



# STANDARD TERMS OF BUSINESS FOR TRADING PARTNERS AT A MERCATO METROPOLITANO SITE

Edition 101/21

These Standard Terms of Business will apply to Trading Partners and the Company in connection with the Trading Partner's Business in a site of the Company in the United Kingdom. These Terms of Business and the Contract Letter in relation to each Trading Partner explain the basis upon which the Trading Partner and the Company will work together during the term of the Agreement.

These Terms of Business supersede and replace any previous commercial arrangements, terms and conditions and terms of business between the Trading Partner and the Company, save as for the Contract Letter, which is amended by the parties to it in accordance with its terms.

In these Standard Terms of Business and in the relevant Contract letter "we", "us" and "the Company" refer to the company defined as such in the Contract Letter and "you" refers to the Trading Partner.

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## 1 Definitions and Interpretation

1.1 In these Standard Terms of Business and in the Contract Letter, the following terms have the following meanings:

<b>Affiliate</b>	in relation to a Party, any entity or person that controls, is controlled by, or is under common control with that Party. For the purposes of this definition, "control" shall mean direct or indirect beneficial ownership of 50% (or, outside a Party's home territory, such lesser percentage as is the maximum, permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that entity or person, as the case may be.
<b>Administrative Charge</b>	has the meaning given to that term in the Contract Letter, if such term is mentioned therein.
<b>Agreement</b>	the Contract Letter and these Standard Terms of Business, including any document referred to in the Contract Letter.
<b>Applicable Laws</b>	means:  (i) all statutes, statutory instruments, by-laws, orders, directives, treaties, decrees or laws, including common law principles, judgments, demands, orders or decisions of any court, regulator or tribunal; including occupational health and safety requirements, legislation relating to food, the Bribery Act 2010 and data protection laws, in force in the UK from time to time;  (ii) legally binding rules, policy, guidance or recommendations issued by any UK governmental, statutory or regulatory body and/or  (iii) legally binding industry code of conduct or guideline,  in each case, which relates to any matter set out, or referred to, in this agreement.
<b>B2B Contract</b>	as such term is defined in Clause 13.6 below.
<b>Brexit</b>	Brexit is an abbreviation for "British exit," and refers to the UK's decision in a referendum held on 23 June 2016 to leave the European Union (EU). For the purpose of the Agreement, the term Brexit indicates the effective exit of the UK from the EU in whatever form and under any conditions.
<b>Bribery Act</b>	the UK Bribery Act 2010, as amended;
<b>Business Day</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for regular, non-automated business.
<b>Catering Areas</b>	means the areas within the MM Premises marked as 'catering areas' in the MM Premises plan annexed to the Contract Letter, including such changes to the catering areas that the Company may communicate to the Trading Partners from time to time.
<b>Claims</b>	all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).
<b>Commencement Date</b>	the date indicated in the Contract Letter as the 'Commencement Date'.
<b>Company</b>	has the meaning given to such term in the Contract Letter.
<b>Company FoH Staff</b>	has the meaning given to that term in clause 0.
<b>Company's Commission</b>	as such term is defined in the Contract Letter.

<b>Confidential Information</b>	Means, in relation to a Party, all information of a confidential and/or proprietary nature in respect of that Party's business which are not in the public domain other than a result of the breach of the Agreement, including (i) all information expressly designated by such Party as being of a confidential, secret or sensitive nature, and (ii) information concerning that Party's relationships with its actual or potential clients or suppliers, any technical, commercial and financial information, business methods, price strategies, development plans, computer systems and software, product and/or catering services development strategies, know-how, trade secrets or market opportunities
<b>Consultant</b>	an employee, agent, consultant, representative or Affiliate of the Company indicated by the Company to the Trading Partner with such designation.
<b>Contract Letter</b>	a contact letter signed between the Company and the Trading Partner pursuant to which the Company agrees to make available the Kiosk to the Trading Partner on the terms and conditions of the Agreement.
<b>Deposit</b>	has the meaning given to that term in the Contract Letter.
<b>Electronic Receipts</b>	means cash receipts from electronic payments effected by customers by debit cards, credit cards, electronic wallets, Apple Pay, Android Pay and other similar electronic means collected into a Company's ring-fenced collection account.
<b>Indemnified Party</b>	has the meaning given to that term in clause 27.
<b>Initial Contract Period</b>	has the meaning given to that term in the Contract Letter.
<b>Kiosk</b>	means the commercial area allocated to the Trading Partner within the MM Premises, as indicated and defined in the Contract Letter and in Appendix 2 thereof, which, for the avoidance of doubt, shall refer to an approximate area (not a precise delimitation) within which the Trading Partner is allowed to conduct the Trading Partner's Business, as this may change from time to time in accordance with the Agreement.
<b>Landlord</b>	means the person entitled to the superior interest in land of the MM Premises with which the Company has entered into a lease or other similar agreement.
<b>Late Payment Notice</b>	as such term is defined in clause 16.2 below.
<b>Lease</b>	means the lease or similar title in land owned by the Company in relation to the MM Premises.
<b>Losses</b>	all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.
<b>Minimum Sales Amount</b>	as such term is defined in the Contract Letter and referred to in clause 14.2 below.
<b>MM Health and Safety Policy</b>	The health and safety requirements and policy in force at the MM Premises kept by the Company, as shall be made available to the Trading Partner from time to time.
<b>MM Premises</b>	has the meaning given to that term in the Contract Letter.
<b>MM Regulations</b>	the regulations, codes of conduct and ethical codes provided to the Trading Partner in relation to the relevant MM Premises, as may be amended at the discretion of the Company from time to time.
<b>NCASS</b>	means The Nationwide Caterers Association.
<b>Parties</b>	the Trading Partner (or Trading Partners), the Company and, if applicable, any additional party to the Contract Letter, and "Party" shall mean either one of them.
<b>Quality Control Inspection</b>	as such term is defined in clause 12.2 below.
<b>Quality Control Report</b>	as such term is defined in clause 12.3 below.
<b>Quarter</b>	a period of three consecutive calendar months.
<b>Quarter Date</b>	The last day of March, June, September or December in each calendar year.

<b>Reduced Company's Commission</b>	has the meaning given to that term in the Contract Letter, if such term is mentioned therein.
<b>Set-up Fee</b>	means the fee Trading Partner's capital contribution to the cost of setting up the Kiosk and initial marketing costs, as such Set-up Fee shall be specified in the Contract Letter.
<b>Site Manager</b>	means the person or persons (including their respective deputies and interim replacement) designated by the Company as 'site manager' or 'general manager' within the MM Premises, as shall be communicated to the Trading Partner from time to time.
<b>Territory</b>	means Great Britain and Northern Ireland.
<b>TP FoH Staff</b>	has the meaning given to that term in clause 9.1.47.
<b>Trade Starting Date</b>	has the meaning given to that term in the Contract Letter.
<b>Trading Hours</b>	has the meaning given to that term in the Contract Letter.
<b>Trading Partner</b>	the person (or, in the case of more parties, the persons) who signs or is deemed to have accepted a Contract Letter.
<b>Trading Partner Design Guidelines</b>	means the guidelines and manuals which may be appended to the Contract Letter and, if so enclosed, they are identified as 'Trading Partner Design Guidelines' and will form part of the Agreement.
<b>Trading Partner Invoice</b>	as such term is defined in the Contract Letter and referred to in clause 13.2 below.
<b>Trading Partner's Business</b>	means the business conducted by the Trading Partner within the Kiosk or any part of the MM Premises, as indicated in the Contract Letter.
<b>Trading Partner's Equipment</b>	means the equipment to be supplied by the Trading Partner to the Kiosk (or any permitted section of the MM Premises) with the prior written consent of the Company from time to time.
<b>Upper Sales Amount</b>	has the meaning given to that term in the Contract Letter, if such term is mentioned therein.

- 1.2 These Standard Terms of Business form part of the 'Agreement' referred to in each Contract Letter and shall be deemed to be made between the relevant Company and the relevant Trading Partner(s) referred to in the Contract Letter, as though these Standard Terms of Business (as they may be amended and restated in accordance with clause 31 (Amendments)) were expressly set out in the Contract Letter.
- 1.3 A Party to the Agreement means a Party to a Contract Letter and includes its permitted assignees or other transferees under the Agreement and/or the successors in title to substantially the whole of its undertaking and, in the case of an individual, to his or her estate and personal representatives.
- 1.4 A person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists).
- 1.5 A statute or statutory instrument or any of their provisions is to be construed as a reference to that statute or statutory instrument or such provision as the same may have been or may from time to time hereafter be amended or re-enacted.
- 1.6 anything in the Agreement that places an obligation on a Party shall be construed requiring that Party to meet such obligation and to procure that any of its principals, employees, agents, Affiliates and authorised representatives meet such obligation;
- 1.7 the headings to the clauses, schedules and paragraphs of the Agreement are not to affect the interpretation;
- 1.8 where the word "including" is used in the Agreement, it shall be understood as meaning "including without limitation".
- 1.9 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

## 2 Objectives of the Company

- 2.1 The Company is the owner of an interest in land in the MM Premises and has all the necessary consents and permissions to enter into the Agreement.

- 2.2 The intention of the Company is to run the MM Premises as a sustainable and inclusive market for the community in which it operates and to include a number of Trading Partners for the sale of (among other things) food, beverages, produce, merchandise, as well as for the hosting of community and other events to which the Company will provide assistance and a host of services.
- 2.3 As part of its objectives, the Company will enter into Agreements with Trading Partners and each Agreement shall be governed by the corresponding Contract Letter and by these Standard Terms of Business, as may be amended from time to time in accordance with the provisions hereof.
- 2.4 The Company and its group support Trading Partners who strive to produce and sell products free of harmful pesticides and chemicals, Trading Partners who are responsible stewards of the land, the zone and the environment in which the Company operates. The Company encourages the production, manufacturing and sale of produce and products that are free from chemical pesticide, herbicide and additives, and expects all its Trading Partners and other suppliers of produce and food products to adhere to such approach, both in the spirit and in the letter.
- 2.5 In connection with the signing of a Contract Letter and the entry into the Agreement, the Trading Partner will be expected to sign-up to the Join the MMovement manifesto of the Company and its group. The Company expects that the principals and all employees of the Trading Partner working within the MM Premises are aware of the Join the MMovement manifesto and operate in the spirit of the values and principles included therein. In evaluating the Trading Partner's performance and the eventual renewal of an Agreement, the Company will also take into account the extent to which the Trading Partner, its principals and employees operate in harmony with such document.
- 2.6 In order to maintain a positive, collaborative and prosperous atmosphere within the MM Premises and among the Trading Partners, the Company intends to use reasonable endeavours to ensure that Trading Partners admitted within the MM Premises are not in direct competition with each other. By way of an example, the Company aims to avoid that two specific typologies of food products or manufactures such as (without limitation) Neapolitan pizza, Vietnamese pho, Colombian arepa, etc., are placed either next to each other or within the same area. However, the Company cannot guarantee to Trading Partners the exclusivity on food products and manufactures such as sandwiches, pizza, beverages, and so on. Save as otherwise agreed to the contrary in the Contract Letter, nothing contained in the Agreement shall be deemed to grant any product or service exclusivity within the MM Premises to the Trading Partner.
- 2.7 The Company intends to maintain a 'general market' feel by, among other things, designating Kiosks within the market by typology, such as 'bakery', 'ice cream', 'pasta', and so on, rather than by Trading Partners' brand and logos. However, Trading Partners are allowed to display their logos and branding material within their respective Kiosk, with the prior written approval of the Company and in compliance with the terms of the Agreement and provided that the Trading Partners comply at all time with the Trading Partner Design Guidelines.

### **3 The Agreement**

- 3.1 The Contract Letter (including any document listed in the Contract Letter and annexed thereto) and these Standard Terms of Business, as they may be amended from time to time in accordance with clause 31, set out the contractual terms between the Company and the Trading Partner named in the Contract Letter and, together, they constitute the Agreement.
- 3.2 The Agreement shall commence on the Commencement Date and shall terminate in accordance with clause 22 below, unless extended in writing between the Parties.
- 3.3 In the event of an inconsistency between one or more terms of the Contract Letter and these Standard Terms of Business, the terms of the Contract Letter will prevail, but without prejudice to the remaining applicable Standard Terms of Business.

### **4 Trading Partner selection**

- 4.1 The Company may adopt such procedure for the sourcing, selection, vetting and acceptance of new applicants as Trading Partners, as it deems necessary or appropriate from time to time.
- 4.2 A person wishing to apply to become a Trading Partner will be provided by the Company with such documentation, information, application forms and other material which, in the reasonable opinion of the Company are necessary to make an informed decision as to whether to enter into the Agreement in relation to a Kiosk within the MM Premises.
- 4.3 A decision by the Company to reject an application for a Kiosk received from an applicant shall be deemed final and shall not be capable of being appealed.

### **5 Kiosk licence and access to Catering Areas**

- 5.1 Upon the Parties signing the Contract Letter and subject to the Trading Partner complying with the terms of the Agreement, the Company will permit the Trading Partner to occupy the Kiosk for the Permitted Use and to access the Catering Areas, in each case, for the duration of the Initial Contract Period and any renewal period thereafter in common with the Company and all others authorised by the Company (so far as is not inconsistent with the rights given to the Trading Partner in relation to use the Kiosk for the Permitted Use).

- 5.2 The use of and access to the Kiosk and Catering Areas is granted to all Trading Partners on a limited licence basis, subject to the Trading Partners complying with the terms of the Agreement. Nothing in the Agreement is deemed to create, and shall not create, any right for Trading Partner's exclusive use of any part of the Kiosk or Catering Areas, nor shall imply any warranty or guidance as to the manner in which the Company may use the Catering Areas. Where the Company has granted a licence to the Trading Partner in the Contract Letter for the use of additional space within the MM Premises, the Company shall have discretion, if needed, to reallocate, before or at any time after the Commencement Date, a similar area to the Trading Partner within the MM Premises.
- 5.3 Unless otherwise agreed in writing between the Company and the Trading Partner, any occupation of or access to the MM Premises (including, without limitation, the Kiosk and the Catering Areas) shall not constitute or create any interest in land to the Trading Partner, nor shall it create any relationship of landlord and tenant between the Company or the Landlord and the Trading Partner, or create a tenancy for the purposes of Part II of the Landlord and Tenant Act 1954 or any other similar legislation. In the event that a lease or any interest in land amounting to a lease is deemed to be created (whether by operation of law or otherwise), the Trading Partner hereby agrees to unconditionally and irrevocably waive any right it may have to claim the application of such a lease. Where a lease or sub-lease is granted by the Company or otherwise, the provisions of section 24-28 of the Landlord and Tenant Act 1954 are to be excluded from such lease, or similar interest in land. For the avoidance of doubt, the licence to occupy any of the Kiosk and the Catering Areas is not intended to generate any form of rental or other fixed income for the Company. The Company retains control, possession and management of all Kiosks and all parts of the MM Premises, and Trading Partners have no right to exclude the Company from the Kiosks or any part of the Catering Areas.
- 5.4 Notwithstanding clause 3.2 above and unless otherwise agreed in writing by the Company:
- 5.4.1 the Company shall be under no obligation to begin the preparation of the Kiosk until the Company has received from the Trading Partner, in clear and available funds, the Set-up Fee and any other relevant amount, as in each case these are stated in the Contract Letter;
- 5.4.2 the Trading Partner shall not be allowed to take possession of the Kiosk until it has paid to the Company, in clear and available funds, the Deposit if a Deposit is payable in accordance with the Contract Letter.

## **6 Company's obligations**

### **General**

- 6.1 During the term of this Agreement, the Company undertakes that it shall use reasonable commercial endeavours to:
- 6.1.1 make available to the Trading Partner whose application has been accepted in accordance with clause 4 the Kiosk and other facilities expressly indicated in the Contract Letter;
- 6.1.2 provide the Kiosk with a centralised till system to record sales and calculate the Company's Commission, together with 'point of sale' and card reader equipment indicated in the Contract Letter in working order, which, in each case, shall remain the property of the Company at all time. Where the Trading Partner wishes to obtain other points of sale and/or card readers in addition to the points of sale/card readers agreed at the time of the Agreement, the Company may request that the Trading Partner pays a monetary contribution to the cost of such additional equipment, provided that all such equipment shall in any event remain the property of the Company at all time;
- 6.1.3 ensure that the Kiosk and other facilities referred to in clause 6.1.1 are delivered to the Trading Partner on the Commencement Date and, where delays in the delivery date occur for reasons beyond the Company's control, liaise with the contractors engaged to set up the Kiosk and other relevant facilities within a reasonable timeframe;
- 6.1.4 ensure the Trading Partner's enjoyment of the Kiosk and other facilities provided without unreasonable interruption;
- 6.1.5 supply security services which are reasonably appropriate to ensure that the food and beverage stock, equipment, goods and chattels belonging to the Trading Partner are kept safe and secure, provided that it is a responsibility, risk and cost of the Trading Partners to insure their equipment and belonging left within the MM Premises;
- 6.1.6 continue the provision of the utilities and other facilities agreed with the Trading Partner in the Agreement (including waste collection and pest control) without unreasonable interruption and liaise with the relevant contractors to keep the provision of such utilities and facilities in good working order;
- 6.1.7 as the Company acts as the collection agent for the Trading Partner in accordance with the terms of the Agreement, pay to the Trading Partner any monies due pursuant to the Agreement within a reasonable timeframe, as agreed from time to time between the Company and the Trading Partner;
- 6.1.8 perform such marketing and other promotional activities as agreed in the Contract Letter and generally promote the MM Premises, as one undivided market, through such media channels and marketing activities, as the Company may in its discretion resolve from time to time;

- 6.1.9 provide general assistance to each Trading Partner as the Trading Partner may reasonably ask and the Company may agree in connection with launching, advertising, developing and marketing the Trading Partner's business within the MM Premises;
- 6.1.10 mediate disputes among Trading Partners relating to market operations to ensure the smooth and professional operation of the various operators within the MM Premises but, for the avoidance of doubt, excluding any personal or commercial disputes which may arise among Trading Partners entertaining commercial relationships of any sort among themselves, which shall be a responsibility and costs exclusively of the affected Trading Partners to settle.

**Company Front of House Staff Optimisation**

- 6.2 Where, pursuant to the Contract Letter, the Parties have agreed that the provisions of this clause 0 apply, the Company will use its reasonable endeavours to make available front of house staff (for the purpose of this clause 0, the **Company FoH Staff**) to the Trading Partner to operate the Company's centralised till system and effect sales of the menu items comprising the Trading Partner's Business, subject to the following provisions:
  - 6.2.1 the Company FoH Staff will be employees or agents of the Company and not of the Trading Partner, nor there will be any express or implied partnership, agency or similar arrangements between the Parties;
  - 6.2.2 the Company and the Trading Partner shall cooperate in good faith to ensure that the Company FoH Staff is properly trained by both Parties and provided by the Trading Partner with the necessary knowledge to allow the Company FoH Staff to efficiently sell the menu items comprising the Trading Partner's Business at all time;
  - 6.2.3 where the training or transmission of information to the Company FoH Staff by the Trading Partner referred to in clause 6.2.2 above constitute Confidential Information, the Trading Partner shall inform the Company FoH Staff and the Site Manager of the provision of such Confidential Information and the Company shall use its reasonable endeavours to ensure that the Company FoH Staff and the Site Manager comply with the provisions of clause 24 below (Confidentiality). For the avoidance of doubt, the mere discussion by the Company FoH Staff with other trading partners or with the Company and its Associates of matters and tactics required or desirable for the maximisation of the sales within the MM Premises shall not constitute a breach of clause 24;
  - 6.2.4 the Company FoH Staff are expected to use their reasonable commercial endeavours to maximise the performance of the sales of all trading partners, including (among other things) by adopting cross selling and upselling techniques, although, for the avoidance of any doubt, neither the Company, nor the Company FoH Staff or their respective Associates warrant any specific level of sales or performance to the Trading Partner or the other trading partners, other than the aim to act in the best interest of the business within the MM Premises as a whole;
  - 6.2.5 where any contentious issue or difference of opinions and intent in the course of regular business within the MM Premises arise between the Trading Partner and the Company FoH Staff, the Trading Partner and the Company shall use their reasonable endeavours to address such contentious issue or difference of opinions in a professional manner;
  - 6.2.6 the Company and the Trading Partner may agree variations to the provisions of this clause 0 from time to time in writing; and
  - 6.2.7 the Company may elect to terminate part or all of the services it provides to the Trading Partner at any time by giving at least fourteen (14) days' notice in writing to the Trading Partner.

**7 Deposit**

- 7.1 Upon the Parties signing the Contract Letter, the Trading Partner shall pay to the Company within five Business Days and in clear funds any Deposit indicated in the Contract Letter as continuing security for the performance of the Trading Partner's obligations under the Agreement.
- 7.2 The Company shall hold any Deposit free of any interest and shall be entitled to use the Deposit solely as permitted by the Agreement.
- 7.3 Where the Company uses part or all of the Deposit to make good of any breach of the Agreement on the part of the Trading Partner, as permitted by the Agreement, the Trading Partner shall provide the Company with any such amount used by the Company necessary to restore the Deposit, in clear funds within five Business Days of receiving a written demand from the Company. The Trading Partner acknowledges and agrees that, failure to comply with this clause 7.3, constitutes a material breach of the Agreement.
- 7.4 The Company shall return any Deposit held to the Trading Partner within 14 Business Days from the termination of the Agreement but shall be entitled to withhold from the Deposit such proportion of the Deposit as may be reasonably necessary to:
  - 7.4.1 make good of any damage or restoration work required to the Kiosk or the Catering Areas caused by the Trading Partner or any of its Affiliates;
  - 7.4.2 recoup any unpaid amount due by the Trading Partner to the Company pursuant to or arising out of the Agreement; or

- 7.4.3 meet any payment or other obligation contracted by a Trading Partner at the Kiosk which remain unpaid (or for which demand for satisfaction is received at the MM Premises) as at the date of the termination of the Agreement, including (without limitation) any amount due pursuant to clause 14.6 below.

## **8 Set-up Fee**

Upon the Parties signing the Contract Letter, the Trading Partner shall also pay to the Company within five Business Days in clear funds the Set-up Fee (if any is indicated in the Contract Letter), which shall be non-refundable other than as provided in clause 23.5 below.

## **9 Trading Partner's obligations**

- 9.1 During the term of this Agreement, the Trading Partner undertakes that it shall:

### **Conduct of business**

- 9.1.1 perform the Trading Partner's Business to high standards of quality, service, ethics and in accordance with the terms of the Agreement;
- 9.1.2 open and close the Trading Partner's Kiosk or other location indicated in the Contract Letter in accordance with the time specified within the MM Regulations;
- 9.1.3 use only reputable suppliers and provider of goods and services required in connection with the Trading Partner's Business who, among other things, are covered by suitable public liability insurance in relation to such supplies;
- 9.1.4 comply with guidelines on access and egress from the MM Premises, delivery and collection times and such other policies, practices, procedures and guidelines relating thereto, as may be communicated by the Company to the Trading Partner from time to time;
- 9.1.5 not provide, through any medium, misleading, fraudulent or reckless information to customers of the Trading Partner regarding the products and services provided as part of the Trading Partner's Business;
- 9.1.6 use, for the purpose of recording sales and collect payments therefrom, only the till system and electronic payment equipment provided for or arranged by the Company, and where any sales are not capable of being recorded in the till system provided by the Company (for instance, sales made through third-party delivery services, such as Deliveroo, Uber Eats, etc.), cooperate with the Company to facilitate the integration of all sales into the till system provided by the Company or, in the absence of such integration, report to the company about all sales made outside of the Company's till system on a monthly basis no later than the third business day of each month;
- 9.1.7 use uniforms required and/or supplied by the Company in accordance with the MM Regulations and keep the same in clean conditions and in good repair;

### **Use of premises**

- 9.1.8 if Trading Partner Design Guidelines are included in the Contract Letter, strictly comply with the same in all respect;
- 9.1.9 not carry out any alterations, additions or improvements to or install any equipment within the Kiosk or the Catering Areas, nor use any contractor not specifically approved by the Company, in each case, without the prior written consent of the Company;
- 9.1.10 not install or use any electrical or electronic equipment or apparatus within Catering Areas so as to interfere with radio or television reception or with internal radio communications;
- 9.1.11 not to use or connect to the electricity supply and/or the water supply in a manner other than that prescribed by the Company in the Agreement or as expressly authorised in writing by the Company from time to time, noting that no electrical or plumbing work shall be carried out within the MM Premises other than by the Company's authorised personnel;
- 9.1.12 not overload or obstruct any pipes or conducting media within the MM Premises, nor discharge into any pipes or conducting media any oil or grease or any noxious or deleterious substance which may cause an obstruction or become a source of hazard to the environment or damage the pipes, conducting media or the drainage system;
- 9.1.13 not bring into any part of the MM Premises anything which is or is likely to become dangerous, combustible, radioactive or explosive or which might increase the risk of fire or explosion or which would cause or be likely to cause nuisance, annoyance, disturbance or damage the MM Premises without the prior written consent of the Company;
- 9.1.14 not use any naked flames of any description within the MM Premises without prior written consent of the Company;
- 9.1.15 not use any part or parts of the MM Premises otherwise than in connection with the Permitted Use, nor for any purpose or activity which is illegal, immoral, noisy, noxious, disruptive, discriminatory in

- any way, derogatory or offensive to any person present at the MM Premises for whatever reason or neighbouring residents;
- 9.1.16 unless otherwise authorised in writing by the Company, not to use any address of the MM Premises as registered office address of the Trading Partner's company or entity, nor of any other company or entity, provided that the Trading Partner is authorised to use the address of the MM Premises as a business address solely for the purpose of conducting the Trading Partner's Business in accordance with the Agreement;
- 9.1.17 not sub-let or sub-licence the Kiosk or any other facilities provided by the Company to the Trading Partner pursuant to the Agreement, nor allow any person other than the Trading Partner and its employees and staff to occupy such Kiosk and facilities without the prior written consent of the Company;
- 9.1.18 not to display any signs or notices on the without the prior written consent of the Company;
- 9.1.19 take all necessary measures to comply with the security measures outlined in the MM Regulations and/or notified to the Trading Partner from time to time;
- 9.1.20 not to use any liquid propane gas or any other volatile or flammable materials in any part of the MM Premises without the prior written consent of the Company;
- 9.1.21 keep the Catering Areas adjacent to the Kiosk in a clean and tidy condition at all times, ensuring routine cleaning is carried out pre, during and post trading;
- 9.1.22 not to allow any oil or other substances (other than clean water) to spill within the Kiosk or any parts of the MM Premises or drainage system;
- 9.1.23 allow the security staff present at the MM Premises to search any delivery and service vehicle prior to entering the MM Premises, as such security staff may reasonably deem appropriate or desirable in the interest of security;
- 9.1.24 not dispose of any used oil, chemicals or other substances which may cause environmental damages through sinks or drains but dispose of the same in accordance with Applicable Law;
- 9.1.25 not affixing padlocks, nor replacing any such padlocks previously installed in any part of the MM Premises (including, without limitation, the Kiosk), in each case, without the prior written consent of the Company and the provision to the Company of a copy of the key relating to the padlock (or the opening code), being understood that in the event of a breach of this provision on the part of the Trading Partner, the Company shall have the right to forcefully remove any such padlock without notice to the Trading Partner;
- 9.1.26 not to play any loud music or create any nuisance without the prior written consent of the Company;
- 9.1.27 ensure that all vehicles brought on to any part of the MM Premises by the Trading Partner or any of the Trading Partner's employees or Affiliates are roadworthy and validly taxed and insured;

### **Compliance**

- 9.1.28 comply with, and ensure that all Trading Partner's principals, staff and employees comply with:
- (i) all Applicable Laws, regulations and industry best practice applicable in the United Kingdom to the Trading Partner's Business;
  - (ii) all health, safety and hygiene working practices and, at minimum, with all applicable provisions of the MM Health and Safety Policy; and
  - (iii) the MM Regulations, as the same may be amended from time to time;
- 9.1.29 except as otherwise specifically provided in the agreement, obtain and maintain at all time all necessary food and hygiene licenses, permits and consents necessary for carrying on of the Trading Partner's Business and the operation of the Trading Partner's Equipment;

### **Insurance**

- 9.1.30 at its own costs and no later than on the Commencement Date, obtain from a reputable insurer and maintain for the duration of the Agreement:
- (i) an appropriate amount of insurance cover against damages resulting from fire or other accidents to all Trading Partner's fittings and contents of the Kiosk, as well goods and materials kept by the Trading Partner within the MM Premises; plus
  - (ii) a third party and product liability insurance with no less than £5,000,000 (five million pound sterling) cover; plus
  - (iii) unless otherwise agreed with the Company in writing, employer's liability insurance with no less than £10,000,000 (ten million pound sterling) cover.
- 9.1.31 The Company recommends that Trading Partner also take out a wider business cover in insure against (among other things) loss of income and stock in the event of electricity cuts or other

intervening event that may result in a business interruption, it being agreed and understood by the Trading Partners entering into a Contract Letter that the Company and its Affiliates shall not be responsible to the Trading Partner for any such losses referred to in this sub-clause 9.1.31;

**Equipment, Fittings and Materials**

- 9.1.32 at its own costs, supply, install and keep in good working order, all Trading Partner's Equipment required for the purpose of conducting the Trading Partner's Business using exclusively contractors approved by the Company (unless otherwise agreed by the Company in writing before engaging non-approved contractors);
- 9.1.33 keep the Kiosk and all equipment provided by the Company to the Trading Partner at the start of the Agreement and from time to time in good repair and condition and shall immediately report any mechanical breakdown, malfunction, failure or damage to the Company;
- 9.1.34 not remove any equipment from the Kiosk, Catering Areas or MM Premises otherwise than with the prior written consent of the Company;
- 9.1.35 not use any of the Kiosk, the fixtures and equipment provided by the Company or the Trading Partner's Equipment other than for the purpose of the Trading Partner's Business and for the Permitted Use, unless otherwise authorised in advance by the Company in writing;
- 9.1.36 not tamper, modify or dismantle any equipment or system provided for or arranged by the Company pursuant to the Agreement;
- 9.1.37 ensure that any extraction system fitted within the Kiosk is (i) effective and sufficiently powerful for the full extraction of fumes from the Kiosk and (ii) properly maintained in accordance with the manufacturer's instructions and, in any event that at no time does the extraction system become a fire or risk hazard;
- 9.1.38 subject to any special term contained in the Contract Letter, where any other equipment is provided by the Company to the Trading Partner, ensure that such equipment is properly maintained at the cost of the Trading Partner in accordance with the manufacturer's instructions;
- 9.1.39 obtain at all time the written consent of the Company prior to make any non-urgent amendments to their Kiosk or any of the equipment provided to the Trading Partner by the Company, which, in each case, shall be carried out at the costs and expenses of the Trading Partner (unless otherwise agreed by the Company) and in accordance with the applicable terms of the Agreement;
- 9.1.40 in the event of an emergency, notify the Site Manager or the Security Staff in writing as soon practicable (and, in any event, within one Business Day after such emergency arose) of any urgent amendments to their Kiosk or any of the equipment provided to the Trading Partner by the Company, which are required in the interest of health and safety or to prevent or mitigate damages to the same, to the MM Premises or to the other Trading Partners' property;

**Personnel**

- 9.1.41 ensure that each of the Trading Partner's principals, contractors, employees and other members of staff of whatever denomination who are allowed within the MM Premises are aware and comply with the duties and obligations of the Trading Partner under the Agreement and are properly trained and supervised in the use of the Trading Partner's Equipment, the Kiosk and any other equipment made available to the Trading Partner within the MM Premises;
- 9.1.42 ensure that, at all time, each of the Trading Partner's principals, contractors, employees and other members of staff of whatever denomination who are allowed within the MM Premises are notified of, and comply with, the MM Regulations and the MM Health and Safety Policy;
- 9.1.43 ensure that all staff, employees and contractors (or similar) engaged by the Trading Partner as part of the Trading Partner's Business are supervised at all times by at least one principal of the Trading Partner or other suitable person who has been appointed in writing by the Trading Partner to manage the Trading Partner's Business, in each case regularly present at the MM Premises, as the Trading Partner shall notify to the Company in writing from time to time;
- 9.1.44 notify the Company in writing and on a timely fashion of any period of absence over five Business Days planned in respect of the principal or other person referred in clause 9.1.43 above appointed to manage the Trading Partner's Business;
- 9.1.45 notify the Company in writing of the occurrence of any accident, howsoever occurring, anywhere within the MM Premises, which results in a physical injury of a Trading Partner's principal, contractor, employee and other member of staff;
- 9.1.46 ensure that the Trading Partner's employees refrain, at all time during shift hours, from drinking any alcoholic substances or from being under the influence of any illegal substances or controlled substances without a certified medical dispensation. Where any member of the Trading Partner's staff is found using by the security staff or by illegal or controlled substances within any part of the MM Premises without a certified medical dispensation, he or she will be escorted out of the MM Premises and will be asked not to work again in a customer-facing role with the Trading Partner or

any of the other trading partners. It is the Trading Partner's responsibility to ensure that the provisions of this sub-clause 9.1.46 are complied with and upheld where steps are taken by the Company or any of its staff, agents or Affiliates. Failure to comply with the provision of this sub-clause shall, unless otherwise agreed in writing with the Company, constitute a material breach of the Trading Partner's Agreement.

The Company and the Mercato Metropolitano group are committed to pay all member of their staff at least a living wage applicable and widely accepted in the region in which the Company and Mercato Metropolitano operate (so, if in London, this will be the London Living Wage). Accordingly, the Company expects that the Trading Partner adopts the same policy of paying all its employees at least the application living wage. Whilst departure from this expectation does not necessarily, in isolation, constitute a breach of the Agreement, where the Company becomes aware of the Trading Partner's unreasonable failure to comply with such best practice, it may elect not to renew the Agreement after its natural expiry.

#### **TP Front of House Staff Optimisation**

- 9.1.47 Where, pursuant to the Contract Letter, the Parties have agreed that the provisions of this clause 9.1.47 apply, the Trading Partner shall will use its reasonable endeavours to ensure that its front of house staff (for the purpose of this clause 0, the **TP FoH Staff**) shall operate the Company's centralised till system and effect sales of both the menu items comprising the Trading Partner's Business and any other menu items which shall be present in the Company's centralised till system from time to time, subject to the following provisions:
- 9.1.47.1 the TP FoH Staff will be employees or agents of the Trading Partner and not of the Company or any other trading partner, nor there will be any express or implied partnership, agency or similar arrangements between the Parties;
  - 9.1.47.2 the Company and the Trading Partner shall cooperate in good faith to ensure that the TP FoH Staff is properly trained by both Parties and provided by the Trading Partner and the Company with the necessary knowledge to allow the TP FoH Staff to efficiently sell the menu items present in the Company's till system from time to time;
  - 9.1.47.3 where the training or transmission of information to the TP FoH Staff by the Company referred to in clause 9.1.47.2 above constitute Confidential Information, the Company shall inform the TP FoH Staff of the provision of such Confidential Information and the Trading Partner shall use its reasonable endeavours to ensure that the TP FoH Staff comply with the provisions of clause 24 below (Confidentiality). For the avoidance of doubt, the mere discussion by the TP FoH Staff with other trading partners or with the Trading Partner and its Associates of matters and tactics required or desirable for the maximisation of the sales within the MM Premises shall not constitute a breach of clause 24;
  - 9.1.47.4 the TP FoH Staff are expected to use their reasonable commercial endeavours to maximise the performance of the sales of all trading partners, including (among other things) by adopting cross selling and upselling techniques;
  - 9.1.47.5 where any contentious issue or difference of opinions and intent in the course of regular business within the MM Premises arise between the Company and the TP FoH Staff, the Trading Partner and the Company shall use their reasonable endeavours to address such contentious issue or difference of opinions in a professional manner. In the event that the Company, acting reasonably, believes that the TP FoH Staff is not properly trained in the fulfilment of their duties pursuant to this clause 9.1.47, or the performance of the TP FoH Staff is insufficient in optimising and maximising sales within the MM Premises (whether in relation to the Trading Partner's menu items or the menu items of other trading partners included in the Company's till system), the Company shall have the right to replace the TP FoH Staff with Company FoH Staff (as defined in clause 6.2 above) by giving at least fourteen (14) days' notice in writing to the Trading Partner, save as in situations where the level of the TP FoH Staff's service requires immediate action, and the provisions of clause 6.2 shall apply;
  - 9.1.47.6 the Company and the Trading Partner may agree variations to the provisions of this clause 9.1.47 from time to time in writing.

#### **Non-Competition or Solicitation**

For the duration of the Agreement and for a period of one (1) year following the termination of the Agreement (however arising), unless otherwise disclosed to, and agreed by, the Company, the Trading Partner and any of its directors, controlling shareholders or principals, shall not:

- 9.1.48 become involved, whether directly or indirectly, in a business within the Territory whose principal objective is the aggregation of food and beverage businesses (of whatever size or nature); or
  - 9.1.49 call on, solicit, take away, or attempt to call on, solicit, or take away any other trading partners or employee of the Company (or of any Affiliate of the Company), with whom the Trading Partner has become acquainted through the Company or any Mercato Metropolitano entity.
- 9.2 Without prejudice to any other provision of the Agreement, a breach of a Trading Partner's obligations set out

in clause 9.1 above shall be deemed a material breach of the Agreement.

## 10 Health and Safety / Food Safety

- 10.1 The Company and its group have a group membership with The Nationwide Caterers Association (**NCASS**) in order to achieve and guarantee a nationally-accepted set of health and safety standards. The Company has agreed with NCASS a substantial discount on membership, as well as a host of complementary services as part of the Company's group membership. The Trading Partner agrees that:
- 10.1.1 upon becoming a Trading Partner, it shall become an NCASS member as part of the Company's group membership;
  - 10.1.2 where the Trading Partner has already a binding commitment with a health and safety service provider, it shall produce evidence thereof to the Company and will be allowed to honour that commitment until the end of the agreed minimum terms PROVIDED that the rating and recognition of such health and safety service services are equivalent to those of NCASS. After the minimum term the Trading Partner is expected to terminate the existing health and safety service agreement and join the Company's group membership with NCASS; or
  - 10.1.3 in exceptional circumstance where it is not possible for the Trading Partner to terminate existing, comparable health and safety services, the Trading Partner shall ensure that its appointed health and safety service provider shall provide the Company with the same level and quality of periodic reports about the Trading Partner's health and safety records, as those provided to the Company by NCASS.
- 10.2 The Trading Partner is required to have in place, no later than the Commencement Date, and to maintain for the duration of the Agreement the following documentation to be available for inspection by the Company, or any of its Consultants:
- 10.2.1 food safety management policies and procedures based on the principles of HACCP (hazard analysis and critical control point), such policies and procedures to be reviewed updated by the Trading Partner strictly in accordance with industry practice;
  - 10.2.2 staff handbook containing, at minimum, policies and procedures for the supervision and training in food hygiene of staff who handles food;
  - 10.2.3 suppliers register; and
  - 10.2.4 product traceability register, including record handling for withdrawals and recalls.
- 10.3 The Company or a Consultant engaged by the Company may be able to assist the Trading Partner, at the request and cost of the Trading Partner to be agreed in advance with the Company, with the preparation of the documentation referred to in clause 10.1 above and, where requested, with ongoing training to be delivered to the member of staff of the Trading Partner.
- 10.4 The Company may, at its own discretion, carry out (or commission the carrying out to external Consultants of) periodic and unannounced inspections of the Trading Partner's Kiosk and other facilities provided pursuant to the Agreement in order to ensure that the Trading Partner complies with the requirements of the Agreement and the MM Regulations in terms of health and safety, procedures and orderly keeping of such Kiosk and facilities. For the avoidance of doubt, such inspections are independent from, and in addition to, any inspection carried out by the local council or by competent health, safety and hygiene authorities.
- 10.5 Any breach by the Trading Partner of the requirements of this clause 10 which:
- 10.5.1 if constituting a health or safety hazard to any person, is not cured immediately; or
  - 10.5.2 otherwise than for breaches referred to in clause 10.5.1 above, is not cured within five Business Days from being notified by the Company thereof; or
  - 10.5.3 is a repeated breach of the same type as previously notified by the Company (whether or not cured);
- shall carry an automatic penalty of an amount indicated in the MM Regulations from time to time, which shall be payable by the Trading Partner within 10 Business Days from receiving notice of such penalty.
- 10.6 Notwithstanding the provisions of clause 10.5 above, the Trading Partner shall have the right to appeal a decision of the Company to issue a penalty notice in accordance with clause 10.5, provided that such appeal is lodged with the Company in writing in accordance with the notice provisions in clause 32 below no later than five Business Days from receiving the penalty notice from the Company. The Company shall have discretion to accept or reject such appeal and shall, in any case, revert back to the Trading Partner within five Business Days from the receipt of such appeal by the Company. Any decision of the Company made in good faith pursuant to this clause 10.6 shall be final and binding on the Trading Partner.
- 10.7 The Company reserves the right to appoint, on behalf of and at the cost of the Trading Partner, any Consultant required to rectify any breach on the part of the Trading Partner of any requirement of this clause 10 as the Company may, in its sole discretion, decide and the Trading Partner hereby agrees to adopt and ratify and such Consultant appointment pursuant to this clause and to indemnify and keep the Company indemnified against any reasonable costs and liability arising out of the appointment of such Consultant save as when any

such cost or liability arises solely as a result of the fraud or wilful misconduct on the part of the Company.

- 10.8 In the event that the Trading Partner receives an inspection from any relevant authority in terms of food safety, health and safety or any other minimum standard that the Trading Partner is required to abide to pursuant to the Agreement, the Trading Partner shall notify the Company without delay of:
- 10.8.1 the date of the inspection and the name of the inspecting authority;
  - 10.8.2 the outcome of the inspection, including (without limitation) details of any rating issued in respect to the Trading Partner's Business by the relevant authority, restrictions and recommendations; and
  - 10.8.3 an overview of the actions and the respective timelines that the Trading Partner intends to put in place in order to comply with any directions, recommendations and conditions of the inspecting authority.
- 10.9 Where, following an inspection from the relevant authority, the Trading Partner or any part of its business (whether such business is conducted within the MM Premises or otherwise) receives a score of 3 or less under the UK Food Hygiene Rating Scheme (FHRS) or similar, the Company shall have discretion to:
- 10.9.1 terminate the Agreement, at its discretion, pursuant to clause 22.6.3 below; or
  - 10.9.2 impose a closer monitoring regime in relation to the Trading Partner and its business, requiring the Trading Partner to regularly update the Company as to any corrective measures to be implemented in order to improve the Trading Partner's rating and allowing the Company to participate in the decision-making process in relation to such corrective measures.

For the avoidance of doubt, the Company may, at any time during the implementation of the corrective measures referred to in sub-clause 10.9.2 above, decide to terminate the Agreement pursuant to clause 22.6.3 below if, in its opinion, the Trading Partner is not cooperating with the Company in implementing sufficient measures to improve the FHRS rating.

## 11 Licenses and permits

- 11.1 The Trading Partner acknowledges and agrees that there are specific planning licences and usage permits issued to the Company in respect of the MM Premises, which are summarised in the MM Regulations, and, in common with other similar establishments, the Company and each Trading Partner and other operators within the MM Premises are strictly required to comply with such licences and permits.
- 11.2 Without prejudice to the generality of clause 11.1 above, the Trading Partner shall refrain from operating the Kiosk and other relevant facilities made available to it, or to sell food, alcohol and other items, otherwise than as agreed from time to time in writing by the Company and the Trading Partner undertakes to indemnify and keep the Company indemnified against any damages and Losses of the Company arising from the breach on the part of the Trading Partner, howsoever arising, of any such applicable licence and permit restrictions, unless such damages and losses result exclusively from the fraud or wilful misconduct on the part of the Company.
- 11.3 To the extent that the Trading Partner's Business includes (or will include) the 'supply of alcohol' (within the meaning of section 14 of the Licensing Act 2003), the Trading Partner acknowledges and agrees that:
- 11.3.1 the sale of such alcoholic beverages shall be permitted to the Trading Partner under the premises licence issued to the Company pursuant to the Licensing Act 2003, by written authorisation which the Company's designated premises supervisor shall be provided to the Trading Partner prior to commencing the sale of any controlled beverage;
  - 11.3.2 under the Licensing Act 2003, the Company is required (among other things) to ensure that each Trading Partner permitted to supply alcohol strictly complies with any licensing conditions and restrictions set out in the Licensing Act 2003, as summarised in the MM Regulations;
  - 11.3.3 it shall be the responsibility of the Trading Partner to understand, comply with and supervise its own members of staff in the requirement to comply with, all applicable provisions of the Licensing Act 2003;
  - 11.3.4 where the Trading Partner or any member of its staff is, in the sole opinion of the Company's designated premises supervisor, in breach of any applicable conditions of the Licensing Act 2003, Company's designated premises supervisor shall have absolute discretion to revoke the authorisation granted pursuant to clause 11.3.1 above and to impose such other restrictions and conditions on the Trading Partner, as the Company's designated premises supervisor shall deem reasonable, appropriate or desirable in pursuance of its duties and obligations under the Licensing Act 2003, without the Company or the Company's designated premises supervisor being liable in any way whatsoever to the Trading Partner for any loss or reduction of sales, income, customers or otherwise; and
  - 11.3.5 in the event of the revocation of the Trading Partner's authorisation to supply alcohol pursuant to clause 11.3.4 above, the Trading Partner shall be responsible and liable to the Company, on a full indemnity basis, for any fines or penalties issued under the Licensing Act 2003 as a result of the Trading Partner's breach of any applicable provision of the Licensing Act 2003 and for any damages, Claim and Losses accruing to the Company as a result thereof in accordance with the indemnity provisions contained in these Standard Terms of Business.

## 12 Changes of menu and quality control

- 12.1 The Trading Partner undertakes to the Company that it shall request the written consent of the Company with at least seven days' notice prior to:
- 12.1.1 amending any part of the Trading Partner's menu previously agreed by the Company;
  - 12.1.2 making any material changes or additions to the quality, origins, type or pricing of any items of food, beverage or other items permitted sold by the Trading Partners in accordance with the Agreement; or
  - 12.1.3 making any change to the Permitted Use of the Kiosk and other facilities made available by the Company to the Trading Partner in accordance with the Agreement.
- 12.2 The Company reserves the right to conduct, whether personally or through Consultants or external service providers, random, unannounced audits and inspections of the MM Premises, the Kiosk and other facilities made available by the Company to the Trading Partner in order to ensure (among other things) consistency in terms of quality and pricing of the goods and services provided by the Trading Partner pursuant to the Agreement, as the Company may in its sole discretion decide (in each case, a **Quality Control Inspection**).
- 12.3 Following each Quality Control Inspection, the Company shall have the right to prepare a report thereof and to provide a copy to the Trading Partner, making such recommendations and requesting such rectifications, amendments or improvements of the Trading Partner's practices, quality, pricing and operations as the Company may in its sole discretion decide (in each case, a **Quality Control Report**).
- 12.4 Upon receipt of a Quality Control Report, the Trading Partner shall, within five Business Days from receipt thereof:
- 12.4.1 implement the recommendations, rectifications, amendments and/or improvements requested in the Quality Control Report; or
  - 12.4.2 appeal any part of the Quality Control Report in writing with the Company, providing a reasonable rationale for refusing to implement any such recommendations, rectifications, amendments and/or improvements, following receipt of which, the Company shall have discretion to accept or reject such appeal and shall, in any case, revert back to the Trading Partner within five Business Days from the receipt of such appeal by the Company. Any decision of the Company made in good faith pursuant to this clause 12.4.2 shall be final and binding on the Trading Partner.

## 13 Commission, charges and other entitlements

- 13.1 With effect from the Commencement Date, the Trading Partner undertakes to make to the Company, without any deductions, all payments indicated in the Contract Letter.
- 13.2 The Company shall issue a monthly invoice (or at such other intervals as the Company may reasonably agree) with a breakdown of the Company's Commission based on the Trading Partner's sales recorded in the centralised till system and all and any commissions, fees and charges payable to the Company in accordance with the Contract Letter (the **Trading Partner Invoice**), which, if not paid through the Company's collection of Electronic Receipts as agent for the Trading Partners, shall be payable by the in clear funds by the Trading Partner within 7 (seven) days of receipt thereof.
- 13.3 Without prejudice to any applicable term of the Agreement, where the Contract Letter requires the Trading Partner to pay an Administration Charge and/or utility charges, the Company reserves the right to amend such Administrative Charge and/or the utility charges to reflect increases in the Company's costs of supply relating to such charges by giving the Trading Partner at least 14 days' notice of increase thereof.
- 13.4 In order to streamline the collection of sales and charging of commissions, the Company has implemented a centralised payment system whereby Electronic Receipts from gross sales are collected into one or more ring-fenced bank accounts and on-paid to the Trading Partner within 7 Business Days after the end of the each relevant month, net of all applicable commissions, charges and other sums pursuant to this clause 13. The Company shall have the right to ask Trading Partners all reasonable documents and information require to enable the Company to comply with (among other things) applicable anti-money laundering laws and regulations.
- 13.5 Unless otherwise agreed in writing by the Company, all payments to be made by the Trading Partner to the Company pursuant to the Agreement:
- 13.5.1 are exclusive of value added tax which, where applicable, shall be payable at the applicable rate by the Trading Partner to the Company in addition to any fee and charge due pursuant to the Agreement;
  - 13.5.2 shall be made in pound sterling; and
  - 13.5.3 shall be made without any deduction.
- 13.6 Where the Trading Partner has entered into an agreement with any Affiliates of the Company in connection with the wholesale supply of goods to the Trading Partner (a **B2B Contract**), and the Company is a party to such agreement as the guarantor of the Trading Partner's payment obligation thereunder, the Company shall be entitled, when reasonably asked by the relevant Company's Affiliate supplying goods pursuant to the B2B Contract and following a payment delay by the Trading Partner, to use any portion of the Electronic Receipts

collected as agent of the Trading Partner to honour the Trading Partner's payment obligations to such Company's Affiliate, plus such percentage of the sum payable to the Company's Affiliate to cover the Company's administrative costs, as shall be indicated in the relevant B2B Contract from time to time.

- 13.7 Without prejudice to clause 13.6 above, where the Trading Partner has more than one kiosk within the MM Premises or more than one contract for different kiosks, the Trading Partner acknowledges and agrees that the Company may offset the Trading Partner's liabilities and other payment obligations to the Company in relation to one kiosk or contract against the Electronic Receipts collected in the ring-fenced account(s) as agent for the Trading Partner pursuant clause 13.4 above.

#### **14 Minimum Sales and Target Sales Amounts**

- 14.1 The Company is committed to providing a fair opportunity to a new Trading Partner (acting in good faith) to develop full sale capabilities within a period following the Commencement Date as stated in the Contract Letter, without requiring a minimum amount of sales to be achieved by the Trading Partner.
- 14.2 Following the expiry of the initial period referred to in clause 14.1 above, the Trading Partner shall, unless otherwise agreed in writing with the Company, meet the minimum amount of sales indicated in the Contract Letter (the **Minimum Sales Amount**) within the time frame indicated in the Contract Letter.
- 14.3 Following the expiry of a further period indicated in the Contract Letter, the Trading Partner shall, unless otherwise agreed in writing with the Company, meet the expected sales amount (the **Target Sales Amount**) indicated in the Contract Letter within the period also indicated therein.
- 14.4 Where, following the expiry of the periods referred to in clauses 14.1 and 14.3 above, the Trading Partner does not meet the Minimum Sales Amount or the Target Sales Amount (as applicable), the Company shall have discretion to:
- 14.4.1 increase the Company's Commission by such a percentage required to bring the Company's Commission to a level that it would be payable to the Company if the Minimum Sales Amount or the Target Sales Amount (as applicable) were met by the Trading Partner; and/or
  - 14.4.2 provide the Trading Partner with a notice of performance review within a reasonable time requiring the Trading Partner to hold a meeting to discuss the circumstances which are preventing meeting such Minimum Sales Amount or the Target Sales Amount (as applicable).
- 14.5 At the meeting referred to in clause 14.4.2 above, The Company may:
- 14.5.1 agree to provide the Trading Partner with an opportunity to implement the necessary changes in order to meet the Minimum Sales Amount or the Target Sales Amount (as applicable) over a period suggested by the Company to the Trading Partner in writing and, if the Company deems it appropriate, recommend changes to the Trading Partner's Business, menu, visual or practices in order to improve the Trading Partner's overall performance; and/or
  - 14.5.2 reduce the Minimum Sales Amount or the Target Sales Amount (as applicable) in writing where the Company believes, in its sole and absolute discretion, that a new Minimum Sales Amount or the Target Sales Amount (as applicable) is desirable or applicable.
- 14.6 In the event that 30 days following a performance review referred to in clauses 14.4 and 14.5 above, the Trading Partner remains unable to meet the Minimum Sales Amount or the Target Sales Amount (as applicable), as these may be amended in writing pursuant to clause 14.5.2 above, or within the 30-day period fails to demonstrate their willingness to implement any changes agreed with the Company, the Company may, in its absolute discretion, resolve to:
- 14.6.1 terminate the Agreement; and
  - 14.6.2 debit the amount held by the Company as Deposit (if any) pursuant to clause 7 for any shortfall due by the Trading Partner pursuant to clause 14.4 above.
- 14.7 The Company reserves the right to increase each of the Minimum Sales Amount and the Target Sales Amount after the expiry of each anniversary of the Agreement in line with the Retail Price Index (or similar price index) published by the Office for National Statistics for the fiscal year immediately preceding such anniversary date.

#### **15 Reduced Company's Commission**

- 15.1 Certain contracts entered into by the Company in the past may include a concept of 'Reduce Company's Commissions'. Where, during the course of a calendar month, the sales of the Trading Partner at the Kiosk reach the Upper Sales Amount (as such term is defined in the Contract Letter), the Trading Partner shall be entitled, in such calendar month, to pay the Reduced Company's Commission indicated in the Contract Letter on any amount equal and exceeding the Upper Sales Amount and the Company's Commission on sales up to but excluding the Upper Sales Amount.
- 15.2 For the avoidance of doubt, the Company shall provide a full breakdown of any Company's Commission and Reduced Company's Commission in the Trading Partner Invoice issued at end of the reference calendar month during which the Trading Partner reached the Upper Sales Amount.
- 15.3 Where the Company operates a half-monthly billing cycle, any adjustment required during a calendar month

to reflect any entitlement of the Trading Partner to a Reduced Company's Commission fee will be included in the invoice to be issued by the Company at the end of the month.

## **16 Late payments procedure**

- 16.1 The financial viability of the Company and the other Trading Partners depends on, among other things, the Trading Partner meeting its payment obligations pursuant to the terms of Agreement in an orderly fashion and without delay. Accordingly, the Trading Partner covenants to pay all monies due pursuant to the Agreement, including (without limitation) all Trading Partner Invoices, in an orderly fashion and without unreasonable delay.
- 16.2 In the event that the Trading Partner fails to pay a Trading Partner Invoice or any other monies due pursuant to the Agreement within the due date of any such payment, the Company will provide the Trading Partner with a late payment notice (each a **Late Payment Notice**), requesting the Trading Partner to provide the Company with clear funds within 7 (seven) days from receipt of the Late Payment Notice. Failure to comply with such Late Payment Notice shall result in a material breach of the terms of the Agreement and in interest accruing on a daily basis at a rate equivalent to 8% per annum above the base rate of the Bank of England then in force.
- 16.3 If any amount due pursuant to a Late Payment Notice remains unreasonably unpaid for more than 14 days, the Company shall have the right to collect from the Kiosk, on a daily basis as agent for the Trading Partner, all cash received from the Kiosk sales, which the Trading Partner's staff shall not refuse to hand over to the Company's representative, provided that, in the absence of fraud or wilful misconduct on the part of the Company or its representatives, all sales receipts generated by the Kiosk pursuant to the Trading Partner's Business shall remain a commercial risk of the Trading Partner and not of the Company.
- 16.4 Where the payment collection procedure pursuant to clause 16.3 is implemented, the Company shall use the sales receipts as follows:
- 16.4.1 firstly, to settle any amount due by the Trading Partner pursuant to the Late Payment Notice;
- 16.4.2 secondly, to settle an amount equal to 10% of the amount due by the Trading Partner pursuant to the Late Payment Notice in order to cover some of the Company's administrative costs incurred in connection with the enforcement of this clause 16.4;
- 16.4.3 thirdly, to settle any Trading Partner Invoice issued following the implementation of such payment collection procedure; and
- 16.4.4 fourthly, within 14 days from the date of the preceding Trading Partner Invoice settled in accordance with clause 16.4.3 above, pay any balance from the sale receipts of the month relating to the Trading Partner Invoice to the Trading Partner's account in clear and available funds.
- 16.5 The payment collection procedure in clause 16.3 above shall remain in place for three calendar months and the Trading Partner undertakes to indemnify and keep the Company's indemnified from any damages or Losses arising out of the Company acting as collecting agent of the Trading Partner pursuant to clause 16.3.
- 16.6 Where, at the end of the three-month period referred to in clause 16.5 above, a Trading Partner Invoice or any other monies due pursuant to the Agreement remains unreasonably unpaid for more than 14 days, the Company shall have the right to:
- 16.6.1 appropriate the Deposit (if any) in order to meet any unpaid amount due by the Trading Partner; and
- 16.6.2 terminate the Agreement with immediate effect and without further notice to the Trading Partner and without prejudice to the Company's rights and entitlements under the Agreement; and
- 16.6.3 request that the Trading Partner provides any payment required under the Agreement, whether to make good of any damages to the Kiosk, the Company or otherwise, in connection with the termination of the Agreement.

## **17 Assignments**

- 17.1 The Trading Partner shall not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Agreement without the prior written consent of the Company.
- 17.2 Where the Company provides its consent to the assignment by the Trading Partner of any of its rights and obligations under the Agreement to a third party, the Trading Partner shall, unless otherwise agreed by the Company in writing, remain primarily responsible for the full performance of its duties and obligations under the Agreement.
- 17.3 The Company shall be entitled, by providing at least thirty days' notice to the Trading Partner, to assign and transfer all its rights and obligations under the Agreement to any Affiliate of the Company or to any non-connected party, provided that such affiliate or non-connected party undertakes to the Company that it shall observe the terms of the Agreement.

## **18 Marketing rights and branding**

- 18.1 Save as provided in clause 18.2 below, no Party shall issue or make any public announcement or disclose any

information regarding the Agreement unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the approval of such Party to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange. This clause shall survive the termination of the Agreement.

18.2 Without prejudice to the generality of clause 18.1 above:

18.2.1 the Trading Partner may implement and refine its marketing campaign (including dissemination via the Trading Partner's website, through email marketing campaigns, etc.) communicated to the Company on or around the Commencement Date as part of the vetting process, provided that any reference to the Company, its Affiliates, Mercato Metropolitan or MM in any public communication of the Trading Partner shall require the prior written approval of the Company and in any case shall not state or imply any relationship between the Company and the Trading Partner other than one of licensor and licensee, respectively, in relation to the MM Premises;

18.2.2 the Company may use details of the Trading Partner the Trading Partner's Business conducted within the MM Premises for its own marketing purposes (including dissemination via the Company's website, through email marketing campaigns, etc.), provided that where any details have been provided by the Trading Partner to the Company on a confidential or limited disclosure basis (including, without limitation, recipes and manufacturing processes), the Company will use reasonable endeavours to obtain the written permission of the Trading Partner prior to publishing such details and, in no event, shall such details state or imply any association between the Trading Partner and the Company other than one of licensee and licensor, respectively, in relation to the MM Premises.

18.3 Nothing in the Agreement shall confer to any Party any right, title or interest in the other Party's trademarks, logos and any other intellectual property, other than as otherwise agreed in writing between the Parties from time to time.

18.4 The Trading Partner may display its logo, brand and other visual intellectual property inside the Kiosk and in such a manner as agreed in writing with the Company from time to time. The Trading Partner shall obtain the written approval of the Company prior to making any material amendment to the logo, brand and other visual intellectual property displayed within the Kiosk.

18.5 Unless otherwise agreed in writing by the Company, the Trading Partner and its staff present at the MM Premises are required to wear unaltered Mercato Metropolitan uniforms as and when supplied by the Company.

18.6 Subject to compliance with the terms of the Agreement, and in particular of clauses 18.1 to 18.1 above 18.5 above, the Trading Partner is expected to promote its Trading Partner's Business in such a manner and to such an extent that it deems appropriate for the success of the business. The Company makes no representation and provides no warranty, nor has it authorised any person to make any such representation or warranty, that any marketing, promotional activities or advertising carried out by the Company will provide any specific outcome, exposure, commercial benefit or otherwise to the Trading Partner.

## 19 Events and changes of layout

19.1 The Company aims to host events within the MM Premises which may improve public awareness of the Mercato Metropolitan concept and drive increased business to the MM Premises. Any such event shall be communicated (whether by email, bulletin or other means of communication) to the Trading Partner as soon as practicable after the arrangements for the event have been conclusively agreed between the Company and the event organiser.

19.2 The objective of the Company is that events hosted within the MM Premises benefit all Trading Partners, both in terms of increased sales during the event and in longer-term marketing exposure for the Trading Partners. However, the Trading Partner acknowledges and agrees that Trading Partners within the MM Premises may not benefit equally from all events to be hosted. Where the outcome of a particular is of material concern to the Trading Partner, the Trading Partner is encouraged to request a meeting with a representative of the Company to, among other things, make recommendations on how to improve the Trading Partner's involvement and participation in the Event.

19.3 In connection with medium and long-term events, or with the changes in the layout of the MM Premises, the Company may request the Trading Partner to surrender its Kiosk in exchange for an alternative Kiosk. In any such event, the Company will liaise with the Trading Partner with sufficient notice (being not less than 14 days) and will use reasonable commercial endeavours to provide the Trading Partner with a suitable alternative Kiosk of the same characteristics as the Kiosk to be surrendered and to minimise disruptions to the Trading Partner's Business.

## 20 Right of managing the Kiosk

20.1 Without prejudice to any other right of the Company pursuant to the Agreement, in the event of a material breach of the Agreement on the part of the Trading Partner which warrants the termination of the Agreement, or where a key person of the Trading Partner such as main chef or principal manager changes without the approval of the Company, the Company may, in lieu of or in addition to such termination and in order to mitigate damages and Losses to the Company and to the Trading Partner, agree with the Trading Partner to take possession of the Kiosk and allow any member of the Company's staff, Consultant or other third party

selected by the Company to operate the Kiosk temporarily until such time as a satisfactory agreement has been reached with the Trading Partner to:

- 20.1.1 irrevocably terminate the Agreement and allow and direct the Trading Partner to collect its belongings and return the Kiosk and any other facilities and/or equipment (as applicable) to the Company in accordance with the provisions of the Agreement, provided that the Trading Partner has no outstanding debts or liabilities towards the Company at the time of such irrevocable termination; or
  - 20.1.2 allow the Trading Partner to re-take possession of the Kiosk in order to continue the Trading Partner's Business, subject to such amendments to the Agreement as the Company may, in its discretion acting reasonably, agree.
- 20.2 Where the Company agrees to enter and operate the Kiosk temporarily pursuant to clause 20.1 above, the Trading Partner acknowledges and agrees that the Company shall not be liable for any damages, loss or breakage of any equipment, chattel or fittings contained in the Kiosk and belonging to the Trading Partner, unless any such damage, loss or breakage is the direct result of a wilful act of the Company or any of the Company's staff, Consultant or other third party selected by the Company to operate the Kiosk, provided always that:
- 20.2.1 the Trading Partner shall have the right to have a representative of the Trading Partner present at the Kiosk (at the cost and expenses of the Trading Partner) at any or all time during opening hours of the MM Premises (as indicated in the MM Regulations) in order to monitor the use of the Trading Partner's equipment, chattel and fittings present in the Kiosk; and
  - 20.2.2 the Company shall operate Kiosk (and shall cause the Kiosk to be operated), including as it relates to the purchase of materials and the contracting of any obligation, in the name of the Company or other third party and, in any event, not in the name of the Trading Partner.

## 21 Penalties

- 21.1 Without prejudice to any other rights and entitlements of the Company pursuant to the Agreement, the following penalties shall be payable by the Trading Partners to the Company:
  - 21.1.1 all penalties resulting from a breach of health and safety guidelines in the MM Regulations pursuant to clause 10.5 above as indicated in the MM Regulations from time to time;
  - 21.1.2 all other penalties indicated in the MM Regulations from time to time;
  - 21.1.3 GBP 1,000 (one thousand pound sterling) in liquidated damages in the event of the Company obtains reasonable evidence that the Trading Partner supplies food, beverage, goods and services, or in any event makes sales, outside the Company's centralised tills, or operates the Company's electronic point of sale in a way that results in the avoidance any part of the Company's Commissions or other relevant charges otherwise payable pursuant to the Agreement; and
  - 21.1.4 GBP 1,500 (five hundred pound sterling) per Business Day in liquidated damages in the event that the Company obtains reasonable evidence that the Trading Partner, without the prior written consent of the Company, connect its electronic point of sale or card reader, or tampers with the Company's electronic point of sale or card reader, regardless of whether the Trading Partner gains a monetary benefit from doing so.
- 21.2 For the avoidance of any doubt, the Trading Partner shall remain responsible for the penalties set out in clause 21.1 in the event that any breaches referred to therein are committed by any person authorised by the Trading Partner to man the Kiosk, whether as principal, employee, agent or otherwise.
- 21.3 The Trading Partner acknowledges and agrees that each of the breaches leading to a penalty referred to in clause 21.1 above shall also constitute a material breach of the Agreement.

## 22 Term and termination

- 22.1 The Agreement shall be in force from the Commencement Date until the expiry of the Initial Contract Period, unless terminated earlier in accordance with the terms hereof.
- 22.2 At the end of the Initial Contract Period, the Company and the Trading Partner may, by written notice supplemental to the Contract Letter, renew the Agreement on the same or substantially the same terms as the original Agreement, subject to any supplements and amendments thereof as the Company and the Trading Partner may mutually agree on good faith negotiation.
- 22.3 The Trading Partner may terminate the Agreement by giving at least one month's written notice to the Company in accordance with clause 32 below.
- 22.4 Notwithstanding anything contained in the Agreement, the Agreement shall terminate in the event that the Landlord terminates the Lease (for whatever reason). While the Company will use reasonable commercial endeavour to mitigate disruption to the Company and to the Trading Partner, the Trading Partner acknowledges and agrees that the termination of the Agreement pursuant to this clause 22.4 shall be without any recourse whatsoever to the Company.

- 22.5 The Trading Partner and its Affiliates shall not impede in any way the Landlord or the Company or their respective officers, servants or agents in the exercise of the Company's rights of possession and control of the Kiosk or any part of the MM Premises.
- 22.6 Without prejudice to the other termination provisions, remedies or rights a Party may have pursuant to the Agreement, either Party may terminate the Agreement at any time on written notice to the other Party (for the purpose of this clause, the **Other Party**) in accordance with clause 32 below if:
- 22.6.1 the Other Party is in material breach of its obligations under the Agreement and, if the breach is capable of remedy and it is still unwaived, the Other Party has failed to remedy such breach within ten days of being notified in writing of the requirement to remedy the breach; or
- 22.6.2 the Other Party is declared insolvent by a competent court or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt; or
- 22.6.3 if the continuation of the Agreement becomes unlawful or is against applicable regulation or public policy, or if it shall result, or in the reasonable opinion of the affected Party will be likely to result, in any material tax or other liability or material administrative or other disadvantage or a reputational damage to a Party.
- 22.7 In addition, and without prejudice, to any and all preceding provisions, the Company may terminate the Agreement forthwith by written notice to the Trading Partner given in accordance with clause 32 below if, without the prior written consent of the Company, the Trading Partner undergoes a change of control (within the meaning of Section 416 of the Income and Corporation Taxes Act 1988) or generally in the event of a breach of clause 26.2.9(i) below.

### 23 Effects on termination

- 23.1 Upon termination of the Agreement (howsoever arising), the Trading Partner shall not do or omit to do anything which may imply a continued connection between the Trading Partner and the Company or its Affiliates.
- 23.2 Without prejudice to anything contained in the Agreement, on termination of the Agreement, each Party shall remain responsible for all its duties and obligations accrued up to the termination of the Agreement and any clauses of the Agreement which expressly or by implication have effect after termination shall continue in full force and effect.
- 23.3 In the event of the termination of the Agreement (howsoever arising), the Trading Partner shall:
- 23.3.1 pay any outstanding sums which are due to the Company pursuant to the Agreement;
- 23.3.2 return, within seven Business Days of such termination, the Kiosk clear of any and all material and all equipment provided by the Company to the Trading Partner in the same conditions as supplied to the Trading Partner at the beginning of the Agreement and from time to time, allowing solely for reasonable wear and tear of such Kiosk or equipment provided by the Company to the Trading Partner; and
- 23.3.3 remove, within seven Business Days of such termination, any Trading Partner's Equipment and other goods and chattels belonging to Trading Partner from the MM Premises, leaving the Kiosk and any affected parts of the MM Premises where the Trading Partner's belonging were stored in clean and good conditions.
- 23.4 Failure to comply with the provisions of this clause shall result in the Company having discretion to:
- 23.4.1 make good of any damages or alternations caused to the Kiosk, facilities and/or equipment (as applicable) while in use by the Trading Partner at the cost of the Trading Partner; and
- 23.4.2 dispose of and/or store any and all items belonging to the Trading Partner at the cost of the Trading Partner, which shall also incur further surcharge of £200 per day to cover, among other things, the Company's internal labour, administrative and other costs. If the removal of any items belonging to the Trading Partner is prevented by anything done by, or imputable to, the Company, no such cost or surcharge shall be payable by the Trading Partner UNLESS the reason for the Company preventing the Trading Partner from collecting any such item belonging to the Trading Partner is as a result of the Company exercising its right to recover any sum due to Company by the Trading Partner or the Company is exercising its right of lien over such items belonging to the Trading Partner (including, without limitation, in relation to the Trading Partner's obligations pursuant to this clause).
- 23.5 In the event of a material breach of the Agreement on the part of the Company which remains unwaived and unremedied, the Trading Partner shall be entitled to receive any sums owed by Company to the Trading Partner (without any deduction or cost to the Trading Partner) provided that:
- 23.5.1 where the Company's material breach occurs within two months from the Commencement Date, the Trading Partner shall receive 100% of any Deposit and 100% of any Set-up Fee which, in each case, has been actually paid to the Company;

- 23.5.2 where the Company's material breach occurs after the end of the second month from the Commencement Date until the fourth month therefrom, the Trading Partner shall receive 100% of any Deposit and 50% of any Set-up Fee which, in each case, has been actually paid to the Company; or
- 23.5.3 where the Company's material breach occurs after the end of the fourth month from the Commencement Date, the Trading Partner shall receive 100% of any Deposit which has been actually paid to the Company;  
but, in each case, without prejudice to any other Company's right and entitlement under the Agreement.
- 23.6 In the event of the termination of the Agreement otherwise that as provided for in clause 23.5 above, the Trading Partner shall be entitled to receive, within 30 days from the termination, 100% of any Deposit actually paid to the Company, net of any amount reasonably required by the Company to:
  - 23.6.1 recoup any amount due to the Company by the Trading Partner pursuant to the Agreement;
  - 23.6.2 make good of any damage and on account of any money payable to the Company pursuant to clause 23.3 above; and/or
  - 23.6.3 meet any payment obligations or other liability towards any third-party suppliers, agents, consultants or employees to and of the Trading Partner which have been incurred during the term of the Agreement at the MM Premises, unless such third-party suppliers, agents, consultants or employees provide written confirmation to the Company that they shall have no claim against the Company and shall not make any further demands for such payments and/or liabilities at the MM Premises or any other address of the Company.

## **24 Confidentiality**

- 24.1 The Parties acknowledge and agree that Confidential Information may be made available or disclosed by one to another during the term of the Agreement. Neither Party shall disclose any Confidential Information to anyone other than, strictly on a need-to-know basis, employees, agents or representatives of the Trading Partner, provided always that the Party disclosing Confidential Information pursuant to this clause:
  - 24.1.1 shall ensure that the receiver of the Confidential Information is aware of the confidential nature thereof and agrees to adhere to a duty of confidentiality substantially as set out in the clause 24; and
  - 24.1.2 shall remain responsible for compliance with clause 24 and shall be primarily liable for any breaches thereof.
- 24.2 The obligations of clause 24.1 shall not apply to any Confidential Information which:
  - 24.2.1 was known or in the possession of the disclosing Party before it was provided to it by the other Party;
  - 24.2.2 is, or becomes, publicly available through no fault of the disclosing Party;
  - 24.2.3 is provided to the disclosing Party without restriction or disclosure by a third party who, as far as the disclosing Party is actually aware, did not breach any confidentiality obligations pursuant to the Agreement by making such a disclosure; or
  - 24.2.4 was developed by disclosing Party (or on its behalf) who had no direct access to, or use or knowledge of the Confidential Information supplied by the other Party; or
  - 24.2.5 is required to be disclosed by order of a competent official body or court of competent jurisdiction.

## **25 Anti-money Laundering and Trading Partner Due Diligence**

- 25.1 It is the Company's policy to adhere to anti-money laundering (AML) practices and standards thorough due diligence on prospective and existing Trading Partners. Accordingly, the Company shall be entitled under the Agreement to carry out appropriate due diligence on each new Trading Partner and, if necessary, monitor the Trading Partner during the existence of the Agreement to ensure that the Company's AML policy and standards are met.
- 25.2 The Company shall be entitled pursuant to the Agreement to suspend or terminate the Agreement where the Company's request for know-your-client (KYC) and client due diligence (CDD) is not complied with by the Trading Partner to the Company's satisfaction.
- 25.3 The Company shall be entitled to outsource or delegate its KYC and CDD functions to external compliance service providers and, to the extent that the Company shall make such delegation, it will notify the Trading Partner who shall be under an obligations to comply with any reasonable request for KYC and CDD documents and information that the Trading Partner will receive from such external compliance service provider or providers.
- 25.4 The Trading Partner understands and agrees that, where the Company sources or introduces to the Trading Partner external providers of goods or professional or administrative services, such external service providers may request KYC and CDD documentation and information to comply with their own AML policies and

procedure, and the provision of such documentation and information shall be separate and independent obligations of the Trading Partner.

## **26 Warranties – representations and undertakings**

- 26.1 The Company hereby warrants, represents and undertakes that:
- 26.1.1 it is a company duly incorporated and existing in England and Wales and that it has all necessary powers and authorities to enter into the Agreement and perform its duties and obligations thereof;
  - 26.1.2 the details provided by the Company in the Contract Letter are true and accurate in all material respects;
  - 26.1.3 it possesses the necessary consents, permissions and licences to operate the MM Premises in a manner contemplated in the Agreement and undertakes to notify the Trading Partner within a reasonable time in the event that any such consent, permission or licence (as applicable) is withdrawn or amended;
  - 26.1.4 the entry into the Agreement and the performance of the Company's duties and obligations pursuant thereto do not conflict with the constitutional documents of the Company or with any other document, consent or authority applicable to the Company or to which the Company is a party;
  - 26.1.5 the Lease is in force on the Commencement Date and the Company has the right to occupy and manage the MM Premises in a manner contemplated in the Agreement and undertakes to notify the Trading Partner within a reasonable time in the event that the Landlord decides to terminate the Lease or amend the Lease in a manner that materially affects the Trading Partner or the Trading Partner's Business;
  - 26.1.6 it has and will maintain sufficient public liability insurance cover for the MM Premises; and
  - 26.1.7 it has not been declared bankrupt or insolvent.
- 26.2 The Trading Partner hereby warrants, represents and undertakes that:
- 26.2.1 it is a company or other legal person as indicated in the Contract Letter duly established and existing under the law of its country and that it has all necessary powers and authorities to enter into the Agreement and perform its duties and obligations thereof;
  - 26.2.2 the details provided by the Trading Partner in the Contract Letter are true and accurate in all material respects;
  - 26.2.3 it owns, or has express permission to use, any intellectual property that the Trading Partner uses or intends to use as part of the Trading Partner's Business and, the use of such intellectual property does not infringe any trademark or other intellectual property rights of any third parties;
  - 26.2.4 it possesses the necessary consents, permissions and licences to operate the Trading Partner's Business in a manner contemplated in the Agreement and undertakes to notify the Company without delay in the event that any such consent, permission or licence (as applicable) is withdrawn or amended in any way;
  - 26.2.5 the entry into the Agreement and the performance of the Trading Partner's duties and obligations pursuant thereto do not conflict with the constitutional documents of the Trading Partner or with any other document, consent or authority applicable to the Trading Partner or to which the Trading Partner is a party;
  - 26.2.6 it is not insolvent or unable to pay its debts when they become due and it has not been declared bankrupt or insolvent in any jurisdiction in any part of the world;
  - 26.2.7 it is, and it undertakes to the Company that it shall remain, responsible for all its tax, administrative and other liabilities relating to the Trading Partner and the carrying on of the Trading Partner's Business;
  - 26.2.8 the quality and standard of the food, beverages and other goods and services which make up the Trading Partner's Business is sufficiently high as to be commensurate with the quality and standard reasonably expected at the MM Premises, taking into account the MM Regulations and the terms of the Agreement;
  - 26.2.9 to the best of its knowledge and belief, having carefully enquired into its ownership and its suppliers and manufacturers:
    - (i) none of the Trading Partner, its Affiliates or its suppliers from time to time are owned or controlled (within the meaning of Section 1124 of the Corporation Tax Act 2010) by a large industrial brand or a company or entity involved in the production, commercialisation, funding or support of foods and beverages on an industrial scale, IT BEING AGREED AND UNDERSTOOD by the Trading Partner that, should the Trading Partners, any of its Affiliates or (unless agreed in writing by the Company) its suppliers become so owned or controlled

without the prior written agreement of the Company to such ownership or change of control, the Company shall have the right, if it wishes so, to terminate the Agreement in accordance with clause 22.7 above without any recourse to the Company. The Trading Partner shall be solely responsible for ensuring that any contractual agreement between the Trading Partner, its Affiliates and suppliers (particularly key suppliers on whose products the Trading Partner's business heavily relies) are made aware of the provision of this sub-clause 26.2.9(i); and

- (ii) the produce, food, beverage and/or other items (as applicable) sold and supplied by the Trading Partner as part of the Trading Partner's Business are free from chemical pesticide, herbicide and harmful additives and it undertakes to the Company that it shall notify the Company in writing in the event that it becomes aware, or ought to be aware, that any item so sold or supplied as part of the Trading Partner's Business cause, or are likely to cause, the Trading Partner breaching the warranty and representation contained in this clause;
- 26.2.10 it holds, and it undertakes to the Company to continue to hold for the duration of the Agreement:
- (i) food safety management policies and procedures in accordance with the requirement of clause 10.1 above;
  - (ii) staff handbook containing, at minimum, the requirements set out in clause 10.2.2 above;
  - (iii) up to date records relating to the origins, provenance, details of supplier, product withdrawals and recalls, and batch numbers (as applicable) in respect of any produce, food, beverage and/or other items (as applicable) sold and supplied by the Trading Partner as part of the Trading Partner's Business; and
  - (iv) all the insurance covers required pursuant to clause 9.1.30 above;
- 26.2.11 all Trading Partner's Equipment that will be fitted in, or affixed to, the Kiosk belongs to the Trading Partner absolutely and are not subject to any lien, security interest or similar interest in favour of any other party, unless otherwise communicated by the Trading Partner to the Company in writing from time to time prior to fitting or affixing any Trading Partner's Equipment;
- 26.2.12 all Trading Partner's Equipment:
- (i) is of sufficient quality, standards and fit for the purpose of the Trading Partner carrying on the Trading Partner's Business;
  - (ii) complies with all Applicable Law and regulations;
  - (iii) conforms in all respects to factory specifications and is free from material alterations which have not been authorised by or on behalf of the manufacturer;
  - (iv) is, and the Trading Partner undertakes to the Company that it will be during the term of the Agreement, regularly inspected and maintained in line with the manufacturer's recommendations;
  - (v) is safe and without risk to health or safety; and
  - (vi) is without damage, fault or excessive wear and tear; and
- 26.2.13 without prejudice to the generality of the foregoing clauses, the Trading Partner undertakes to the Company that it shall notify the Company in writing in the event that it becomes aware, or ought to be aware, of anything that would cause, or is likely to cause, the Trading Partner breaching any of the warranties and representation contained in clauses 26.2.1 to 26.2.12 (inclusive) above.
- 26.2.14 Each of the Parties acknowledges that, in entering into the Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.
- 26.3 The Trading Partner covenants with the Company that it shall not, during the term of the Agreement and before the expiry 90 calendar days after the termination of the Agreement (howsoever arising):
- 26.3.1 offer to employ or engage or otherwise endeavour to entice away from the Company any employee, member or exclusive contractor of the Company; or
  - 26.3.2 employ or engage in any way any employee, member or exclusive contractor of the Company within three months of his or her resignation in any such capacity howsoever arising;
- in each case without the prior written consent of the Company.

## 27 Indemnity

- 27.1 Each Party (for the purpose of this clause, the **Indemnifying Party**) undertakes to indemnify and keep indemnified the other Party and its employees, agents and representatives and Affiliates (for the purpose of this clause, each being an the **Indemnifying Party**) against any and all Claims and Losses suffered, and any and all legal and other fees and costs incurred, by or the indemnified Party in connection with any material

breach of any term, warranty or representation contained in the Agreement, except where any such Claims or Losses result from the fraud, wilful misconduct or gross negligence on the part of any Indemnified Party. This clause 27 shall survive the termination of the Agreement.

- 27.2 The Trading Partner undertakes to indemnify and keep indemnified the Company against any Claims, Losses and damages caused by the Trading Partner in the course of the Trading Partner's Business and/or the use of the Trading Partner's Equipment within the MM Premises.
- 27.3 Neither the Landlord, nor the Company shall be liable for the death of, or injury to the Trading Partner or any of its employees, customers, invitees to the MM Premises or Affiliates, or for damage to any property of the Trading Partner or that of the Trading Partner's employees, customers, invitees to the MM Premises or Affiliates, or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Trading Partner or the Trading Partner's employees, customers, invitees to the MM Premises in the exercise or purported exercise of the rights granted by clause 5.1.
- 27.4 Nothing in the Agreement shall limit or exclude the liability of a Party for:
- 27.4.1 death or personal injury caused by its negligence;
  - 27.4.2 fraud or fraudulent misrepresentation; or
  - 27.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 27.5 Notwithstanding anything contained in the Agreement and to the fullest extent permitted by Applicable Law, the liability of the Company under or in connection with the Agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall not exceed (i) the Company's Commission actually paid by the Trading Partner and received by the Company over the three-month period preceding the notification of the relevant Claim by the Trading Partner in accordance with the terms of the Agreement, or (ii) £20,000 (twenty thousand pound sterling), whichever is lower.

## **28 Provision of similar services**

- 28.1 Considering the inherent nature of a common market place, the Company (and/or any of its employees, agents, representatives or Affiliates) shall be free to provide access to the MM Premises, any services or engage in any form of activity, whether for itself or on behalf of other organisations, companies or individuals who are or are potentially direct or indirect competitors of the Trading Partner.
- 28.2 The Company will use commercially reasonable endeavours to protect the confidentiality of any Confidential Information and to mitigate any actual damage to the Trading Partner's Business in the course of its operations.

## **29 Use of the Company's name**

- 29.1 The Trading Partner shall not, unless authorised in writing by the Company, refer to or mention the name of the Company, any of its Affiliates, Mercato Metropolitano or MM (or state, report, notify or refer to the fact that the Company is providing any services to the Trading Partner) for the purposes of persuading or influencing a third party to enter into any contract with the Trading Partner or invest in the Trading Partner or any Affiliate of the Trading Partner.

## **30 Anti-corruption**

- 30.1 Each of the Parties shall:
- 30.1.1 comply with all Applicable Law and regulations relating to anti-bribery and anti-corruption and not engage in any activity, practice or conduct anywhere in the world, which would constitute an offence under the Bribery Act if such activity, practice or conduct had been carried out in the UK; and
  - 30.1.2 promptly report to the other Party any request or demand which, if complied with, would amount to a breach of this clause 30.
- 30.2 Breach of this clause 30 shall be deemed a material breach of this Agreement entitling the innocent Party or Parties to seek damages and/or terminate the Agreement immediately, but without prejudice to any entitlements accrued (and in the case of the Company, without regards to any contingency contained in the Agreement triggering its entitlements under the Agreement) as at the date of such breach.

## **31 Amendments**

- 31.1 The Contract Letter may only be amended in writing signed by duly authorised representatives of each of the Parties.
- 31.2 The Company reserves the right to vary these Standard Terms of Business from time to time including during the term of the Agreement, provided that no amendment shall be made to these Standard Terms of Business without the written consent of the Trading Partner if, and only if, such amendment results in a variation of the following terms which may be set out in the Contract Letter:

- 31.2.1 the Initial Contract Period;
  - 31.2.2 the Set-up Fee;
  - 31.2.3 the Deposit;
  - 31.2.4 Company's Commission;
  - 31.2.5 the Reduced Company's Commission;
  - 31.2.6 the Minimum Sales Amount;
  - 31.2.7 the Upper Sales Amount;
  - 31.2.8 the Target Sales Amount;
  - 31.2.9 any Special Term expressly set out in the Contract Letter.
- 31.3 Where the Company varies these Standard Terms of Business during the term of the Agreement, the Company shall publish, without delay, an amended copy of these Standard Terms of Business and any variations thereto from time to time in force, on the Company's website at the address [www.mercatometropolitano.com/terms](http://www.mercatometropolitano.com/terms) or other suitably linked address as the Company shall decide and communicate to the Trading Partner from time to time and, upon the publication of any amendments to these Standard Terms of Business, the Trading Partner shall be deemed to have acknowledged and agreed such amendments to the Standard Terms of Business carried out in accordance, and subject to the limitations, of this clause 31. It is the responsibility of the Trading Partners to periodically check such link to the Company's website to ensure that they operate in accordance with the Standard Terms of Business in Force from time to time.

## 32 Notices

- 32.1 Any notice to be given under the Agreement shall be in writing and shall be given under hand or may be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address of the relevant Party set out at the head of the Contract Letter or such other address as that Party may from time to time notify to the other Party in accordance with this clause or, in the case of the Landlord, to its registered office at 45 Westminster Bridge Road London SE1 7JB.
- 32.2 Notices sent in accordance with clause 32.1 above, shall be deemed to have been received two Business Days after the day of posting (in the case of inland first class mail), or five Business Days after the date of posting (in the case of air mail). Email is not a valid method of serving a notice under the Agreement.
- 32.3 In serving a notice pursuant to this clause 32, it shall be sufficient to prove that the notice was left to the correct address for the Party, or that the envelope containing the notice was properly addressed and posted.

## 33 General

- 33.1 *Force majeure*: Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate the Agreement by written notice to the other Party.
- 33.2 *Entire agreement*: The Agreement contains the whole agreement between the Parties in respect of the matters set out, and referred to, in the Contract Letter and in these Standard Terms of Business (as amended from time to time) and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such matters. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement.
- 33.3 *Waiver*: No failure or delay by the Company in exercising any right, power or privilege under the Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 33.4 *Agency, partnership etc.*: The Agreement shall not constitute or imply:
- 33.4.1 any partnership or joint venture between the Parties, unless the Parties otherwise agree in writing;
  - 33.4.2 subject to clause 16.3 above, any agency or similar legal relationship;
  - 33.4.3 any landlord/tenant or similar relationships between the Parties;
  - 33.4.4 any employer/employee relationship between the Parties or any of their respective employees, agents, contractors or other Affiliates;
  - 33.4.5 any fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's

behalf.

- 33.5 *Further assurance:* Each Party shall, at the request and expense of the other or any of them, execute and do any deeds and other things reasonably necessary to carry out the provisions of the Agreement or to make it easier to enforce it.
- 33.6 *Severance:* If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
- 33.7 *Photography and video consent:* when entering and occupying MM Premises, the Trading Partner, its employees, agents and Associates enter into an area where photography, audio, and video recording may occur. The Company reserves the right to use any imagery/recordings taken at the MM Premises, without expressed verbal or written permission. The Company may use any appropriate footage (photography/video/audio recordings) in publications or other media material produced including but not limited to brochures, invitations, books, newspapers, magazines, television, websites, etc. To ensure the privacy of individuals and children, images will not be identified using full names or personal identifying information (such as address) without written approval from the photographed subject, parent or legal guardian. Any person referred to in this clause who does not wish to have their image recorded for distribution should make their wishes known to the photographer, and/or the event organisers in person.
- 33.8 *Law and jurisdiction:* The validity, construction and performance of the Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties irrevocably submit.
- 33.9 *Third parties:* For the purposes of the Contracts (Rights of Third Parties) Act 1999, the Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

**END OF DOCUMENT**