

MEMBERSHIP AGREEMENT

WHEREAS

- (A) The University Caterers Organisation Ltd (“the Company”) has been established to advance education and training in relation to catering and hospitality activities and to seek opportunities to exploit economies of scale available by co-ordinating the demand of individual universities, colleges and other institutions of higher and further education and other public sector bodies for goods and/or services and utilising the collective purchasing opportunities of universities, colleges and other institutions of higher and further education and other public sector bodies in achieving value for money within their purchasing activities, which may be on a national, inter-regional or regional basis.
- (B) You are an existing Member of the Company or you have agreed to and have been accepted by the Company to become a Member.
- (C) This Membership Agreement sets out the obligations of each member of the Company.

1. DEFINITIONS

1.1 Where used herein the following expressions shall have the meaning attached hereto (unless the context requires otherwise):

‘Articles’	means the Articles of Association of the Company in force from time to time;
‘Affiliate Member’	means a member of the Company registered as an affiliate member in the Company’s register of members;
‘Associate Member’	means a member of the Company registered as an associate member in the Company’s register of members;
‘Board’	means the board of Directors of the Company;
‘Budget’	means the annual budget of the Company determined by the Board;
‘Business Day’	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
‘Directors’	means the directors from time to time of the Company;
‘Full Member’	means a member of the Company registered as a full member in the Company’s register of members;
‘Groups’	means the groups established to carry out the activities set out in the terms of reference in respect of that particular group;
‘Members’	means each of the institutions, organisations and bodies who are or become Members of the Company as determined in accordance with the Articles;

'party'	means a party to this Membership Agreement, being you and the Company;
'Subscription'	means the annual membership payment by a Full Member to the Company;
'Year'	means the 12 month period from 1 August to 31 July;
'you'	means you, the university, college or other institutions of higher and further education or other public sector body who is or will be a member of the Company and is a party to this Membership Agreement.

2. EFFECT

- 2.1 This Membership Agreement is entered into between you and the Company.
- 2.2 This Membership Agreement shall take effect from the earliest of the date you sign this Membership Agreement or are deemed to have accepted the terms of it. This Membership Agreement shall remain in force until terminated in accordance with the provisions set out below.
- 2.3 If you have not rejected or if you fail to return to the Company a signed copy of this Membership Agreement but continue to use the services and benefits the Company has provided or agrees to provide further services or benefits or act in accordance with the articles of association or this Membership Agreement, you will be deemed to have accepted the terms of this Membership Agreement and each party be bound by its terms.

3. MEMBERSHIP

- 3.1 As a Member you agree and undertake to act in accordance with the Articles and this Membership Agreement.
- 3.2 Subject to the Articles, you agree that:
 - (a) a Full Member is entitled to vote at general meetings, annual general meetings and upon written member resolutions;
 - (b) subject to their rights to vote in accordance with Article 9.4, the Associate Members and the Affiliate Members shall have no right to vote at general meetings, annual general meetings or upon written member resolutions.
- 3.3 This Membership Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Membership Agreement.

4. OBLIGATIONS OF MEMBERS

- 4.1 If you are a Full Member, you agree and undertake to the Company to exercise your respective voting rights at any general meetings and annual general meetings or any other time. Such voting shall be done in accordance with clause 15.

- 4.2 As a Member, you agree and undertake to support the aims of the Company by using your best endeavours:
- (a) to ensure that the Company agreements, benefits and initiatives are used and implemented within your own institution or body;
 - (b) to ensure that Company agreements, benefits and initiatives will not be disclosed to any third party;
 - (c) to provide an appropriate representative for regional meetings and Groups as required and where appropriate;
 - (d) to take any necessary decisions to enable the Company to meet its objectives and achieve its strategic and business plans; and
 - (e) pay the Subscription and any other fees, costs or expenses due from you to the Company within 30 days of the receipt of the invoice requesting such payment.

5. THE BOARD

- 5.1 The Company will be managed by the Board which will meet a minimum of three times a Year, or more frequently at the discretion of the Board and conduct itself in accordance with the Articles. The Board shall have no less than 7 and no more than 12 Directors, one of whom shall be the Chief Executive Officer (CEO).
- 5.2 The Board shall be responsible for:
- (a) oversight of Company activities and shall take all necessary decisions and actions to enable the CEO to perform his duties, including having day to day responsibility for the running and management of the Company;
 - (b) consideration of Company initiatives proposed by the CEO;
 - (c) review of national developments in hospitality and purchasing;
 - (d) determination of the Budget, and cost of Subscriptions for the relevant Year and the application of Subscription and other income generated monies; and
 - (e) receipt and consideration of management accounts, budgets and other such reports that may be required and formal approval of the Annual Accounts.

6. FUNDING

- 6.1 The Company shall be funded through a combination of Subscriptions and income generation. The Board shall determine the basis on which Subscriptions for Full Members are to be calculated and shall set the rate of Subscriptions before the start of the relevant Year.
- 6.2 Income generation will be achieved by means of a combination of:
- (a) admin fees from suppliers; and
 - (b) other income generation as determined by the Board.

6.3 Each Full Member must pay a fee to the Company on becoming a Member (based pro rata on the proportion of the annual subscription period remaining at the time that member is accepted as a Member of the Company) and then annually thereafter the Subscription. The annual subscription period shall be a Year. Payment of any Subscription must be made within 30 days of receipt of an invoice from the Company requesting such payment. The Subscription fee is non-refundable, including in the event of a Member ceasing to be a Member (for whatever reason) at any time during a Year.

7. TERMINATION OF MEMBERSHIP

7.1 If at any time, you cease to be a Member of the Company this Membership Agreement shall terminate. Termination of this Membership Agreement shall be without prejudice to the rights that you or the Company has accrued prior to such termination. On termination of membership your right to use of any existing or future suppliers' contracts exploited, engaged or utilised via the Company shall immediately cease.

7.2 Your membership shall terminate immediately if:

- (a) you no longer satisfy the conditions which must be satisfied for you to be accepted as a Members as set out in the Articles;
- (b) any sum due from you to the Company is not paid in full at the time of the next fees falling due;
- (c) any of the events set out in clauses 7.3, 7.4 or 7.5 occur;
- (d) an order being made, or a resolution passed for your winding or for the appointment of a provisional liquidator to you (other than a voluntary liquidation for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or for an administration order of you;
- (e) a receiver, manager or administrative receiver being appointed over all or any part of the undertaking or assets of you; or
- (f) any proceedings or orders equivalent or analogous to any of those described above in articles 7.2(d) and 7.2(e) occurring under the law of any jurisdiction outside England and Wales.

7.3 If you are a Full Member you may provide not less than 12 months written notice to cease to be a Member and you agree that in such an event you will not be entitled to any rebate or refund of the Subscription in respect of unexpired parts of a Year nor entitled to make any claim against the assets of the Company.

7.4 If you are an Associate Member or Affiliate Member you may provide not less than 5 Business Days written notice to cease being a Member and you agree that you shall not be entitled to any rebate or refund in respect of unexpired parts of a Year nor entitled to make any claim against the assets of the Company.

7.5 The Company may terminate this agreement at any time with immediate effect (or upon such notice as determined by the board) and at its sole discretion without having to give reason for such termination.

8. CONFIDENTIALITY

- 8.1 Subject to clause 8.2 and 8.3, at all times you shall keep secret and confidential all business and trade secrets, methods of doing business and other information and material disclosed by or obtained from Company in connection with this Membership Agreement, the Company or the Company's business.
- 8.2 You agree and undertake not to disclose any such material or information to any third party other than your responsible employees who require such disclosure where bona fide necessary for the proper performance of their duties hereunder and who will individually comply with all obligations of confidentiality imposed upon you by the provisions of this clause 8. You agree and undertake to take all reasonable steps to minimise the risk of disclosure of such confidential information by employees and others.
- 8.3 The obligations of confidentiality set out above shall not apply to any information or material which:
- (a) was already known to you prior to its receipt thereof from the Company;
 - (b) was subsequently disclosed to you lawfully from a person or a third party who did not obtain the same (whether directly or indirectly) from a person who had no obligation of confidence in respect of that information or materials; or
 - (c) was in the public domain at the time of receipt by the recipient or has subsequently entered into the public domain other than by reason of a breach of the provisions of this clause or breach of any obligation of confidence owed by you to the Company.

9. Liability

- 9.1 You agree to indemnify the Company and keep the Company indemnified, and hold its employees and directors harmless, against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by you arising out of or in connection with:
- (a) any breach of this Membership Agreement or the Articles by you;
 - (b) the enforcement of this Membership Agreement or the Articles by you;
 - (c) any actions, exercise of rights or decisions of the Company or the board in accordance with this Membership Agreement or the Articles.

10. NO PARTNERSHIP OR AGENCY

- 10.1 Nothing in this Membership Agreement is intended to, or shall be deemed to, establish any partnership between the parties or constitute any party the agent of another party. Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

11. FORCE MAJEURE

- 11.1 Neither party shall be in breach of this Membership Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Membership agreement if such delay or failure result from events, circumstances or causes beyond Aits reasonable control (which shall include but not by way of limitation strikes lockouts, riot act of war or piracy destruction of essential equipment by fire explosion storm flood earthquake or delay caused by failure of power supplies or transport facilities).

12. IMPLIED TERMS

- 12.1 This Membership Agreement embodies the entire understanding of each party as to the subject matter hereof and there are no promises, terms, conditions or obligations (whether oral or written, express or implied) other than those written herein.

13. NOTICES

- 13.1 Any notice given to a party under or in connection with this Membership Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address of the primary contact appointed by that party.

- 13.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the third Business Day after posting or at the time recorded by the delivery service;

(c) if sent by email, at 10.00 am on the next Business Day after transmission.

- 13.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14. NO WAIVER

- 14.1 No failure or delay by a party to exercise any right or remedy provided under this Membership Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. WARRANTY

- 15.1 You warrant to the Company that you have all necessary power and authority to enter into the membership of the Company and each party warrants to the other that the obligations undertaken by it in this Membership Agreement are valid, binding and enforceable upon it in accordance with their respective terms.

16. FURTHER ASSURANCE

- 16.1 You undertake to do all such acts and things and execute all such deeds and documents as shall be necessary to give effect to the provisions of this Membership Agreement and the Articles.
- 16.2 You shall exercise all voting rights and other powers of control available to you in relation to the Company so as to procure (so far as each is respectively able by the exercise of such rights and powers) that at all times during the term of this Membership Agreement the provisions of this Membership Agreement are duly and promptly observed and given full force and effect according to its spirit and intention.
- 16.3 Without prejudice to the generality of sub-clause 16.2, if any provision of the Articles at any time conflict with any provisions of this Membership Agreement, the provisions of the Articles shall prevail but you shall whenever necessary exercise all voting and other rights and powers available to procure the amendment of the Articles to the extent necessary to permit the Company and its affairs to be administered as provided in this Membership Agreement.
- 16.4 This Membership Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original but all the counterparts shall together constitute the one agreement.
- 16.5 No variation of the Membership Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.6 No one other than a party to this Membership Agreement shall have any right to enforce any of its terms.

17. HEADINGS

- 17.1 The headings in this Membership Agreement are for reference only and do not limit or affect its interpretation.

18. GOVERNING LAW AND JURISDICTION

- 18.1 The construction, validity and performance of this Membership Agreement shall be governed and construed in all respects by English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

19. **PRIVACY**

TUCO may share your personal information with the following third parties, where relevant:

- our members – to enable members to contact each other and facilitate collaboration;
- our suppliers;
- our staff, agents and contractors – to enable us to deliver the core business of professional development and procurement frameworks;
- our professional advisors;
- third party contractors that provide services to us (such as MailChimp, Survey Monkey); and
- analytics and search engine providers that assist us in the improvement and optimisation of our site.

TUCO may also share your information with third parties such as regulatory authorities, or where we are under a legal obligation to disclose your information (for example where we are required to share information in accordance with legislation, to prevent fraud and other criminal offences, or because of a court order). We may disclose your information in order to enforce our legal rights or to protect the legal rights of our members or others.

I agree to TUCO being sent, from our suppliers, all purchasing information relative to the frameworks being transacted with TUCO, for the duration of our membership with TUCO and give permission for TUCO to receive a copy of all our invoicing information, relative to the framework/s you transact with them.

Signed by Mike Haslin, for and on behalf of The University Caterers Organisation Ltd



Mike Haslin
Chief Executive Officer