



SUBJECT TO CONTRACT
THE ROYAL PARKS LTD (1)

and

<Insert Company Name> (2)

**SEASONAL RETAIL SERVICES CONCESSION -
CHRISTMAS TREES AND RELATED GOODS – 2021 &
2022**

GENERAL CONDITIONS OF CONTRACT

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DRAFT

THIS AGREEMENT is made the _____ day of _____ 2021

BETWEEN

- (1) **THE ROYAL PARKS LIMITED** (hereinafter called “The Royal Parks”), a company registered in England and Wales under company number 10016100 (and with charity number 1172042) and having its registered office at the Old Police House, Hyde Park , London, W2 2UH; and
- (2) **<INSERT COMPANY NAME>** (hereinafter called “the Concessionaire”), a company registered in England and Wales under company number **<insert number>** and having its registered office at **<insert address>**.

I. INTRODUCTION

The Secretary of State for Culture, Media and Sport is responsible for the management of Richmond Park, Bushy Park and Greenwich Park by virtue of section 22 of the Crown Lands Act 1851 (as amended by other legislation) and pursuant to The Contracting Out (Functions relating to the Royal Parks) Order 2016 [S.I. 2016 No.1039] (“the Contracting Out Order”) the Secretary of State has authorised The Royal Parks to manage The Regent’s Park on behalf of the Secretary of State.

Pursuant to the functions conferred on The Royal Parks and authorised under Article 3 of the Contracting Out Order The Royal Parks is authorised to enter into this agreement (including the signing thereof) and to carry out the said management function conferred on the Secretary of State.

Following a tender process by The Royal Parks it has been agreed that the Concessionaire may establish, operate and manage certain ‘pop-up’ retail units in specified locations in The Royal Parks for the term of this Contract.

The Royal Parks will allocate suitable locations for these ‘Pop-Up’ retail units.

The Parties agree as follows:

2. DEFINITIONS

In this Contract (including in the Introduction) the following words shall have the following meanings as set out below unless stated otherwise:

- | | |
|------------------------------|--|
| “Access and Egress Routes” | means the areas within the Park and outside of the Site that during the Hire Period the Concessionaire, in its reasonable opinion, needs, in relation to its rights and obligations hereunder, to use as access and egress routes to and from the Site, including to drive on or over, to place vehicles or infrastructure on, and/or to instruct the public to use as access or egress routes to and from the Site. |
| “Additional Fee” | means a fee of £100 plus VAT if applicable per day per Park. |
| “Approval” and “Approved” | means the written consent of The Royal Parks. |
| “Brand User Guidelines” | means the Brand User Guide as issued from time to time by The Royal Parks and a copy of which will be provided by The Royal Parks. |
| “Build Up” | means the erection and building of the Infrastructure required for the Pop-Up Stores. |
| “Build Up Commencement Date” | means the dates detailed in Schedule 2 (Store Operations Schedule). |
| “Clause” | means a Clause within the Contract. |

“Commencement Date”	means the date hereof.
“Confidential Information”	means any and all information (howsoever communicated and/or reproduced including without limitation in writing, pictures, tables, graphs, photographs, moving image, orally or electronically) of whatever nature (including without limitation plans, designs, operational procedures, methods, financial information (including accounts and budgets) and copyright material) relating to this Contract, the parties and the business and affairs thereof, the Store Operations, all persons connected with this Contract and the Store Operations. together with any information that either Party shall have obtained or received as a result of discussions leading up to or the entering into or performance of this Contract. and any information obtained or observed as result of any Site visit.
“Contract”	means this agreement including all its Schedules as annexed hereto.
“Contract Period”	means the duration of the Contract as defined in Clause 8.
“Contracting Authority”	means any UK contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.
“Emergency Services”	means the Metropolitan Police, the London Ambulance Service or another approved ambulance service, the London Fire & Emergency Planning Authority or any other emergency service, or any one or more of them as the case may be.
“Fabric”	means the natural and built infrastructure of the park including but not only, the turf, flowerbeds, trees, horse rides, water bodies, buildings, roads, footpaths, monuments and furniture and fittings (lampposts, gates, fences, bins, benches and similar).
“Fair Wear and Tear”	means any compaction or damage to turf that could reasonably be expected as a result of the Store Operations in the Park in accordance with the terms and conditions of this Contract.
“Fee”	means the fees detailed in Clause 5.1.
“Financial Year”	means the financial year of The Royal Parks commencing on the 1st April in each calendar year.
“FOIA”	means the Freedom of Information Act 2000.
"Force Majeure"	means any event or occurrences which can reasonably be considered to be outside the reasonable control of the party concerned and which are not attributable to any act or failure to take preventive action by the party concerned, including act of terrorism, material threat of an act of terrorism, inability to obtain essential fuel, power, raw materials, labour, containers or transportation, accident, malfunction of machinery or apparatus, epidemic, avian flu, death, fire, storm, flood or explosion of any kind, Act of God, war, insurrection, natural disaster, riot, civil commotion, the demise of a member of The Royal Family such that it would require cancellation of a Store Operation in whole or in part, and equivalent circumstances which the party concerned could not be reasonably expected to foresee or provide for in advance, but shall not include any industrial action occurring within that party’s organisation or within any sub-contractor's organisation.
“Gross Retail Sales”	means the amount calculated by multiplying the number of units of merchandise sold by the Concessionaire in the Pop-Up Stores during the Store Operation Period by the relevant retail price [and any other agreed

	sales channels] (which for the avoidance of doubt includes VAT at the prevailing rate).
“Hire Period”	means the period between the Build Up Commencement Date and Take Down Completion Date.
“Infrastructure”	means such equipment required by the Concessionaire for the Pop-Up Retail Stores which may include, but is not limited to, air conditioning, barriers, cabling, scaffolding, flooring, trackway, temporary structures, marquees, platforms, mobile cabins, catering equipment, portable toilets, fencing, steel sheeting, generators and lighting.
“Intellectual Property Rights”	means patents, trademarks, service marks, trade names, registered and unregistered designs, trade or business names, copyright (including rights in software), database rights, customer data, design rights, rights in confidential information and any other intellectual property rights whatsoever irrespective of whether such intellectual property rights have been registered or not which may subsist in any part of the world.
“Concessionaire’s Vehicles”	means all vehicles authorised for use by the Concessionaire and/or its subcontractors at the Site in relation to the Pop-Up Store and to which the terms of Clause 12 shall apply.
"Concessionaire’s Representative"	means an individual authorised to act on behalf of the Concessionaire for the purposes of the Contract.
“Local Authority”	means Royal Borough of Richmond, Royal Borough of Greenwich and Westminster.
“London Living Wage”	means the London rate for the basic hourly wage as updated and published annually by the Living Wage Foundation, Citizens UK registered charity number 1107264 (or any relevant replacement organisation) on its website (www.livingwage.org.uk).
“London Subcontractor”	means a sub-contractor (of any tier) of the Service Provider whose relevant employees have a workplace postcode in London.
“Marketing Plan”	means the marketing and publicity plan which is to be agreed between the Concessionaire and The Royal Parks and which will include (without limitation) details of any in store activities, promotional events and marketing and publicity plans used by the Concessionaire to generate interest in the Pop-Up Store.
“Material Damage”	means any damage to the park fabric, other than Fair Wear and Tear, including but without limitation. fire damage, oil or chemical spills, any damage whatsoever to flowerbeds, trees, horse rides, water bodies, buildings, roads, footpaths, monuments and furniture and fittings (lampposts, gates, fences, bins, benches and similar).
“Minimum Royalty Payment”	means the guaranteed sum payable by the Concessionaire to The Royal Parks in accordance with Clause 5.1.
“Net Retail Sales”	means the Gross Retail Sales less any deductions for VAT and any other applicable sales taxes, refunds, returns and discounts/allowances for damaged goods.

“Noisy Working Hours”	means 10:00 to 18:00 on Saturdays and Sundays and 08:00 to 20:00 Mondays to Fridays or such hours as may be stipulated by any relevant planning condition.
“Operational Dates”	means the dates detailed in Schedule 2 (the Store Operations Schedule).
“Operation End Time”	means the times detailed in Schedule 2 (Store Operations Schedule).
“Parks”	means the area which is for the time being under the control or management of The Royal Parks and known as The Royal Demesne of Richmond Park, Bushy Park and Greenwich Park and to which the Park Regulations apply.
“Park Property”	means any physical property or equipment belonging to The Royal Parks (other than real property) made available to the Concessionaire by The Royal Parks in accordance with Clause 23.
“Park Regulations”	means those regulations made in pursuance of the powers conferred on the Secretary of State by section 2(1) of the Parks Regulation (Amendment) Act 1926 as extended by section 7(5) of the Crown Estate Act 1961.
“Party”	means a party to this Contract and “Parties” shall be construed accordingly and shall have the corresponding meaning where the context permits as referring to all of the parties under this Contract.
“Performance Bond”	means a bond as described at Clause 5.1c), payable in each calendar year during the Contract Period from which The Royal Parks may make deductions in accordance with Schedule 3 (the Reinstatement and Performance Bond Schedule).
“Permitted Times”	means the hours between which Build Up and Take Down are permitted as determined in Schedule 2 (Store Operations Schedule).
“Pop-Up Store”	means the 3 pop-up retail stores which will be located in accordance with the Site Plan during the Hire Period in [insert park names], (such plans may be amended from time to time and subjected to written agreement with The Royal Parks).
“Rectification Meeting”	means a minuted meeting of The Royal Parks and the Concessionaire to discuss repetitive or persistent minor breaches of the Contract at which the parties, acting reasonably, will seek to agree actions designed to avoid further such breaches.
“Request for Information”	has the meaning ascribed to that term in Clause 30.2c).
“Store Operation Proposal”	refers to the Store Operation Proposal that was prepared and submitted by the Concessionaire the relevant particulars of which are detailed in Error! Reference source not found. (the Store Operation Proposal Schedule).
“Reinstatement Costs”	means the costs as defined in Schedule 3 (the Reinstatement and Performance Bond Schedule).
“Royal Parks Logo”	means The Royal Parks trademark as applied and developed for The Royal Parks in the Royal Parks Brand User Guidelines annexed hereto, and as may be amended from time to time.
“Service Charges”	has the meaning ascribed to that term in Clause 24.1.
“Services”	has the meaning ascribed to that term in Clause 24.1.

“Site”	is the area enclosed or otherwise occupied by the Concessionaire for the purpose of operating the Pop-Up Stores, as shown in the Site Plan.
“Site Manager”	means the senior person on Site working for the Concessionaire.
“Site Plan”	is appended in Schedule 1 (Site Schedule) or as otherwise agreed by the Parties in accordance with Clause 4.4.
“Store Operation”	means any or all of the Pop-Up Store Operations detailed in Schedule 2 (Store Operations Schedule) and “Store Operations” shall be interpreted accordingly.
“Store Operation Period”	means the period between the Store Operation Start Time and the Store Operation End Time.
“Store Operation Proposal”	refers to the Store Operation Proposal that was prepared and submitted by the Concessionaire the relevant particulars of which are detailed in Schedule 2 (Store Operation Proposal Schedule).
“Store Operation Start Time”	means the times detailed in Schedule 2 (Store Operations Schedule).
“Store Operation End Time”	means the times detailed in Schedule 2 (Store Operations Schedule).
“Take Down”	means the dismantling of the Infrastructure.
“Take Down Completion Date”	means the dates detailed in Schedule 2 (Store Operations Schedule).
“The Royal Parks’ Representative”	means an individual authorised to act on behalf of The Royal Parks for the purposes of this Contract.
“Tax”	means Value Added Tax, customs duties and any other taxes or duties.
“Trading Times”	means the hours between which the Pop-Up Stores can be open for trading as set out in Schedule 2 (Store Operations Schedule).
“VAT”	means Value Added Tax at the rate prescribed in law or such replacement tax of a similar nature.
“Wear and Tear”	means any noticeable deterioration in the quality of soft or hard landscaped areas of the Parks, such as typically is caused by the movement of people and vehicles and the placement of infrastructure.

3. INTERPRETATION

- 3.1. The interpretation and construction of this Contract shall be subject to the following provisions (except where the context otherwise requires):
- a) words denoting the singular include the plural and vice versa;
 - b) words importing the masculine includes the feminine and the neuter;
 - c) any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, re-enacted or replaced and in force from time to time, whether before or after the date of this Contract and shall also be construed as referring to any previous statute, statutory provision or subordinate legislation amended, modified, consolidated, re-enacted or replaced by such statute, statutory provision or subordinate legislation;
 - d) any reference to a statutory provision shall be construed as including references to all statutory instruments, orders, regulations or other subordinate legislation made pursuant to that statutory provision;
 - e) the schedules to this Contract shall for all purposes form part of this Contract;

- f) any reference to "persons" includes individuals, bodies corporate, companies, partnerships, unincorporated associations, firms, trusts and all other legal and commercial entities;
- g) Clause headings and the table of contents are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- h) any reference to the word "including" shall be deemed to mean "including without limitation";
- i) any reference to a Clause, sub-Clause, paragraph or schedule is to the relevant Clause, sub-Clause, paragraph or schedule of this Contract unless stated otherwise;
- j) whenever the terms of this Contract provide for the agreement, consent or approval of the Concessionaire to be given or obtained, unless otherwise stated such approval will not be unreasonably withheld, delayed or conditioned; and
- k) whenever the terms of this Contract provide for the agreement, consent, approval or permission of The Royal Parks to be given or obtained, unless otherwise stated such approval will not be unreasonably withheld, delayed or conditioned.

4. LICENCE AND SITE

4.1. The Royal Parks hereby grants to the Concessionaire:

- a) an exclusive licence to use and occupy the Sites during the Hire Period. The Concessionaire may use and occupy the Sites for all purposes relating to the Store Operations on the Store Operational Dates and for the purposes of Build Up and Take Down during the remainder of the Hire Period; and
- b) a non-exclusive licence to use the Access and Egress Routes during the Hire Period.

4.2. Notwithstanding any terms to the contrary elsewhere in this Contract, but subject always to Clause 41 (Liability), the Concessionaire's obligations, responsibilities and liabilities under this Contract are limited at all times:

- a) to the Sites and the Access and Egress Routes; and
- b) to the Hire Period.

4.3. If The Royal Parks acting reasonably wishes the Concessionaire to comply with any reasonable policies or procedures in addition to those detailed in this Contract, it shall provide full details thereof to the Concessionaire, shall act reasonably and shall undertake a reasonable and fair discussion with the Concessionaire, in relation thereto, following which the Concessionaire shall comply therewith.

4.4. The Parties may from time to time discuss and agree updated versions of the Site Plan and shall take reasonable account of any comments of the other party in relation thereto and once such updated versions of the Site Plan have been Approved by The Royal Parks, they shall be referred to herein as "Site Plans" and the site detailed therein shall be referred to as "Site".

4.5. The Royal Parks hereby grants to the Concessionaire a licence to use the name "Greenwich Park, Richmond Park and Bushy Park" and with Approval, The Royal Parks Logo, in both cases in relation to the promotion and exploitation of the Store Operation(s), such use to be in accordance only with the terms and conditions of this Contract.

4.6. The Concessionaire will only trade from the Pop-Up Stores between the Trading Times.

5. FEES

5.1. The Concessionaire shall pay the following fees to The Royal Parks, in all cases subject to The Royal Parks' compliance with the terms of this Contract and to the Concessionaire's receipt of an invoice (which shall be valid for VAT if applicable) in respect of the relevant fee:

- a) [X%] of all Net Retail Sales applied to any Gross Retail Sales ("Revenue Share");
- b) a Minimum Royalty Payment of [X%] of forecast Revenue Share plus VAT;
- c) a Performance Bond of £21,000;
- d) any Reinstatement Costs due under Schedule 3 (Reinstatement and Performance Bond Schedule).

5.2. The Concessionaire shall pay all monies due to The Royal Parks under Clause 5.1 above as follows:

- a) the Minimum Royalty Payment shall be paid to The Royal Parks as follows:

Percentage of Minimum Royalty Payment	Date of Payment to The Royal Parks
30%	7 th December each contract year
70%	31 st December each contract year

- b) Revenue Share on Sales over the Minimum Royalty Payment shall be paid by the Concessionaire to The Royal Parks on 31st January of each contract year;
- c) the Concessionaire shall declare Net Retail Sales and Gross Retail Sales to The Royal Parks via a report at the end of each Store Operation Date and no later than 31st January. An invoice for the remaining Revenue Share shall be issued The Royal Parks for payment no later than 20 days from date of invoice;
- d) the Performance Bond shall be paid by no later than 20 working days prior to the start of each/the Hire Period;
- e) any Reinstatement Costs due under Schedule 3 (Reinstatement and Performance Bond Schedule) shall be paid in accordance with Schedule 3 (Reinstatement and Performance Bond Schedule);

5.3. If any monies due to The Royal Parks under Clause 5.1 remain unpaid by the Concessionaire after the due date for payment, then the Concessionaire shall pay interest on the outstanding sums. The interest will be calculated at a rate equivalent to the rate of 4% per annum above the base rate of the Bank of England from time to time in force, on the amount outstanding of such sums from the date on which the same becomes payable until the actual date of payment. The Parties acknowledge that this constitutes a substantial remedy and that The Royal Parks may not claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5.4. If the Concessionaire has not fully vacated the Site by the Take Down Completion Date, then provided that failure to do so is not caused by:

- a) a direction or instruction given by The Royal Parks;
- b) an event of Force Majeure or;
- c) such other Store Operations as may be agreed between the parties should be exempted from the provisions of this Clause 5.4, both parties acting reasonably in relation thereto.

The Royal Parks will charge the Additional Fee for each and every day which the Concessionaire remains on the Site. The Concessionaire will pay the Additional Fee upon demand which may be made within 14 days from the day to which the Additional Fee relates.

- 5.5. If the Concessionaire has not removed all Infrastructure and any other equipment owned by it from the Site by the Take Down Completion Date or such later date as agreed between the parties, then provided that failure to do so is not caused by:
- a) a direction or instruction given by The Royal Parks;
 - b) an event of Force Majeure; or
 - c) such other Store Operations as may be agreed between the parties should be exempted from the provisions of this Clause 5.5, both parties acting reasonably in relation thereto;

The Royal Parks may take such steps as it thinks fit to remove such Infrastructure and other equipment from the Site. The Concessionaire will reimburse on demand all reasonable costs (including any storage charge) which The Royal Parks reasonably and properly incurs in doing so, provided always that any actions taken by or on behalf of The Royal Parks under this Clause 5.5 shall be entirely at The Royal Parks' sole risk and liability and the Concessionaire shall have no liability or responsibility whatsoever (subject to Clause 39 (Liability)) in relation thereto, including in relation to any damages or losses which The Royal Parks, its employees, agents or subcontractors may suffer as a result of or in relation to such actions.

6. ACCOUNTS AND BOOKS

- 6.1. The Concessionaire shall keep and maintain full and accurate accounts of the Gross Retail Sales, Net Retail Sales in respect of each Store Operation.
- 6.2. Such accounts shall be provided to The Royal Parks in electronic form as well as in hard copy. The Concessionaire shall agree with The Royal Parks the file format and media to be used and the data structure required. The Concessionaire must bear all the costs for preparing the data in the agreed format, on the agreed media and in the required structure.
- 6.3. The Concessionaire shall present to The Royal Parks the value of Gross Retail Sales, Net Retail Sales received for each Store Operation within 20 working days of the relevant Store Operation.
- 6.4. The Royal Parks shall have the right to commission an audit of any returns made in accordance with this Clause 6.

7. RIGHT OF AUDIT

- 7.1. The Concessionaire shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records to support the accounts described in Clause 6.
- 7.2. The Concessionaire shall on request afford The Royal Parks such access to those records as may be requested by The Royal Parks, acting reasonably, in connection with the Contract.

8. CONTRACT PERIOD

- 8.1. The Contract shall take effect on the Commencement Date and subject to the provisions for earlier termination detailed herein, shall continue in full force and effect until 1st February 2023, after which point it shall expire automatically (“Contract Period”).
- 8.2. The operation of this Contract is conditional upon the Parties’ agreement of the Marketing Plan (which is attached at Schedule 2 Store Operation Proposal Schedule). The Marketing Plan shall be reviewed and agreed not later than 30th September of each contract year.

9. THE CONCESSIONAIRE’S GENERAL OBLIGATIONS

- 9.1. The Concessionaire shall, in relation to the exercise of its rights and performance of its obligations hereunder, comply with all applicable legislation together with (where applicable and which The Royal Parks has made the Concessionaire aware of in writing prior to the date hereof) the terms of the Premises Licence and any appropriate planning permissions.
- 9.2. The Concessionaire specifically shall:
- a) be responsible for the procurement and management of all matters pertaining to the design, content and marketing of the Store Operations as may be Approved pursuant to the terms of Clause 20.1 or elsewhere in this Contract;
 - b) organise all aspects of the Store Operations, and specifically it shall:
 - c) build and construct and maintain the Infrastructure in a good, safe and secure condition during the Hire Period;
 - d) manage the Site and keep it secure during the Hire Period;
 - e) not invite or permit any member of the public to be on the Site at any time when the Site is not open to the public;
 - f) not store any cash on the Site and instead remove all cash at the end of each day of trading;
 - g) secure all working areas during construction and dismantling of the Site in order to prevent public access;
 - h) not permit sleeping at the Site overnight or allow vehicles to be parked overnight on the Site or on Access or Egress Routes unless reasonably essential for the Build Up, Take Down or operation of the Store Operations;
 - i) nominate a competent Site Manager and which for the avoidance of doubt may change from time to time during the Contract Period and whereupon the Concessionaire will provide The Royal Parks with as much notice in relation thereto as is reasonably practicable;
 - j) ensure that the Site Manager will be contactable at all times during the Hire Period;
 - k) produce a full risk assessment for the Store Operations and the Build Up and Take Down, for the Approval of The Royal Parks no later than 20 working days prior to the first Store Operation Date;
 - l) keep order, maintain public safety and provide relevant information and advice to the public throughout the Store Operations;
 - m) be responsible for security on the Site and take all measures necessary to comply with the provisions of any legislation relating to security on Site which may be applicable to the Concessionaire;
 - n) install such lighting and signage on the Site and Access and Egress Routes as The Royal Parks and the Site Manager agree from time to time, both parties acting reasonably in relation thereto;

- o) manage all sub-contractors, suppliers and concessionaires engaged by or on behalf of the Concessionaire on the Site during the Hire Period;
- p) provide The Royal Parks with a full list of contractors to be used by the Concessionaire on Site during the Hire Period no later than 20 working days prior to each Build Up Commencement Date. Their risk assessments, method statements and a copy of their public liability insurance certificates should be made available for inspection on Site by The Royal Parks on reasonable notice;
- q) use and occupy the Site and use the Access and Egress Routes during the Hire Period in accordance with the Park Regulations and this Contract shall constitute the written permission of the Secretary of State required under the Park Regulations for the activities licensed herein to take place, subject to the terms and conditions of this Contract;
- r) be responsible for all actions or inactions of its concessions, contractors, sub-contractors, staff, agencies, Concessionaires and similar in relation to the performance of this Contract;
- s) provide access to the Site at all times to such employees of The Royal Parks, the Emergency Services and the Local Authority who need to have access to the Site for the purposes of their employment. The Royal Parks shall give the Concessionaire as much notice as is reasonably possible in relation to exercising its rights under this Clause;
- t) cooperate on Site during the Store Operations in such reasonable manner with such employees of The Royal Parks and with all members of the Emergency Services or Local Authority and not obstruct or hinder access over any part of the Site required by such a person in exercise of his duties;
- u) ensure that adequate provision is made within the Site during the Store Operations for wheel chair users and that during the Store Operations, the Site is compliant with the Equalities Act 2010;
- v) take reasonable steps to ensure that nothing is done on the Site by the Concessionaire and/or by any third party engaged by the Concessionaire for the Store Operations which in the reasonable opinion of The Royal Parks is obscene, unlawful, illegal or immoral or which is harmful to the reputation of The Royal Parks provided always that holding the Store Operations and acting in accordance with this Contract shall not be deemed to be a breach of this Clause 9.2v);
- w) not display within the Park any materials, branding, signage or promotions of any product or service, in such manner that it is visible outside the Site, without obtaining the prior approval of The Royal Parks no later than 20 working days prior to each Build Up Commencement Date;
- x) ensure that The Royal Parks Logo is included signage subject to Approval, and in accordance with the Brand User Guidelines;
- y) only use the name of the Park and The Royal Parks Logo for the purposes set out in this Contract and for no other purpose and the Concessionaire hereby acknowledges that it has no rights other than as granted under this Contract in connection with such Intellectual Property;
- z) not permit any merchandising, other than inside the Site and then only during the Store Operations;
- aa) ensure that the price of any merchandise to be offered for sale or sold at the Store Operations, shall be approved by The Royal Parks and not permit any person to sell such goods or items or offer for sale such goods or items, at a higher price than agreed;
- bb) not permit barbeques without the Approval of The Royal Parks in its absolute discretion;
- cc) not release balloons;
- dd) not hand out or otherwise give out flyers at the Site or within the Park without the Approval of The Royal Parks;

- ee) not use glass anywhere on Site and shall ensure that any receptacles used for the serving of alcoholic or soft drinks are comprised of non-fragmenting plastics;
- ff) not sell cigarettes at the Store Operations, nor allow others to do so;
- gg) ensure that no pyrotechnics or special effects are permitted as part of any Store Operation unless specifically Approved by The Royal Parks;
- hh) take all reasonable steps agreed to between the parties, both parties acting reasonably in relation thereto, to ensure that amplified music including public announcements do not cause a nuisance to any nearby residents or occupiers of any buildings on the perimeter of the Park;
- ii) ensure that any works carried on within the Site are not audible outside of the Park other than during the Noisy Working Hours;
- jj) ensure that all licences and other permissions necessary for the Store Operations are obtained subject to and with the benefit of the warranties provided by The Royal Parks under Clause 0; and
- kk) be registered under the Data Protection Act 1998 (the "DPA") and will (and shall procure that any of its sub-contractors involved in the provision of this Contract will) duly observe all their obligations under the DPA which arise in connection with this Contract.

9.3. Without prejudice to any other provision of this Agreement, the Concessionaire shall ensure that none of its employees; nor the employees of its London Sub-contractors, engaged in the provision of the Services be paid less than the London Living Wage as appropriate to the location of their workplace. For the avoidance of doubt the Concessionaire shall implement the annual increase in the rate of London Living Wage; and procure that its London Sub-contractors implement the annual increase in the rate of the London Living Wage, in line with their existing salary review date and in any case not later than 1 May in the year following the publication of the increased rate of the London Living Wage.

10. USE OF THE SITE

- 10.1. The Parties agree that there is no intention on the part of The Royal Parks to create a tenancy of any nature whatsoever in favour of the Concessionaire or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and (notwithstanding any rights granted pursuant to this Contract) The Royal Parks retains the right at any time to use all areas of the Park other than the Site in any manner that The Royal Parks sees fit.
- 10.2. The Sites (including any temporary buildings thereon and any Park Property) made available to the Concessionaire by The Royal Parks in connection with the Contract shall be used by the Concessionaire solely for the purpose of the Concessionaire exercising its rights and performing its obligations hereunder.
- 10.3. The Concessionaire shall have the use of Sites (including any temporary buildings thereon and any Park Property) as Concessionaire and shall vacate the same at the end of each Hire Period.
- 10.4. The Concessionaire and employees, servants, agents, suppliers or sub-contractors engaged by the Concessionaire to provide services on the Site in relation to the Store Operations shall observe and comply with such rules and regulations as may be in force at any time for the use of the Site and the Access and Egress Routes as determined by The Royal Parks acting reasonably following a reasonable and fair discussion with the Concessionaire.
- 10.5. The Royal Parks shall be entitled to such payment from the Concessionaire as may be due in accordance with Schedule 3 (Reinstatement and Performance Bond Schedule) for any costs incurred by The Royal

Parks in reinstatement of the Site as a result of the Concessionaire's staging of the Store Operations at the Site.

- 10.6. The Concessionaire shall pay and discharge all rates and taxes (if any) of whatsoever nature imposed on The Royal Parks by a third party and which are payable in respect of the use of the Site during the Hire Period and or the Store Operations or which may become payable by reason or in consequence of this Contract and to refund to The Royal Parks any contribution made by it in lieu of such rates and/or taxes.
- 10.7. The Concessionaire shall keep the Site secure at all times during the Hire Period.
- 10.8. The Concessionaire shall take all reasonable steps to minimise wear and tear to the Site and the Access and Egress Routes and fabric of the Park during the Hire Period.
- 10.9. The Concessionaire will not drive nor permit to be driven any vehicle over the grass within the Park except fork lift trucks and other essential plant and then only with the Approval of The Royal Parks and provided always that the Concessionaire shall ensure that:
 - a) trackway will be provided in accordance with the Site Plans, to enable vehicular access without the need to run over the grass and that all trackway will be edged with metal pins or plastic blockers to stop vehicles driving onto the grass;
 - b) all fork-lift trucks and similar plant will be fitted with tyres suitable for driving on grass;
 - c) nothing will be fixed, fastened or otherwise secured to any fittings or furniture without the permission of The Royal Parks;
 - d) no excavating, drilling, staking or in any way digging or driving anything into the ground is carried out without first carrying out a scan to ensure, so far as is practicable, that there are no underground pipes, cables or other services that will be damaged as a result and without obtaining the prior Approval of The Royal Parks;
 - e) no parking or positioning of vehicles or Infrastructure by the Concessionaire or any third party engaged by the Concessionaire in relation to the Store Operations, will be allowed, underneath tree canopies or over the root zone of any tree unless otherwise Approved by The Royal Parks. The Royal Parks, acting reasonably, will decide what constitutes the area of the canopy or root zone of any tree; and
 - f) nothing is attached to any trees or otherwise interferes with any trees;
- 10.10. The Concessionaire shall not use the Site nor the Access and Egress Routes, nor permit them to be used, for any purpose or activity other than the Concessionaire exercising its rights and performing its obligations under this Contract.

11. HEALTH AND SAFETY

- 11.1. The Concessionaire shall take all necessary measures to comply with all legislation relating to Health and Safety (including the Health and Safety at Work etc. Act 1974) which may apply to persons engaged by it to work on the Site during the Hire Period.
- 11.2. The Concessionaire shall:
 - a) be responsible for the management of health and safety on Site during the Hire Period and shall nominate a competent person to be the Health & Safety coordinator for the Store Operations; provide for Approval by The Royal Parks (who shall act in consultation with the Licensing & Safety

Advisory Group) a Store Operation Proposal Schedule to be prepared in accordance with the requirements set out below in Clause 11.3;

- b) ensure that all appliances, (and their associated fittings), powered by Liquid Petroleum Gas (used on Site during the Hire Period) will have been serviced or inspected by a Corgi registered engineer in the previous 12 months. All safety certificates and inspection or service records should be made available to The Royal Parks during the Hire Period upon request;
- c) comply with the Traffic Signs Regulations & General Directives 2002 (and subsequent legislation) and specifically Chapter 8 of the Traffic Signs Manual in relation to any infrastructure or signage placed on Park roads in the Park;
- d) comply with any health and safety measures agreed between the Parties, both Parties acting reasonably in relation thereto;
- e) provide suitable first aid cover for the Store Operations;
- f) provide suitable first aid cover for Build Up and Take Down in accordance with the Concessionaire's risk assessments;
- g) maintain records of any accidents occurring on Site during the Hire Period and notify The Royal Parks of any accident or injury to any person which occurs on Site or on the Access and Egress Routes during the Hire Period. All RIDDOR reportable incidents shall be immediately reported to The Royal Parks. The Concessionaire and not The Royal Parks will report all RIDDOR reportable incidents to the HSE;
- h) promptly notify The Royal Parks of any significant health and safety hazards which may arise in connection with the performance of the Contract; and
- i) ensure that its health and safety policy statement and risk assessments (as required by the Health and Safety at Work etc Act 1974), and any other health and safety information that The Royal Parks may reasonably demand, are made available to The Royal Parks on request;

11.3. For the purposes of Clause 11.2a) the Store Operation Proposal Schedule shall provide for:

- a) Build & De-rig Plan
- b) Operations Plan
- c) Site production schedule.
- d) Site plan (produced in CAD or similar) with location grid (to AO size).
- e) Collation of all contractor drawings, calculations and documentation as required.
- f) Risk assessments.
- g) Traffic management plan (build, event, de-rig).
- h) Access and egress arrangements as required.
- i) Stewarding and security schedules.
- j) Contact lists for key personnel.
- k) Management structure.
- l) List of all attractions, traders, exhibitors and similar.
- m) Medical cover.
- n) Emergency and contingency plans.
- o) Refuse Plan
- p) Marketing and Communications Plan

12. VEHICLES

- 12.1. The Concessionaire shall comply with all reasonable instructions, notices and directions agreed to between the Parties from time to time in relation to any vehicle used by or on behalf of the Concessionaire in the Park during the Hire Period, including on the Site and Access and Egress Routes.
- 12.2. The Concessionaire shall ensure that all Concessionaire Vehicles:
- a) display a vehicle permit issued by the Concessionaire; enter and leave the Park through routes agreed to between the Parties, both parties acting reasonably;
 - b) give right of way to pedestrians, cyclists, horses and other animals;
 - c) are only driven by people who hold a valid driving licence and have had appropriate training for that vehicle, and
 - d) do not block road corners, pedestrian footpaths or access to business or residential premises within the Park.
- 12.3. The Concessionaire shall:
- a) supply such traffic marshals, traffic cones and signage as necessary for ensuring that drivers of Concessionaire Vehicles engaged by the Concessionaire comply with the terms of this Contract relating to Concessionaire Vehicles;
 - b) ensure that safe passage around all Concessionaire Vehicles is available for pedestrians and a banksman shall be used at all times whilst the vehicles are being moved into or out of the Park;
 - c) enforce a speed limit of 5mph on Concessionaire Vehicles driving in the Site; and
 - d) keep a written record of all Concessionaire Vehicles and shall ensure that they carry such identification within the Park as The Royal Parks acting reasonably specifies.

13. INFRASTRUCTURE

- 13.1. The Concessionaire shall:
- a) provide all Infrastructure necessary for the performance of its obligations hereunder;
 - b) not commence any work on the Site at the beginning of each Hire Period without obtaining the prior Approval of The Royal Parks;
 - c) arrange the delivery and removal of all Infrastructure to and from the Site at its sole cost and risk;
 - d) keep any Infrastructure that it places on the Access & Egress Routes secure and appropriately lit at night;
 - e) ensure that all items of Infrastructure are, whilst on the Site, maintained in a safe, serviceable and clean condition;
 - f) remove all Infrastructure arising from the Store Operations from the Site by the expiry of each Hire Period; and
 - g) make good any damage caused to the Site by the removal of the Infrastructure.
- 13.2. All Infrastructure shall be at the risk of the Concessionaire and The Royal Parks shall have no liability for any loss of or damage to any Infrastructure, unless such loss or damage was caused or contributed to by any act or omission of The Royal Parks.

- 13.3. The Royal Parks shall have the power at any time during the Hire Period to order in writing:
- a) the removal from the Park of any Infrastructure which in the opinion of The Royal Parks is either hazardous, noxious or not in accordance with the Contract; and/or
 - b) the substitution of proper and suitable materials, plant, equipment; and/or
 - c) the removal and proper re-execution in respect of material or workmanship, which is not in the opinion of The Royal Parks in accordance with the Contract.

14. CONCESSIONAIRE'S STAFF

- 14.1. The Royal Parks, acting reasonably, may refuse to admit to, or to withdraw permission to remain in, the Park any person employed or engaged by the Concessionaire or by a sub-contractor, agent or servant of the Concessionaire whose admission or continued presence would, in the opinion of The Royal Parks, be undesirable.
- 14.2. The decision of The Royal Parks as to whether any person is to be refused access to any premises occupied by or on behalf of the Crown shall be final and conclusive and the Concessionaire shall bear the cost of any notice, instruction or decision of The Royal Parks under this condition.
- 14.3. When dealing with the public at the Store Operations, all persons engaged by the Concessionaire in connection with the Contract, including the Concessionaire's agents and sub-contractors, will act in a helpful and courteous manner.
- 14.4. The Concessionaire shall select and appoint suitable and competent persons in relation to the exercise of its rights under this Contract. All such persons shall possess the qualifications and competence appropriate to the tasks for which they are engaged.

15. MODERN SLAVERY

- 15.1. It is the policy of each of The Royal Parks and the Concessionaire to comply with the anti-slavery and human trafficking laws of the United Kingdom (including without limitation, the Modern Slavery Act 2015, as amended from time to time) and any other applicable anti-slavery laws and legislation anywhere in the world which, inter alia, prohibit slavery, servitude and forced or compulsory labour and human trafficking (including an offence committed by aiding, abetting, counselling or procuring the same) (collectively and individually the "Anti-Slavery Policy"). Any violation of the Anti-Slavery Policy by the Concessionaire or The Royal Parks will entitle the other party to immediately terminate the Agreement.
- 15.2. The Concessionaire represents and warrants on an ongoing basis throughout the Contract Period that neither the Concessionaire nor any of its officers, employees and if relevant, its suppliers or sub-contractors or other persons associated with it:
- 15.2.1. has been convicted of any offence involving slavery and human trafficking; or
 - 15.2.2. has been or is it the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16. SAFEGUARDING

- 16.1. The Concessionaire shall ensure that its safeguarding policy and procedures for children, young people and adults at risk comply with all relevant regulations and follow Government safeguarding guidelines as amended from time to time. Copies shall be made available to the Customer on request for review.

17. WORKING IN THE PARK

- 17.1. The Concessionaire shall exercise its rights and perform its obligations under this Contract in a polite and courteous manner, acting reasonably at all times and shall carry out the provision of the Store Operations in a manner so as not to disrupt the activities of the public, employees and other contractors of The Royal Parks.
- 17.2. The Royal Parks shall, so far as reasonably possible, carry out all of its activities within the Park in a manner so not as to disrupt the Concessionaire.

18. REMOVAL OF LITTER, RUBBISH AND WASTE FLUIDS

- 18.1. The Parks are designated Grade A environments under the Code of Practice on Litter and Refuse. The Concessionaire shall use its reasonable endeavours to comply with this Code of Practice and will ensure that a reasonably sufficient number of staff are engaged to enable the continuous gathering of litter in the Site during the Store Operations.
- 18.2. The Concessionaire shall take reasonable precautions in the performance of this Contract to ensure that the impact of litter emanating from the Site as a direct result of the Store Operations is minimised. Such steps shall include the selection of packaging which minimises litter.
- 18.3. The Concessionaire shall minimise waste in the exercise of its rights and performance of its obligations under this Contract and upon completion of each Hire Period, the Concessionaire shall remove any unused materials and all rubbish and leave the Site in a neat and tidy condition.
- 18.4. The Concessionaire shall minimise waste in the provision of the Store Operations. As much waste as is reasonably possible shall be recycled and on request the Concessionaire shall produce whatever documentation is reasonably requested by The Royal Parks to ensure that waste generated on the Site during each Hire Period is disposed of in accordance with applicable legislation. The Concessionaire shall, upon request provide to The Royal Parks details of all of its waste streams together with data on the amount recycled, the amount reused and the amount going to landfill.
- 18.5. The Concessionaire shall participate in such recycling schemes as the parties agree to from time to time, both parties acting reasonably in relation thereto.
- 18.6. Compactors or other suitable storage containers must be used to store rubbish generated on Site during each Hire Period and disposal thereof shall be undertaken at the Concessionaire's expense.
- 18.7. The Concessionaire will supply litter bins throughout the Site during each Hire Period.
- 18.8. Suitable sealed containers must be provided for the collection of all waste fluids e.g. cooking oils. All waste fluids must be disposed of off Site or as agreed by The Royal Parks.
- 18.9. The Concessionaire shall make its own arrangement for the ongoing removal of all litter and rubbish from the Site to the approval of The Royal Parks, such approval not to be unreasonably withheld or delayed.

- 18.10. To avoid the risk of infestation by pests, the Concessionaire will use its reasonable endeavours to ensure that rubbish collections are made daily on each day following a Store Operation before 10am unless otherwise agreed by The Royal Parks.
- 18.11. The Concessionaire shall use its reasonable endeavours to minimise the risk of pest infestation by making reasonably adequate arrangements for the disposal of food waste and other matters attractive to pests. The Concessionaire shall not arrange for the control of any pests without the written permission of The Royal Parks. If The Royal Parks agrees to the Concessionaire dealing with pest control, the pesticides or any other chemicals and method of application to be used in relation thereto must be agreed with The Royal Parks.

19. ENVIRONMENTAL REQUIREMENTS

- 19.1. The Concessionaire shall, when working on the Site, perform its obligations under the Contract in accordance with The Royal Parks' environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 19.2. The Concessionaire shall comply with any reasonable requirements that The Royal Parks may have relating to the implementation of ISO14001 and BS8901 standards.
- 19.3. The Concessionaire shall ensure that all energy consuming plant used on Site during each Hire Period is operated and maintained at optimum efficiency and shall use its reasonable endeavours to ensure that all fuel, electricity and water used on Site during each Hire Period are used economically.
- 19.4. The Concessionaire shall ensure that no timber or wood contained in any product it procures in relation to the Store Operations is derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.
- 19.5. All timber and wood, other than recycled timber and wood, shall be supplied to the Concessionaire in strict accordance with applicable laws of England and Wales. The Concessionaire shall be able to provide reasonable evidence in relation thereto.
- 19.6. The Concessionaire shall ensure that timber and wood used on site derives from forests or plantations that were sustainably managed to promote biodiversity and prevent ecological and social damage. The Concessionaire should be able to evidence that this requirement has been met.
- 19.7. The Concessionaire shall, if requested by The Royal Parks, obtain independent verification of the claims being made and shall meet the full costs involved in so doing.
- 19.8. The Royal Parks will accept that the Concessionaire has met his obligations in proving the source of his timber and wood products is if those products are certified, by properly accredited organisations, as meeting the standards set by the Forest Stewardship Council.
- 19.9. The Concessionaire shall work with The Royal Parks to identify and implement environmental improvement opportunities within the park.

20. STORE DESIGN AND PROGRAMMING

20.1. The Concessionaire will make proposals for the Approval of The Royal Parks, such Approval not to be unreasonably withheld or delayed, as to all matters pertaining to the design, content and marketing of the Store Operations.

21. BRANDING & INTELLECTUAL PROPERTY

21.1. The Parties shall work together and cooperate in good faith in order to agree the design concept for the Store Operations in accordance with Schedule I (Store Operation Proposal Schedule).

21.2. The Concessionaire will submit proposals for the design concept for the Store Operations to The Royal Parks for their Approval, such Approval not to be unreasonably withheld or delayed.

21.3. The Parties shall ensure that The Royal Parks' Logo is included in the design concept for the Store Operations.

21.4. The Concessionaire shall only use the name "Richmond Park, Bushy Park and Greenwich Park" and The Royal Parks Logo for the purposes set out in this Contract and for no other purpose and the Concessionaire hereby acknowledges that it has no rights other than as granted under this Contract in connection with such intellectual property.

21.5. All Intellectual Property Rights in the Brand User Guidelines, the Schedules of this Contract, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

- i. furnished to or made available to the Concession Holder by or on behalf of TRP shall remain the property of TRP; and
- ii. prepared by or for the Concession Holder on behalf of TRP for use, or intended use, in relation to the performance by the Concession Holder of its obligations under this Contract shall belong to TRP;

and the Concession Holder shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

21.6. The Concession Holder hereby acknowledges that it has no rights other than as granted under this clause in connection with the Trade Marks and shall only use any marketing collateral materials (meaning for the purposes of this clause the marketing material used in association with the Trade Marks for the provision of the Services) in the form and style set out in the Brand User Guidelines and in conformity with the terms of any Approval required under the terms of this clause.

21.7. The Concession Holder shall only use the name and the TRP Logo for purposes which have been Approved.

21.8. The Concession Holder shall supply to TRP for Approval pre-production samples of such branded materials prior to their production. Production items shall comply in all respects with the samples given Approval by TRP.

21.9. For the purposes of any Approval required under the terms of the preceding sub-clause **Error! Reference source not found.**21.8 the Parties acknowledge that:

- i. TRP shall be allowed at least 10 Working Days within which to Approve or provide written refusal calculated from the date of receipt of any samples submitted by the Concession Holder for Approval; and
 - ii. the Concession Holder shall build into its timetable sufficient time to implement any reasonable alterations suggested by TRP as a condition of its Approval; and
 - iii. any materials which do not meet with Approval shall not be used by the Concession Holder.
- 21.10. The Concession Holder shall not in respect of any of its goods or services use any mark or name the same as or confusingly similar to any of the Trade Marks.
- 21.11. The Concession Holder shall not seek to use or register anywhere worldwide the names of any of the Parks as trademarks, domain names or names that are confusingly similar (and reference to "Parks" in this context shall mean any of the Parks, gardens, recreation grounds, open spaces and other land to which the Park Regulations from time to time shall apply).
- 21.12. The Concession Holder shall not sub-licence to any third party any of the rights and obligations derived under this clause.
- 21.13. TRP reserves the right to bring any legal action against the Concession Holder for infringement of any Intellectual Property Rights.
- 21.14. TRP reserves the right to treat any breach of this clause and the sub-clauses contained therein as a material breach and to which clause **Error! Reference source not found.**(a) (Termination on Default) will apply.
- 21.15. The Concession Holder hereby assigns to TRP, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with this clause 21. This assignment shall take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Concession Holder. The Concession Holder shall execute all documentation necessary to execute this assignment.
- 21.16. The Concession Holder shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.
- 21.17. The Concession Holder shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to TRP a non-exclusive licence or, if itself a Concessionaire of those rights, shall grant to TRP an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for TRP to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Concession Holder or to any other third party supplying services to TRP.
- 21.18. The Concession Holder shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Concession Holder shall, during and after the Contract Period, indemnify and keep indemnified and hold TRP and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which TRP or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
 - i. items or materials based upon designs supplied by TRP; or

- ii. the use of data supplied by TRP which is not required to be verified by the Concession Holder under any provision of this Contract.
- 21.19. TRP shall notify the Concession Holder in writing of any claim or demand brought against TRP for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Concession Holder.
- 21.20. The Concession Holder shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Concession Holder, provided always that the Concession Holder:
- i. shall consult TRP on all substantive issues which arise during the conduct of such litigation and negotiations;
 - ii. shall take due and proper account of the interests of TRP; and
 - iii. shall not settle or compromise any claim without TRP' prior written consent (not to be unreasonably withheld or delayed).
- 21.21. TRP shall at the request of the Concession Holder afford to the Concession Holder all reasonable assistance for the purpose of contesting any claim or demand made or action brought against TRP or the Concession Holder by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Concession Holder's obligations under this Contract and the Concession Holder shall indemnify TRP for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Concession Holder shall not, however, be required to indemnify TRP in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in this clause 21.
- 21.22. TRP shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by TRP or the Concession Holder in connection with the performance of its obligations under this Contract.
- 21.23. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Concession Holder is likely to be made, the Concession Holder shall notify TRP and, at its own expense and subject to the consent of TRP (not to be unreasonably withheld or delayed), use its best endeavours to:
- i. modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - ii. procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to TRP,

and in the event that the Concession Holder is unable to comply with clauses **Error! Reference source not found.**21.20i or **Error! Reference source not found.**21.20ii or within 20 Working Days of receipt of the Concession Holder's notification TRP may terminate this Contract with immediate effect by notice in writing.

- 21.24. The Concession Holder grants to TRP a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Concession Holder owned or

developed prior to the Service Commencement Dates and which TRP reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

22. MARKETING, PROMOTION AND COMMUNICATIONS

- 22.1. The Parties shall work together and cooperate in good faith in order to agree and implement proposals for the marketing and promotion of the Store Operations so that both Parties can share content and maximise marketing and communications opportunities for their mutual benefit.
- 22.2. The Concessionaire will be responsible for designing marketing and communications plans in accordance with Clause 22.1 above for the Approval of The Royal Parks, such Approval not to be unreasonably withheld or delayed.
- 22.3. The Concessionaire will be responsible for the implementation of the marketing and communications plans, at their cost, following their Approval in accordance with Clause 22.2 above.
- 22.4. Without prejudice to the obligations of The Royal Parks under the FOIA, and other than in accordance with Clause 22.1 above, neither Party shall make any press announcement relating to this Contract or Store Operations or publicise this Contract or Store Operations or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed). Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause 22 by their employees, agents, professional advisors, subcontractors and consultants.
- 22.5. The provisions of Clause 22.4 shall survive expiry or termination of this Contract for any reason.
- 22.6. The Concessionaire acknowledges that The Royal Parks is under an obligation to report all Serious Incidents to the Charity Commission and shall make itself aware of the Charity Commission guidance made available at <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>, and The Royal Parks' requirements as a charity under that guidance. The Concessionaire shall promptly report all Serious Incidents, which are connected to the obligations and activities under this Agreement, as soon as becoming aware of the same to The Royal Parks in writing providing detailed information about the Serious Incident.

23. PARK PROPERTY

- 23.1. If the parties agree that The Royal Parks shall allow the Concessionaire to use Park Property, the parties agree that all Park Property shall be and remain the property of The Royal Parks.
- 23.2. The Concessionaire shall not in any circumstances have a lien on the Park Property and the Concessionaire shall take all reasonable steps to ensure that the title of The Royal Parks to such Park Property is brought to the notice of all subcontractors engaged by the Concessionaire in relation to the Store Operations who use such Park Property.
- 23.3. The Concessionaire shall:
 - a) use the Park Property solely in connection with the Contract and for no other purpose, without prior Approval of The Royal Parks;
 - b) return the Park Property to The Royal Parks at such times as the parties agree; and
 - c) ensure the security of all Park Property, whilst in the Concessionaire's possession, in accordance with The Royal Parks' reasonable security requirements from time to time.

- 23.4. The Concessionaire shall be liable for any and all loss of or damage to any Park Property caused during the time that the Concessionaire was responsible there for, unless such loss or damage was caused by any act or omission of The Royal Parks. The Concessionaire shall immediately inform The Royal Parks of any defects appearing in or losses or damage occurring to Park Property of which the Concessionaire is aware.

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24. SERVICES

- 24.1. The Royal Parks shall provide any services which The Royal Parks has agreed to provide, upon such terms and conditions as agreed to between The Royal Parks and the Concessionaire (“Services”). The Concessionaire shall pay all charges therefore which the Parties have agreed to, both parties acting reasonably and in good faith in relation thereto (such agreed charges shall be referred to herein as “Service Charges”).
- 24.2. The Concessionaire shall not make use of any Park supply of water, electricity, gas or telephone without the written consent of The Royal Parks and if such consent is given, it shall pay to The Royal Parks all charges imposed on The Royal Parks by a third party in respect of the water, electricity, gas and telephone supplies used by the Concessionaire (including standing charges and meter rents) on the Site during each Hire Period in relation to the Store Operations.
- 24.3. The Royal Parks will not be liable for loss of revenue, costs or damages where any utility supply fails, except where it is directly attributable to any act or omission of The Royal Parks.

25. PUBLICITY, MEDIA, OFFICIAL ENQUIRIES AND ADVERTISING

- 25.1. Without prejudice to The Royal Parks’ obligations under the FOIA, neither Party shall make any press announcement relating to this Contract or publicise this Contract or any part thereof in any way, except with the written consent of the other Party. Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause by their employees, agents, professional advisors, subcontractors and consultants.
- 25.2. Neither Party shall make any press announcements relating to the Store Operations without the consent of the other Party in any circumstances (such consent not to be unreasonably withheld or delayed), including in an emergency.
- 25.3. The provisions of this Clause 25 do not apply to carrying out agreed marketing and publicity plans for the Store Operations.
- 25.4. The provisions of this Clause 25 shall survive expiry or termination of this Contract for any reason.

26. FRAUD

- 26.1. The Concessionaire shall use its reasonable endeavours to put in place sufficient systems to ensure that no fraud is committed by its staff, agents, contractors and sub-contractors in relation to the Store Operations.
- 26.2. If the Concessionaire becomes aware of any such fraud it will immediately inform The Royal Parks thereof.

27. PREVENTION OF CORRUPTION

- 27.1. The Concessionaire shall not offer or give, or agree to give, to any employee, agent, servant or representative of The Royal Parks any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Crown, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Concessionaire is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

- 27.2. The Concessionaire shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of The Royal Parks by the Concessionaire or on the Concessionaire's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any Contract for the payment thereof have been disclosed in writing to The Royal Parks.
- 27.3. Where the Concessionaire or Concessionaire's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Concessionaire's behalf, breach the Concessionaire's obligations under this Clause 27, The Royal Parks has the right to terminate the Contract by giving written notice to the Concessionaire.
- 27.4. In exercising its rights or remedies under this Clause 27, The Royal Parks shall:
- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the prohibited act; and
 - b) give all due consideration, where appropriate, to action other than termination of the Contract.

28. DISCRIMINATION

- 28.1. The Concessionaire shall not unlawfully discriminate in relation to the employment of staff working at the Site during each Hire Period.

29. CONFIDENTIALITY

- 29.1. Each Party undertakes to the other that it shall:
- a) keep confidential all Confidential Information;
 - b) take appropriate steps to safeguard all Confidential Information within its control belonging to the other Party;
 - c) not, without the other Party's prior written consent, disclose the Confidential Information in whole or in part to any other person save those of its directors, employees, agents, professional advisers, consultants and subcontractors involved in the implementation of this Contract provided in all cases that they have a need to know the same and provided that in disclosing information under this Clause 29.1c) the Parties shall disclose only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; and
 - d) use the Confidential Information solely in connection with the exercise of rights and/or the performance of obligations under this Contract and not otherwise for its own benefit or the benefit of any third party.
- 29.2. The Parties shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party under or in connection with the Contract is given only to such of the directors, employees, agents, professional advisors, consultants and subcontractors engaged by it in relation to the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract.
- 29.3. The provisions of Clauses 29.1 and 29.2 shall not apply to the whole or any part of the Confidential Information that can be shown by the receiving Party to be:
- a) disclosed as a requirement of law or any regulatory body to whose rule either Party is subject;

- b) required for the examination and certification of each Party's accounts by external professional advisors;
- c) known to the receiving Party prior to the date of this Contract otherwise than as a result of being obtained directly or indirectly from the disclosing Party;
- d) obtained from a third party who lawfully possessed such Confidential Information and which has not been obtained in a breach of a duty of confidence owed to the disclosing Party by any reason;
- e) in the public domain other than as a result of a breach of a duty of confidence owed to the disclosing Party by any person;
- f) in the case of The Royal Parks, required for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which The Royal Parks has used its resources.

29.4. The provisions under this Clause 29 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

29.5. The provisions of this Clause 29 shall survive expiry or termination of this Contract for any reason.

30. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

30.1. The Concessionaire acknowledges that The Royal Parks is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 (collectively "Disclosure Legislation") and shall as far as is reasonably possible assist and co-operate with The Royal Parks (at the Concessionaire's expense) to enable The Royal Parks to comply with the requirements thereof in relation to any information relating to the Concessionaire, the Store Operations and/or this Contract.

30.2. The Concessionaire shall, and shall procure that its sub-contractors shall:

- a) send to The Royal Parks any Request for Information received by them addressed to The Royal Parks as soon as practicable after receipt and in any event within two working days
- b) provide all necessary assistance as reasonably requested by The Royal Parks to enable The Royal Parks to respond to a Request for Information within the time frames for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.
- c) If The Royal Parks is required under the Disclosure Legislation to comply with and/or assist with responding to a Request for Information from a third party under the Disclosure Legislation which relates to the Concessionaire, the Store Operations and/or this Contract (a "Request for Information") The Royal Parks shall:
- d) inform the Concessionaire about the Request for Information and the nature of the information being sought as soon as is reasonably practicable following receipt of the Request for Information;
- e) consider all relevant exemptions provided under the Disclosure Legislation (including, without limitation, section 41 of the FOIA – information provided in confidence – and section 43 of the FOIA – information which would prejudice the commercial interests of a party) to withhold information sought in terms of the Request for Information and apply such exemptions where it is correct to do so (e.g. that either an absolute exemption or a qualified exemption as detailed under the FOIA applies);
- f) consult with the Concessionaire prior to the disclosure of any such information and take reasonable account of the Concessionaire's views in relation thereto; and

- g) inform the Concessionaire about The Royal Parks' progress in dealing with any Request for Information and where requested by the Concessionaire, provide the Concessionaire with copies of any correspondence and documents relating to the Request for Information.
- 30.3. Subject to Clause 30.2c), The Royal Parks shall be responsible for determining at its absolute discretion whether information within its control relating to this Contract, the Store Operations and/or the Concessionaire:
- a) is exempt from disclosure in accordance with the provisions of the Disclosure Legislation; or
 - b) is to be disclosed in response to a Request for Information.
- 30.4. The Concessionaire shall not respond directly to a Request for Information addressed to The Royal Parks unless expressly authorised to do so by The Royal Parks.
- 30.5. The Concessionaire acknowledges that any information provided by it outlining Confidential Information are of indicative value only and that The Royal Parks may nevertheless be obliged to disclose Confidential Information in accordance with the Disclosure Legislation under the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000:
- a) without consulting with the Concessionaire; or
 - b) following consultation with the Concessionaire and having taken its views into account.
- 30.6. The Concessionaire shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit The Royal Parks to inspect such records as requested from time to time.
- 30.7. The provisions of this Clause 30 shall survive expiry or termination of this Contract for any reason.

31. WARRANTIES REPRESENTATIONS AND CAPACITY

- 31.1. The Royal Parks warrants, represents and undertakes at all times during the Contract Period that:
- a) it has, and will during the Contract Period retain, full and exclusive power and authority to enter into and perform this Contract and grant the rights and perform the obligations detailed hereunder free from all encumbrances and that it does not at the date hereof have any actual or constructive notice of any defect in or restriction in granting such rights;
 - b) The Royal Parks shall discharge its obligations hereunder with all due skill, care and diligence including in accordance with good industry practice and with its own established internal procedures;
 - c) the Concessionaire's use of the name Richmond Park, Bushy Park and Greenwich Park and/or The Royal Parks Logo shall not infringe any rights, including any Intellectual Property Rights, of any third parties;
 - d) that the Site will be readily and freely available to stage the Store Operations whereby for such purposes:
 - (i) the Concessionaire shall have quiet enjoyment of the Site during the Hire Period to give full effect to the provisions of these Conditions;
 - (ii) The Royal Parks shall not unduly interrupt the use of the Site by the Concessionaire providing always that such use is in accordance with the terms of these Conditions;

- (iii) The Royal Parks shall provide full access to and egress from the Site and the Access and Egress Routes (as that term is so defined) to the Concessionaire; all third parties engaged by the Concessionaire (with and without vehicles and equipment) and to the general public travelling on foot to the Store Operations during such times as the Parties agree and via such routes as the Parties agree, in both cases, both Parties acting reasonably;
- (iv) no third party will be entitled to exercise any rights in respect of the Site during the Hire Period which for the avoidance of doubt does not include any areas outside of the Site but within the Park including the Access and Egress Routes;
- e) The Royal Parks shall act reasonably towards the Concessionaire in respect of any of its rights and obligations under this Contract.
- f) The Royal Parks shall promptly notify the Concessionaire of any health and safety hazards which may exist or arise at the Site and which may affect the Concessionaire.
- g) that this Contract is executed by a duly authorised representative of The Royal Parks;
- h) The Royal Parks acknowledge that the Concessionaire shall be entitled to all sums received from the production and exploitation of the Store Operations, including ticket and programme sales, sponsorship, advertising, sale of merchandising, film, soundtrack or sound recordings and any and all rights in relation to hospitality, catering and bar sales within the Site, in all cases without any payment or other obligation to The Royal Parks, subject to the Concessionaire's obligations under Clause 5 (Fees).
- i) During each Hire Period the Concessionaire warrants, represents and undertakes that:
 - (i) the Concessionaire has the full capacity, authority and all necessary consents to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Concessionaire;
 - (ii) the Concessionaire shall discharge its obligations hereunder with all due skill, care and diligence including in accordance with good industry practice and with its own established internal procedures; and
 - (iii) all obligations of the Concessionaire pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained employees with all due skill, care and diligence.
 - (iv) it has inspected the Site before tendering so as to have understood the nature and extent of the Contract to be carried out and is satisfied in relation to all matters connected with the performance of the Contract.

32. COORDINATION

- 32.1. The Concessionaire recognises the importance of it implementing good working practices whilst exercising its rights and performing its obligations under this Contract.
- 32.2. At regular pre-arranged intervals, the Concessionaire will meet with The Royal Parks to discuss the performance of the Contract.
- 32.3. In an emergency, the Concessionaire's representative shall be available at 1 hour's notice to attend a meeting with The Royal Parks.

33. MINOR BREACHES

- 33.1. A minor breach of this Contract shall be a non persistent breach in the nature of but not limited to the following:

- a) Making press statements without prior Approval.
- b) Failure to comply with Agreed marketing and communications plans.
- c) Failure to preserve the fabric of the Park.
- d) Payment of fees or any other sums due under this Contract in arrears of not more than one month.
- e) Health and Safety violations.
- f) Standards of customer care not in accordance with this Contract.
- g) Poor cleanliness standards.
- h) Poor standards of rubbish storage and disposal.
- i) Environmental health violations, including poor food preparation standards.
- j) Use of under-qualified staff.
- k) Undertaking the Store Operations outside of the agreed times.
- l) Operating outside of the agreed sites/routes.
- m) Poor traffic management including traffic violations in respect of late delivery, speeding, parking, lack of safety or courtesy to park visitors.
- n) Staff swearing in front of entrants/visitors to the Store Operations.
- o) Sale of non-approved goods.
- p) Obstruction of thoroughfares including the unreasonable or unauthorised disruption to park operations and/or the enjoyment of the Park by visitors.
- q) The display of unauthorised advertising.
- r) The use of unauthorised vehicles.
- s) Poor standards of dress/uniform.
- t) Staff smoking on duty.
- u) Any other occurrences of sub-standard service delivery of a non-fundamental nature.
- v) Overpricing.

33.2. The Royal Parks' Representative shall bring any breaches to the attention of the Concessionaire by setting out minor breaches which:

- a) have occurred;
- b) still remain unremedied; and
- c) have been remedied.

33.3. If The Royal Parks is of the opinion that minor breaches are not being rectified in a reasonable time frame or that reasonable action is not being taken to avoid recurring minor breaches, then a Rectification Meeting may be called at which both parties will agree remedies and timescales.

33.4. Persistent Failure of the Concessionaire to comply with actions agreed at a Rectification Meeting, or persistent minor breaches of this Contract, such that The Royal Parks calls Rectification Meetings in consecutive Hire Periods may be regarded as a material breach to which Clause 35 will apply.

- 33.5. For the avoidance of doubt, nothing within these conditions shall in any way limit any rights or remedies which The Royal Parks may have elsewhere within this Contract, including, but not limited to, termination of this Contract by reason of cumulative and persistent failure to remedy minor breaches pursuant to these conditions.

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34. CRIMINAL LIABILITY

- 34.1. If an act or default of the Concessionaire or their agents causes the Concessionaire to commit a criminal offence then the Concessionaire shall immediately take any measure necessary to ensure that the act or default is corrected and no longer causes that criminal offence.
- 34.2. If The Royal Parks suspects that such an act or default may occur it may issue an instruction to the Concessionaire to remedy the act or default which the Concessionaire shall immediately comply with and any failure to comply with such an instruction shall be treated as a breach of a material obligation to which Clause 35 will apply.

35. TERMINATION

- 35.1. Either Party ("Complaining Party") may terminate this Contract by giving written notice to the other Party ("Defaulting Party") if any of the following events occur:
- a) the Defaulting Party commits any material breach of any of the provisions of this Contract and either:
 - (i) the breach is not capable of remedy; or
 - (ii) if the breach is capable of remedy, the Defaulting Party fails to remedy it within ten (10) days after receiving a written notice from the Complaining Party containing full particulars of the material breach and requiring it to be remedied.
- 35.2. For the purposes of Clause 35.1 a) a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance:
- a) any meeting of creditors of such Party is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Defaulting Party (other than for the purpose of a bona fide reconstruction or amalgamation);
 - b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over or any distress, execution or other process is levied or enforced (and is not discharged within seven days) upon the whole or any substantial part of the assets of the Defaulting Party;
 - c) the Defaulting Party ceases or threatens to cease to carry on business or is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - d) a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy or dissolution of the Defaulting Party; or
 - e) any event analogous to Clause 35.1 of the foregoing is suffered by a Party.
- 35.3. The Concessionaire may terminate this Contract by giving written notice to The Royal Parks in the event that that the terms of Clauses 26 apply (and whereupon the terms of Clause 37.6 (Payment on Termination) are to specifically apply).
- 35.4. Upon termination of this Contract, the appropriate terms of Clause 37 (Payment on Termination) shall apply and the Concessionaire shall immediately, if required by The Royal Parks acting reasonably, commence Take Down and remove from the Site all its property and equipment in accordance with reasonable instructions given by The Royal Parks.

- 35.5. Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Parties accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 35.6. The provisions of this Contract which are expressly or impliedly intended to survive the termination or expiry of this Contract shall survive such termination or expiry including Clauses 7 (Right of Audit), 25 (Publicity), 29 (Confidentiality), 30 (FOIA), 35 (Termination), 36 (Force Majeure and Cancellation) 37 (Payment on Termination), 39 (Liability) and 46 (Governing Law).
- 35.7. Upon the termination or expiry of this Contract (howsoever arising) the Concessionaire shall immediately deliver to The Royal Parks upon request any Park Property in its possession or under its control or in the possession or under the control of any of the Concessionaire's suppliers or sub-contractors. In default of compliance with this Clause, The Royal Parks may recover possession thereof and the Concessionaire grants a licence to The Royal Parks or its appointed agents to enter (for the purposes of such recovery) any premises of the Concessionaire where any such items may be held.

36. FORCE MAJEURE AND CANCELLATION

- 36.1. Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under this Contract which is due to Force Majeure, where there is no reasonably practicable means available to the party concerned to avoid such failure or delay.
- 36.2. If either party becomes aware of any circumstance of Force Majeure, which gives rise to any such failure or delay, or which appears likely to do so, that party shall promptly give notice of such circumstance as soon as practicable after becoming aware of it and shall inform the other party of the period for which it estimates that the failure or delay will continue.
- 36.3. Any failure or delay by a party in performing its obligations under this Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the relevant party by Force Majeure.
- 36.4. Neither Party will be liable: (i) to the other Party or its sub-Concessionaires for any expenses or losses directly or indirectly incurred by them in consequence of any Force Majeure Event; and/or (ii) for any delay in performing its obligations nor for failure to perform its obligations under this Contract, if and to the extent that the delay or failure is caused by a Force Majeure Event affecting its performance of the relevant obligations and each Party shall be relieved of its obligations under this Contract during the duration of the Force Majeure Event.
- 36.5. In the event of cancellation of one or more Store Operations (in whole or in part) and/or termination of part of this Contract as a direct result of a Force Majeure Event:
- a) neither Party shall be under any liability to the other Party for any expenses or losses directly or indirectly incurred by them in consequence of any such cancellation and/or termination;
 - b) each Party shall bear all costs incurred by them to date;
 - c) neither Party shall have any claim against the other in relation thereto; and
 - d) Clause 37.1 shall apply.
- 36.6. For the avoidance of doubt, if one or more but not all Store Operations are cancelled in whole or in part for any reason whatsoever, this Contract shall remain in full force and effect in relation to all non-cancelled Store Operations and for the remainder of the Contract Period.

37. PAYMENT ON TERMINATION

- 37.1. If this Contract is terminated in its entirety as a result of any breach of this Contract by the Concessionaire or an event of Force Majeure, the Concessionaire shall not be entitled to any refund of any sums paid by it to The Royal Parks as at the date of such termination, subject to Clauses 37.7 and 37.9 and shall pay to The Royal Parks the Fees which were due to The Royal Parks for the Financial Year in which the breach or event of Force Majeure (as appropriate) occurred.
- 37.2. If this Contract is terminated in its entirety as a result of any breach of this Contract by The Royal Parks, without prejudice to any other rights or remedies available to the Concessionaire, The Royal Parks shall refund to the Concessionaire all or any part of the Fees that the Concessionaire has paid at the date of termination.
- 37.3. If any Store Operations are cancelled but the Contract is not terminated in its entirety as a result of (i) any breach of this Contract by the Concessionaire or (ii) an event of Force Majeure, the Concessionaire shall:
- 37.4. not be entitled to any refund of any sums paid by it to The Royal Parks as at the date of such termination, subject to Clauses 37.7 and 37.9; and shall pay to The Royal Parks the Fees which were due to The Royal Parks for the Financial Year in which the breach or event of Force Majeure (as appropriate) occurred.
- 37.5. If any Store Operations are cancelled but the Contract is not terminated in its entirety as a result of any breach of this Contract by The Royal Parks, without prejudice to any other rights or remedies available to the Concessionaire: The Royal Parks shall refund to the Concessionaire all or any part of the Fees as related to the cancelled Store Operations that the Concessionaire has paid at the date of termination.
- 37.6. If the Concessionaire terminates this Contract pursuant to Clause 35.3 then in full and final settlement of all and any claims which The Royal Parks may have in connection with this Contract and the Store Operations, the Concessionaire shall pay to The Royal Parks all monies due to The Royal Parks under Clause 5 in relation to the Financial Year in which the Contract is terminated together with any monies that remain due for any other previous Financial Year in the Contract Period (but not in relation to any of the Financial Years that follow the Financial Year in which the Contract is terminated).
- 37.7. If the Contract is terminated and any Store Operations are cancelled for any reason before any Build Up Commencement Date, The Royal Parks shall refund the Performance Bond in full to the Concessionaire if any such monies have been paid before such termination.
- 37.8. If the Contract is terminated and any Store Operations are cancelled for any reason after the Build Up Commencement Date, the parties shall comply with the procedure detailed in Schedule 3 (Reinstatement and Performance Bond Schedule).
- 37.9. The Concessionaire shall not be obliged to pay to The Royal Parks any Revenue Share in relation to any Store Operations which have been cancelled for any reason whatsoever.
- 37.10. All payments due to either Party under this Clause shall be paid in full within 30 days of the Party's demand therefore.

38. ASSIGNMENT AND SUB-CONTRACTING

- 38.1. The Concessionaire shall not assign this Contract or share the benefit thereof with a third party nor sublet in whole or part the Site provided that the Concessionaire shall be entitled to:

- a) use third party sub-contractors on the Site to provide such services and equipment as are necessary to stage the Store Operations provided that the Concessionaire shall remain liable for any acts or omissions of such third-party sub-contractors in relation to the Site. The Concessionaire shall be liable for all acts and omissions of all third parties in relation to the Site which have been appointed by the Concessionaire in relation to the Store Operations, including without limitation all sub-contractors appointed by the Concessionaire.
- 38.2. Sub-contracting any part of the Contract shall not relieve the Concessionaire of any obligation or duty attributable to the Concessionaire under the Contract.
- 38.3. The Concessionaire shall be responsible for the acts and omissions of its sub contractors as though they are its own.
- 38.4. The Royal Parks shall be entitled to novate this Contract to any Contracting Authority or other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by The Royal Parks provided that any such novation shall not increase the burden of the Concessionaire's obligations pursuant to this Contract.

39. LIABILITY

- 39.1. The Concessionaire shall not exclude or limit its liability arising out of or in connection with this Contract for:
 - a) death or personal injury caused by its negligence; or
 - b) fraudulent misrepresentation.
- 39.2. Subject to Clause 39.1, under no circumstances shall either Party be liable to the other in contract, tort (including without limitation negligence), breach of statutory duty or otherwise for any indirect, incidental, special, exemplary or consequential loss or damage, including without limitation loss of profits, anticipated profit, anticipated revenue, loss of business or goodwill, suffered by that other Party even if that Party has been advised of the possibility of such damages.

40. INSURANCE AND INDEMNITY

- 40.1. The Concessionaire shall during each Hire Period effect and maintain with a reputable insurance company insurance policies which:
 - a) include death or personal injury, or loss of or damage to property;
 - b) are in existence from each Build Up Commencement Date to the Take Down Completion Date;
 - c) are for a sum of not less than ten million pounds (£10,000,000) for each and every occurrence or series of occurrences arising out of any one occurrence;
 - d) do not exclude or limit liability to the other Party for death or personal injury caused by its negligence;
 - e) include product liability insurance for a sum of not less than five million pounds (£5,000,000) for each and every occurrence or series of occurrences arising out of any one occurrence; and
 - f) include employer's liability insurance in respect of the employment of staff working at the Site during each Hire Period in accordance with any legal requirement for the time being in force for a sum of not less than ten million pounds (£10,000,000) for each and every occurrence or series of occurrences arising out of any one occurrence.

- 40.2. The Concessionaire shall produce to The Royal Parks, on request, summaries of all insurance policies referred to in Clause 40.1.
- 40.3. The Concessionaire will be responsible for and make good or pay compensation for any damage or injury (including injury resulting in death) to any person or property arising by reason of or which would have not occurred but for this Contract or anything done or purported to be done hereunder and to keep the Crown and The Royal Parks fully and effectually indemnified against all costs charges expenses actions claims and demands in respect of any such damage or injury And this indemnity shall extend and apply to all sums paid by the Crown or The Royal Parks so as to indemnify their servants against any claim made against them in respect of any such damage or injury and also to all sums payable under any Statute Order Regulation Instruction Warrant or other Government provision to any officer servant or agent of the Crown or the personal representatives of any such person in respect of any such damage or injury PROVIDED ALWAYS that The Royal Parks shall be at liberty to settle as it may think fit after consultation with the Concessionaire any such actions claims or demands by payment of such sum or sums as The Royal Parks in its discretion may consider reasonable and may in its discretion after giving notice in writing to the Concessionaire cause any such damage to be made good and the expenses incurred by The Royal Parks in so doing or in making any such payment shall be repaid by the Concessionaire to The Royal Parks on demand PROVIDED NEVERTHELESS that the Concessionaire shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case (it being agreed that an amount ascertainable under any Statute Order Regulation Instruction Warrant or other Government provision is a sum reasonably so payable) and in particular (where the payment is legally enforceable) to the damages which might be recoverable at common law.
- 40.4. The terms of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under the Contract. It shall be the responsibility of the Concessionaire to determine the amount of insurance cover that will be adequate to enable the Concessionaire to satisfy any liability hereunder.

41. NOTICES

- 41.1. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 41.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter) and provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 41.3. The provisions of Clause 41.2 shall not apply in relation to the service of any process in any legal proceedings arising out of or in connection with this Agreement.
- 41.4. For the purposes of Clause 41.2, the address of each Party shall be:

For The Royal Parks:

Ms Heather Carr
Brand and Business Development Manager
The Royal Parks

The Old Police House,
Hyde Park, London W2 2UH
email: hcarr@royalparks.org.uk

For the Concessionaire:

To be inserted

Either Party may change its address for service by notice in accordance with this Clause.

42. CONFLICTS OF INTEREST

- 42.1. The Concessionaire shall take appropriate steps to ensure that neither the Concessionaire nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concessionaire and the duties owed to The Royal Parks under the provisions of the Contract.
- 42.2. The Concessionaire will disclose to The Royal Parks full particulars of any such conflict of interest which may arise.
- 42.3. The Royal Parks reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of The Royal Parks, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concessionaire and the duties owed to The Royal Parks under the provisions of the Contract.
- 42.4. The actions of The Royal Parks pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party

43. SEVERABILITY

- 43.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 43.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

44. DISPUTE RESOLUTION

- 44.1. If any dispute arises in connection with this Contract, directors or other senior representatives of the Parties with authority to settle the dispute will, within 5 working days of a written request from one to the other, meet in good faith to attempt to resolve the dispute.
- 44.2. If the dispute is not resolved at that meeting, the Parties will attempt to settle it by mediation, provided that within 5 working days of the meeting referred to in Clause 44.1 above they have both agreed in writing to do so.
- 44.3. Within 10 working days of such agreement in writing, the Parties will exchange proposals for the appointment of a mediator. In default of agreement within a further 5 working days, the matter may be referred by either Party to the Centre for Effective Dispute Resolution for the nomination of a mediator, at which point the CEDR Model Mediator Procedure will apply.

44.4. Both Parties shall act reasonably in relation to any disputes under this Agreement and shall use their reasonable endeavours to settle such disputes in accordance with Clause 44.1 above rather than commencing court proceedings if reasonable do to so in the circumstances.

44.5. Nothing in this Clause 0 shall prevent any Party commencing or continuing court proceedings.

45. GENERAL

45.1. This Contract (together with the Schedules which are hereby incorporated into this Contract) constitute the entire agreement and understanding between the Parties in respect of all matters which are referred to herein and supersedes any previous arrangement, agreement or understanding (whether oral or written) between them relating to such matters.

45.2. The Parties confirm that they have not entered into this Contract on the basis of any representations, warranty or undertaking that are not expressly incorporated in this Contract which supersedes all prior negotiations, representations and undertakings, whether written or oral, and no reliance is placed on any representation, warranty or undertaking that is not set out in this Contract except that nothing in this Contract purports to exclude liability for fraud or fraudulent misrepresentation.

45.3. No variation of this Contract or any agreement or document entered into pursuant to this Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

45.4. Nothing in this Contract and no action taken by the Parties pursuant to it, shall constitute, or be deemed to constitute, a partnership, contract of employment, joint venture, or the relationship of principal and agent between the Parties.

45.5. No Party has any authority or power to bind, contract in the name of, or to create a liability against the other Party in any way or for any purpose, unless specifically stated in this Contract.

45.6. No delay, indulgence or omission in exercising any right, power or remedy provided by this Contract or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy and shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

45.7. No single or partial exercise or non-exercise of any right, power or remedy provided by this Contract or by law shall preclude any other or further exercise of such right, power or remedy or of any other right, power or remedy.

45.8. A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract and no waiver shall be deemed to be effective unless it is expressly stated to be a waiver and communicated by notice to the other Party in writing.

45.9. Except as otherwise expressly provided by the Contract the rights, powers and remedies provided by this Contract are cumulative and may be exercised by either Party for breach of this Contract concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

45.10. Where the Concessionaire enters into a sub-contract for the provision of any part of the Contract, the Concessionaire shall ensure that a term is included in the sub-contract which requires the Concessionaire to pay all sums due to the supplier or sub-contractor within a specified period, not

exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

- 45.11. Each of the parties shall pay all costs and expenses incurred by it in relation to the negotiation, preparation and completion of this Contract.
- 45.12. The invalidity or partial invalidity of any provision of this Contract shall not prejudice or affect the remainder of this Contract which shall continue in full force and effect.
- 45.13. Each Party shall from time to time (both during the Contract Period of this Contract and after) do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Contract.
- 45.14. This Contract may be executed in any number of documents or counterparts each in the like form, all of which when taken together shall constitute one and the same document.
- 45.15. Any person who is not a Party to this Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of the Parties) shall have any right to enforce its terms under the Contracts (Rights of Third Parties) Act 1999 without the prior agreement in writing of both Parties which agreement should specifically refer to this Clause.

46. GOVERNING LAW

- 46.1. This Contract shall be governed by and construed in accordance with English law. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the English courts.

IN WITNESS of which the parties have signed this Agreement on the date set out below.

SIGNED by a duly authorised signatory for and on behalf of **<Insert Company Name>**:

Signature:

.....

Name in capitals:

.....

Job title

.....

Date:

.....

SIGNED by a duly authorised signatory for and on behalf of The Royal Parks Ltd

Signature

.....

Name in capitals

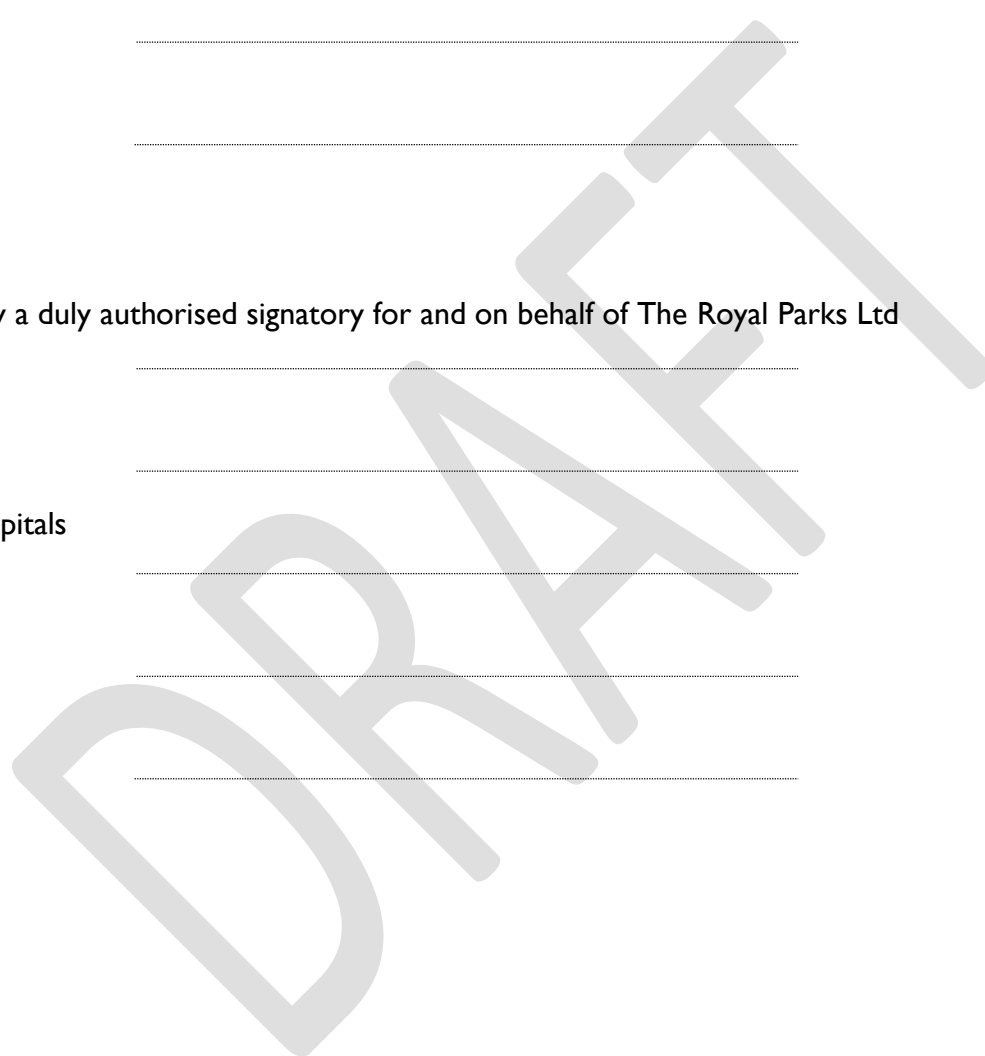
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Job title

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Date:

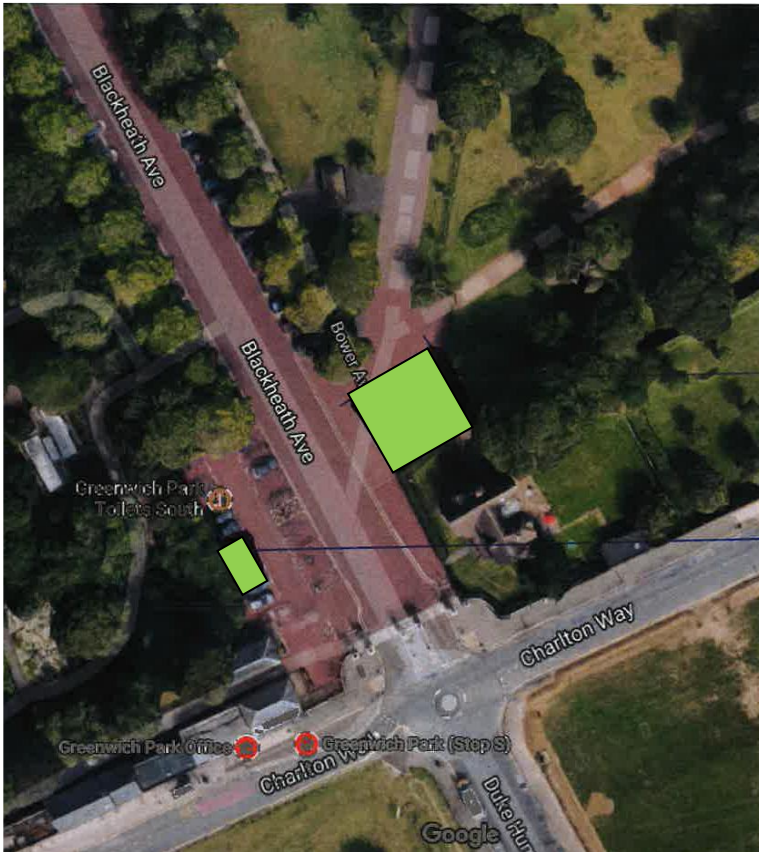
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SCHEDULE I – SITE SCHEDULE

Site Plan

- i. Greenwich Park: Blackheath Gate car park 10.5m x 10.5m retail area
3 x 3.5m bays opposite retail area next to the offices



ii.

Bushy Park:

Diana Fountain car park 28m x 10.5m in central parking bays



iii.

Richmond Park:

Roehampton Gate car park 28m x 10.5m



SCHEDULE 2 – STORES OPERATIONS SCHEDULE

Build Up Commencement Date

Week commencing (dates to be agreed with Park Managers)

Take Down Completion Date

To commence (dates to be agreed with Park Managers)

Operational Dates

To be no more than 28 days in each park. First trading date to be (dates to be agreed with Park Managers)

STORE OPERATION TIMES – PERMITTED TIMES (to be agreed by Park Managers)

	<i>Operational Start Time</i>	<i>Operational End Time</i>
Greenwich Park		
Bushy Park		
Richmond Park		

Marketing Plan – schedule to be agreed

- Core messages to be agreed by The Royal Parks and the Concessionaire no later than 30th September
- The Royal Parks to promote in seasonal blogs, on linked web page and through social media channels
- The Concessionaire to promote via Friends' newsletters, local schools and churches, on site cafes, residents groups
- Joint promotion to local news contacts
- The Royal Parks to create staff induction packs

- Signage

Richmond Park	Directional and unit signage, information in park notice boards
Bushy Park	Directional and unit signage, information in park notice boards
Greenwich Park	Unit signage and information in park notice boards

SCHEDULE 3 – PERFORMANCE AND RE-INSTATEMENT BOND SCHEDULE

- i.** The Concessionaire and The Royal Parks shall attend the Site on each Build Up Commencement Date or as soon as is reasonably practicable thereafter to agree a description of the condition of the Site immediately prior to the commencement of the Build Up (“First Inspection”). The agreed condition of the Site at this time will be recorded in writing by The Royal Parks together with supporting photographic evidence of any defects.
- ii.** Immediately after completion of Take Down on each Take Down Completion Date or as soon as is reasonably practicable thereafter, the Concessionaire and The Royal Parks shall again attend the Site for the purpose of agreeing its condition (“Final Inspection”). The agreed condition of the Site at this time will be recorded in writing by The Royal Parks together with supporting photographic evidence.
- iii.** For the purposes of determining any Reinstatement Costs payable by the Concessionaire in accordance with the Contract, determination of the difference (if any) between the condition of the Site upon completion of Take Down and the condition of the Site prior to commencement of the Build Up will be based on the following premise: that during the Final Inspection of the Site should be materially the same condition that it was in (and now worse or better) than during the First Inspection.
- iv.** The Royal Parks will provide no later than 30 working days following the Take Down Completion Date details of all costs relating to Fair Wear and Tear suffered at the Site during the Hire period (“Fair Wear and Tear Costs”) and all costs relating to Material Damage suffered on the Site and on the Access and Egress Routes during the Hire Period (“Material Damage Costs”), which together shall be referred to as “Reinstatement Costs”.
- v.** The Royal Parks will notify the Concessionaire of all Material Damage caused to the Site during the Hire Period and all incidents relating to such Material Damage as soon as is reasonably possible.
- vi.** The Concessionaire’s liability in relation to Fair Wear and Tear Costs will be limited to a sum equal to the Performance Bond.
- vii.** The Royal Parks will provide objective and reasonable evidence in relation to each item of charge contained in the calculation of the Reinstatement Costs and for each such charge.
- viii.** All reinstatement works will be carried out by the contractors employed by The Royal Parks.
- ix.** The Concessionaire must notify The Royal Parks in the event of any dispute being raised by the Concessionaire by written notice within 5 working days of receipt of the Reinstatement Costs and following the service of such notice the Parties may then (at the Concessionaire’s cost) appoint an independent expert to review the Reinstatement Costs and the planned works and charges specified therein.
- x.** Where the Parties are unable to agree on the identity of the independent expert, the parties shall request the President of the Law Society to appoint such independent expert on their behalf.
- xi.** The independent expert shall be required to provide a report on the veracity of the Reinstatement Costs and the planned works and charges specified therein within 10 working days of his or her appointment and conclude whether such costs are reasonable or not.
- xii.** Where any of the planned reinstatement works are in dispute The Royal Parks agrees that its contractors shall not commence work in respect of those works until the report of the independent expert will not unreasonably delay their implementation.

- xiii.** The parties agree that they shall abide by any findings of the independent expert in increasing or decreasing the Reinstatement Costs.
- xiv.** The Royal Parks shall follow the earlier of the Concessionaire's written consent to the Reinstatement Costs or (where appropriate) the independent expert's decision, first use the Performance Bond to pay for the Fair Wear and Tear Costs. The Royal Parks shall then use the remainder of the Performance Bond to pay for the Material Damage Costs.
- xv.** In the event that the Performance Bond is greater than the Reinstatement Costs, The Royal Parks undertakes to return any excess amount to the Concessionaire within 20 working days.
- xvi.** In the event that the Performance Bond is greater than the Performance Bond, the Concessionaire will be under no obligation to pay any additional amounts in relation thereto.
- xvii.** In the event that the balance of the Performance Bond, after deducting the Fair Wear and Tear Costs, is insufficient to pay the Material Damages Costs, The Royal Parks may submit an invoice to the Concessionaire in relation to the balance of the Material Damage Costs over and above the remainder of the Performance Bond.
- xviii.** The Concessionaire will pay the invoice within 20 working days of its receipt of such invoice.

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SCHEDULE 4 – SPECIFICATION OF REQUIREMENTS

I INTRODUCTION

- 1.1 The Contract scope is the provision of a retail services concession of Christmas Trees and Associated Products over a two-month period each year in Bushy Park, Richmond Park and Greenwich Park in line with The Royal Parks' brand profile. The Concessionaire will be responsible for planning and producing all aspects of the Services.

2 TIME OF YEAR

- 2.1 The Contract will operate in November and December 2021 and 2022 and allow for Build Up and Take Down.
- 2.2 Trading is permitted for no more than 28 trading days in each contract year.

3 Location

- 3.1 There are three locations with a total footprint for retail unit and display as follows:
- 3.1.1 Roehampton Gate Car Park, Richmond Park (footprint = ~18m x 9m)
 - 3.1.2 Diana Car Park, Bushy Park (footprint = ~6m x 26m)
 - 3.1.3 Bower Avenue, next to Black Heath Lodge, Greenwich Park (footprint = ~6m x 12m)

4 ROLE OF THE CONCESSIONAIRE

- 4.1 The Concessionaire shall be responsible for providing the following Services:
- (i) Retailing and merchandising of seasonal goods.
 - (ii) Working in outdoor locations.
 - (iii) Secure cash handling and clear sales and account reporting.
 - (iv) Managing outdoor site issues.
 - (v) Managing and training sales and security staff to deliver high levels of customer service secure cash handling.
 - (vi) Securing the site and stock.
- 4.2 The Concessionaire must:
- (i) Only sell Approved product items
 - (ii) Provide all stock at its own cost and manage product supply chains
 - (iii) Provide fixed prices for the retail duration
 - (iv) Agree product listing with TRP
 - (v) Provide temporary retail units in Royal Parks Approved branding, details of which can be found in Annex I.
- 4.3 The Concessionaire shall benefit from the commercial sales, in return for which they will pay TRP an agreed Minimum Royalty Payment and Revenue Share. Please refer to Clause 5 of the General Conditions of Contract for further information.

5 SERVICE DELIVERY

- 5.1 The Concessionaire shall set up and take down the temporary retail units and storage areas.
- 5.2 The temporary retail units will be decorated and illuminated with warm but not flashing white lights. The inside

walls of the hut and interior display should be decorated. No plastic trees or plastic figures may be used.

6 HEALTH & SAFETY

- 6.1 The Concessionaire is required to ensure that all elements of the Services comply with all current health and safety legislation and guidance on best H&S practice.
- 6.2 The Concessionaire and TRP shall agree a RAMS Health & Safety plan one month prior to commencement of operations.

7 INSURANCE

- 7.1 The Concessionaire is required to manage all risks associated with the design, delivery and management of The Services. You are required to ensure that you have insurance cover in place.

8 ACCESS

- 8.1 You must ensure that you cooperate with the Park Management to provide appropriate facilities and access arrangements for people with disabilities.

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SCHEDULE 5 – TENDER RESPONSE DOCUMENT
(Bind in response and fee structure)

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