



The City of Edinburgh Council terms and conditions with Mimi's Teahouse Ltd in connection with the café concession at the City Art Centre, Edinburgh.

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AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL, a local Council constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG (the "**Council**"); and

MIMI'S TEAHOUSE LTD., incorporated under the Companies Acts (Company Number SC 375619), having its registered office at 63 Shore, Edinburgh EH6 6RA (the "**Concessionaire**");

The Council and the Concessionaire hereby agree as follows:

COMMENCEMENT AND DURATION

1. CONTRACTUAL DOCUMENTS

- 1.1** The Contract between the Council and the Concessionaire consists of these terms and conditions together with the Schedules.
- 1.2** In the event there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) Schedule 11; then
 - (b) these terms and conditions; then
 - (c) Schedule 6.

COMMENCEMENT AND DURATION

2. TERM

This Contract shall commence on the Commencement Date and shall continue, for the Term, unless terminated in accordance with Clause 29; [REDACTED]

[REDACTED]

3. CONSENTS, CONCESSIONAIRE'S WARRANTY AND DUE DILIGENCE

- 3.1** The Concessionaire shall ensure that all Necessary Consents are in place to provide the Concession and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2** The Concessionaire confirms to the best of its knowledge that there are no restrictions of any kind which in any way affects its capacity to contract. If

any such restrictions exist or arise, the Council shall have the option to terminate the Contract. The Concessionaire shall indemnify the Council in full for any resulting loss.

- 3.3 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Concessionaire has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Concession.
- 3.4 The Concessionaire acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Concession and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Concession in accordance with the terms of this Contract; and
 - (b) it has entered into this Contract in reliance on its own due diligence.
- 3.5 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Concessionaire by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.6 The Concessionaire shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified by it to the Council save where such additional costs or adverse effect on performance have been caused by the Concessionaire having been provided with misleading, incorrect or inaccurate information by or on behalf of the Council and the Concessionaire could not reasonably have known that the information was incorrect, inaccurate or misleading at the time such information was provided. If this exception applies, the Concessionaire shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 3.7 Nothing in this clause 3 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

THE CONCESSION

4. SUPPLY OF CONCESSION

- 4.1 The Concessionaire shall provide the Concession to the Council with effect from the Commencement Date for the Term in accordance with the terms, conditions and provisions of this Contract.

- 4.2 The Concessionaire shall not be required to comply with the terms of clause 4.1 in the event of any act or omission by the Council or the Council's employees which prevent the Concessionaire from providing the Concession.

5. KEY PERFORMANCE INDICATORS –NOT USED

6. STANDARDS FOR CONCESSION - NOT USED

7. HEALTH AND SAFETY

- 7.1 The Concessionaire shall promptly notify the Council of any material health and safety hazards which may arise in connection with the performance of the Concession. The Council shall promptly notify the Concessionaire of any health and safety hazards that may exist or arise at the Council's Premises and/or the City Art Centre and that may affect the Concessionaire in the performance of the Concession.
- 7.2 While on the Council's Premises, the Concessionaire shall comply with any health and safety measures implemented by the Council and notified to the Concessionaire in respect of staff and other persons working on the Council's Premises and any directions made by the Council to the Concessionaire in respect of health and safety issues.
- 7.3 The Concessionaire shall notify the Council as soon as reasonably practicable in the event of any incident occurring in the performance of the Concession on the Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 7.4 The Concessionaire shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council's Premises in the performance of the Concession.
- 7.5 The Concessionaire shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

8. COUNCIL'S PREMISES AND ASSETS

- 8.1 The Council and the Concessionaire agree that the Concession may be provided from the Council's Premises with use of the Council's Assets. The Council shall provide the Concessionaire (and its Sub-Contractors) with access to the Council's Premises and to the City Art Centre for the purposes of providing the Concession.

8.2 The Council shall provide the Concessionaire with such accommodation and facilities in the Council's Premises as is specified in Schedule 6 or which is otherwise agreed by the parties in writing from time to time.

8.3 The Concessionaire shall ensure that:

- (a) where using the Council's Premises and any Council Assets they are kept secure out-with normal opening hours for the Concession;
- (b) only those of the Concessionaire's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Concession, do so;
- (c) the Council's Premises and the Council Assets used by the Concessionaire are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date as shown in Schedule 12, (fair wear and tear excepted) and the Council Assets are not removed from Council Premises unless expressly permitted under this Contract or by the Council's authorised representative;

(d) [REDACTED]

(e) [REDACTED]

8.4 [REDACTED]

8.5 The Concessionaire shall notify the Council as soon as reasonably practicable on becoming aware of any damage caused by the Concessionaire, its agents, employees or Sub-Contractors to the City Art Centre, or to the Council's Premises in the course of providing the Concession.

8.6 [REDACTED]

[REDACTED]

9. BUSINESS CONTINUITY- NOT USED.

CHARGES AND PAYMENT

10. PAYMENT

10.1 In consideration for providing the Council's Premises to the Concessionaire to deliver the Concession in accordance with the terms and conditions of this Contract, the Concessionaire shall pay the Charges to the Council. ■

[REDACTED]

10.2 [REDACTED]

10.3 [REDACTED]

10.4 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

10.5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]
[REDACTED]

(c) [REDACTED]

(d) [REDACTED]
[REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]
[REDACTED]

(h) [REDACTED]
[REDACTED]

(i) [REDACTED]
[REDACTED]

(j) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11. SERVICE CREDITS AND COMMUNITY BENEFIT CREDITS - NOT USED

STAFF

12. KEY PERSONNEL - NOT USED

13. PERSONNEL USED TO PROVIDE THE CONCESSION

13.1 At all times, the Concessionaire shall ensure that:

- (a) each of the Concessionaire's Personnel is, adequately trained; and
- (b) all of the Concessionaire's Personnel comply with all of the Council's policies which are relevant to the Concession and have been provided by the Council to the Concessionaire including those that apply to persons who are allowed access to the applicable Council's Premises.

- 13.2 The Council may refuse to grant access to, and remove, any of the Concessionaire's Personnel who do not comply with any of the policies referred to in Clause 13.1, or if they otherwise present a security threat.

14. STAFF VETTING – NOT USED

15. TUPE

The parties agree that the provisions of Schedule 5 shall apply to any Relevant Transfer of staff under this Contract.

16. REPORTING AND MEETINGS- NOT USED

17. MONITORING

- 17.1 The Council may monitor the performance of the Concession by the Concessionaire.

- 17.2 The Concessionaire shall co-operate with the Council in carrying out the monitoring referred to in clause 17.1.

18. CHANGE CONTROL

- 18.1 Any requirement for a Change shall be subject to the Change Control Procedure detailed in Schedule 3.

19. DISPUTE RESOLUTION

- 19.1 If any dispute arises in relation to this Contract the parties' authorised representatives shall endeavour to resolve it to the parties' mutual satisfaction.

- 19.2 If the parties' authorised representatives cannot resolve any dispute within ten (10) Working Days then the parties shall attempt in good faith to negotiate a settlement to any dispute and such efforts shall involve the escalation of the dispute to the Council's Head of Legal, Risk and Compliance or the Council's Head of the relevant Concession and to the finance director (or equivalent) of the Concessionaire.

- 19.3 In the event that the parties are unable to negotiate a settlement, then either party may, refer the dispute for mediation; the mediator shall be mutually chosen and in the event of disagreement, appointed by the chair of Scottish Mediation.

- 19.4 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.

20. SUB-CONTRACTING, STEP-IN AND ASSIGNATION

- 20.1 Neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party, neither may the Concessionaire sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Council, which shall not be unreasonably withheld or delayed.
- 20.2 In the event that the Concessionaire enters into any Sub-Contract in connection with this Contract it shall:
- (a) remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative along with details of the name, contact details and legal representatives of the Sub-Contractor.
- 20.3 In the event that the name, contact details or legal representatives of any Sub-Contractor changes during the term of the Contract, the Concessionaire shall provide to the Council details of the changes within five (5) Working Days of the date of change.
- 20.4 Notwithstanding clause 20.1, the Council shall be entitled to assign or novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council. The Concessionaire shall do or procure all such further acts and shall execute or shall procure the execution of such documents as may be required by the Council to enjoy the full benefit of this clause.

LIABILITY

21. INDEMNITIES

- 21.1 [REDACTED]

[REDACTED]

22. LIMITATION OF LIABILITY

22.1 [REDACTED]

22.2 [REDACTED]

22.3 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

22.4 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

22.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for the following, where it is not legally competent to do so:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any Applicable Laws.

23. INSURANCE

23.1 The Concessionaire shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover set out in Schedule 7, Part A (the **Required Insurances**) in respect of all risks which may be incurred by the Concessionaire, arising out of the Concessionaire's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

23.2 The Concessionaire shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

23.3 [REDACTED]

23.4 [REDACTED]

23.5 [REDACTED]

INFORMATION

24. FREEDOM OF INFORMATION

24.1 The Concessionaire acknowledges that the Council is subject to the requirements of the FOISA and the Environmental Information (Scotland) Regulations and shall assist and co-operate with the Council (at the Concessionaire's expense) to enable the Council to comply with these information disclosure requirements.

24.2 The Concessionaire shall:

- (a) In the event of directly receiving a transfer the Request for Information, provide details to the Council as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession within five (5) Working Days (or such other reasonable period as the Council may specify) of the Council requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOISA or regulation 5 of the Environmental Information (Scotland) Regulations.

24.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOISA or the Environmental Information (Scotland) Regulations; and/or
- (b) is to be disclosed in response to a Request for Information.

24.4 In no event shall the Concessionaire respond directly to a Request for Information unless expressly authorised to do so by the Council.

24.5 The Concessionaire acknowledges that the Council may, acting in accordance with the Code, be obliged under the FOISA or the Environmental Information (Scotland) Regulations to disclose Information:

- (a) without consulting with the Concessionaire; or
- (b) following consultation with the Concessionaire and having taken its views into account,

provided always that where clause 24.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give

the Concessionaire advanced notice, or failing that, to draw the disclosure to the Concessionaire's attention after any such disclosure.

24.6 The Concessionaire shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for a period of 1 year for disclosure and shall permit the Council to inspect such records as reasonably requested from time to time.

24.7 The Concessionaire acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 24.5.

25A. RECORDS MANAGEMENT

25A.1 The Concessionaire shall (i) manage all Public Records in its possession in accordance with the 2011 Act, the CEC Records Management Plan and the Arrangements; (ii) notwithstanding the terms of clause 25A.9, provide to the Council on request copies of the Arrangements from time to time in force; and (iii) make such alterations to the Arrangements as the Council may from time to time require.

25A.2 The Concessionaire shall ensure that none of its actions in the provision of the Concession to the Council cause the Council to be in breach of its obligations under the 2011 Act.

25A.3 The Concessionaire shall, at no cost, provide the Council with all reasonable assistance required in order for the Council to comply with the requirements of the 2011 Act in relation to any Public Records created and/or managed by the Concessionaire in its provision of the Concession.

25A.4 The Concessionaire shall ensure that its management of any Public Records it manages and/or creates in its provision of the Concession is not the sole or principal reason for the Council receiving an action notice in terms of section 7 of the 2011 Act.

25A.5 The Concessionaire shall comply with the terms of the CEC Records Management Plan, which the Council shall provide to the Concessionaire, in relation to the destruction and retention of the relevant classes of Public Records that the Concessionaire manages and/or creates in its provision of the Concession, such classes being set out in the Arrangements.

25A.6 On termination of this Contract for whatever reason, the Public Records held by the Concessionaire which are to be delivered to the Council in terms of the Arrangements shall be delivered to the Council forthwith, and shall be included with the data and other material belonging to the Council.

- 25A.7 The Concessionaire acknowledges that all records created and/or managed by the Concessionaire in its provision of the Concession where such Concession are required by statute shall be deemed to be Public Records.
- 25A.8 Where the terms of the CEC Records Management Plan and the Arrangements conflict, the CEC Records Management Plan shall take precedence.
- 25A.9 The Concessionaire shall, on request, provide to the Council such documentation in relation to the Arrangements from time to time in force as are reasonably required by the Council in reference to its obligations under the 2011 Act.
- 25A.10 The Council may require the transfer of Public Records from the Concessionaire to the Council during the term of the Contract where such Public Records are no longer required for the provision of the Concession under the Contract (whether such Public Records are so required shall be determined by the Council at its sole discretion, acting reasonably), and the Concessionaire shall provide such Public Records forthwith at no cost to the Council.

25. DATA PROTECTION

- 25.1 Each party warrants to the other that it shall comply with all the requirements of the Data Protection Legislation.
- 25.2 The parties agree that the provisions of Schedule 10 shall apply in relation to the parties' data protection obligations under this Contract.

26. CONFIDENTIALITY

- 26.1 Subject to clause 26.2 and Clause 24, the parties shall keep confidential all Confidential Information of the other party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any of the other party's Confidential Information.
- 26.2 Clause 26.1 shall not apply to any disclosure of information:
- (a) required by Regulatory Body or any Applicable Law, provided that clause 24.1 shall apply to any disclosures required under the FOISA or the Environment Information (Scotland) Regulations;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
 - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 26.1;

- (d) by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 19.3;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this Contract and in respect of which the Concessionaire has given its prior written consent to disclosure.

27. AUDIT

27.1 [REDACTED], the Council may conduct or be subject to an audit for the following purposes:

- (a) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
- (b) to review the Concessionaire's compliance with Data Protection Legislation and the FOISA in accordance with clause 25 (Data Protection) and clause 24 (Freedom of Information) and any other legislation applicable to the Concession;
- (c) to review any records relating to the Concession created during the provision of the Concession;
- (d) to review any books of account kept by the Concessionaire in connection with the provision of the Concession;
- (e) to carry out the audit and certification of the Council's accounts;
- (f) to carry out an examination of the economy, efficiency and effectiveness with which the Council has used its resources.

27.2 Except where an audit is imposed on the Council by a Regulatory Body, or where the Council, acting reasonably, believes that the Concessionaire is in default or breach of this Contract, the Council may not conduct an audit under this clause 27 more than twice in any calendar year.

27.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Concessionaire or delay the provision of the Concession.

27.4 Subject to the Council's obligations of confidentiality, the Concessionaire shall on demand provide the Council and any Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Concessionaire and to any equipment used (whether exclusively or non-exclusively) in the performance of the Concession; and
- (c) access to the Concessionaire's Personnel.

27.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a Regulatory Body's, intention to conduct an audit.

27.6 [REDACTED]

28. INTELLECTUAL PROPERTY – NOT USED

TERMINATION

29. TERMINATION

29.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Concessionaire in the following circumstances:

- (a) if the Concessionaire is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this Contract under this clause 29.1 if the Concessionaire has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- (b) if the Concessionaire is in material breach of any of clause 24 (Freedom of Information), clause 25 (Data Protection), clause 26 (Confidentiality), clause 32 (Prevention of corruption) or clause 35 (Equalities and Equal Opportunities);
- (c) if the Concessionaire ceases or threatens to cease to carry on business in the United Kingdom;
- (d) if any act or omission by the Concessionaire or any Sub-contractor causes, or in the Council's reasonable opinion, is likely to cause adverse publicity or materially damage to the reputation of the Council;
- (e) where the Concessionaire is an individual, if a petition is presented for the Concessionaire's bankruptcy or the sequestration of the Concessionaire's estate or a criminal bankruptcy order is made against the Concessionaire,

or the Concessionaire is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Concessionaire's affairs;

- (f) where the Concessionaire is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (g) or (h) of this clause occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Concessionaire to be wound up as an unregistered company;
- (g) where the Concessionaire is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge;
- (h) the Concessionaire commits any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commits any material breach of the Data Protection Legislation by unlawfully processing personal data in connection with any blacklisting activities and
- (i) in the event the City Art Centre is sold or a lease for 99 years or more is granted by the Council.
- (j) The Council may also terminate this Contract in accordance with the provisions of clause 31.

29.2 If this Contract is lawfully terminated by the Council in terms of clause 29.1 such termination shall be at no loss or cost to the Council and the Concessionaire hereby indemnifies the Council against any financial losses or costs which the Council may suffer as a direct result of any such termination for cause.

30. TERMINATION ON NOTICE – NOT USED

31. FORCE MAJEURE

31.1 Subject to the remaining provisions of this clause 31, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.

31.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 31.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 31.4 The Concessionaire cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 31.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Concessionaire is the affected party, it shall take and/or procure the taking of all reasonable steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
- 31.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 31.7 Either party may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Concession and which continues for more than twenty (20) Working Days.

32. PREVENTION OF CORRUPTION

- 32.1 The Concessionaire:
- (a) shall not, and shall procure that any Concessionaire Party and all Concessionaire Personnel shall not, in connection with this Contract commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection

with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

32.2 The Concessionaire shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Concessionaire) compliance with this clause 32 by the Concessionaire and all persons associated with it or other persons who are supplying goods or Concession in connection with this Contract. The Concessionaire shall provide such supporting evidence of compliance as the Council may reasonably request.

32.3 The Concessionaire shall have an anti-bribery policy, where appropriate to the operation of the Concession, (which shall be disclosed to the Council) to prevent any Concessionaire Party or Concessionaire Personnel from committing a Prohibited Act and shall enforce it where appropriate.

32.4 If any breach of clause 32.1 is suspected or known, the Concessionaire must notify the Council immediately.

32.5 If the Concessionaire notifies the Council that it suspects or knows that there may be a breach of clause 32.1, the Concessionaire must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for five years following the expiry or termination of this Contract.

32.6 The Council may terminate this Contract by written notice with immediate effect if the Concessionaire, Concessionaire Party or Concessionaire Personnel (in all cases whether or not acting with the Concessionaire's knowledge) breaches clause 32.1. In determining whether to exercise the right of termination under this clause 32.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Concessionaire or a senior officer of the Concessionaire or by an employee, Sub-Contractor or supplier not acting independently of the Concessionaire. The expression "not acting independently of" (when used in relation to the Concessionaire or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Council; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Concessionaire; or

- (c) in circumstances where any one or more of the directors of the Concessionaire ought reasonably to have had knowledge.

32.7 Any notice of termination under clause 32.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

32.8 Despite clause 19 (Dispute resolution), any dispute relating to the interpretation of clause 32; or the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

32.9 Any termination under clause 32.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

33. CONSEQUENCES OF TERMINATION

33.1 On termination of this Contract the Concessionaire shall procure that any data or other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Concession), shall be delivered to the Council forthwith and the Concessionaire's Chief Executive Officer shall certify full compliance with this clause.

33.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

GENERAL PROVISIONS

34. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit the Concession of any senior staff of the other party who have been engaged in the provision of the Concession or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

35. EQUALITIES AND EQUAL OPPORTUNITIES

35.1 In providing the Concession, the Concessionaire shall comply with all equal opportunities obligations and the public sector equality duty and shall ensure compliance with the Council's written policies on such matters and with all Applicable Laws from time to time applicable in such regard.

35.2 The Concessionaire shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of:

- (a) assessing the Concessionaire's compliance with its obligations under this clause 35;
- (b) enabling the Council to review diversity in employment data such as total staff in post, applications for posts, appointments to post, annual gender pay audits, promotions, performance reviews, training, disciplinary matters, grievances, tribunal matters and all other relevant information required for the Council to comply with its public sector equality duty; and
- (c) enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Concessionaire's approach to equalities, diversity and human rights.

35.3 In delivering and reviewing the Concession the Concessionaire shall:

- (a) comply with the Council's public sector equality duty and shall have regard to any guidance provided by Scottish Ministers for local authorities on the public sector equality duty (including assisting in or preparing reports in order to secure the Council's compliance with the public sector equality duty); and
- (b) comply with reasonable requests for information or data in respect of the Council's public sector equality duty including where the Council undertakes an equalities impact assessment.

35.4 The Concessionaire shall deliver the Concession in a non-discriminatory manner that ensures fairness and equality to all users of the Concession. The Concessionaire recognises that the Council has a responsibility to monitor the extent to which the provision of the Concession extends to groups who are at risk of social exclusion. The Concessionaire agrees, where appropriate and practicable, to provide information to the Council in relation to employment and use of the Concession by the following criteria:

- (a) age;
- (b) sex;
- (c) sexual orientation;

- (d) disability;
- (e) religion or belief;
- (f) race;
- (g) marriage and civil partnership;
- (h) pregnancy and maternity and
- (i) gender reassignment.

35.5 The Concessionaire shall not discriminate, whether directly or indirectly and whether by way of victimisation or harassment, against any person on grounds of age, sex, sexual orientation, disability, religion or belief, race, marriage and civil partnership; pregnancy and maternity and gender reassignment contrary to the Equality Act 2010.

35.6 The Concessionaire shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Concessionaire under the legislation contained in the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Concessionaire's performance of this Contract being in contravention of the Equality Act 2010, the Concessionaire shall free of charge:

- (a) provide any information requested in the timescale allotted;
- (b) attend any meetings as required and permit the Concessionaire's Personnel affected to attend;
- (c) promptly allow access to and investigation of any document or data deemed to be relevant;
- (d) allow itself to appear as witness in any ensuing proceedings and
- (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Concessionaire, its agents or sub-contractors, or the staff of the Concessionaire, and where there is a finding against the Concessionaire in such investigation or proceedings, the Concessionaire shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment of the Council may have been ordered or required to pay to a third party.

35.7 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010, the Concessionaire may be subject to the requirement to complete a questionnaire and/or provide information to the Council's officers on the context and quality of the Concessionaire's equalities and diversity policies and practice. Poor practice in regard may result in the Council issuing a mind to comply letter describing the nature of the improvement required and associated timescales.

35.8 In the event that the Concessionaire enters into any subcontract in connection with this Contract, it shall impose obligations on its subcontractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this Condition.

36. WAIVER

No failure or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Concessionaire in respect of the Concession or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Concessionaire of its obligations to deliver the Concession in accordance with the provisions of this Contract.

37. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy provided for in this Contract or existing in law.

38. SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Council and the Concessionaire shall immediately commence good faith negotiations to remedy that invalidity.

39. PARTNERSHIP OR AGENCY

Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

40. PUBLICITY

The Concessionaire shall not, save where legally required to do so, or to the Concessionaire's bank or professional advisors:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council.

41. NOTICES

41.1 Any notice, demand or communication in connection with this Contract shall be in writing, marked for the attention of the Director of Culture (in the case of the Council) or the Directors (in the case of the Concessionaire) and delivered personally or sent by pre-paid first class post to the recipient's address as set out in this Contract or to the relevant party's Registered Office or principal place of business

41.2 The notice, demand or communication is deemed given:

- (a) if delivered personally, at the time of delivery to the address provided for in this Contract; or
- (b) if sent by pre-paid first class post, on the second Working Day after posting it;

provided that, if it is delivered personally on a day which is not a Working Day or after 4pm on any Working Day, it shall instead be deemed to have been given or made at 9am on the next Working Day.

42. ENTIRE AGREEMENT

These terms and conditions together with the Schedules contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

43. GOVERNING LAW AND JURISDICTION

- 43.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with Scots Law and subject to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the 26 preceding pages together with the 13 Schedules annexed and identified as relative hereto are executed as follows:

Subscribed for and on behalf of the City of Edinburgh Council

At

On the day of 2019

ByProper Officer

In the presence of this witness

..... witness

.....Full Name

..... Address

SUBSCRIBED for and on behalf of Mimi's Teahouse Ltd

At

On the day of 2019

By Director

In the presence of this witness

..... Witness

..... Full Name

..... Address.

Schedule 1 Definitions and interpretation

This is the Schedule 1 referred to in the foregoing Terms and Conditions between City of Edinburgh Council and Mimi's Teahouse Ltd

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in Schedule 1 apply in this Contract.

2011 Act: the Public Records (Scotland) Act 2011.

Additional Conditions: the additional conditions set out in Schedule 11.

Applicable Laws: any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

Arrangements: the Concessionaire's approach to the management of Public Records;

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

CEC Records Management Plan: the Council's records management plan in terms of the 2011 Act.

Change: any change to this Contract including to any of the Concession.

Change Control Procedure: the procedure for changing this Contract, as set out in Schedule 3.

Charges: [REDACTED]

City Art Centre: the whole of property belonging to the Council (including the Council's Premises) known as the City Art Centre , 2 Market Street, Edinburgh EH1 1DE.

Code: the Scottish Ministers' Code of Practice on the Discharge of the Functions of Public Authorities under the Freedom of Information (Scotland) Act 2002.

Commencement Date: 5 November 2018.

Commercially Sensitive Information: the information listed in the Concessionaire's information comprising the information of a commercially sensitive nature relating to the Concessionaire, its intellectual property rights or its business or which the Concessionaire has indicated to the Council that, if disclosed by the Council, would cause the Concessionaire significant commercial disadvantage or material financial loss.

Concessionaire: means Mimi's Teahouse Ltd., a company registered in Scotland under company number SC375619 and having its registered office at 63 Shore, Edinburgh, EH6 6RA.

Concession: means the operation of the City Art Centre café, Edinburgh by the Concessionaire.

Concessionaire Party: means the Concessionaire's agents and contractors in connection with the Contract including any sub-contractor.

Concessionaire's Personnel: means all employees, staff, other workers, agents and consultants of the Concessionaire and of any sub-contractors who are engaged in the provision of the Concession from time to time.

Confidential Information: all confidential information (however recorded, preserved or disclosed) disclosed by a party to the other including the business, affairs, customers, clients, suppliers, plans or trade secrets of the disclosing party.

Contract: the agreement between the Council and the Concessionaire consisting of the documents referred to in Clause 41.

Council: means the City of Edinburgh Council, a local Council constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council for use in providing the Concession as identified in Schedule 6.

Council's Premises: the City Art Centre Café, Edinburgh as more particularly defined in Schedule 6 and which is to be made available for use by the Concessionaire for the provision of the Concession on the terms set out in this Contract.

Data Protection Legislation: is as defined in Schedule 10.

Dispute Resolution Procedure: the procedure set out in clause 19.

Environmental Information (Scotland) Regulations: the Environmental Information (Scotland) Regulations 2004 (SI 2004/520) together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such regulations.

FOISA: the Freedom of Information (Scotland) Act 2002, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Concessionaire, the Concessionaire's Personnel or any other failure in the Concessionaire's supply chain.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company of similar size to the Concessionaire within the relevant industry or business sector.

Information: has the meaning given under section 73 of FOISA.

Licence: the Licence to Occupy forming part of Schedule 6.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council 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 this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

Public Records: shall have the meaning prescribed to it in section 3 of the 2011 Act.

Regulatory Body: those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Council and "**Regulatory Body**" shall be construed accordingly.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Council in accordance with clause 29.1(a).

Replacement Concession: any concession that is identical or substantially similar to the Concession and which the Council receives in substitution for the Concession following the termination or expiry of this Contract, whether the concession is provided by the Council internally or by any Replacement Concessionaire.

Replacement Concessionaire: any third party supplier of a Replacement Concession appointed by the Council from time to time.

Request for Information: a request for information, in connection with the Concession, under the FOISA or the Environmental Information (Scotland) Regulations.

Sub-Contract: any contract between the Concessionaire and a third party pursuant to which the Concessionaire agrees to source the provision of any of the Concession from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Concessionaire.

Surveyor: an independent Chartered Surveyor qualified for not less than 10 years in the profession and with recent experience in the letting and valuation of properties similar in type and location to the Council's Premises, to be agreed upon by the Council and the Concessionaire and failing such agreement to be nominated and appointed by the Chairman or other Senior Office Holder for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors on the application of either party.

Term: the period commencing on the Commencement Date and continuing for a period of [REDACTED].

Termination Date: the date of expiry or termination of this Contract.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (CRATUPEAR) and as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Working Day: any day other than a Saturday or Sunday on which the Scottish clearing banks are open for business.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignee.
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of these terms and conditions and any reference to this Contract includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied, assigned or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.10 References to clauses and schedules are to the clauses and schedules of these terms and conditions; references to paragraphs are to paragraphs of the relevant schedule.
- 1.11 The words **include** or **including** are to be construed as meaning without limitation.

| | | |
|-------|-------|--|
| | | [REDACTED] |
| 1.1 | | [REDACTED] [REDACTED] |
| 1.1.1 | | [REDACTED] |
| 1.1.2 | | [REDACTED] [REDACTED] |
| | | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| 1.2.1 | (i) | [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| | (ii) | [REDACTED] [REDACTED] [REDACTED] |
| | (iii) | [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| 1.2.2 | (i) | [REDACTED] [REDACTED] |
| | (ii) | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| | (iii) | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| 1.3 | | [REDACTED] |

[REDACTED]

1.4

[REDACTED]

1.5

[REDACTED]

Schedule 3 **Change control**

This is the Schedule 3 referred to in the foregoing Terms and Conditions

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Concessionaire sees a need to change this Contract, the Council may at any time request, and the Concessionaire may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 3.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Concessionaire shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Concessionaire in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Concessionaire and the Concessionaire's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 3, shall be undertaken entirely at the expense and liability of the Concessionaire.

2. PROCEDURE

- 2.1 Discussion between the Council and the Concessionaire concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this Contract by the Council; or
 - (c) a recommendation to change this Contract by the Concessionaire.
- 2.2 Where a written request for an amendment is received from the Council, the Concessionaire shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Concessionaire to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this Contract by the Concessionaire shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Concessionaire at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;

- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Concessionaire.

2.5 For each Change Control Note submitted by the Concessionaire the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Concessionaire; or
 - (iii) notify the Concessionaire of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Concessionaire shall constitute an amendment to this Contract. Any Change Control Note shall be materially in the form set out below.

CONTRACT CHANGE NOTE (CCN)

SEQUENTIAL NUMBER: [TO BE ALLOCATED BY THE COUNCIL]

SUPPLIER NAME:

CONTRACT TITLE/REFERENCE:

ORIGINATOR: [FOR THE [COUNCIL/SERVICE PROVIDER]

DATE CHANGE FIRST PROPOSED:

NUMBER OF PAGES ATTACHED:

WHEREAS the Concessionaire and the Council entered into a Contract for the provision of the above mentioned Service dated and now wish to amend that Contract;

| |
|--------------------------------------|
| Reason for proposed change: |
| [Party proposing change to complete] |

| |
|---|
| Full details of proposed change: |
| [Party proposing change to complete] |

| |
|---|
| Details of likely impact (if any) of proposed change on other aspects of the Contract: |
| [Party proposing change to complete] |

IT IS AGREED as follows:

1. With effect from [date] the Contract shall be amended as set out below:
[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc]
2. Except as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

| Signed for and on behalf of the Concessionaire | | Signed for and on behalf of City of Edinburgh Council (Contracting Authority) | |
|--|--|---|--|
| Signature: | | Signature: | |
| Name: | | Name: | |
| Title: | | Title: | |
| Date: | | Date: | |

Schedule 4 **Benchmarking –not used**

Schedule 5 TUPE

This is the Schedule 5 referred to in the foregoing Terms and Conditions

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Concession Provider's Final Staff List: the list of all the Concessionaire's and Sub-Contractors' personnel employed or engaged in, or wholly or mainly assigned to, the provision of the Concession or any part of the Concession at the Concession Transfer Date.

Concession Provider's Provisional Staff List: the list prepared and updated by the Concessionaire of all the Concessionaire's and Sub-Contractors' personnel employed or engaged in, or wholly or mainly assigned to, the provision of the Concession or any part of the Concession at the date of the preparation of the list.

Concession Transfer Date: the date on which the Concession (or any part of the Concession), transfers from the Concessionaire or Sub-contractor to the Council or any Replacement Concessionaire.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Concessionaire arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Concession Transfer Date in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, claims in respect of pension rights, compensation for less favourable treatment of part-time workers, and any claims (whether in delict, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably

incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Concession Transfer Date to the Council or a Replacement Concessionaire by virtue of the application of TUPE.

Staffing Information: in relation to all persons detailed on the Concessionaire's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Concession.

1 NOT USED.

2. EMPLOYMENT EXIT PROVISIONS

2.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Concession may change (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Concession in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Concessionaire will inherit liabilities in respect of the Relevant Employees with effect from the relevant Concession Transfer Date.

2.2 The Concessionaire shall on receiving notice of termination of this Contract or otherwise, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.3 At least 28 days prior to the Concession Transfer Date, the Concessionaire shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Concessionaire, the Concessionaire's Final Staff List, which shall be complete and accurate in all material respects. The Concessionaire's Final Staff List shall identify which of the Concessionaire's personnel named are Relevant Employees.

2.4 The Concessionaire warrants to the Council and the Replacement Concessionaire that the Concessionaire's Provisional Staff List, the Concessionaire's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Concession other than those included on the Concessionaire's Final Staff List.

2.5 The Concessionaire shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

2.6 [REDACTED]

2.7 [REDACTED]

2.8 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

2.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

2.10 It is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

3. PENSIONS – NOT USED

4. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME - NOT USED.

5. SERVICE PROVIDER'S PENSION SCHEME – NOT USED

6. PENSIONS FOR NEW JOINERS TO THE WORKFORCE –NOT USED

7. INDEMNITY

[REDACTED]

Schedule 6 Council's Premises and Assets

This is the Schedule 6 referred to in the foregoing Terms and Conditions

Attached to Schedule 6 – Licence to occupy the café at the City Art Centre, Edinburgh

Assets:



Schedule 7 **Insurance**

This is the Schedule 7 referred to in the foregoing Terms and Conditions

The following levels of cover:

Part A

(a) [REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

(c) [REDACTED]

Schedule 8 Sustainability

This is the Schedule 8 referred to in the foregoing Terms and Conditions

1 SUSTAINABILITY [

1.1 The Concessionaire must assist the Council in achieving its Sustainable Edinburgh 2020 commitments by taking account of the Council's Sustainable Procurement Policy which requires the Council through its procurement and management of suppliers, inter alia, to

- (a) Deliver community benefits;
- (b) Minimise (carbon based) energy use;
- (c) Minimise water use;
- (d) Minimise the use of raw materials;
- (e) Minimise waste;
- (f) Use recycled packaging, where practicable, and minimise, reuse and recycle packaging;
- (g) Minimise the release of greenhouse gases which contribute to climate change;
- (h) Prepare for and adapt to the anticipated impacts of climate change so as to minimise the risk of disruption and the need to take remedial measures;
- (i) Minimise pollution to air, water and land;
- (j) Conserve and enhance biodiversity;
- (k) Avoid genetically modified food or food with genetically modified ingredients; and
- (l) Consider animal welfare, and wherever possible, avoid goods which have been developed using animal testing.

1.1.1 The Concessionaire will achieve this by developing, implementing, maintaining and regularly reporting on a Sustainable Development Action Plan which delivers the sustainability requirements specified by the Council.

1.2 The Concessionaire shall (and shall procure that the Concessionaire's Personnel shall) operate and actively sustain a clear ethical sourcing policy, spanning the full supply chain, which does not knowingly support the trade in slavery, prostitution, arms, illegal drugs and tobacco nor suppliers who breach International Labour Organisation conventions.

Sustainable Timber

1.3 In respect of any Concession or supplies to the Council which require the provision or use of timber or timber products the Concessionaire will procure such timber or timber products from legal and well managed forests which are certified under third party certification schemes and comply with the criteria set out in "UK Government Timber Procurement Policy: Criteria for Evaluating Category A Evidence".

1.4 The Concessionaire shall provide on request by the Council such evidence that the timber source is sustainable as is set out in "UK Government Timber Procurement Policy: Framework for Evaluating Category B Evidence".

- 1.5 The Concessionaire will where practicable use recycled timber and products using recycled timber.
- 1.6 The Concessionaire will complete and submit to the Council on request the Council's Timber and Wood Products Monitoring Form along with the following documentary evidence that the timber and timber products have been procured sustainably:-
- 1.6.1 suppliers Forestry Stewardship Council, the Programme for Endorsement of Forest Certification Scheme or equivalent certificates;
 - 1.6.2 delivery notes or invoices stating chain of custody numbers;
 - 1.6.3 details of the Concessionaires onsite timber monitoring arrangements; and
 - 1.6.4 details of any action taken by the Concessionaire to deal with non-compliance.

2 ROAD SAFETY

- 2.1 The Concessionaire shall ensure that any vehicle larger than 7.5 tonnes unloaded weight used in the delivery of this Contract (1) bears prominent signage on its rear to warn cyclists of the dangers of passing the vehicle on the inside and (2) has Fresnel lenses fitted to the passenger window to improve 'nearside' driver visibility.
- 2.2 The Concessionaire shall carry out a driving licence check with the DVLA for all drivers employed by it prior to the commencement of the Contract and shall carry out follow up checks on at least an annual basis for those with less than 6 points on their driving licence and at least quarterly checks for those with 6 or more points on their driving licence. The Concessionaire shall not permit any driver disqualified from driving a vehicle to be used in the delivery of this Contract.
- 2.3 The Concessionaire shall provide the Council with an updated Collision Report, reporting all collisions between its vehicles used in the delivery of this Contract and other road users, at the end of each quarter and within five (5) Working Days of a written request from the Council to evidence that it is monitoring and investigating collisions on an ongoing basis.

Schedule 9 **Step-in- not used.**

Schedule 10 **Data Protection Clauses**

This is the Schedule 10 referred to in the foregoing Terms and Conditions

DEFINITIONS

Agreed Purposes: means the performance by each party of its obligations under this Contract;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 and (iii) all applicable Law about the processing of personal data and privacy;

Permitted Recipients: The parties to this Contract, the employees of each party and any third parties engaged to perform the obligations in connection with this Contract.

Shared Personal Data: the personal data to be shared between the parties under clause 1.1 of this Contract. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- (a) the names of current and potential employees of the parties
- (b) the geographical and email addresses of the employees of the Concessionaire.

DPA 2018: Data Protection Act 2018;

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*);

LED: Law Enforcement Directive (*Directive (EU) 2016/680*);

1. DATA PROTECTION

1.1 Shared Personal Data: This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

1.2 Effect of non-compliance with the Data Protection Legislation: Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Contract with immediate effect.

1.3 Particular obligations relating to data sharing: Each party shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- (g) not transfer any personal data outside the EEA unless the transferor:
 - (i) complies with the provision of Article 26 of the GDPR (in the event the third party is a joint controller) and;
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

1.4 Indemnity:

[REDACTED]

Schedule 11 **Additional Conditions**

Schedule 12 **Schedule of Condition of the Council's Premises.**
Photographs.

Schedule 13 **Specification of refurbishment works.**