications with its employees and workers about:

- (a) whether an individual is an employee or worker and what statutory and other rights they have;
- (b) the process by which work will be offered and assurance that they are not obliged to accept work on every occasion; and
- (c) how the individual's contract will terminate, for example, at the end of each work task or with notice given by either party.

## **11 Sustainability**

### **11.1 The Contractor shall:**

- (a) comply with the applicable Government Buying Standards;
- (b) provide, from time to time, in a format reasonably required by the Authority, reports on the environmental effects of providing the Goods and Services;
- (c) maintain ISO 14001 or BS 8555 or an equivalent standard intended to manage its environmental responsibilities; and
- (d) perform its obligations under the Contract in a way that:
  - (i) supports the Authority's achievement of the Greening Government Commitments;
  - (ii) conserves energy, water, wood, paper and other resources;
  - (iii) reduces waste and avoids the use of ozone depleting substances and single use plastics; and
  - (iv) minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **Annex A - Relevant Policies and information**

1. Security Policy Framework -

Security policy framework - GOV.UK ([www.gov.uk](http://www.gov.uk))

**Security policy framework - GOV.UK ([www.gov.uk](http://www.gov.uk))**

2. Authority's environmental policies and strategies and other useful guidance-

Ministry of Justice and the environment - GOV.UK ([www.gov.uk](http://www.gov.uk))

Greening Government Commitments 2021 to 2025 - GOV.UK ([www.gov.uk](http://www.gov.uk))

Energy Ratings and Energy-Efficient Appliances | OVO Energy

Food and drink waste hierarchy: deal with surplus and waste - GOV.UK ([www.gov.uk](http://www.gov.uk))

Food and cooking oil waste | Food Standards Agency

Food safety and hygiene certification - GOV.UK ([www.gov.uk](http://www.gov.uk))

Health and safety in catering and hospitality ([hse.gov.uk](http://hse.gov.uk))

Section 34 of the Environmental Protection Act 1990 and the Environmental Protection Act (Duty of Care) Regulations 1991 as amended.

3. equality, diversity and inclusion policy –

Equality and diversity - Ministry of Justice - GOV.UK ([www.gov.uk](http://www.gov.uk))

4. anti-slavery policy –

Modern slavery statement - Ministry of Justice - GOV.UK ([www.gov.uk](http://www.gov.uk))

Procurement Policy Note 05/19: Tackling Modern Slavery in Government Supply Chains - GOV.UK ([www.gov.uk](http://www.gov.uk))

5. Health and Safety Policies and procedures –

The relevant H&S policies and procedures will be provided by site representatives as many are specific to the site, Fire evacuation, reporting of accidents, incidents etc.

## **Schedule F: Pricing and Payment**

### Financial Arrangements

For the purposes of this Schedule F, the following terms shall have the following meaning:

Accounting Period	means each period of four or five weeks there being twelve such Accounting Periods in each calendar year
Budget	means the estimated annual operating budget agreed by the Contractor and the Authority from time to time, which for this Agreement is set out in Schedule G
Cash Sales	means all sales taken through the till either via cash or card, in the provision of the Catering Services;
Contract Year	means a period of twelve (12) months starting on 1 May in any calendar year during the Agreement and ending on the 30 April of the following calendar year
Hospitality Sales	means all sales taken in the provision of Hospitality Services
Management Charge	means in respect of the first year of the Agreement the amount of [REDACTED] (excluding VAT) (or such amount as may be amended from time to time in accordance with paragraphs 1A.10 and 1A.11)
Upfront Equipment Charge	means a sum to be agreed between the parties but which is expected to be in the region of [REDACTED] [excluding VAT] and which shall be expended by the Contractor in accordance with paragraph 1A.2 of this Schedule F
Ratio	means the share between the parties, if any, which shall be apportioned in the following manner: [REDACTED] [REDACTED]
Sales Income	means, in respect of any period, all sales income (if any) received by the Contractor in respect of the sale of meals, beverages and other items relating to provision of the Services including Cash Sales and Hospitality Sales

Subsidy	means the amount payable by the Authority to the Contractor pursuant to paragraph 1A.4 of this Schedule F which, for the first year of the Agreement is [REDACTED] (excluding VAT).
Tariffs	means the prices to be charged for the food and beverages sold, as part of the Services;
Total (Cost) / Surplus	means the net of Sales Income minus Total Operating Costs
Total Operating Costs	means the costs set out in clause 1A.3

## **1. UPFRONT EQUIPMENT CHARGE**

The Authority acknowledges that the Contractor has agreed to expend the Upfront Equipment Charge on the commencement of this Agreement in respect of the ordering and or purchasing of certain equipment and supplies, and it is agreed that the Upfront Equipment Charge shall be reimbursed to the Contractor, in full and without set off, within 30 days of receipt of an invoice

## **1A ACCOUNTING AND PAYMENT FOR THE SERVICES**

1A.1 Prior to the start of each Contract Year, the parties shall review and agree the Budget.

1A.2 Not used.

1A.3 The Contractor shall be entitled to receive and retain all Sales Income and shall offset this against all costs of providing the Services such costs including (but not limited to):

1A.3.1 an amount equal to the Contractor's charges for all food, beverage, consumables, sundries and other items purchased by the Contractor to perform the Services (all stocks being the property of the Contractor);

1A.3.2 in respect of labour (whether permanent or temporary) the amount of wages (as might be increased from time-to-time in accordance with the Contractor's standard wage review process or LLW) sickness payments pension training and holiday charges employer's national insurance contributions and any other statutory entitlements

1A.3.3 the depreciation charge in relation to the Capital Investment;

1A.3.4 an amount equal to the Contractor's costs and charges incurred in the repair, maintenance and replacement of the Capital Project Assets and the Capital Project Works and or Authority Equipment; and

1A.3.5 in respect of the provision of the Services an amount equal to the Management Charge (as may be adjusted in accordance with Clauses 1A.10 and 1A.11 below).

1A.4 As soon as practicable after the end of each Accounting Period the Contractor will issue to the Authority in respect of the preceding Accounting Period:

1A.4.1 an operating statement detailing the Sales Income received and the total of the amounts the Contractor is entitled to retain under paragraph 1A.3 ("the Subsidy"); and

1A.4.2 an invoice which inter alia details the amount due to the Contractor if Sales Income is less than the amounts the Contractor is entitled to retain under paragraph 1A.3 ("the Subsidy") (or a note of the amount due to the Authority if the Sales Income exceeds the total of the amounts the Contractor is entitled to retain under Clause 1A.3.

1A.5 All invoices issued by the Contractor in accordance with paragraph 1A.4 will be subject to the addition of VAT of the applicable rate, and, unless stated otherwise:

the Authority shall pay all invoices issued by the Contractor pursuant to this Agreement within thirty (30) days of the date of the invoice (the "**Due Date**"); and

the Contractor shall credit any amounts due to the Authority within thirty (30) days of the date of the operating statement in which the credit arose.

1A.6 The Subsidy is fixed for the first year of the Agreement as set out in the definitions table in this Schedule F and the Authority will pay to the Contractor, an amount equal to one twelfth of the Subsidy for the Agreement year in question. The Contractor shall be entitled to set the Tariffs to ensure that the Sales Income, annually, will be sufficient to cover the retentions set out in clause 1A.3 and any shortfall between those sums will not be greater than the Subsidy.

1A.7 The Contractor shall undertake a reconciliation of all sums paid pursuant to this Clause 1A in the final month of each Contract Year and will confirm the Total (Cost) / Surplus. If the Total (Cost) / Surplus is worse than that stated in the agreed Budget, the Contractor shall take the risk on that overspend. If the reconciliation shows that the Total (Cost) / Surplus is better than that stated in the agreed Budget, the difference shall be shared between the parties in accordance with the Ratio, and the Contractor shall issue a credit note within the first month of the following Contract Year. By way of a worked example:

Examples:

	Budget	Worked Example 1 <i>Total (Cost) / Surplus is better than the Budget</i>	Worked Example 2 <i>Total (Cost) / Surplus is worse than the Budget</i>
Cash sales			
Hospitality Sales			
Total Sales			
Operating Costs			
<b>Total (Cost) / Surplus</b>			
<b>Subsidy Paid</b>			
		Betterment versus Bid	Adverse to Bid
		Betterment is split in accordance with Ratio:	Additional Cost is taken by ESS:
		Client	Client
		ESS	ESS

1A.8 If either party fails to pay any amount overdue by the Due Date it shall pay to the other interest on any amount due at a daily rate equivalent to 3% above the base lending rate of the National Westminster Bank Plc applicable from the invoice date until the date of payment. If the Authority fails to pay any amount by the due date within fourteen (14) days of being issued with a notice by the Contractor stating the sum overdue, the Contractor may (at its sole discretion) serve written notice to: (i) suspend provision of the Services with immediate effect; and or (ii) terminate this Agreement with immediate effect.

1A.9 For the avoidance of doubt, all discounts, credits, rebates, bonuses or other benefits received from the Contractor's suppliers or generated as a result of the Contractor's or the Contractor's affiliates' international or group activities shall fall outside the scope of the Agreement and in relation to which the Contractor takes the risk and benefit.

1A.10 The Management Charge shall be reviewed and agreed between the parties (acting reasonably) prior to the start of each Contract Year. In the event the Management Charge cannot be agreed, the parties shall refer the matter to the Dispute resolution Process in accordance with clause 14.

1A.11 The Management Charge will be subject to renegotiation in the event that the scope and volume of the Services materially differs from the level operative as at the Commencement Date and/or as detailed in this Agreement. During such period of renegotiation, the Management Charge shall remain at its then current level provided that at any time during the period of renegotiation the Contractor may terminate this Agreement by giving three months' prior written notice.

1A.12 If HM Government or any competent authority or body to whose authority the Authority or Contractor are subject, introduces or suggests a measure (whether legislation, law, mandatory measure or guidance), in accordance with which the Authority is obliged to comply, or where the Authority takes measures of its own volition, in relation to the prevention, control or delay of the spread of any actual or anticipated plague, pandemic, epidemic or other health infection or potential infection or disease or any other epidemic, pandemic or disease which results in (a) the Contractor not being able to use any of the Premises (or any part of them) for the performance of the Services as anticipated as at the Commencement Date or (b) the Authority restricting or prohibiting access to any of the Premises of any type of intended consumer, customer or user for any periods during which the Premises are intended to be open for trade such that there is a reduction in Sales Income directly attributable to such measures, the parties shall use reasonable endeavours (so far as reasonably practicable) to review the provision of the Services to allow them to be provided in a cost effective manner such that neither party is to be in a better or worse position than if the measures had not been implemented; such adjustments to include the opening hours of the Premises, amending the Subsidy, changing the extent or nature of the Services and permitting the Contractor to change its staffing and other operational management aspects to reduce the impact of the measures on the profitability and viability of the Services.

1A.13 The Subsidy shall be reviewed and agreed between the parties (acting reasonably) prior to the start of each Contract Year, but in any event, shall not exceed the Subsidy as set out in the Budget. In the event that the Subsidy cannot be agreed, the parties shall refer the matter to the Dispute Resolution in accordance with clause 14.

**Schedule G: Budget**

	Year 1	Year 2	Year 3	Total
Cash sales				
Hospitality Sales				
<b>Total Sales</b>				
Cost of Sales				
Gross Profit				
GP%				
Labour				
Sundries				
Mobilisation Costs				
Depreciation				
Management Fee <span></span>				
<b>Total (Cost) / Surplus</b>				
<b>Client Subsidy</b>				
Monthly Subsidy				