SCHEDULE 4A

*Cross references to be updated after final agreement.*

*FOR USE WITH THE SPECIFICATION for the Provision OF THE Schools Catering Service to Gloucestershire County Council ONLY*

Call-Off Terms and Conditions

1. **Definitions and Interpretations**
   1. In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:
      1. “**Approval**” and “**Approved**” means the written consent of the Contract Manager.
      2. “**Commencement Date**” means the date set out in the Order Form;
      3. “**Commercially Sensitive Information**” means the subset of Confidential Information listed in the Order Form comprised of information:
         1. which is provided by the Contractor to the School or Contract Manager in confidence for the period set out in the Order Form; and/or
         2. that constitutes a trade secret.
      4. “**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all Personal Data and Sensitive Personal Data within the meaning of the Data Protection Legislation and the Commercially Sensitive Information.
      5. “**Contract**” means the written agreement between the School and the Contractor consisting of the Order Form and these clauses save that, for the purposes of clause 4.2 only, reference to 'Contract' shall not include the Order Form.
      6. “**Contractor**” means the person, firm or company identified as the “Service Provider” in the Order Form with whom the School enters into the Contract.
      7. “**Contract Manager**” means Gloucestershire County Council’s Support Services Officer (Catering) for the time being appointed by the School as being authorised to administer the Contract on behalf of the School (and whose contact details are set out in the Order Form) or such person as may be nominated by the School to act on his or her behalf.
      8. “**Contractor’s Equipment**” means the Contractor’s equipment, plant, vehicles, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.
      9. “**Contractor’s Representative**” means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.
      10. “**Contractor Staff**” means all persons employed by the Contractor to perform the Contract together with the Contractor’s servants, agents and sub-contractors used in the performance of the Contract.
      11. **“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures”** as defined in the Data Protection Legislation.
      12. “**CPI**” means the Consumer Prices Index (all items);
      13. “**Customer Satisfaction Survey**” has the meaning given to it in clause 59.1.
      14. “**Customer Satisfaction Survey Date**” means the 1st April in each year during the Term.
      15. **“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
      16. **“Domestic Law”** means the law of the United Kingdom or a part of the United Kingdom
      17. “**Default**” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
      18. **“Domestic Law”** means the law of the United Kingdom or a part of the United Kingdom
      19. “**Dining Centre**” means a Services Location where hot and/or cold meals are consumed after having been prepared at a Production Kitchen.
      20. “**Duty Meal**” means a meal provided to a member of school staff who is entitled to receive the same by reason of the duties they are performing.
      21. “**Duty Meal Price**” means the price (exclusive of any applicable VAT) payable for a Duty Meal in accordance with clause 21.3
      22. “**Environmental Information Regulations**” means the Environmental Information Regulations 2004.
      23. “**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
      24. “**Force Majeure Event**” means any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Contract, the Contractor Staff or any other failure in the Contractor’s supply chain.
      25. **“Framework Agreement**" means the framework agreement for the provision of school catering services for specified primary, secondary and special schools in Gloucestershire entered into between Gloucestershire County Council and the Contractor on [●●●●●] 2022.
      26. **"Fraud"** means any offence under Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the School or Gloucestershire County Council.
      27. “**Free Meal**” means any food or drink (to include without limitation a hot meal and/or cold pack lunch) provided by the Contractor at the Services Location for consumption by a school pupil who is entitled to receive a free school meal under section 512(3) Education Act 1996.
      28. “**Free Meal Price**” means the price (exclusive of any applicable VAT) payable for a Free Meal in accordance with clause 21.1.
      29. “**Good Industry Practice**” means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
      30. “**Heavy Equipment**” means the heavy equipment set out in the Order Form.
      31. “**Information**” has the meaning given under section 84 of the Freedom of Information Act 2000.
      32. **“Initial Term”** means the period commencing on the Commencement Date and ending on [●●●●●]
      33. “**Intellectual Property Rights**” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
      34. “**Invitation to Tender**” means the invitation to tender issued by Gloucestershire County Council on 30th August 2021 (a copy of which is incorporated hereto as schedule 5 to the Framework Agreement).
      35. “**Kitchen**” a Services Location where hot and/or cold meals are prepared for consumption at that Services Location only.
      36. “**Law**” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.
      37. “**Light Equipment**” means the light equipment set out in the Order Form.
      38. “**Month**” means calendar month.
      39. **"Order"** means the order submitted by the School to the Contractor in accordance with the Framework Agreement.
      40. "**Order Form**" means the order form submitted to the Contractor by the School in accordance with the Framework Agreement which sets out *inter alia* the description of the Services to be supplied.
      41. “**Paid Pupil Meal**” means any food or drink (including without limitation any hot meal or cold packed lunch) other than a Free Meal, Universal Infant Free School Meal, Duty Meal or Staff/Visitor Meal supplied by the Contractor to the School for consumption by a school pupil at the Services Location;
      42. “**Paid Pupil Meal Price**” means the price (exclusive of any applicable VAT) payable for a Paid Pupil Meal in accordance with clause 21.2.
      43. “**Performance Standards**” means the performance standards set out in the Order Form;
      44. “**Party**” means a party to the Contract and “**Parties**” shall be construed accordingly.
      45. **“Production Kitchen”** means a Services Location where hot and/or cold meals are prepared for consumption at that Services Location and one or more Dining Centres at another school’s premises.
      46. “**Quality Standards**” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply (as may be further detailed in the Order Form).
      47. “**Regulated Activity**”means in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
      48. “**Regulated Activity Provider**” shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
      49. “**Regulatory Bodies**” means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the School.
      50. “**Relevant Transfer**" a relevant transfer for the purposes of TUPE.
      51. “**Replacement Contractor**” means any third party contractor appointed by the School from time to time, to provide any services which are substantially similar to any of the Services, and which the School receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
      52. “**Requests for Information**” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.
      53. “**RPI**” means the General Index of Retail Prices (all items) as published by the Office for National Statistics (Consumer Prices and General Inflation Branch) or the nearest equivalent official index replacing the same;
      54. “**School**” means the school identified in the Order Form;
      55. “**School Property**” means any property, other than real property, issued or made available to the Contractor by the School in connection with the Contract.
      56. “**Services**” means the required school catering services to be supplied by the Contractor as specified in the Order Form.
      57. “**Services Location**” means the school premises set out in the Order Form (including the curtilage of the building) at which the Services are to be performed and which are made available to the Contractor pursuant to the terms hereof in connection with the provision of the Services.
      58. **“Specification”** means the specification set out in schedule 1 to the Framework Agreement.
      59. **“Staff/Visitor Meal**” means any food or drink other than a Free Meal, Universal Infant Free School Meal, Paid Pupil Meal or a Duty Meal (including without limitation any hot meal or cold packed lunch) which is supplied by the Contractor to any member of school staff and/or visitor at the Services Location.
      60. “**Staff/Visitor Meal Price**” means the price (exclusive of any applicable VAT) payable for a Staff/Visitor Meal in accordance with clause 21.4.
      61. **“Term”** means the period of the Initial Term as may be varied by:
          1. any extension to the Contract which is agreed pursuant to Clause 2.2; or
          2. any earlier termination of the Contract in accordance with its terms.
      62. “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
      63. “**Tax**” means value added tax.
      64. “**Tender**” means the Contractor’s response to the Invitation to Tender, a copy of which is incorporated hereto as schedule 6 to the Framework Agreement.
      65. “**Universal Infant Free School Meals**” means meals provided free to pupils in reception, year 1 and year 2 in accordance with The Children and Families Act 2014.
      66. **“Universal Infant Free School Meals Price”** means the price (exclusive of any applicable VAT) payable for a Universal Infant Free School Meal in accordance with Clause 21.5.
      67. “**Users**” means those users who consume or benefit from the Services to include (without limitation) pupils teachers and visitors attending the Services Location.
      68. “**Variation**” has the meaning given to it in clause 42.1
      69. “**Work Areas**” means the kitchen, associated office areas, storerooms, cloakrooms and the specified access routes thereto situated at the Services Location as identified in the Order Form.
      70. “**Working Day**” means a day on which banks are open for domestic business in the City of London other than a Saturday or Sunday.
      71. “**Year**” means each period of twelve calendar months commencing on the Commencement Date and each anniversary of the commencement date thereafter.
   2. In the Contract except where the context otherwise requires:
      1. the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
      2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
      3. words importing the masculine include the feminine and the neuter;
      4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
      5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
      6. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
      7. the words “**include**”, “**includes**” and “**including**” are to be construed as if they were immediately followed by the words “without limitation”;
      8. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
2. **Term**

### The Contract shall take effect on the Commencement Date and shall, subject to clause 50 (Break), continue for the Term.

* 1. Extending the Initial Term

### Subject to clause 2.2.4, the School may extend the Contract beyond the Initial Term by a further period of two (2) years. If the School wishes to extend the Contract it shall give the Contractor at least six (6) months’ written notice of such intention before the expiry of the Initial Term.

### If the School gives such notice then the Term shall be extended by the period set out in the notice.

### If the School does not wish to extend the Contract beyond the Initial Term the Contract shall expire on the expiry of the Initial Term.

### For the avoidance of doubt the Term may not be extended beyond 27th July 2026.

## School’s Obligations

* 1. Save as otherwise expressly provided, the obligations of the School under the Contract are obligations of the School in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the School in any other capacity, nor shall the exercise by the School of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the School to the Contractor.

1. **Entire Agreement**
   1. The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
   2. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
      1. the Order Form and the documents referred to therein;
      2. clauses 1 to 61 of these Call-Off Terms and Conditions; and
      3. any other document referred to in the clauses of the Contract.
   3. The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.
2. Scope of Contract
   1. Nothing in the Contract shall be construed as creating a partnership or a contract of employment between the School and the Contractor.
3. **Notices**
   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.
   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), or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] 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.
   3. For the purposes of clause 6.2, the address of each Party shall be that which is set out in the Order Form.
   4. Either Party may change its address for service by serving a notice in accordance with this clause.
4. **Mistakes in Information**
   1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the School or Contract Manager by the Contractor in connection with the provision of the Services and shall pay the School any extra costs occasioned by any discrepancies, errors or omissions therein.
5. **Sufficiency of Information**
   1. The Contractor shall be deemed to have satisfied itself before accepting the School’s Order as to the accuracy and sufficiency of the Free Meal Price, the Paid Pupil Meal Price, the Universal Infant Free School Meal Price, the Duty Meal Price and the Staff/Visitor Meal Price stated in the Order Form which shall (except in so far as it is otherwise provided in the Contract) cover all of its obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its acceptance of the Order.
6. **Inspection of the Work Areas and Services Location** 
   1. Save as the School or Contract Manager may otherwise direct, the Contractor is deemed to have inspected the Work Areas and the Services Location before accepting the School’s Order (pursuant to clause [6.6] of the Framework Agreement) and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
7. **Prevention of Fraud**
   1. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Contractor Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies hereunder..
   2. The Contractor shall notify the Contract Manager immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
   3. If the Contractor or the Contractor Staff commits any Fraud in relation to the Contract or any other contract with the School or Gloucestershire County Council, the School may:
      1. terminate the Contract with immediate effect by giving the Contractor notice in writing and recover from the Contractor the amount of any loss suffered by the School resulting from the termination including the cost reasonably incurred by the School of making other arrangements for the supply of the Services and any additional expenditure incurred by the School throughout the remainder of the Term; and/or
      2. recover in full from the Contractor any other loss sustained by the School in consequence of any breach of this clause.
8. **The Services**
   1. The Contractor shall provide the Services during the Term in accordance with the School’s requirements as set out in the Contract and the Performance Standards set out in the Order Form in consideration of the payment of the sums specified in clause 21. The Contract Manager shall have the power to inspect and examine the performance of the Services at the Services Location at any reasonable time or, provided that the Contract Manager gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.
   2. The Contractor shall at all times deliver the Services in accordance with the Law.
   3. The Contractor shall take reasonable care to ensure that in the performance of its obligations in respect of the Services it shall not disrupt the operations of the School, its employees or any other contractor employed by the School.
9. **Heavy Equipment and Light Equipment**
   1. Throughout the Term the School shall provide the Heavy Equipment and procure for Gloucestershire County Council to provide the Light Equipment for use by the Contractor in the provision of the Services at the Services Location. The Contractor hereby acknowledges and agrees that prior to the Commencement Date it has had an opportunity to inspect the Heavy Equipment and the Light Equipment and that it is satisfied that such equipment is sufficient for the purpose of providing the Services.
   2. The Contractor shall not use the Heavy Equipment or the Light Equipment for any purpose whatsoever other than to provide the Services unless the Contract Manager has provided its prior written consent therefor.
   3. The Contractor shall ensure that throughout the Term the Heavy Equipment is in a safe, serviceable and clean condition.
   4. Provided that the Heavy Equipment does not breakdown or become damaged as a result of the negligent act or omission of the Contractor or the Contractor Staff the School shall at its own expense maintain the Heavy Equipment in a state of good repair and condition.
   5. In the event that the Heavy Equipment breaks down or becomes damaged lost or stolen other than as a result of the negligent act or omission of the Contractor or the Contractor Staff the Contract Manager shall subject to clause 12.7 at the School’s own expense and without undue delay arrange for such Heavy Equipment to be repaired or (at the Contract Manager’s discretion) replaced with equipment that is equivalent to such Heavy Equipment whereupon it shall become part of the Heavy Equipment.
   6. In the event that the Heavy Equipment breaks down or becomes damaged lost or stolen due to the negligent act or omission of the Contractor or the Contractor Staff the Contract Manager shall at the Contractor’s expense and without undue delay arrange for such Heavy Equipment to be repaired or (at the Contract Manager’s discretion) replaced with equipment that is equivalent to such Heavy Equipment whereupon it shall become part of the Heavy Equipment.
   7. The Contractor shall be responsible for managing equipment maintenance by reporting to the School or the GCC property help desk as appropriate, and shall only formally raise it as an issue with the Contract Manager if the maintenance issue is not resolved. The Contractor shall copy the Contract Manager by email on all maintenance requests they have made. The School shall not be obliged to repair or replace any Heavy Equipment pursuant to clauses 12.5 or 12.6 until such time as the Contractor has notified the Contract Manager in accordance with this clause 12.7.
   8. The Contractor shall throughout the Term and at its own expense maintain the Light Equipment in a safe, serviceable and clean condition.
   9. In the event that the Light Equipment breaks down or becomes damaged lost or stolen the Contractor shall at the Contractor’s expense and without undue delay arrange for such Light Equipment to be repaired or (at the Contract Manager’s option) replaced with equipment that is equivalent to such Light Equipment whereupon it shall become part of the Light Equipment.
   10. The Contractor shall not make any modification or adjustment to the Heavy Equipment or the Light Equipment nor shall it remove any component therefrom (other than in the ordinary course of its operation and maintenance). The Contractor shall at all times operate the Heavy Equipment and the Light Equipment in a manner that is safe and in accordance with the relevant operating instructions.
   11. Title to the Heavy Equipment and the Light Equipment (including any Heavy Equipment and Light Equipment replaced by the Contractor pursuant to this clause 12) shall vest in the School and Gloucestershire County Council respectively. The Contractor shall not sell let loan charge or pledge the Heavy Equipment and/or the Light Equipment or cause or allow any lien thereon and shall not (save in connection with the maintenance and repair of such equipment) part with possession thereof or remove the same from the Services Location.
   12. Notwithstanding anything in the Contract and to the fullest extent permitted by Law the School shall not be liable for any losses of the Contractor arising from the damage breakdown malfunction misuse loss or theft of any of the Heavy Equipment or Light Equipment nor for any disruption to the Services or access to the Work Areas arising therefrom and the Contractor shall indemnify the School in respect thereof. For the avoidance of doubt the exclusion of liability set out in this clause 12.12 shall include the loss of food stuffs or other produce stored in freezers or stores at the Services Location.
   13. To the fullest extent permitted by Law the School shall not be liable in respect of any loss damage costs claims or expenses arising from the use or misuse of the Heavy Equipment and/or the Light Equipment and/or the Contractor’s Equipment whether such claims arise in contract or in negligence or howsoever and the Contractor indemnifies the School in respect thereof.
   14. In the event that any Heavy Equipment or Light Equipment or Contractor’s Equipment become unusable for any reason whatsoever the Contractor shall remain obliged to provide the Services.
10. **Contractor’s Equipment** 
    1. Unless otherwise stated in the Order Form the Contractor shall provide all Contractor’s Equipment that is necessary for the provision of the Services.
    2. The Contractor shall make no delivery of any Contractor’s Equipment without obtaining the Contract Manager’s prior Approval.
    3. All Contractor’s Equipment brought onto the Services Location shall be at the Contractor’s own risk. The Contractor shall at the Contractor’s expense provide for the haulage or carriage of the Contractor’s Equipment to the Services Location and for its removal when it is no longer required to provide the Services. Unless otherwise agreed in writing, all Contractor’s Equipment brought onto the Services Location will remain the property of the Contractor.
    4. The Contractor shall maintain at its own expense all items of Contractor’s Equipment within the Services Location in a safe, serviceable and clean condition.
    5. All Contractor’s Equipment shall be at the risk of the Contractor and the School shall have no liability for any loss of or damage to any Contractor’s Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the School.
    6. The Contractor shall at the School or Contract Manager’s written request, at the Contractor’s expense and as soon as reasonably practicable s:
       1. remove from the Services Location any Contractor’s Equipment which in the opinion of the School or Contract Manager is either hazardous, noxious or not in accordance with the Contract; and
       2. replace such item with a suitable substitute item of Contractor’s Equipment.
    7. On completion of the Services the Contractor shall remove the Contractor’s Equipment together with any other materials used by the Contractor to provide the services in order to leave the Services Location in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Services Location or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Contractor Staff.

# Standard of Work

* 1. The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to the delivery of the Services, and the Contractor shall ensure that it performs the Services to the reasonable satisfaction of the Contract Manager and undertake its obligations in accordance with Good Industry Practice.
  2. The Contractor warrants and represents that all Contractor Staff assigned to the performance of the Services possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services
  3. The signing of time sheets or other similar documents by the Contract Manager (or his representative) shall not be construed as confirmation that the Services meet with the requirements of the Contract.
  4. The Contractor shall ensure that all Contractor Staff are at all times properly instructed in relation to the provision of the Services and in particular:
     1. the task or tasks such person has to perform;
     2. all relevant provisions of the Contract;
     3. all relevant policies, rules, procedures and standards of the School;
     4. all relevant rules, procedures and statutory requirements concerning health and safety at work, including the School's safety policy as set out in the Order Form;
     5. fire risks and fire precautions;
     6. the need to maintain the highest standards of hygiene, courtesy and consideration;
     7. the need to recognise situations which may involve any actual or potential danger of personal injury to any person at the Services Location and where possible without personal risk, to make safe such situations, and forthwith to report such situations to the Contract Manager or in the event of an emergency the member of the School's staff with responsibility for the Services Location.

1. **Contractor Staff**
   1. The School or Contract Manager may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain at the Services Location:
      1. any member of the Contractor Staff; or
      2. any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would, in the reasonable opinion of the School or Contract Manager, be undesirable. The Contractor shall bear the cost of any notice, instruction or decision of the School or Contract Manager under this clause.

* 1. The Contractor shall prior to the Commencement Date provide to the Contract Manager a list of the names and addresses of all Contractor Staff and other persons who it expects will require access to the Services Location for the purpose of providing the Services and to provide details of their roles and responsibilities and such other information as the Contract Manager may reasonably require.
  2. The Contractor Staff, engaged within the boundaries of the Services Location, shall comply with such rules, regulations and requirements (including those relating to security arrangements set out in clause 37) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
  3. The Contractor shall ensure that there is a sufficient number of trained and competent Contractor Staff at the Services Location to provide the specified Services and that an adequate reserve of trained and competent Contractor Staff is available to provide cover for holidays, sickness and any other Contractor Staff absences.
  4. The Contractor shall ensure that the Contract Manager (or a competent deputy therefore ) that has been duly authorised by the Contractor to act on its behalf, is available between the hours of 7.30 am and 3.30 pm on Working Days.
  5. The Contractor shall provide at the Services Location a sufficient number of supervisory employees to ensure that all Contractor Staff are at all times adequately supervised and that they perform their duties in accordance with the terms of the Contract.
  6. The Contractor shall ensure that the Contractor Staff perform their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
  7. The Contractor shall ensure that its Contractor Staff are both courteous and diplomatic in their dealings with Users.
  8. When requested to do so by any person at the Services Location or when communicating with other persons as a representative of the Contractor in the performance of the Services, any employee, representative, or agent of the Contractor shall disclose his/her identity and not attempt to avoid so doing.
  9. The Contractor shall ensure that its Contractor Staff at all times while engaged in provision of the Services will be properly and presentably dressed in appropriate uniforms or work wear to the reasonable satisfaction of the Contract Manager. Such uniforms or work wear shall be provided, laundered, maintained and replaced as necessary by the Contractor.
  10. The Contractor shall provide and shall ensure that at all times while engaged in provision of the Services the Contractor Staff wear such identification including photographic identification as may be specified by the Contract Manager from time to time.
  11. Where the nature or the place of any duties upon which the Contractor's employees shall be engaged in the provision of the Services make the wearing of any special or protective clothing or footwear necessary or appropriate, the Contractor shall provide and shall require its Contractor Staff to wear such clothing or footwear. Where Gloucestershire County Council's special or protective clothing or footwear policies, rules, procedures, or standards set out in the Order Form require any special or protective clothing or footwear to be wornthe Contractor shall ensure that such clothing or footwear is provided for and worn by the relevant Contractor Staff. Such special or protective clothing or footwear shall be maintained and replaced as necessary by the Contractor.
  12. The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions, or levies of any kind, relating to or arising out of the employment of any Contractor Staff or other persons employed by the Contractor and shall fully and promptly indemnify the School in respect of any liability of the School in respect thereof including any costs incurred by the School in defending or settling any claim in respect thereof.

1. **Contractor's Representative**
   1. The Contractor shall appoint a Contractor’s Representative who shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services and who is empowered to act on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contractor’s Representative shall be deemed to have been given or made to the Contractor.
   2. The Contractor shall forthwith give notice in writing to the Contract Manager of the identity, address and telephone number(s) of the person appointed as the Contractor’s Representative and of any replacement therefor. The Contractor’s Representative shall be available by telephone between the hours of 7.30 am and 3.30 pm on Working Days.
   3. The Contractor shall forthwith give notice in writing to the Contract Manager of the identity, address and telephone numbers of any person authorized to act for any period as the Contractor’s Representative’s deputy.
   4. The Contractor’s Representative shall promptly inform the Contract Manager of any activities or omissions on the part of the School or Contract Manager that are preventing or hindering or are likely to prevent or hinder the Contractor in its performance of the Services. Compliance with this clause 16.4 by the Contractor shall not in any way release or excuse the Contractor from any of its obligations under the Contract.

## Work Areas

* 1. The Work Areas shall be made available to the Contractor free of charge on Working Days between the hours of 7.30 am and 3.30 pm and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land as Gloucestershire County Council’s or (as appropriate) the School’s licensee and shall vacate the same on completion, termination or abandonment of the Contract.
  2. The Contractor shall not use the Services Location for any purpose or activity other than the provision of the Services.
  3. Should the Contractor require modifications to any of the Work Areas, such modifications shall be subject to prior Approval and shall be carried out by the Schoolat the Contractor’s expense. The School shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with Gloucestershire County Council or (as appropriate) the School .
  4. The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of the Services Location (and the Work Areas therein) as determined by Contract Manager, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, its employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein (to include without limitation the Heavy Equipment and the Light Equipment).
  5. The Parties agree that there is no intention on the part of Gloucestershire County Council or (as appropriate) the School or to create a tenancy of whatsoever nature in favour of the Contractor 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 the Contract, the School retains the right at any time to use in any manner the School sees fit any premises owned or occupied by it.
  6. The Contractor will not obstruct or permit or suffer to be obstructed within the Work Areas any access to or means of working such fire fighting and extinguishing appliances as shall be in the Work Areas or any emergency means of escape from the Work Areas.
  7. The Contractor will not cause or permit the rights hereby granted to be exercised in such manner as shall in any way interfere with or adversely affect the enjoyment of the Services Location by the School or by others authorised by the School or Contract Manager.
  8. The School warrants that on the Commencement Date there were no outstanding requirements issued by any environmental health authority under the Food Hygiene (England) Regulations 2006. The liability of the School for any breach of this warranty shall be limited to the cost to the School of complying with such requirements.
  9. Subject to clauses 17.10 and 17.11 the School shall at its own expense maintain in reasonable repair the Work Areas including all floors doors windows ceilings walls fixtures and fittings (including any structural defects and the consequences thereof) and gas and electrical appliances; and kitchen ventilation and air conditioning systems.
  10. In the event that there arises any need for repair in relation to the Work Areas in accordance with clause 17.9 due to the negligent act or omission of the Contractor or its Contractor Staff the Contract Manager shall at the Contractor’s expense and without undue delay arrange for such repairs to be carried out.
  11. The Contractor shall notify the School and copy the Contract Manager in writing as soon as it becomes aware that any need for repair in relation to the Work Areas (in accordance with clauses 17.9 or 17.10) has arisen. The School shall not be obliged to carry out such repairs until such time as the Contractor has notified the Contract Manager in accordance with this clause 17.11.
  12. The Contractor will keep the Work Areas and any area outside the Work Areas used solely by the Contractor and all associated areas in a clean and tidy condition. Any area outside the Work Areas used by the Contractor in common with others shall be kept in a clean and tidy condition to the extent that the same is used by the Contractor.
  13. The School shall maintain all fire fighting equipment at the Work Areas in good working order and replace the same as required***.***
  14. The Contractor will not do or permit anything to be done which may cause any insurance policy effected in respect of the Work Areas to become void or voidable or to be prejudiced in any way and the Contractor indemnifies the School against any loss which is uninsured as a result thereof.
  15. If so requested by the School or the Contract Manager the Contractor shall, within an area to be allocated by the School or Contract Manager, set out and put away furniture required by pupils and staff who consume meals at the Services Location that have been prepared by the Contractor.

1. **Utilities and Production Kitchen Contribution**
   1. The School will procure for supplies of gas electricity and water to the Services Location for use by the Contractor in the provision of the Services at the Services Location The School does not warrant or guarantee that such supplies will be uninterrupted. In the event that such supplies are interrupted the Parties will co-operate with each other in good faith so as to ensure that the Services continue uninterrupted.
   2. If the School is identified in the Order Form as a Production Kitchen that will prepare meals for consumption at service locations other than the Services Location the School shall at the end of each school academic term submit an invoice to the Contractor for a sum equal to the number of meals which have been produced at the Production Kitchen for consumption at service locations other than the Services Location during the relevant school academic term multiplied by the rate set out in paragraph 8.2 of the Specification which shall be paid by the Contractor within 30 days of receipt thereof.
   3. Sums payable pursuant to clause 18.2 shall be reviewed by the School on 1st day of April in each year during the Term (the “Utility Review Date”) and increased by the proportion by which CPI for “electricity, gas and other fuels” has increased since the Commencement Date (in the case of the first such increase) or since the preceding Utility Review Date (in the case of subsequent increases) rounded down to the nearest whole penny.
   4. Where land line telephones are installed in the Work Areas the Contractor shall pay the full cost of line rental and calls charges (together with any applicable Tax) in respect thereof made during Working Hours. If any other telephone at the Services Location is used by the Contractor Staff the Contractor shall pay all call charges incurred in relation thereto.
   5. If the Contract Manager so directs the Contractor shall at its own expense arrange for the installation of a direct telephone line to the Work Areas and pay the full cost of line rental and calls charges (together with any applicable Tax) in respect thereof made during Working Hours.
2. **School Property** 
   1. Without prejudice to clause 12, where for the purposes of the Contract the School issues School Property free of charge to the Contractor such property shall be and remain the property of the School. The Contractor shall not in any circumstances have a lien on the School Property and the Contractor shall take all reasonable steps to ensure that the title of the School to such School Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Contract.
   2. Any School Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the School otherwise within 5 Working Days of receipt.
   3. The Contractor shall maintain all School Property in good order and condition, excluding fair wear and tear, and shall use School Property solely in connection with the Contract and for no other purpose without prior Approval.
   4. The Contractor shall ensure the security of all School Property, whilst in the Contractor’s possession, either on its premises or elsewhere during the performance of the Contract, in accordance with the School’s reasonable security requirements as required from time to time.
   5. The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any School Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the School. The Contractor’s liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the School. The Contractor shall inform the Contract Manager within [2] Working Days of becoming aware of any defects appearing in or losses or damage occurring to School Property made available for the purposes of the Contract.

## Offers of Employment

* 1. For the duration of the Contract and for a period of 12 months thereafter neither of the School or the Contractor shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior Approval.

1. **Price**

Free Meals

* 1. The School will pay to the Contractor the price specified in the Order Form in respect of each Free Meal supplied by the Contractor hereunder (the “Free Meal Price”) such sum to be invoiced and payable in accordance with clause 23.

Paid Pupil Meals

* 1. The School will pay to the Contractor the price specified in the Order Form in respect of each Paid Pupil Meal supplied by the Contractor hereunder (the “Paid Pupil Meal Price”) such sum to be collected in accordance with clause 22.1 and invoiced and payable in accordance with clause 23.

Duty Meals

* 1. The School will pay to the Contractor the price specified in the Order Form in respect of each Duty Meal supplied by the Contractor to a duty teacher hereunder (the “Duty Meal Price”) such sum to be invoiced and payable in accordance with clause 23.

Staff/Visitor Meals

* 1. The School or (as appropriate) relevant member of school staff or visitor will pay to the Contractor the price specified in the Order Form in respect of each Staff/Visitor Meal supplied to them (the “Staff/Visitor Meal Price”) such sum to be collected in accordance with clause 22.1 or (as appropriate) clause 22.2 and invoiced and payable in accordance with clause 23.

Universal Infant Free School Meals

* 1. The School will pay to the Contractor the price specified in the Order Form in respect of each Universal Infant Free School Meal supplied by the Contractor hereunder (the “Universal Infant Free School Meal Price”) such sum to be invoiced and payable in accordance with clause 23

Price adjustment

* 1. On each anniversary of the Commencement Date the Free Meal Price, the Paid Pupil Meal Price, the Universal Infant Free School Meal Price, the Duty Meal Price and the Staff/Visitor Meal Price shall be increased in accordance with the formula set out in paragraph 8.3 of the Specification.
  2. Subject to clause 21.6 the Free Meal Price, the Universal Infant Free School Meal Price, the Paid Pupil Meal Price, the Duty Meal Price and the Staff/Visitor Meal Price shall remain fixed irrespective of any changes in Law.

1. **Collection of fees** 
   1. Subject to clause 22.2, the Contractor shall provide access for the School and users of the Services to a web-based system in a form Approved by the Contract Manager that the Contractor will use to generate invoicing reports and collect all fees due in respect of:
      1. the Paid Pupil Meal Price; and/or
      2. the Staff/Visitor Meal Price.

All licence fees and transaction charges payable to third parties in respect of such web-based system shall be paid by the Contractor at its own expense.

* 1. The Contractor shall also collect from relevant members of school staff and visitors to the Services Location all monies due in respect of the Staff/Visitor Meals that have not otherwise been collected in accordance with clause 22.1.
  2. The Contractor shall at the end of each Month, using the web-based system described in clause 22.1, transfer all monies (without deduction) it receives during that Month pursuant to clauses 22.1 and 22.2 in respect of the Paid Pupil Meal Price and the Staff/Visitor Meal Price to a bulk payment account notified to the Contractor that has been established and is held by Gloucestershire County Council on the School’s behalf. For the avoidance of doubt the Contractor shall not be entitled to set-off any sums payable by the Contractor to the School under this clause 22.3 against any sums due to the Contractor under the Contract.

1. **Invoices and Payment** 
   1. The Contractor acknowledges and agrees that the School has appointed Gloucestershire County Council to process on its behalf all invoices submitted by the Contractor to the School under the Contract in respect of the supply of:
      1. Free Meals;
      2. Universal Infant Free School Meals; and
      3. Paid Pupil Meals.
   2. The Contractor shall at the end of each Month submit its invoice to the School at the **bulk** **invoice address** specified in the Order Form (which shall be a Tax invoice if Tax is payable) setting out the information specified in clause 23.6 in respect of all:
      1. Free Meals;
      2. Universal Infant Free School Meals; and
      3. Paid Pupil Meals

supplied by it during that Month which shall, subject to clause 23.4 and the Contractor’s compliance with clause 22.3, be paid by the School within 30 days of receipt and agreement of such invoice.

* 1. The Contractor shall at the end of each Month submit its invoice to the School at the **School invoice address** specified in the Order Form (which shall be a Tax invoice if Tax is payable) setting out the information specified in clause 23.7 in respect of all:
     1. Duty Meals; and
     2. Staff/Visitor Meals

supplied by it during that Month which shall, subject to clause 23.4 and the Contractor’s compliance with clause 22.3, be paid by the School within 30 days of receipt and agreement of such invoice.

* 1. The School may, in accordance with clause 44.1.2, reduce or withhold payment in respect of any Paid Pupil Meals, Free Meals, Universal Infant Free School Meals, Duty Meals and Staff/Visitor Meals that the Contractor has either failed to provide or which fails to comply with the requirements of the Contract. If payment has already been made by the School in respect of any such Paid Pupil Meals, Free Meals, Universal Infant Free School Meals, Duty Meals and/or Staff/Visitor Meals the Contractor shall forthwith on demand repay to the School any payment made by the School in respect thereof. The rights of the School under this clause 23.4 are without prejudice to any other rights or remedies of the School.
  2. Tax, where applicable, shall be shown as a separate item on valid Tax invoices as a strictly net extra charge.
  3. All invoices submitted by the Contractor under Clause 23.2 shall set out the following:
     1. the Month to which the invoice relates;
     2. the number of Free Meals supplied to the School during that Month,
     3. the number of Universal Infant Free School Meals supplied to the School during that Month; and
     4. the number of Paid Pupil Meals supplied to the School during that Month, to include a breakdown of the number of Paid Pupil Meals which have been paid for using the web-based payment system described in clause 23.1.
  4. All invoices submitted by the Contractor under Clause 23.3 shall set out the following:
     1. the Month to which the invoice relates;
     2. the number of Duty Meals supplied to the School during that Month; and
     3. the number of Staff/Visitor Meals supplied to the School during that Month, to include a breakdown of the number of Staff/Visitor Meals which have been paid for using the web-based payment system described in clause 22.1.
  5. The Contractor shall not be entitled to set off any sums payable by the School to the Contractor under the Contract against any sums due to the Contractor pursuant to this clause 23.
  6. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 51.2 for failure to pay undisputed charges.

1. **Tax** 
   1. The Contractor will act as the School’s **agent** in the performance of:
      1. serving Free Meals to school pupils who are entitled to receive such Free Meals;
      2. serving Universal Infant Free School Meals to school pupils who are entitled to receive such Universal Infant Free School Meals;
      3. serving Paid Pupil Meals to school pupils who are entitled to receive such Paid Pupil Meals; and
      4. serving Duty Meals to members of school staff who are entitled to receive such Duty Meals by reason of the duties they are performing.
   2. The Contractor will act as **principal** in respect of:
      1. the purchase of all required foodstuffs and consumables used in the preparation of Free Meals, Universal Infant Free School Meals, Paid Pupil Meals, Duty Meals and Staff/Visitor Meals;
      2. the preparation of Paid Pupil Meals, Free Meals, Universal Infant Free School Meals, Duty Meals and Staff/Visitor Meals;
      3. the supply to the School of:
         1. Free Meals;
         2. Universal Infant Free School Meals;
         3. Paid Pupil Meals; and
         4. Duty Meals

for consumption by relevant pupils or (as appropriate) duty teachers at the Services Location; and

* + 1. the sale, supply and the act of serving Staff/Visitor Meals to relevant school staff (other than duty teachers) and visitors to the Services Location.

It shall be the Contractor’s duty to determine the TAX liability of this supply and to account for any output tax due to HM Revenue and Customs.

* 1. For the avoidance of doubt the Contractor may charge Tax if due at the appropriate rate to the School in respect of Free Meals, Universal Infant Free School Meals, Paid Pupil Meals and Duty Meals and shall account to HM Revenue and Customs for such Tax.

1. **Recovery of Sums Due** 
   1. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the School in respect of any breach of the Contract), the School may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the School.
   2. Any overpayment by either Party, whether of the Free Meal Price or the Universal Infant Free School Meals Price or the Paid Pupil Meal Price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
   3. The Contractor shall make any payments due to the School without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the School to the Contractor.
2. **Prevention of Bribery and Corruption**
   1. The Contractor shall:
      1. comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and Section 117(2) of the Local Government Act 1972**;**
      2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
   2. Breach of clause 26 shall be deemed a material breach of the Contract.
3. **Discrimination**
   1. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment , order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise howsoever) .
   2. The Contractor shall take all reasonable steps to secure the observance of clause 27.1 by all Contractor Staff, servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.
4. **The Contracts (Rights of Third Parties) Act 1999**
   1. Except as provided in clause 54 (TUPE), no person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the School or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this clause 28. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### Environmental Requirements

* 1. The Contractor shall, when working at the Services Location, perform the Contract in accordance with Gloucestershire County Council’s environmental policy set out in the Order Form 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.
  2. The Contractor shall at the end of each school academic term at its own expense dispose of all cooking oil arising from the provision of the Services to the reasonable satisfaction of the Contract Manager. The Contractor shall ensure that refuse is not allowed to accumulate on or near the Services Location. The Contractor shall ensure that it clears all Work Areas of refuse on the last day of each school academic term so as to ensure that no refuse is permitted to accumulate at or near the Services Location during school holidays.
  3. The Contractor shall at its own expense ensure that in the performance of its obligations in respect of the Service it uses working methods equipment materials and consumables which minimise environmental damage

1. **Health and Safety** 
   1. The Contractor shall promptly notify the Contract Manager of any health and safety hazards which may arise at the Services Location in connection with the performance of the Contract. The Contract Manager shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Services Location and which may affect the Contractor in the performance of the Contract.
   2. While at the Services Location, the Contractor shall comply with all health and safety measures implemented by the School (to include Gloucestershire County Council’s Health and Safety Policy set out in the Order Form in respect of Contractor Staff and other persons present at the Services Location.
   3. The Contractor shall notify the Contract Manager immediately in the event of any incident occurring in the performance of the Contract at the Services Location where that incident causes any personal injury or damage to property which could give rise to personal injury.
   4. The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to Contractor Staff and other persons working at the Services Location in the performance of the Contract
   5. The Contractor shall nominate a person from its Contractor Staff to be responsible for all health and safety obligations imposed on it by the Health and Safety at Work etc. Act 1974 and notify the Contract Manager accordingly.
   6. The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Contract Manager on request.
   7. The School shall have the right to suspend the provision of the Services in the event of non‑compliance by the Contractor with this clause 30 and the Contractor shall not resume provision of the Services until the Contract Manager is satisfied that any such non‑compliance has been rectified. For the avoidance of doubt, during any such period of suspension the School may in accordance with clause 44.1 reduce or withhold payment in respect of any Paid Pupil Meals, Free Meals, Universal Infant Free School Meals or Duty Meals.
   8. All COSHH data sheets for any COSHH chemicals in use must be made available by the Contractor at the Services Location for inspection by the Contract Manager on demand.
2. **Safeguarding Children And Vulnerable Adults** 
   1. The Parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under the Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (as amended).
   2. The Contractor shall:
      1. ensure that all Contractor Staff engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (“DBS”) including a check against the children's barred list; and
      2. monitor the level and validity of the checks under this clause 31.2 for each member of Contractor Staff.
   3. The Contractor warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
   4. The Contractor shall immediately notify the Contract Manager of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 31 have been met.
   5. The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children.
   6. The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children.
   7. The Contractor shall procure that the School is kept advised at all times of any Contractor Staff, or other persons employed/engaged in the performance of any part of the Services if subsequent to the commencement of his/her employment/engagement under the Contract their previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children.
3. Data Protection Act
   1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 32 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
   2. The parties acknowledge that for the purposes of the Data Protection Legislation, the School is the Controller and the Contractor is the Processor. Appendix 3 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
   3. Without prejudice to the generality of clause 32.1, the School will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor and/or lawful collection of the Personal Data by the Supplier on behalf of the School for the duration and purposes of this Contract.
   4. Without prejudice to the generality of clause 32.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
      1. process that Personal Data only on the documented written instructions of the School which are set out in Appendix 3 unless the Contractor is required by Domestic Law to otherwise process that Personal Data. Where the Contractor is relying on Domestic Law as the basis for processing Personal Data, the Contractor shall promptly notify the School of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Contractor from so notifying the School;
      2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the School, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
      3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
      4. not transfer any Personal Data outside of the UK unless the prior written consent of the School has been obtained and the following conditions are fulfilled:
         1. the School or the Contractor has provided appropriate safeguards in relation to the transfer;
         2. the data subject has enforceable rights and effective legal remedies;
         3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
         4. the Contractor complies with reasonable instructions notified to it in advance by the School with respect to the processing of the Personal Data;
         5. assist the School, at the School's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
         6. notify the School without undue delay on becoming aware of a Personal Data Breach;
         7. at the written direction of the School, delete or return Personal Data and copies thereof to the School on termination of the agreement unless required by Domestic Law to store the Personal Data; and
         8. maintain complete and accurate records and information to demonstrate its compliance with this clause 32 and allow for audits by the School or the School's designated auditor and immediately inform the School if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.
   5. The School consents to the Contractor appointing [[●●●●●]] as a third-party processor of Personal Data under this agreement. The Contractor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement [substantially on that third party's standard terms of business OR incorporating terms which are substantially similar to those set out in this clause 32 and in either case which the School confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the School and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 32.
   6. Either Party may, at any time on not less than 30 days' notice, revise this clause 32 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
4. Confidentiality
   1. Each Party:-
      1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
      2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
   2. The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the School or Contract Manager under or in connection with the Contract:
      1. is given only to such of the Contractor Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
      2. is treated as confidential and not disclosed (without prior Approval) or used by any Contractor Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
   3. The Contractor shall not use any Confidential Information it receives from the School or the Contract Manager otherwise than for the purposes of the Contract.
   4. The provisions of clauses 33.1 to 33.3 shall not apply to any Confidential Information received by one Party from the other:
      1. which is or becomes public knowledge (otherwise than by breach of this clause);
      2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
      3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
      4. is independently developed without access to the Confidential Information; or
      5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 34.
   5. Nothing in this clause shall prevent the School:
      1. disclosing any Confidential Information for the purpose of:
         1. the examination and certification of the School’s accounts; or
         2. any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the School has used its resources; or
      2. disclosing any Confidential Information obtained from the Contractor:
         1. to any government department or Gloucestershire County Council; or
         2. to any person engaged in providing any services to the School for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under clause 33.5.2(b) the School discloses 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.

* 1. Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

1. Freedom of Information
   1. The Contractor acknowledges that the School is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the School or (as appropriate) the Contract Manager (at the Contractor’s expense) to enable the School to comply with these Information disclosure requirements.
   2. The Contractor shall and shall procure that its sub-contractors shall:
      1. transfer the Request for Information to the Contract Manager as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
      2. provide the Contract Manager with a copy of all Information in its possession or power in the form that the Contract Manager requires within five Working Days (or such other period as Contract Manager may specify) of the Contract Manager requesting that Information; and
      3. provide all necessary assistance as reasonably requested by the Contract Manager to enable the School to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
   3. The School shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
      1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
      2. is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contract Manager.
   4. The Contractor acknowledges that the School may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
      1. without consulting with the Contractor, or
      2. following consultation with the Contractor and having taken its views into account.
   5. The Contractor 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 Contract Manager to inspect such records as requested from time to time.

## The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the School may nevertheless be obliged to disclose Confidential Information in accordance with clause 34.4.

## The Contractor acknowledges that the Commercially Sensitive Information listed in the Order Form is of indicative value only and that the School may be obliged to disclose it in accordance with clause 34.4.

1. Security of Confidential Information
   1. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain security systems approved by the Contract Manager.
   2. The Contractor will immediately notify the Contract Manager of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under clause 33. The Contractor will co-operate with the Contract Manager in any investigation that the Contract Manager considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
2. Publicity and Media
   1. Without prejudice to the School’s obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract 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).
   2. Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 36.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 36.1 by its sub-contractors.
3. Security
   1. The School shall be responsible for maintaining the security of the Services Location (including without limitation the Work Areas) in accordance with its standard security requirements set out in the Order Form and in paragraph 9.0 of the Specification.The Contractor shall comply with all reasonable security requirements of the School while at the Services Location, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.
   2. The Contractor shall comply with the School’s written security procedures for locking buildings at the Services Location and handling keys a copy of which has been issued by the Contract Manager to the Contractor prior to execution of the Contract and receipt whereof the Contractor hereby acknowledges**.**
   3. In the event that the Contractor or any of its Contractor Staff loses a key or keys to any building at the Services Location the Contractor will forthwith on demand pay the School the cost of replacing such keys and the accompanying locks and notwithstanding anything in the Contract shall indemnify the School against all costs arising directly or indirectly from the loss of such keys.
4. Intellectual Property Rights
   1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
      1. furnished to or made available to the Contractor by the School or its Contract Manager shall remain the property of the School;
      2. prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract shall belong to the School. The Contractor shall not, and shall procure that the Contractor’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.
   2. At the termination of the Contract the Contractor shall at the request of the Contract Manager immediately return to the Contract Manager all materials, work or records held, including any back-up media relating to the Contract.
   3. The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.
5. Records and Audit Access
   1. The Contractor shall keep and maintain until six (6) years after the end of the Term (or as long a period as may be agreed between the Parties), full and accurate records (to include without limitation the reports described in clause 58.3) and accounts of the operation of the Contract including the Services provided under it and all monies collected and invoiced by it pursuant to clause 22 and 23.
   2. The Contractor shall keep the records and accounts referred to in clause 39.1 above in accordance with good accountancy practice.
   3. The Contractor shall on request afford the Contract Manager (and/or their agents or representatives) and Gloucestershire County Council and any relevant regulatory body access to the records and accounts kept and maintained by the Contractor pursuant to this clause 39.
   4. The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of one year after the expiry of the Term to the Contract Manager (and/or their agents or representatives) and any relevant regulatory body.
   5. The Contract Manager shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by a third party regulatory body is outside of the control of the Contract Manager.
   6. The Contractor shall free of charge at any reasonable time without prior notice permit the Contract Manager (and/or their agents or representatives), Gloucestershire County Council and any relevant regulatory body access to:
      1. all records and documents in the possession or control of the Contractor relation to the performance of the Services (and if so required provide copies thereof free of charge);
      2. the Work Areas for the purpose of inspecting materials and stores and sampling and checking the quantity and/or quality of foodstuffs (whether prepared or unprepared) in order to ensure that such items comply with the Contract and are suitable for the purposes of providing the Services;
      3. Contractor Staff in connection with the Services;
      4. the Heavy Equipment, the Light Equipment, the Contractor’s Equipment and any other equipment used or intended for use in connection with the provision of the Services for the purpose of ensuring that all such equipment meets the requirements of the Contract and all relevant statutory requirements.
   7. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 39, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the School for the School's reasonable costs incurred in relation to the audit.
6. Assignment and Sub-Contracting
   1. The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.
   2. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
   3. Where the School has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the School, be sent by the Contractor to the School within 2 Working Days of such request.
   4. Where the Contractor enters into a sub-contract with third party for the purpose of performing all or part of the Contract, it shall cause a term to be included in such a sub-contract which requires:
      1. payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements; and
      2. the sub-contractor to comply with protection of data requirements pursuant to clauses 32 (Data Protection), confidentiality requirements pursuant to clause 33 (Confidentiality) and freedom of information requirements pursuant to clause 34 (Freedom of Information).
   5. The School may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
      1. Gloucestershire County Council;
      2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the School; or
      3. any private sector body which substantially performs the functions of the School;

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

* 1. The School may disclose to any of the bodies described in clause 40.5 any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the School shall authorise such body to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that such body gives a Confidential Information undertaking in relation to such Confidential Information.
  2. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

1. Waiver
   1. The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
   2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 6.
   3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
2. Variation
   1. Subject to the provisions of this clause 42, the School may request a variation to the Services ordered hereunder provided that such variation does not amount to a material change to the Contract. Such a change is hereinafter called a "Variation”.
   2. The School may request a Variation by completing and sending the Variation form attached at Appendix 1 to these Call-Off Terms and Conditions ("the Variation Form") to the Contractor giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the proposed Variation.
   3. In the event that the Contractor is unable to provide the Variation to the Services or where the Parties are unable to agree a change (as appropriate) to the Paid Pupil Meal Price, the Free Meal Price, the Universal Infant Free School Meals Price, the Duty Meal Price or the Staff/Visitor Meal Price, the School may:
      1. agree to continue to perform their obligations under the Contract without the Variation; or
      2. refer the matter to mediation pursuant to clause 61.5.
   4. If the Parties agree the Variation and (as appropriate) any variation in the Paid Pupil Meal Price, the Free Meal Price, the Universal Infant Free School Meals Price, the Duty Meal Price or the Staff/Visitor Meal, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.
3. Severability
   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.
4. Remedies in the event of inadequate performance
   1. Without prejudice to clause 51 or any other rights or remedies of the Council In the event that the School is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, or the Contractor’s performance of its obligations under the Contract has failed to meet the Performance Standards set out in the Order Form, then the School may, without prejudice to its rights under clause 51 of the Contract, do any of the following:
      1. invoke the “resolution of shortcomings procedure” set out in paragraph 12.0 of the Specification;
      2. make such deduction from (as applicable) the Free Meal Price, the Universal Infant Free School Meals Price, the Paid Pupil Meal Price, and/or the Duty Meal Price as the School shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of Services which have failed to meet the requirement set out in the Order Form;
      3. without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the School that the Contractor will be able to perform such part of the Services in accordance with the Contract;
      4. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Paid Pupil Meal Price, the Free Meal Price, the Universal Infant Free School Meals Price and the Duty Meal Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
      5. terminate, in accordance with clause 51, the whole of the Contract.
   2. The School may charge to the Contractor any cost reasonably incurred by the School and any reasonable administration costs in respect of the provision of such part of the relevant Services by the School or by a third party to the extent that such costs exceed (as applicable) the Paid Pupil Meal Price, the Free Meal Price, the Universal Infant Free School Meals Price and the Duty Meal Price which would otherwise have been payable to the Contractor for such part of the relevant Services and provided that the School uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
   3. If due to the Default of the Contractor any data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Contractor shall be liable for the cost of reconstituting such data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the School for any costs incurred by it arising from such Default.
5. Remedies Cumulative
   1. Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised 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.
6. Novation
   1. The School shall be entitled to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to any school, academy, local authority, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under the Contract.
   2. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.
   3. The School shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor. In such circumstances the School shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.
7. Indemnity and Insurance
   1. Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
   2. The Contractor shall indemnify and keep indemnified the School fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Contractor Staff or sub-contractors, or by any circumstances within its or their control.
   3. Subject always to clause 47.1, the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed ten million pounds (£10 million).
   4. Subject always to clause 47.1, in no event shall either Party be liable to the other for:
      1. loss of profits, business, revenue or goodwill;
      2. loss of savings (whether anticipated or otherwise); and/ or
      3. indirect or consequential loss or damage.
   5. The provisions of clause 47.4 shall not be taken as limiting the right of the School to claim from the Contractor for:
      1. reasonable additional operational and administrative costs and expenses arising due to the Default of the Contractor; and/or
      2. reasonable expenditure or charges rendered unnecessary as a result of any Default by the Contractor.
   6. The Contractor shall effect and maintain with a reputable insurance company public liability insurance of at least ten million pounds (£10 million) in respect of each and every claim that may arise from the Contractor's performance of the Services with no limit to the number of claims.
   7. The Contractor shall hold employer’s liability insurance in respect of Contractor Staff in accordance with any legal requirement for the time being in force.
   8. The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
   9. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Contract the School may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
   10. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
8. Warranties and Representations
   1. The Contractor warrants and represents that:
      1. the Contractor has the full capacity and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
      2. the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
      3. in entering the Contract it has not committed any Fraud;
      4. all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Contractor Staff with all due skill, care and diligence;
      5. the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.
      6. as at the Commencement Date, all information, statements and representations contained in the Tender Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the School or Gloucestershire County Council prior to execution of the Contract and it will advise the Contract Manager of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
      7. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract.
9. Termination on change of control and insolvency
   1. The School may terminate the Contract by notice in writing with immediate effect where:
      1. the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or
      2. the Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor’s or firm’s affairs; or
      3. the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
      4. where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
      5. any similar event occurs under the law of any other jurisdiction.
   2. The Contractor shall notify the Contract Manager immediately when any change of control occurs. The School may only exercise its right under clause 49.1.1 within six months of:
      1. being notified that a change of control has occurred; or
      2. where no notification has been made the date that the Contract Manager becomes aware of the change of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the Contractor.

* 1. If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the School shall be entitled to terminate the Contract by notice to the Contractor or the Contractor’s Representative with immediate effect.

1. **Break**
   1. The School may terminate the Contract on the second anniversary of the Commencement Date or on any subsequent anniversary of the Commencement Date by giving at least 12 months’ notice in writing to the Contractor.
   2. On termination in accordance with clause 50.1 the School shall pay to the Contractor all fees due and payable under the Contract in respect of the Services it has performed reasonably and substantially in accordance with the Contract prior to the effective date of the notice to terminate. For the avoidance of doubt, save as expressly provided under this clause 50, the Contractor shall not be entitled to any costs, losses and/or expense, loss of profits or contracts or other monies arising from the termination of the Contract pursuant to this Clause 50.
2. Termination on Default
   1. Notwithstanding any other rights and remedies the School may have under the Contract, the School may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Contractor’s Representative with immediate effect if the Contractor commits a Default and if:
      1. the Contractor has not at the Contractor’s expense remedied the Default to the satisfaction of the Contract Manager within 20 Working Days, or such other period as may be specified by the Contract Manager, after issue of a written notice specifying the Default and requesting it to be remedied; or
      2. the Default is not, in the opinion of the Contract Manager, capable of remedy; or
      3. the Default is a material breach of the Contract; or
      4. it has previously committed repeated Defaults in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract.
      5. the Default is a material breach of clause 32 (Data Protection Act);

#### The Contractor may terminate the Contract if the School is in material breach of its obligations to pay undisputed charges by giving the Contract Manager 60 Working Days notice specifying the breach and requiring its remedy. The Contractor’s right of termination under this clause 51.2 shall not apply to non-payment of the sums due in respect of the Free Meal Price, the Universal Infant Free School Meals Price, the Paid Pupil Meal Price, or the Duty Meal Price and where such non-payment is due to the School exercising its rights under clauses 25.1 and 44.1.2.

1. **Termination of the Framework Agreement**
   1. The School may terminate the Contract by giving written notice to the Contractor with immediate effect if the Framework Agreement is terminated for any reason whatsoever.
2. Consequences of Termination
   1. Where the School terminates the Contract under clause 51, or terminates the provision of any part of the Contract under that clause 51, and then makes other arrangements for the provision of Services, the School shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the School throughout the remainder of the Term. The School shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 51, no further payments shall be payable by the School to the Contractor until the School has established the final cost of making those other arrangements.
3. TUPE
   1. The Parties agree that the provisions of Appendix 2 to these Call-Off Terms and Conditions shall apply to any Relevant Transfer of staff under the Contract.
4. **Taxation, National Insurance and Employment Liability**
   1. The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Contractor shall at all times indemnify the School and keep the School indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the School is alleged or determined to have been assumed or imposed with the liability or responsibility for the Contractor Staff (or any of them) as an employer of the Contractor Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Contractor Staff whether during the Term or arising from termination or expiry of the Contract.
5. Recovery upon Termination
   1. Save as otherwise expressly provided in the Contract :
      1. termination of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to 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; and
      2. termination of the Contract shall not affect the continuing rights and obligations of the Contractor and the School under clause 12 (Standard of Work), 25 (Recovery of Sums Due), 26 (Prevention of Corruption), 32 (Data Protection Act), 33 (Confidentiality), 36 (Publicity and Media), 37 (Security), 38 (Intellectual Property Rights), 39 (Audit), 45 (Remedies Cumulative), 48 (Indemnity and Insurance), 49 (Warranties and Representations), 51 (Termination on Default), 53 (Consequences of Termination), 54 (TUPE), 56 (Recovery on Termination) and 61 (Governing Law).
   2. At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the School upon request all the School’s Property (including but not limited to materials, documents, information, access keys), Heavy Equipment and Light Equipment in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the School may recover possession thereof and the Contractor grants licence to the School or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
   3. At the end of the Term (and howsoever arising) the Contractor shall:
      1. cease to use the School’s Confidential Information (including without limitation all Personal Data) and, at the direction of the School provide the School with a complete and uncorrupted version of the School’s Confidential Information in electronic form in the format and on media agreed with the School; and
      2. on the earlier of the receipt of the School’s written instructions or 12 months after the date of expiry or termination, expunge and destroy all copies of the School’s Confidential Information (including without limitation all Personal Data), excepting a copy of any data which is also a record as set out in clause 39 (Records and Audit Access) and promptly provide written confirmation to the School that the data has been expunged and destroyed.
   4. At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the School and any Replacement Contractor appointed by the School to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor’s Default, the Contractor shall provide such assistance free of charge. Otherwise the School shall pay the Contractor’s reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.
6. Force Majeure
   1. Subject to the remaining provisions of this clause 57, neither Party to the Contract shall be liable to the other for any delay or non-performance of its obligations under the Contract to the extent that such non-performance is due to a Force Majeure Event.
   2. In the event that either Party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event or likely to be delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such Party shall:
      1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   4. The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable contractor should have foreseen and provided for the cause in question.
   5. As soon as practicable following the affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract. Where the Contractor is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with best industry practice.
   6. The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under the Contract. Following such notification, the Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
7. **Monitoring**
   1. The Contractor’s “Area Manager” or equivalent shall visit and inspect the Services Location at least once every Month.
   2. The Contractor’s Representative shall meet with the Contract Manager once every Month or as otherwise required by the Contract Manager to review the Contractor’s performance in relation to the Contract.
   3. The Contractor shall provide to the Contract Manager a report, using the “Cypad” monitoring system described in paragraph 11.0 of the Specification, , uploaded to Technology Forge in real time in the form Approved by the Contract Manager, detailing:
      1. the number of Paid Pupil Meals, Free Meals, Universal Infant Free School Meals, Duty Meals and Staff/Visitor Meals Price it has served during that Month;
      2. any subsidy/contribution set out in the Order Form which has been paid in respect of the Paid Pupil Meal Price in that Month;
      3. any food and/or drink that has been supplied by the Contractor in that Month for the purposes of a special function as described in paragraph 3.6 of the Specification;
      4. the quality of food and Services provided by it during that Month (measured in accordance with the key performance indicators set out in Appendix 8 of the Invitation to Tender);
      5. any marketing that has been carried out by the Contractor pursuant to paragraph 4.1 of the Specification during that Month;
      6. the number of Contractor Staff that have been engaged in the performance of the Services during that Month;
      7. the standard of hygiene and food safety (measured in accordance with the key performance indicators set out in Appendix 8 of the Invitation to Tender) attained by the Contractor during that Month.
   4. The Contractor shall permit the Contract Manager or his/her authorised agent access, free of charge, to all the relevant recipes, orders, invoices and other relevant documentation together with such food samples as the Contract Manager may require to ascertain the quality and/or quantity of the food supplied hereunder. This information shall be available to the Contract Manager in real time and include portion sizes and allergen information.
   5. The Contractor acknowledges and agrees that the Contract Manager may from time to time arrange for foodstuffs to be analysed by a public or independent analyst or food examiner and that it may apply any tests or cause any analyses to be made for any purpose including ascertaining the quality and/or quantity of foodstuff being supplied under the Contract. Should the results of such tests or analyses indicate that any foodstuff does not comply with the Quality Standards the charges payable for such tests or analyses shall be met by the Contractor.
   6. The Contractor and its employees shall provide to the Contract Manager or another authorised agent of the School, free of charge, all reasonable assistance in the investigation of any complaints received by them relating to the quality of the Services (including without limitation the foodstuffs provided thereunder) or in relation to any claims for damages or similar.
   7. The Contractor shall keep accurate records of meals served, menus, recipes and quantities used to provide the meals. Such records must be made available in real time to the Contract Manager and at his request and copies supplied free of charge. Whilst there is no wish to restrict product development the Contract Manager must be notified in writing of any proposed menu or recipe alterations.
   8. The Contractor supply free of charge to the Contract Manager copies of all reports received by the Contractor in respect of inspections carried out by third party bodies within seven (7) days of the Contractor’s receipt of such reports and will indicate steps implemented or to be implemented by the Contractor to comply with any defects referred to in any such reports.
   9. The Contract Manager will provide feedback to the Contractor in respect of the results of the monitoring described in this clause 58, so as to allow the Contractor to take (if necessary) appropriate remedial action. The Contractor shall respond in a timely manner to such feedback, prepare an action plan, take appropriate action and report on what action has been taken, and when it was completed.
8. **Customer Satisfaction Survey**
   1. The Contractor shall, on each Customer Satisfaction Survey Date, undertake (or procure the undertaking of) a customer satisfaction survey for the purpose of assessing the level of satisfaction amongst Users (including the way in which the Services are provided, performed and delivered) and, in particular, the quality, efficiency and effectiveness of the Services.
   2. The Customer Satisfaction Survey shall be undertaken by means of distributing to Users a questionnaire or conducting another survey method as agreed in writing between the Parties.
   3. The content of the questionnaire or other material to be used for any other survey method referred to in clause 59.2 and the method of undertaking the Customer Satisfaction Survey shall comply with Law.
   4. The School shall provide reasonable assistance and information to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.
   5. Within two Months of each Customer Satisfaction Survey Date, the Contractor shall produce to the Contract Manager a summary of the results of the Customer Satisfaction Survey in such form as the Contract Manager shall reasonably require and promptly upon a written request from the Contract Manager provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the Contract Manager shall reasonably require.
9. Governing Law
   1. The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.
10. Dispute Resolution
    1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
    2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
    3. If the dispute cannot be resolved by the Parties pursuant to clause 61.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 61.5 unless:
       1. the School considers that the dispute is not suitable for resolution by mediation; or
       2. the Contractor does not agree to mediation.
    4. The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
    5. The procedure for mediation and consequential provisions relating to mediation are as follows:
       1. a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
       2. The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
       3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
       4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
       5. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
       6. If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**APPENDIX 1 (TO THE CALL-OFF TERMS AND CONDITIONS)**

1. Variation Form

# Call-Off Terms And Conditions For Services

**No of Order Form being varied:………………………………………………………………………**

**Variation Form No:………………………………………………………………………………………**

**BETWEEN:**

|  |
| --- |
| The Governing Body of [●●Insert name of School ●●] (the **“School"**)  and  [●●Insert name of Contractor ●●] (the **“Contractor"**) |

# The Order is varied as follows: [list details of the Variation]

# Words and expressions in this Variation shall have the meanings given to them in the Contract.

# The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Governing Body of School**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |
| Address |  |
|  |  |

**Authorised to sign for and on behalf of the Contractor**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |
| Address |  |
|  |  |

**APPENDIX 2 (TO THE CALL-OFF TERMS AND CONDITIONS)**

PART 1 (of Appendix 2)

Transfer of employees from the Outgoing Contractor to the Contractor

PART 2 (of Appendix 2)

Transfer of employees from Gloucestershire County Council to the Contractor

**APPENDIX 3 (TO THE CALL-OFF TERMS AND CONDITIONS)**

This Schedule includes certain details of the Processing of Personal Data as required by the Data Protection Legislation.

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

|  |  |
| --- | --- |
| Identity of the Controller and Processor | The parties hereto acknowledge that for the purposes of the Data Protection Legislation, the School is the Controller and the Contractor is the Processor. |
| Subject matter of processing: | The processing is needed to ensure that the processor can effectively deliver a catering service to Schools to its relevant pupils/staff |
| Duration of Processing: | In line with clause 2 of Schedule 4A of the call off terms and conditions. |
| Nature of Processing: | The nature of the processing means any operation such as   * collection * recording * organisation * structuring * storage * adaptation or alteration * retrieval * consultation * use * disclosure by transmission * dissemination or otherwise making available * alignment or combination * restriction * erasure or destruction of data (whether or not by automated means) etc   for the purpose of providing catering services for schools. |
| Business Purposes: | To provide a catering service to schools to support their legal obligation to provide a free school meal and to offer paid meals to other pupils and staff |
| Personal Data Categories: | * Pupils * Teachers * Visitors  Parents |
| Data Subject Types: | * Name * Gender * Address * Contact details * Email address * Payment history and balances * Payment card details * IP Address * Browser details * Trouble ticket data * In-app messages * Message status |
| Plan for return and destruction of the data once the processing is complete UNLESS lawful requirement exists to preserve that type of data | The Provider must comply with Clause 16 records and audit access of the Framework contract |

Any such further instructions shall be deemed incorporated into this Schedule.

|  |  |
| --- | --- |
|  |  |

|  |  |
| --- | --- |
| Approved Subcontractors: | [  * Payment Processors – to securely process card payments (they do not see, or store payment card details) * SMS Providers – to send out SMS notifications or messages sent by Customers using PPL Products and Services * Email Providers – to send out email notifications or messages sent by Customers using PPL Products and Services * Hosting Providers – to manage their secure enterprise datacentres * Security Providers – to protect their systems from attack * Telephony Providers –calls may be recorded for training, quality and security purposes * Training Platforms – to train school staff on the use of their services * Support Portal (ZenDesk) – so that help is easily accessible * Bank Transfer functionality – working with Corvid and Experian * Cloud Hosting and Recovery – working with AWS and Azure * Security insight and system logging – working with Rapid7 * Cloud email delivery – working with Sendgrid (USA hosted) * Anonymous Web Analytics – working with Google * Feedback Platforms (Optional) – working with SurveyMonkey * Personal information is also accessed by Parent pay as part of delivering the service. If there is a need to change or add additional third parties, the Privacy Notice accordingly. Personal data will only be shared with other parties in the following limited circumstances * where there is a legal obliged to do so, e.g. to law enforcement and regulatory authorities * where there is a duty to disclose in the public interest * where disclosure is necessary to protect our interest e.g. to prevent or detect crime and fraud * where permission has been given to do so e.g. by providing consent within the PPL Products and Services or via an online application or consent form |