Dated 2019

Cheshire East Borough Council

and

CONCESSION OPERATOR

------------------------------------------------------------------------------------

Agreement for the Provision of an Event and Mobile Catering

Service Concession at Tatton Park

------------------------------------------------------------------------------------

**Cheshire East Council**

**Westfields**

**Middlewich Road**

**Sandbach**

**Cheshire**

**CW11 1HZ**

Contents

Clause

1. Interpretation 4

2. Rights Granted 9

3. Term 9

4. Fees 9

5. Council's Obligations 11

6. Concession Operator's Obligations 11

7. Hours of Operation 12

8. Accounting Records 12

9. Monitoring 13

10. Utilities 13

11. Insurance 13

12. Premises 14

13. Sale of Business 15

14. Confidentiality 15

15. Termination 16

16. Consequences of Termination 17

17. Indemnity 17

18. Entire Agreement 18

19. Further Assurance 18

20. Data Protection 18

21. Freedom of Information 19

22. Environmental Health and Health and Safety 20

23. Intellectual Property 20

24. TUPE and Re-Tendering 21

25. Transparency 23

26. Assignment and Subcontracting 23

27. Third Party Rights 24

28. No Partnership or Agency 24

29. Force Majeure 24

30. Set-off 25

31. Severance 25

32. Variation 26

33. Waiver 26

34. Notices 26

35. Alternative Dispute Resolution 28

36. Governing Law and Jurisdiction 29

Schedule

Schedule 1 33

Schedule 2 35

Schedule 3 37

Annex

Annex A. The Licence 48

Annex B. Variations 49

**THIS AGREEMENT** is made on the day of 2019

Parties

1. **CHESHIRE EAST BOROUGH COUNCIL**, of WESTFIELDS, MIDDLEWICH ROAD, SANDBACH, CHESHIRE, CW11 1HZ (the “**Council**”)
2. **INSERT PROVIDER NAME** of INSERT DETAILS (“**Concession Operator**”)

Whereas

1. The Council has undertaken a procurement exercise to let a Service Concession Agreement through the issue of an Invitation to Tender.
2. The Concession Operator submitted a Tender in response to the Invitation to Tender and in consideration of the Concession Operator’s payment of the Charges the Council permits the Concession Operator to deliver the Services on the terms set out in this agreement.

Agreed terms

# Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

Additional Licence Fee Charge: the sum which becomes due and payable by the Concession Operator to the Council in accordance with the provisions of this agreement and as set out in the Tender and as detailed at Schedule 2.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Business and its services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

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

Business**:** the business of catering, which provides the Services in respect of this agreement.

Business Day**:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges which shall become due and payable by the Concession Operator to the Council in respect of the Services in accordance with the provisions of this agreement and the Licence, and which shall include the base licence fee charge (as set out in the Tender and detailed in Schedule 2) and apportionment for utilities as set out in the Licence and any other payments which the Council may from time to time request from the Concession Operator.

Commercially Sensitive Information: the information which the Concession Operator has indicated to the Council that if disclosed by the Council, would cause the Concession Operator significant commercial disadvantage or material financial loss.

Concession Operator's Business**:** the Business as carried on by the Concession Operator under this agreement from the Premises.

Confidential Information**:** 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 in whatever media it is stored). This includes information which relates to the Services, Business, plans, properties, assets, trading practices, 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 Act 2018).

Contract Year: a period of 12 months, commencing on the Start Date or any anniversary thereof, during the Term.

* + 1. **Data Privacy Laws:** The European Union General Data Protection Regulation 2016/679 and the Data Protection Act 2018.

**Employees:** the employees of the Concession Operator employed in the provision of the Services prior to the Transfer Date.

**Events:** the organised activities set out in the Specification.

Extension Period: the 12 month period following an extension under the provisions of clause 3.2.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events or omissions beyond its reasonable control, including acts of God, riots, wars, acts of terrorism, fire, flood, or earthquake and any disaster but excluding any industrial dispute relating to the Concession Operator, the Concession Operator’s personnel or any other failure in the Concession Operator’s supply chain.

FOIA: Freedom of Information Act 2000.

Gross Weekly Receipts**:** the gross takings of the Concession Operator's Business in respect of the Services supplied by the Concession Operator under this agreement in any week of the Term starting on the Start Date, excluding all VAT and without deducting any sales rebates or discounts.

Initial Term**:** the period of one (2) years commencing on the Start Date.

Intellectual Property Rights**:** patents, rights to inventions, copyright and related rights, trademarks, trade names, business names, service marks and rights in and/or to internet domain names and website addresses, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection.

Licence**:** a licence to occupy the Premises to be entered into by the Council and the Concession Operator, on the date of this agreement, in the form set out in Annex A.

Park: the Council’s Park in which the Premises are located as shown at Plan 1 of Schedule 1.

Premises**:** the locations as set out in the Licence from which the Concession Operator shall deliver the Services and further identified in Plan 2 of Schedule 1 which includes the Fixed Units, the Ice Cream Units and the Events Units or with the Licence of the Council in order to trial provision at new locations (Trial Units) located thereon.

Prohibited Act**:** the following constitute Prohibited Acts:

### to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

### committing any offence:

#### under the Bribery Act;

#### under legislation or common law concerning fraudulent acts;

#### defrauding, attempting to defraud or conspiring to defraud the Council.

### any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c), if such activity, practice or conduct had been carried out in the UK

**Remuneration:** includes all wages, salary, commission, pension, pension contributions, holiday pay, emoluments, allowances, benefits, benefits in kind, other contributions, PAYE, income tax, national insurance and incentive payments.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

Services**:** the catering services to be delivered by the Concession Operator in furtherance of the Concession Operator's Business and as further defined in relation to the Council’s Specification and the Tender bid of the Concession Operator under this agreement.

Special Event: means an activity including, but not limited to, a performance, meeting, assembly, contest, exhibition, ceremony, parade, athletic or sporting competition, display or event, organised concert which are not included on the Events list which forms part of the Specification and/or hospitality catering for a private party not accessible by the public, marquee catering or any event as otherwise reasonably so designated by the Council. Special Event shall not include casual use of the Park by visitors.

Specification: means the detailed requirements of service as set out in the Council’s Invitation to Tender and incorporated to this agreement at Schedule 2.

Start Date**:** 2019.

**Successor Concession Operator:** any supplier which supplies services similar to the Services or any part of the Services following the termination or expiry of part or all of this Agreement.

Tender: means the response to the Invitation to Tender submitted by the Concession Operator and as included in Schedule 2.

Term**:** the period of the Initial Term as varied by:

### any extensions to this agreement pursuant to clause 3; or

### the earlier termination of this agreement in accordance with its terms

**Transfer Date:** the applicable date (or dates) on which Employees transfer pursuant to TUPE from the employment of the Concession Operator to the Council or a Successor Concession Operator.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Units: the mobile catering units and associated equipment which are the property of the Concession Operator and located on the Premises which term shall relate to the units at the playground location (Fixed Units) and Boathouse Wood (Ice Cream Unit) and the units brought on to the Premises by the Concession Operator for use at Events (Events Units) shown on Plan 2 of Schedule 1 or with the Licence of the Council in order to trial provision at new locations (Trial Units).

VAT**:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

## Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

## The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Words in the singular shall include the plural and vice versa.

## A reference to one gender shall include a reference to the other genders.

## A reference to any party shall include that party's personal representatives, successors or permitted assigns.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

## A reference to **writing** or **written** includes faxes but not e-mail.

## A reference to "this agreement" or to any other agreement or a document referred to in this agreement is a reference to this agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

## References to clauses and Schedules are to the clauses and Schedules of this agreement; references to paragraphs are to paragraphs of the relevant Schedule.

## Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## Any obligation in this agreement not to do something includes an obligation not to agree or allow that thing to be done.

# Rights granted

## The Council hereby grants the Concession Operator a licence to exploit the commercial opportunity of operating the Concession Operator’s Business from the Premises and for the Events through the provision of the Services during the Term.

## For the avoidance of doubt, the Concession Operator does not have an exclusive licence and:

### The Council retains the right for itself and for other bodies to sell food, drink or similar to Park users from the Stables Restaurant, the shops in the Courtyard area, temporary units in the Stableyard area, the Farm and Old Hall; and

### the Council reserves the right to sell or to permit or appoint other bodies to distribute or sell food, drink or similar to Park users on or for Special Events and to grant licences for ice-cream, or similar concessions within the Park.

### The Concession Operators rights extend to the Premises and the Events only.

# Term

## This agreement shall come into force on the Start Date and shall continue for the Initial Term and any Extension Period, subject in each case to earlier termination in accordance with clause 15.

## The Council may extend the Initial Term for two further periods of 12 months each (Extension Period). If the Council wishes to extend the agreement, it shall give the Concession Operator written notice of such intention 90 Business Days before the expiry of the Initial Term.

## If the Council gives such notice then the Term shall be extended by the Extension Period.

## If the Council does not wish to extend this agreement it shall expire on the expiry of the Initial Term and the provisions of clause 16 shall apply.

# Fees

## In consideration of the opportunity to exploit the Premises through the provision of the Services by the Concession Operator in accordance with the terms and conditions of this agreement, the Concession Operator shall pay the Charges to the Council.

## The Concession Operator shall pay the Charges in accordance with the terms of this agreement and the Licence. All payments shall be directed to the Council in the prescribed manner set out at clause 4.6 or from time to time directed by the Council.

## The Concession Operator shall pay the Additional Licence Fee Charge in accordance with the terms of this agreement, more specifically set out in Schedule 2 and the licence. All payments shall be directed to the Council in the prescribed manner set out at clause 4.6 or from time to time directed by the Council.

## If the Concession Operator fails to pay any amount payable by it under this agreement, the Council may charge the Concession Operator interest on the overdue amount. The Concession Operator shall pay the interest immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly.

## The Concession Operator shall maintain complete and accurate records of, and supporting documentation for, the payment of Charges to the Council. Such records shall be retained for inspection by the Council for six years from the end of the Contract Year to which the records relate.

## Unless the Council otherwise notifies the Concession Operator in writing, the Concession Operator shall make all payments electronically to the following bank account:

[supplier@ecwip.co.uk] or [Cheshire East Council, Cheshire Shared Services Payments Section, Purchasing & Exchequer, PO Box 3655, Chester, CH1 9PP].

Client Code No.: Tatton Park service concessions

## All sums due under this agreement are exclusive of VAT thereon, which shall, where applicable, be paid by the Concession Operator at the prevailing rate on the due date for payment.

## The Concession Operator shall be responsible for the payment of all invoices due to third party suppliers.

## In the event that the Council extends the Initial Term the base licence fee charge for each Extension Period shall be as set out in Schedule 2.

# Council's obligations

5.1 The Council shall permit the Concession Operator to undertake the Business in accordance with the terms of this agreement and the Licence.

# Concession Operator's obligations

6.1 The Concession Operator shall start trading on the Start Date and shall, at all times during the Term, in relation to the Concession Operator's Business:

### operate the Concession Operator's Business strictly in accordance with this agreement and not do anything that could bring the Business into disrepute or damage the reputation of the Business or of the Council;

### provide a high quality, light refreshment retail service at the Premises;

### use its best endeavours to promote and extend the Business;

### adhere to the objectives as specified in the Specification;

### provide and agree with the General Manager of the Park a Customer Promise and thereafter meet the requirements of that Customer Promise as a minimum standard of customer service;

### have in place a written complaints policy which shall include an obligation to respond to complaints within 2 days of receipt to include providing a copy of the complaint and the response to the General Manager of the Park;

### shall agree all menu choices with the General Manager of the Park;

### shall include value for money options on the menu and be able to demonstrate such options to the Council at all times;

### shall provide healthy eating options and locally sourced products on the menu and be able to demonstrate such options to the Council at all times;

### shall not play music from the Ice Cream Unit to attract business;

### at the Concession Operator’s own cost obtain, maintain and comply with all licences and consents necessary for the operation of the Concession Operator's Business including but not limited to:

#### registration under the Food Premises (Registration) Regulations 1991 as amended, for the provision of the Services;

#### Basic Hygiene and Food Handling Certificates;

#### Health and Safety;

#### As required by the Licensing Act 2003;

#### Fire certification; and

#### Commercial waste;

### respond immediately to requests from trading Standards or Environmental Health;

### comply and ensure that its personnel comply with the Food Safety Act 1990 and Regulations made thereunder;

### ensure that its personnel have appropriate first aid training;

### ensure that its personnel, agents and sub-contractors (if any) treat the Park, buildings and equipment with due care and attention;

### comply with all relevant legislation in relation to the Premises and their use and the Concession Operator's Business;

### operate the Concession Operator’s Business in accordance with clause 7 below and in accordance with the Licence;

### operate the Concession Operator's Business within the perimeter of the Premises unless prior written approval has been obtained from the Council;

### pay all third party suppliers promptly in accordance with the terms of supply agreed with them;

### supply the Council with information as set out in the Specification and also such reasonable information relating to the Concession Operator's Business in such form and at such times as the Council may from time to time reasonably require;

### introduce any improvements or modifications into the Concession Operator's Business when requested by the Council;

### give such notices in such places as required by law and/or as the Council may reasonably require;

### comply with the Council’s policies as set out in the Specification, Tender Documents and as notified to the Concession Operator during the Term.

## Without limiting the general obligation set out in clause 6.1, the Concession Operator shall (and shall procure that the Concession Operator's Personnel shall):

### perform its obligations under this agreement in accordance with:

#### all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

#### the Council’s equality and diversity policy as provided to the Concession Operator from time to time; and

#### any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and

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

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Concession Operator shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

6.3 In performing its obligations under the agreement, the Concession Operator shall:

(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

(c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 6.3;

(d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement;

(e) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with the Contract; and

(f) permit the Council and its third party representatives to inspect the Concession Operator's premises, records, and to meet the Concession Operator's personnel to audit the Concession Operator's compliance with its obligations under this clause 6.3.

6.4 The Concession Operator represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

6.5 The Council may terminate the Agreement with immediate effect by giving written notice to the Concession Operator if the Concession Operator commits a breach of clause 6.3.

## In performance of this agreement and delivery of the Services by the Concession Operator the time of delivery is of essence to the Council and the agreement.

# Hours of operation

## The Concession Operator is required to provide the Services at a minimum in accordance with the hours of operation set out in Schedule 3

# Accounting records

The Concession Operator shall:

### maintain records of all sales and Gross Weekly Receipts and submit to the Council a statement of them within seven days of request by the Council;

### keep and maintain complete and accurate accounts and records relating to the Concession Operator's Business. If required by the Council, the Concession Operator shall have them audited by qualified auditors nominated by the Council;

### in the event that the Concession Operator is permitted to operate Trial Units, to keep and maintain complete and accurate accounts relating to those Trial Units on an “open book” basis (which shall mean that the accounts are maintained in a fully auditable manner, made available to the Council whenever requested and, if the Council so requests, certified by a qualified auditor as an accurate and in line with the Charges);

### deliver to the Council a copy of the audited accounts of the Concession Operator within three months of the relevant accounting year end;

### retain its accounting and financial records for at least six years after the end of any accounting year to which those records relate;

### allow officers or authorised representatives of the Council to enter the Premises and investigate the Concession Operator's records and take copies of the Concession Operator's accounts and records on reasonable notice, during usual business hours during the Term and facilitate access to the same for a period of six years after the termination of this agreement; and

### supply to the Council copies of all VAT returns and any other financial and fiscal information which the Council may reasonably request including but not limited to the validation of the Additional Licence Fee Charge.

# Monitoring

## The Council may monitor the performance of the Services by the Concession Operator.

## The Concession Operator shall co-operate, and shall procure that any sub-contractor co-operates, with the Council in carrying out the monitoring referred to in clause 9.1 at no additional charge to the Council.

# Utilities

## The Concession Operator shall reimburse the Council for all charges in respect of utilities or other services related to Concession Operator’s Business within Seven Business Days of such a request by the Council or as otherwise agreed in the Licence for the Premises.

# Insurance

## The Concession Operator shall take out and maintain through-out the Term an all-risk insurance policy or equivalent policies with a reputable insurance company (or companies) as the Council may, in its absolute discretion, specify. Such policy (or policies) shall include:

### Employer’s Liability Insurance for an insured amount of not less that £10 million;

### Public Liability Insurance for an insured amount of not less that £5 million;

### Product Liability Insurance for an insured amount of not less that £5 million;

## The insurance cover shall be in respect of all risks which may be incurred by the Concession Operator, arising out of the Concession Operator’s performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.

## The Concession Operator shall not breach, or allow any breach of, such policies.

## The Concession Operator shall provide the Council with copies of all such policies and renewals upon written or verbal demand.

## The Concession Operator shall promptly pay all premiums for such policies and should it be requested immediately provide the Council with evidence of payment of premiums.

## If the Concession Operator fails to take out and maintain such policies, the Council may do so and the Concession Operator shall reimburse the Council for all costs and expenses incurred in doing so.

## The terms of any insurance or the amount of cover shall not relieve the Concession Operator of any liabilities under the agreement.

# Premises

The Concession Operator shall comply with the terms, conditions, covenants and undertakings to be observed and performed by the Concession Operator under the Licence and without prejudice to the provisions of the Licence shall:

### at its own expense equip and keep the Premises and the Units in a good state of repair and refurbish, redecorate or improve the Premises and the Units when, and in such manner, as is in accordance with the Specification and as required by the Council (which in the case of the Fixed Units only shall include using the Tatton colours and/or branding approved by the Park’s General Manager) prior to occupying the Premises;

### co-operate with the Council and its requirements in the event that the business needs to be located temporarily;

### not carry out any alterations to the Premises or the Units without the Council's prior written consent;

### provide access to the Premises (including the Units) at all reasonable times, on reasonable notice and during usual business hours during the Term to allow the Council to inspect the Premises and the Units and the inventory and accounts of, the Concession Operator's Business and check that the Concession Operator is complying with its obligations under this agreement;

### keep the Premises and the Units clean and maintain hygiene and health and safety standards in accordance with the Licence and with applicable legislation and as required by the Council and ensure that fixtures and fittings are in working order;

### not erect any permanent signs or buildings on the Premises and ensure that it obtains the Council’s prior permission to display any/all temporary signs or notices at the Premises/on the Units;

### prominently display a notice in each Unit requesting Park users use the litter bins provided;

### provide a litter bin if the Council has not provided a litter bin in the vicinity of the Premises;

### not part with possession of or sell or transfer any interest in the Premises without the Council's prior written consent;

### provide the Council straightaway with copies of any notices received by the Concession Operator under the terms of the Licence or served by any statutory body or other competent authority relating to the Premises and comply with the terms of such notices;

# Sale of business

## The Concession Operator shall not sell, transfer or otherwise dispose of part or all of the Concession Operator's Business to a third party purchaser (or purchasers), unless it has first served written notice on the Council at least twenty [20] Business Days before the proposed transaction.

# Confidentiality

## The Concession Operator undertakes that it shall not at any time either during or after the termination of this agreement copy, use or disclose to any person any Confidential Information, except as permitted by this agreement.

## The Concession Operator may disclose Confidential Information:

### to the employees, officers, representatives or advisers of the Concession Operator who need to know such information for the purposes solely of carrying out its obligations under this agreement. The Concession Operator shall ensure that the employees, officers, representatives or advisers of the Concession Operator to whom the Confidential Information is disclosed comply with this clause 14; and

### as may be required by law, court order or any governmental or regulatory authority, and shall notify the Council straight away that it has been so required.

## No party shall use the Confidential Information for any purpose other than to perform its obligations under this agreement.

## The Concession Operator shall return or destroy all Confidential Information on Termination or Expiry of the agreement or when the Council requests.

# Termination

## Subject to the provision of clause 29 (Force Majeure) the Council may terminate the agreement with immediate effect by notice in writing to the Concession Operator on or at any time if:

### the Concession Operator becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;

### the Concession Operator is convicted of a criminal offence;

### the Concession Operator ceases or threatens to cease to carry on its business;

### the Concession Operator has a change in control (as defined in section of 1124 of the Corporation Tax Act 2010);

### there is a risk or genuine belief that reputational damage to the Council will occur as a result of the agreement continuing;

### the Concession Operator is in breach of any of its obligations under this agreement that is capable of remedy and which has not been remedied to the satisfaction of the Council within 15 Business Days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied;

### there is a material or substantial breach by the Concession Operator of any of its obligations under this agreement or the Licence which is incapable of remedy;

### the Concession Operator commits persistent minor breaches of this agreement whether remedied or not;

### persistent, valid complaints continue to be made to the Council about the quality of the service provided by the Concession Operator and the Concession Operator, having received notice of such complaints, fails to improve such service to the reasonable satisfaction of the Council;

### if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply; or

### the Licence is terminated.

## The Council reserves the right to terminate the agreement in whole or part in the case of termination under clause 15.1.

## Without prejudice to any rights that have accrued under this agreement or any of its remedies the Council may at anytime terminate this agreement by giving not less than two months’ written notice to the Concession Operator.

## In the event that at any time Charges are overdue for payment the Concession Operator will have committed a default for which the Council can terminate this agreement by giving 20 Business Days written notice to the Concession Operator. In the event that the Concession Operator remedies such a default within the 20 Business Day period the Council’s notice to terminate this agreement shall be deemed to have been withdrawn.

# Consequences of termination

## If this agreement is terminated (or expires) in whole or in part for any reason the Concession Operator shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council’s request, a replacement Concession Operator.

## Any termination or expiry of this agreement shall not affect any rights or liabilities that have accrued prior to such termination.

## On termination or expiry of this agreement for any reason, the Concession Operator shall:

### immediately pay the Council the full amount of all sums due from the Concession Operator to the Council together with any interest payable in accordance with clause 4.3;

### cease to operate the Concession Operator's Business from the Premises and not hold the Concession Operator out as a Concession Operator of the Council or do anything that may indicate any relationship between them and the Council;

### immediately cease using the Council’sname and logo, take all necessary steps to ensure that templates are returned to the Council or secured destroyed and that reference to the Council and the Servicesis removed from written materials; and will not make any spoken public representations about the Council or the Services.

### provide contact details or a list of regular suppliers;

### pay all debts owing to creditors of the Concession Operator's Business operated under this agreement from the Premises;

# Indemnity

The Concession Operator shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Council arising out of or in connection with the negligence, omission or default of, or breach or negligent performance or non-performance of this agreement by, the Concession Operator, its employees, agents or sub-contractors.

# Entire agreement

## This agreement, the Licence, Tender and any documents referred to in it or annexed to it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

## If there is an inconsistency between the terms of this agreement and the Tender, or any other documents referred to in it or annexed to it, the terms of this agreement shall prevail.

## Each party warrants to the other that, in entering into this agreement and the documents referred to in it or annexed to it, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in this or those documents.

## Nothing in this clause shall limit or exclude any liability for fraud.

# prevention of bribery

## The Concession Operator represents and warrants that neither it, nor to the best of its knowledge any Concession Operator's Personnel, have at any time prior to the Commencement Date:

### committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Concession Operator shall not during the term of this agreement:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## The Concession Operator shall during the term of this agreement:

### establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under clause 19.3(a) and make such records available to the Council on request.

## The Concession Operator shall immediately notify the Council in writing if it becomes aware of any breach of clause 19.1 and/or clause 19.2, or has reason to believe that it has or any of the Concession Operator's Personnel have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

## If the Concession Operator makes a notification to the Council pursuant to clause 19.4, the Concession Operator shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 8.

## If the Concession Operator is in Default under clause 19.1 and/or clause 19.2, the Council may by notice:

### require the Concession Operator to remove from performance of this agreement any Concession Operator's Personnel whose acts or omissions have caused the Default; or

### immediately terminate this agreement.

## Any notice served by the Council under clause 19.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

# Data protection

## The Concession Operator shall (and shall procure that any of its Employees involved in the provision of the Service) comply with the Data Privacy Laws.

# Freedom of information

## The Concession Operator acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, FOIA and EIR and shall assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations.

## The Concession Operator shall and shall procure that any sub-contractors shall:

### Transfer to the Council any Request for Information that it receives as soon as practicable and in any event within two Business Days of receipt.

### Provide the Council with a copy of all information in its possession, or under its control in the form that the Council requires within five Business Days (or such other period as the Council may specify) of the Council’s request; and

### Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance as set out in section 10 of the FOIA or regulation 5 of the EIR.

## The Council shall be responsible for determining in its absolute discretion despite any other provisions of this agreement or any other agreement whether Commercially Sensitive Information and/or other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the EIR.

## In no event shall the Concession Operator respond directly to a Request for Information unless expressly authorised in writing to do so by the Council.

## The Concession Operator acknowledges that (despite the provisions of clause 14 (Confidentiality) the Council may be obliged under the FOIA, or the EIR to disclose information concerning the Concession Operator or the Services:

### In certain circumstances without consulting the Concession Operator; or

### Following consultation with the Concession Operator and having taken their views into account.

## Where clause 21.5(a) applies the Council shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the Concession Operator advance notice, or failing that, to draw the disclosure to the Concession Operator’s attention after any such disclosure.

## The Concession Operator shall make sure that all information relating to the Concession Operator's Business, the Services and this agreement is retained for disclosure in accordance with any record keeping obligations imposed upon the Concession Operator under this agreement and shall permit the Council to inspect such information as requested from time-to-time.

## The Concession Operator acknowledges that the designation of information as Commercially Sensitive Information is indicative only and that the Council may be obliged to disclose it in accordance with this clause 21.

# Environmental health and Health and safety

## The Concession Operator shall comply with all environmental health and health and safety legislation in force from time to time and any specific health and safety policies as required by the Council from time to time.

## The Concession Operator shall use its best endeavours to ensure compliance with Best Industry Practice relating to environmental health and safety and/or best practice guidance or equivalent as issued from time to time by the Health and Safety Executive.

# Intellectual property

## It is a condition of the agreement that in undertaking the Business and delivering the Services from the Premises the Concession Operator will not infringe any Intellectual Property Rights of any third party or the Council and the Concession Operator shall during and after the Term indemnify and keep indemnified without limitation the Council against all liabilities, actions, losses, claims and proceedings, which the Council may suffer or incur as a result of or in connection with any breach of this clause 23, except to the extent that any such claim relates to the act or omission of the Council.

## The Council hereby consents to the Concession Operator using the Council’s name and logo in the circumstances set out in Schedule 2, provided always that the Concession Operator complies with all reasonable branding guidelines issued by the Council from time to time.

# TUPE and Re-Tendering

## The Council and the Concession Operator agree that the expiry or termination of part or all of the Services may constitute a relevant transfer under TUPE, in which event the contracts of employment (other than in respect of any occupational pension scheme to the extent that such rights are excluded from transfer by TUPE) of the Employees (other than an Employee who opts not to transfer under the TUPE) shall have effect after the Transfer Date as if originally made between each such Employee and the Council or the Successor Concession Operator.

## The Concession Operator shall discharge all obligations in relation to each of the Employees in respect of all Remuneration accrued or payable up to and including the Transfer Date. The Council shall use its reasonable endeavours to procure that the Successor Concession Operator shall discharge all obligations in relation to each of the Employees in respect of all Remuneration which accrue and are payable in respect of the period after the Transfer Date.

## The Concession Operator shall indemnify the Council (for and on behalf of itself and any Successor Concession Operator) against all claims brought against it (or them) and all losses and costs incurred by it (or them) arising out of or in connection with:

### any act, omission, breach or default of the Concession Operator on or before the Transfer Date in respect of any of its obligations or duties to or in relation to any of the Employees;

### any failure by the Concession Operator to inform and consult with the Employees and/or their representatives pursuant to its obligations under the TUPE, except to the extent that any such failure arises as a result of the Council's failure to comply with its obligations under regulation 13(4) of TUPE; and

### any claim brought or threatened against the Council or any Successor Concession Operator by any employee (other than an Employee) or former employee of the Concession Operator.

## The Council shall indemnify the Concession Operator against all claims brought against it and all losses and costs incurred by it arising out of or in connection with:

## any act, omission, breach or default of the Council after the Transfer Date in respect of any of its obligations or duties to or in relation to any of the Employees; and

## any failure by the Council to comply with its obligations under regulation 13(4) of the Employment Regulations.

## In the period following the receipt of any notice of termination in the event this Agreement is terminated early or in the 12 month period prior to the expiry of this Agreement, the Concession Operator shall not without the Council's prior written consent (such consent not to be unreasonably withheld):

## terminate or give notice to terminate the employment of any Employee (except where such termination is due to misconduct by that employee); or

## withdraw any such Employee from the performance of the Services; or

## recruit any person or re-deploy any other employee or worker to work wholly or mainly in the provision of the Services; or

## vary they contractual terms of employment (including for the avoidance of doubt but without limitation, the salaries and the provision of any other benefit) of any Employee.

## In the event of expiry or termination of this agreement or whenever reasonably requested by the Council in preparation for re-tendering arrangements the Concession Operator shall provide to the Council or any Successor Concession Operator free of charge such assistance as the Council or Successor Concession Operator may require and any information the Council or Successor Concession Operator may request in relation to the Services and/or Employees involved in their performance including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

## The Concession Operator authorises the Council to pass any information supplied under clause 24.6 to any Successor Concession Operator or potential Successor Concession Operator and the Concession Operator shall secure all necessary consents from the relevant personnel in order to do this.

## The Concession Operator will keep the Council (for itself and on behalf of any Successor Concession Operator) indemnified in full against all liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

# Transparency

## The Council and the Concession Operator acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the text of this agreement, and any Schedules to this agreement are not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the agreement or its Schedules are exempt from disclosure in accordance with the provisions of the FOIA.

## Notwithstanding any other term of this agreement, the Concession Operator hereby gives its consent for the Council to publish this agreement and its Schedules in their entirety, including from time to time agreed changes to the agreement, to the general public in whatever form the Council decides.

# Assignment and subcontracting

## The Concession Operator shall not, except with the prior written consent of the Council (such consent shall be exercised at the Council’s absolute discretion):

## assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement; nor

## sub-contract the whole or any part of its obligations under this agreement.

## In the event that the Concession Operator enters into any sub-contract in connection with this agreement it shall:

### Remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of the sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;

### Impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the sub-contractor complies with such terms; and

### Provide a copy, at no charge to the Council, of any sub-contract on receipt of a request for such by the Council.

## The Council shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

# Third party rights

## No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

# No partnership or agency

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the party, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

# Force majeure

## Subject to the remaining provisions of this clause 29, neither party shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

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

### Give notice in writing of such delay or prevention to the other party as soon as possible stating the commencement date and extent of such Force Majeure Event, the cause thereof and its estimated duration;

### Use all reasonable endeavours to mitigate the effects of such Force Majeure Event on the performance of its obligations under this agreement; and

### Resume performance of its obligations as soon as reasonably possible after the removal of the Force Majeure Event.

## 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.

## The Concession Operator cannot claim relief if the Force Majeure Event is one which a reasonable concession operator should have foreseen and taken steps to prevent or minimise.

## As soon as reasonably practicable following the affected party’s notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Concession Operator 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.

## The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## The Council may, during the continuance of the Force Majeure Event, terminate this agreement by written notice to the Concession Operator if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 15 Business Days.

## Without Prejudice to the contents of this clause 29, the Council reserves the right, to close the Park (either the whole or in part) in circumstances in which, acting reasonably, it considers to be necessary having regard to its obligations to the National Trust, the general public and to its roles and responsibilities as a Local Authority.

# Set-off

## All amounts due under this agreement from the Concession Operator to the Council shall be paid in full without any deduction or withholding other than as required by law. The Concession Operator shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

## The Council may, at any time or times, without notice to the Concession Operator, set off any liability of the Concession Operator to the Council against any liability of the Council to the Concession Operator, in either case, whether under this agreement or otherwise. Any exercise by the Council of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this agreement or otherwise.

# Severance

## If any of the provisions in this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

## If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary in the reasonable opinion of the Council to make it legal, valid and enforceable and, to the greatest extent possible, to give effect to the commercial intention of the parties.

## The parties agree, in the circumstances referred to in clause 31.1 and if clause 31.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves, to the greatest extent possible, the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this agreement shall be suspended while an attempt at such substitution is made.

# Variation

No variation of this agreement or of any document referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives). Any such variation shall be appended to Annex B upon its agreement.

# Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

# Notices

## Subject to clause 34.6 below a notice or other communication given to a party under or in connection with this agreement shall be:

### in writing;

### signed by or on behalf of the party giving it;

### sent to the party for the attention of the person at the address, or fax number specified in this clause (or to such other person or to such other address, or fax number as that party may notify to the others, in accordance with the provisions of this clause); and

### either:

#### delivered personally;

#### sent by commercial courier;

#### sent by pre-paid first class post or recorded delivery; or

#### sent by fax.

## The addresses for delivery of a notice or other communication is as follows:

### Council:

#### Address: Tatton Park, Knutsford, Cheshire WA16 6QN

#### for the attention of: The General Manager

### Concession Operator:

#### address:

#### for the attention of:

#### position:

## If a notice or other communication has been properly sent or delivered in accordance with this clause, it shall be deemed to have been received as follows:

### if delivered personally, at the time of delivery; or

### if sent by commercial courier, at the time of signature of the courier's delivery receipt; or

### if sent by pre-paid first class post or recorded delivery, 9.00 am on the second Business Day after posting; or

### if sent by fax, at the time of transmission.

## For the purposes of this clause, if deemed receipt is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.

## To prove delivery, it is sufficient to prove that:

### if sent by pre-paid first class post, the envelope containing the notice or other communication was properly addressed and posted; or

### if sent by fax, the notice or other communication was transmitted by fax to the fax number of the relevant party.

## The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## A notice or other communication required to be given under, or in connection with, this agreement shall not be validly given if sent by e-mail.

# Alternative dispute resolution

## Subject to clause 35.7 below, any dispute or claim (including non-contractual disputes or claims) between the Council and the Concession Operator arising out of or in connection with this agreement or its subject matter or formation (“**Dispute**”), shall be resolved by the parties in accordance with the provisions of this clause 35.

## Firstly the parties shall each use reasonable endeavours to resolve a Dispute by means of prompt discussion at an appropriate managerial level.

## If a Dispute is not resolved within 15 Business Days of referral under clause 35.2 then either party shall refer it to the chief executive or appropriate nominated officer of each party (Nominated Officer) for resolution. The Nominated Officers shall meet within 15 Business Days of such referral.

## Where a Dispute is not resolved by the Nominated Officers within 15 Business Days of their meeting in accordance with clause 35.3, it shall be referred at the request of either party for mediation to a mediator. The mediator shall be appointed by agreement between the parties or in the absence of such agreement, by the Centre for Dispute Resolution (CEDR) within 15 Business Days of a party's request for mediation. Unless otherwise agreed by the parties, in any mediation each party shall bear its own costs, and the charges and expenses of CEDR and the mediator shall be borne equally by the parties.

* 1. Mediation shall be facilitative and shall be conducted using a sole mediator in or substantially in accordance with an agreement to be entered into between the parties and the mediator in the form of the Model Mediation Agreement of CEDR incorporating CEDR's Model Mediation Procedure current at the time of issue of the request to mediate issued under clause 35.4.
  2. If the parties fail to reach agreement in the mediation within 20 Business Days of the mediator being appointed or such longer period as the parties may agree in writing, then either party may refer the dispute to the court in accordance with clause 35.9 below.

## Nothing in this clause shall preclude either party from applying at any time to the English Courts for such interim or conservatory measures as may be considered appropriate.

## The parties shall continue to perform their respective obligations under this agreement pending the resolution of a Dispute, and nothing in this clause 35 or clause 36 prevents or restricts a party from lawfully exercising any of its termination rights at any time in accordance with this agreement.

## In the event that the parties are unable to resolve a Dispute by the application of the provisions set out in this clause 35, either party may elect to seek recourse through the courts of England in accordance with clause 36 below.

# Further assurance

The Concession Operator shall (and shall use all reasonable endeavours to procure that any necessary third party shall) (at their own expense) promptly execute and deliver all such documents, and perform such acts, as the Council may, from time to time, reasonably require for the purpose of giving full effect to this agreement.

# Governing law and jurisdiction

## This agreement and any Dispute shall be governed by and construed in accordance with the law of England and Wales.

## Subject to clause 35 above, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.

Signed for and on behalf of )

**CHESHIRE EAST BOROUGH COUNCIL** )

Signature………………………………………………

Print Name………………………………………

Title………………………………………………..

Signed by )

)

......…………………....…………...........

Signature

......…………………....…………...........

Printed name

......…………………....…………...........

Signature of Witness

Name.................................................................................................................................................

Address.....................................................................................................................................................

……………………………………………………………………………………………………………………………………………………………

Occupation................................................................................................................................................

(Print details as per above)



**Plan 1 Plan 2**



**SPECIFICATION AND TENDER RESPONSE**

**The base Licence Fee charge and Additional Licence Fee Charge shall become due and payable as set out in the Licence**



**HOURS OF OPERATION**

1. The Services at the Premises will be provided during the normal opening hours of the Park which are as follows:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Mon | Tues | Weds | Thurs | Fri | Sat | Sun | Bank hols |
| High Season | 10.00 – 19.00 | 10.00 – 19.00 | 10.00 – 19.00 | 10.00 – 19.00 | 10.00 – 19.00 | 10.00 – 19.00 | 10.00 – 19.00 | 10.00 – 19.00 |
| Low Season | closed | 10.00 – 17.00 | 10.00 – 17.00 | 10.00 – 17.00 | 10.00 – 17.00 | 10.00 -17.00 | 10.00 – 17.00 | 10.00 – 17.00 |

High Season and Low Season for the duration of the Term are as follows:

|  |  |  |
| --- | --- | --- |
| Year | Low | High |
| 2019-20 | 16h Sept 2019 – 27th Mar 2020 | 28th Mar 2020 – 31st Oct 2020 |
| 2020-21 | 1st Nov 2020 – 28th Mar 2021 | 29th Mar 2021 – 31st Oct 2021 |
| 2021-22 | 1st Nov 2021 – 27th Mar 2022 | 28th Mar 2022 – 30th Oct 2022 |
| 2022-23 | 31st Oct 2022 – 24th Mar 2023 | 25th Mar 2023 – 16th Sept 2023 |

The Park is open every day except Christmas Day and on Mondays during Low Season.

The opening hours of Tatton Park as advertised and updated on the Tatton Park website provide the maximum operational hours for the Licensee unless agreed with the General Manager of Tatton Park.

2. The Services for the Events will be provided by agreement.

1. The Licence
2. Variations

During the term of this Agreement any contractual variations shall be annexed with full details and the date upon which the variation shall come into effect.