

AN AGREEMENT made on _____ 200__

BETWEEN

- (1) _____ Limited (registered no. _____) whose registered office is at _____ (the *Franchisor*)
- (2) _____ Limited (registered no. _____) whose registered office is at _____ (the *Franchisee*)
- (3) _____ of _____ (the *Principal*)

WHEREAS

(A) The Franchisor is engaged in the business of _____ which is operated in accordance with a distinctive system and plan utilising and comprising certain intellectual property, confidential information, standards, specifications, techniques, identifying schemes and materials, insignia, management methods and standard operational procedures and has expended substantial time, effort and money in the development and implementation of the same.

(B) The Franchisee desires to obtain the benefit of the knowledge, skill and experience of the Franchisor and the right and franchise to operate the business system of the Franchisor upon the terms and subject to the conditions set out below.

(C) The Franchisor has established substantial reputation and goodwill in the said business and the Franchisee recognises the benefit to be derived therefrom and acknowledges the necessity of conforming to the high standards and uniform specifications of the said business.

(D) [The Principal is [the beneficial owner of the entire issued share capital] [a director] of the Franchisee.]

NOW IT IS AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement (including the Schedules) the following expressions shall have the following meanings unless the context otherwise requires:

Accounting Reference Date means _____ in each year of the Term;

Advertising Contribution means _____ per cent. _____ % of the Gross Turnover of the Business earned by the Franchisee in the twelve month period preceding the relevant Accounting Reference Date;

Business means the franchise business of _____ operated and conducted under the Proprietary Marks using the System more particularly described in the Operating Manual;

Business Day means a day on which banks are open in London for the transaction of business (excluding Saturday);

Commencement Date means _____ [the date set out at the head of this Agreement];

Credit Limit means;

(a) Time: _____ days from the date of [delivery of] [the invoice relating to] the [Products] [Services];

(b) Value: £ _____ at any time in respect of [Products] [Services] [delivered] [invoiced];

Expiry Date means _____ or such later Business Day as shall result from any extension of the Term under clause 3.1;

Gross Turnover means for the purposes of calculating payments to be made by the Franchisee to the Franchisor, the gross income of the Business arising directly or indirectly from the conduct of the Business during each [week] [month] of the Term and gross income shall include without limitation:

(a) all cash or credit transactions of whatever nature made, and whether or not invoiced by the Franchisee, in each [week] [month];

(b) the value of all [Products sold and delivered] [Services performed] by the Franchisee during each [week] [month] which are not invoiced on the relevant dates;

(c) the value of all [Products sold] [Services performed] and business dealings [other than purchases] whatsoever made by the Business in each [week] [month],

gross income shall exclude:

(i) Value Added Tax;

(ii) any customer refunds or allowances arising from credits or allowances which shall only be deducted from gross income in the [week] [month] in which they are paid or allowed to the customer;

(iii) credit card discounts or similar charges suffered by the Franchisee;

(iv) all free offers or discounts made or given by the Franchisee as part of any special promotion required or authorised by the Franchisor;

Initial Fee means the sum of £ _____ ;

Insurance Premium means the premium for the insurance arranged by the Franchisor described in clause 10;

Minimum Performance means £_____ of Gross Turnover of the Business in each year of the Term increasing by the annual rate of increase of the Retail Price Index as published by the Department of Employment in respect of the immediately preceding year;

Operating Manual means the written specification of the methods, processes, techniques, systems and schemes devised and compiled by the Franchisor to be observed and implemented by the Franchisee in operating the Business and any amendment or variation thereof at any time hereafter notified in writing by the Franchisor to the Franchisee;

Payment Date means the _____ day of each calendar month during the Term or if such day is not a Business Day then the next Business Day thereafter;

Permitted Name means _____ ;

Premises means the premises approved by the Franchisor in accordance with the terms of this Agreement at which the Franchisee may operate the Business;

Products [Services] means the products [services] identified by the Proprietary Marks [sold] [provided] in the course of the Business and described in the Operating Manual;

Proprietary Marks means:

- (a) the Trade Marks;
- (b) the Trade Name;
- (c) the patent[s] of which the Franchisor is [patentee] [licensee] in the Territory details of which [is] [are] set out in Schedule 1 and applications for the grant of any such patents;
- (d) the copyright held by the Franchisor in any written material plans designs or other work relating to the [Products] [Services] and/or the System;
- (e) the designs whether or not registered or protected by copyright devised or acquired by the Franchisor and applied in the [sale] [supply] of the [Products] [Services];
- (f) the computer software program[s] details of which [is] [are] set out in Schedule 1;

and all other patents, trade marks, trade names, logos, designs, symbols, emblems, insignia, fascia, slogans, copyrights, know-how, information, drawings, plans and other identifying materials whether or not registered or capable of registration and all other proprietary rights whatsoever owned by or available to the Franchisor adopted or designated now or at any time hereafter by the Franchisor for use in connection with the System;

System means the distinctive business format and method developed and implemented by the Franchisor in connection with the operation of the Business utilising and comprising the Proprietary Marks, and certain standard operational procedures, plans, directions, specifications, methods, management and advertising techniques and identification schemes, part of which are contained in the Operating Manual;

Term _____ years starting on the Commencement Date and ending on the Expiry Date unless extended or earlier determined as provided by this Agreement;

Territory means the territory more particularly described in Schedule 2 in which the Franchisee may operate the Business [and shown edged red on the map attached to this Agreement];

Trade Marks means the trade mark[s] of which the Franchisor is the [registered proprietor] [licensee] in the Territory and which [is] [are] applied to the [Products] [Services] details of which [is] [are] set out in Schedule 1 and applications for registration of any such marks;

Trade Name means the trade name[s] details of which [is] [are] set out in Schedule 1.

1.2 The clause headings in this Agreement are included for ease of reference only and shall not affect its interpretation or construction.

2. GRANT AND RESERVATION

2.1 The Franchisor hereby grants to the Franchisee during the Term upon the terms and conditions herein contained the right and licence to use the Proprietary Marks only:

- (a) in the Business;
- (b) at and from the Premises;
- (c) within the Territory;
- (d) under the Permitted Name;
- (e) in accordance with the System and the Operating Manual.

2.2 [The Franchisor reserves the power:

- (a) to decline to accept any order for the supply of [Products] [Services] from or through the Franchisee;
- (b) to [continue to] sell Products [supply Services] direct to customers in the Territory [by mail order only];
- (c) to vary the specification and the price of the Products [Services];

- (d) to withdraw any existing product line or to add any new product line from or to the Products.]

3. EXTENSION OF TERM

3.1 Subject to the provisions of clause 3.2 below, the Franchisee may at its option renew the franchise herein granted at the expiration of the Term for a further term of _____ years by giving notice in writing to the Franchisor exercising the said option not more than _____ months nor less than _____ months before the Expiry Date.

3.2 Notwithstanding the giving of due notice pursuant to clause 3.1 above, the renewal shall only be effective provided that:

- (a) the Franchisee has throughout the Term properly observed and performed all its obligations under this Agreement and is not at the Expiry Date in default under any such obligations;
- (b) no later than twenty-eight days prior to the Expiry Date the Franchisee has paid to the Franchisor without set-off or deduction a renewal fee of _____ per cent. of the Gross Turnover of the Business during the twelve month period prior to the Expiry Date or _____ _____ per cent. of the then current initial fee charged by the Franchisor to its franchisees whichever is less;
- (c) prior to the Expiry Date the Franchisee has, if requested by the Franchisor, completed or agreed in writing to perform at its own expense such maintenance, renovation, repairs and refurbishment of the Premises and the equipment, fixtures and fittings used in the Business as the Franchisor may require within the time prescribed by the Franchisor;
- (d) prior to the Expiry Date, the Franchisee and any person employed by or concerned with the Franchisee specified by the Franchisor shall have completed such re-training or refresher training at such time and at such place as the Franchisor may request; [and]
- (e) [the Franchisee has achieved the Minimum Performance throughout the Term.]

4. TERRITORY

[Exclusive]

4.1 The Franchisor agrees with the Franchisee that it will not itself operate or make use of nor license any person other than the Franchisee to operate the Business or make use of the System under the Proprietary Marks in the Territory.

OR:

[TERRITORY

[Non-Exclusive]

4.1 The Franchisor agrees that before granting to any person a license to use the System or to conduct the Business in the Territory, to offer the licence to the Franchisee.

4.2 If the Franchisee refuses the offer, the Franchisor agrees not to offer such licence to use the System in the Territory to any other person on more favourable terms than those offered to the Franchisee but save as aforesaid shall be free to offer such licence to any other third party.

4.3 If the Franchisee fails to send notice to the Franchisor of his acceptance of such offer of a licence within 7 days of his being offered the licence, the Franchisee shall be deemed to have refused such offer.]

5. INITIAL OBLIGATIONS OF FRANCHISOR

In connection with the commencement of the Business by the Franchisee the Franchisor agrees and undertakes as follows:

- (a) to provide the Franchisee with consultation and advice concerning site selection criteria, and the location, suitability and acquisition of the Premises;
- (b) to provide the Franchisee with standard construction and conversion plans and specifications for internal layout, signs, fixtures and fittings consultation and advice relating to the construction, conversion and refurbishment of the Premises and to review the Franchisee's construction and conversion plans to ensure compliance with the standards of the System;
- (c) to provide such general supervision of the construction or conversion works as the Franchisor shall consider appropriate;
- (d) to provide to such key employees and personnel of the Franchisee as the Franchisor shall require initial training in the standards, procedures, techniques and methods comprising the System during a period of not less than _____ days at such times and at such place as shall be specified by the Franchisor, the cost of travel and subsistence in connection therewith being borne by the Franchisee and to discuss with the Franchisee the performance of all such persons during training;
- (e) to deliver to the Franchisee at the commencement of the initial training period one copy of the Operating Manual and any other training materials deemed appropriate by the Franchisor;
- (f) to undertake such advertising activities prior to the commencement of the Business by the Franchisee as the Franchisor shall consider necessary to promote the opening of the Premises and to devote to this purpose a sum of not less than £ _____ ;
- (g) to provide such assistance as the Franchisor shall deem appropriate in connection with the opening of the Premises including on-site supervision

thereof and consultation and advice concerning pre-opening and launch activities; [and]

- (h) [to supply the Franchisee in due time for the commencement of the Business with the equipment and other materials specified in the Operating Manual at the prices and hire charges therein set out.]

6. CONTINUING OBLIGATIONS OF FRANCHISOR

The Franchisor agrees at all times during the Term as follows:

- (a) to permit the Franchisee to operate and promote the Business under the Permitted Name in accordance with the terms of this Agreement;
- (b) to provide the Franchisee with advice, know-how and guidance relating to the management, finance, promotion and methods of operation to be employed in connection with the System and to provide reasonable facilities for consultation with the Franchisee in connection with any problems relating to the System from time to time arising with a view to assisting and enabling the Franchisee to operate and maintain the System and to give to the Franchisee the benefit of the knowledge and experience of the Franchisor;
- (c) to make available to the Franchisee with reasonable promptness members of the Franchisor's staff competent to provide any requisite on-site assistance and advice in connection with the System or recommend to the Franchisee such independent experts as may appear necessary the Franchisee paying the standard per diem charge for such staff;
- (d) to provide the Franchisee at the Franchisee's expense with standard forms of contract for use by the Franchisee in dealings with its customers;
- (e) to make available to the Franchisee its staff engagement service for the provision and selection of trained and qualified staff for employment in the Business;
- (f) to improve and develop the System and to make available to the Franchisee and its employees at cost, such further training as may from time to time appear to the Franchisor necessary in the light of such improvements or developments, the Franchisee bearing the cost of any travel and subsistence involved in such further training and the salaries of any employees;
- (g) [subject to availability] to provide to the Franchisee the [Products] [Services] and equipment described in the Operating Manual on the terms from time to time therein specified [provided that the Franchisee shall remain within the Credit Limit] and to assist the Franchisee in procuring such additional supplies of [Products] [Services] and equipment as may be required by the Franchisee to commence and operate the Business and to use reasonable endeavours to negotiate and obtain from such suppliers favourable discount rates for furnishing such supplies to the Franchisee;

- (h) to make available to the Franchisee all services and facilities which the Franchisor makes available to its other franchisees and company-owned outlets carrying on the Business including improvements in and additions to the System;
- (i) in addition to the initial training pursuant to clause 5(d) above to provide at cost a course of training to any person required to undergo such training who becomes employed by the Franchisee in the Business, the Franchisee bearing the cost of any travel and subsistence involved in connection with such training and the salaries of the employees;
- (j) to organise and convene by written notice to each of its franchisees an annual conference, the agenda for which shall include discussion of any improvements to the System and the Franchisor's proposals for promotional activities and the general operation of the System, the Franchisee bearing the cost of any travel and subsistence expenses incurred in attending such meetings;
- (k) not to derogate from the grant [and in particular not to grant any other franchise for the Business in the Territory];
- (l) to lend to the Franchisee during the Term a copy of the Operating Manual and to update the same from time to time where appropriate or reasonably necessary;
- (m) to promote charge and credit cards and plans in accordance with the procedures established therefor from time to time in order to make the operation of the System more convenient for customers and to create new customers;
- (n) to indemnify and keep indemnified the Franchisee from and against any and all loss damage or liability whether criminal or civil suffered and legal costs and fees incurred by the Franchisee in the course of conducting the Business arising from:
 - (i) any neglect or default of the Franchisor or its agents or employees;
 - (ii) the proven infringement by the Franchisor of the intellectual property rights of any third party;
 - (iii) any successful claim by any third party against the Franchisor alleging libel or slander in respect of any matter arising from the supply of the [Products] [Services] or conduct of the Business in the Territory,

provided that and to the extent that such liability has not been incurred by the Franchisee through any default or neglect by it in carrying out the terms of this Agreement;

- (o) to maintain [at its own cost or subject to prompt payment of the Insurance Premium by the Franchisee] a [comprehensive or specific] insurance policy

with an insurer of repute to cover the liability of the Franchisor in respect of any act or default for which it may become liable to indemnify the Franchisee under clause 6(n);

- (p) to support the Franchisee in its efforts to promote the Business or [sales or other dealings in the Products] [supply of the Services] in the manner specified in the Operating Manual and in particular [at its own expense or at cost]:
 - (i) to supply samples of the Products;
 - (ii) to supply patterns of the Products;
 - (iii) to supply end-users manuals, brochures, instructions for the Products in the language(s) used in the Territory;
 - (iv) to provide and promptly update information about the [Products] [Services]; and
 - (v) to provide courses for the instruction of [employees of] the Franchisee in the [demonstration of the Products] [the supply of the Services] [and in the provision of proper after-sales service at such location as the Franchisor shall specify] at the expense of the Franchisee;
- (q) to maintain the Proprietary Marks during the Term and not to cause or permit anything which may damage or endanger them or the Franchisor's title to them or assist or suffer others to do so;
- (r) subject to the performance by the Franchisee of all its obligations to allow the Franchisee credit up to and in accordance with the provisions of the Credit Limit; and
- (s) to review the Credit Limit [monthly / quarterly / annually] on [the last day of each month / on the usual quarter days / on each anniversary of the Commencement Date] and subject to the strict performance and observance by the Franchisee of all its obligations under this Agreement to increase the value of the Credit Limit as set out in paragraph (b) of the definition thereof by the proportion by which the turnover of the [Products] [Services] of the Franchisee has increased since the last review or (as the case may be) the Commencement Date in the case of the first such review.

7. OBLIGATIONS OF FRANCHISEE

The Franchisee agrees as follows:

- (a) upon the execution of this Agreement and prior to the commencement of the Business to enter into a registered user agreement in the form required by the Franchisor in respect of the Trade Marks and to execute such other registered user agreements during the Term as the Franchisor may require;

- (b) at its own cost and expense to acquire the Premises or (as the case may be) to erect a building or structure to constitute the Premises in accordance with plans approved in writing by the Franchisor and to ensure that the Premises are without delay following such acquisition altered, refurbished, equipped and fitted out in accordance with the requirements of the Franchisor within _____ of the Commencement Date and in any event prior to the commencement of the Business;
- (c) to ensure that adequate financial resources are available to the Franchisee by way of working capital and otherwise to ensure that the Franchisee is able to fulfil all the obligations herein contained;
- (d) to operate the Business strictly in accordance with the provisions of the Operating Manual and to conform in all respects and at all times with the System as modified from time to time to adopt all changes in the System as soon as required by the Franchisor and not at any time to use any additional trade name or symbol nor do or permit to be done anything which is additional to or not in accordance with the System without the prior consent in writing of the Franchisor;
- (e) to ensure that the Business conforms with other businesses operated in accordance with the System with regard to quality, service and cleanliness, the Franchisee acknowledging that such conformity is of the utmost importance to the successful operation of the Business and the protection of the goodwill attaching to the Proprietary Marks;
- (f) to comply with all advice and instructions given by the Franchisor with regard to the operation of the System and in the absence of any such instructions in relation to any particular matter to act in such a manner as the Franchisee might reasonably have considered to be most beneficial to the Franchisor;
- (g) forthwith on commencement of the Business to engage all staff and other persons required for the commencement and successful operation of the Business [in accordance with the recruitment criteria set out in the Operating Manual] and to ensure that all such staff and replacements for such staff who are required under the terms of this Agreement to undergo training in the System, are trained in the System and any modifications thereto and if and when required by the Franchisor to procure their attendance at a time and place specified by the Franchisor for such purpose, the Franchisee bearing the cost of any travel and subsistence incurred in connection therewith and the salaries of such persons;
- (h) to hold regular training and assessment sessions at the Premises for all employees of the Franchisee to ensure their competence in their allotted duties and to report to the Franchisor any serious incompetence on the part of any employee after training;
- (i) to procure that the persons responsible for managing the Business shall attend such further periods of training as may from time to time be required by the

Franchisor and to bear any travel and subsistence expenses incurred in connection therewith and the salaries of such persons;

- (j) to use only such letter headings, invoices, signs, display materials, promotional literature, equipment and other items in connection with the Business as shall be approved in writing by the Franchisor and immediately to desist from the use or display of any signs, materials or objects as the Franchisor directs;
- (k) at all times to maintain the interior and exterior of the Premises and all parts thereof (including furnishings) to the highest standard of decoration, repair and cleanliness so as to enhance the reputation of the Business and promptly to ensure that any requirements of the Franchisor in this regard are fulfilled;
- (l) diligently to carry on the Business and to use best endeavours to promote and increase the Business in such form as may be approved by the Franchisor and to co-operate with the Franchisor and the other franchisees of the Franchisor in this regard and to act loyally and faithfully toward the Franchisor;
- (m) continuously to operate the Business upon such days and between such hours as the Franchisor shall specify;
- (n) to maintain sufficient stocks and employ sufficient staff to meet demand from the customers of the Business and to permit the efficient operation of the Business at all times;
- (o) promptly to pay all suppliers of goods and services sold or provided to the Franchisee for the purposes of the Business;
- (p) to promote and preserve the goodwill and reputation associated with the Proprietary Marks by promptly replacing or refunding the cost of any goods or services supplied by the Franchisee which do not conform with the high standards required by the System;
- (q) to ensure that all personnel employed in the Business shall at all times present a neat and clean appearance and render competent sober and courteous service to customers and comply with any and all directions of the Franchisor in this respect relating to dress, appearance and demeanour;
- (r) [to consult with the Franchisor as to the scale and level of prices and charges to be levied in the course of the Business;]
- (s) to permit the Franchisor and its representatives without any further authority save that hereby irrevocably given at reasonable times and upon reasonable notice to enter upon the Premises for the purposes of ascertaining whether the provisions of this Agreement are being complied with;
- (t) to permit the Franchisor without any further authority save that hereby irrevocably given to speak or write to customers of the Business concerning

the standard of the [Products] [Services] being provided to such customers by the Franchisee;

- (u) to comply with all statutes, byelaws, regulations and requirements of any government or other competent authority relating to the Franchisee, the conduct of the Business and/or the Premises;
- (v) to sell only such [Products] [Services] as may be described from time to time in the Operating Manual upon the terms and conditions therein set out;
- (w) to procure from its manager for the time being and from such other staff as the Franchisor shall require, an undertaking in a form specified by the Franchisor not to disclose to any third party any confidential information or knowledge concerning the Business, the Proprietary Marks or the System which may be communicated to such manager or employee or which such manager or employee may otherwise acquire, and the Franchisee shall at its own expense take such steps as the Franchisor may direct in order to enforce or restrain any breach of the terms of any such undertaking;
- (x) [if the Franchisee obtains its supplies for the Business or the Products from any party other than the Franchisor, then the Franchisee shall pay to the Franchisor without demand deduction or set-off a further fee of _____ % of the Gross Turnover of the Business on the Payment Dates;]
- (y) on entering into this or any other agreement or transaction with the Franchisor during the Term or any continuation of it to make full disclosure of all material circumstances and of everything known to it respecting the subject matter of the contract or transaction which would be likely to influence the conduct of the Franchisor including in particular the disclosure of other agencies or franchises in which the Franchisee is or has previously been interested directly or indirectly;
- (z) [promptly to refer to the Franchisor any enquiries from prospective customers or other leads outside the Territory and to supply to the Franchisor information which may come into its possession which may assist the Franchisor to effect sales or other dealings for the Business or [in the Products] [in the Services] outside the Territory;]
- (aa) to pass on any information which comes to its knowledge which may prejudice [sales of the Products] [supplies of the Services] or the Business or reduce the Gross Turnover of the Business in any way;
- (bb) to keep a list of actual and potential customers for the [Products] [Services] and to supply a copy of it to the Franchisor upon request;
- (cc) to procure the greatest volume of turnover for the Business consistent with good service to the public;
- (dd) to protect and promote the goodwill associated with the System;

- (ee) to conduct the Business in an orderly and businesslike manner and strictly in accordance with all such policies and operating standards as may from time to time be specified by the Franchisor and generally to maintain the standards of quality of the System;
- (ff) to honour such charge and credit cards and plans as may from time to time be issued or approved by the Franchisor in accordance with the terms and conditions laid down by the Franchisor or in the manner from time to time prescribed by the Franchisor and to participate in [and comply with the terms and provisions of a central invoicing programme and other credit plans programmes and procedures specified by the Franchisor;]
- (gg) if at any time during the Term the Franchisee makes or discovers any improvements to the Business or [the Products] [the Services] [or the marketing of the [Products] [Services]] forthwith:
 - (i) to provide the Franchisor with all necessary details;
 - (ii) to acknowledge that the property in any such improvement and the right to obtain any relevant protection belongs to the Franchisor;
 - (iii) to provide such assistance [at the expense of the Franchisor] as the Franchisor may require to obtain that protection;
- (hh) to note on all insurance policies maintained by the Franchisee in accordance with the provisions of this Agreement the interest of the Franchisor; and
- (ii) in all correspondence and other dealings relating directly or indirectly to the [sale of the Products] [supply of the Services] or the Business clearly to indicate that it is acting as Principal.

8. RESTRICTIONS ON FRANCHISEE

8.1 During the Term the Franchisee agrees as follows:

- (a) not to commence operating the Business until the persons responsible for its operation have undergone a proper course of training to the satisfaction of the Franchisor and have been approved as competent by the Franchisor, nor at any time thereafter to employ any such person who has not undergone such training or been so approved;
- (b) not to commence operating the Business until the Franchisor has approved the Premises and the construction and conversion thereof;
- (c) not to permit or suffer any person to act or assist in the operation of the Business until such person has signed a non-competition and confidentiality undertaking in the form from time to time specified by the Franchisor;
- (d) not to operate the Business or any part of the System at any location other than the Premises without the prior approval in writing of the Franchisor;

- (e) not to sell, assign, transfer, charge or sub-license the Business, the System, the Proprietary Marks or any of the rights and licences granted to the Franchisee under this Agreement nor any part thereof without the prior consent of the Franchisor in accordance with the other terms of this Agreement;
- (f) [not to exceed any prices for the [Products] [Services] stated in the Operating Manual from time to time to be maximum prices provided that the Franchisee shall be free to [sell] [supply] at prices less than such maximum prices at any time during the Term;]
- (g) not to cause or permit to subsist any circumstance which may constitute a breach of any insurance policy maintained pursuant to this Agreement;
- (h) not to [sell any Product] [render any Service] which does not conform to or conflicts with the standards associated with the Proprietary Marks or of which the Franchisor does not approve;
- (i) not to alter or convert the Premises or the internal layout thereof or the fixtures and fittings therein nor install any equipment nor alter, erect or display any sign or other medium of advertisement whether inside or outside the Premises without in every case seeking and obtaining the prior consent in writing of the Franchisor, and each such alteration, conversion, erection or installation shall be carried out only in accordance with plans and specifications previously submitted to and approved by the Franchisor;
- (j) not to do or omit to do any act or thing which may in the sole opinion of the Franchisor bring the System or the Proprietary Marks into disrepute or which may in the sole opinion of the Franchisor damage or conflict with the interests of the Business or the other franchisees of the Franchisor;
- (k) not to use or publish any advertisements, signs, directory entries or other forms of publicity whether or not relating in whole or part to the Business or display the same on or at the Premises unless the same shall have first been submitted to and approved by the Franchisor;
- (l) [not to purchase those products, materials and equipment required by the terms of the Operating Manual to be purchased from the Franchisor from any person other than the Franchisor;]
- (m) not to use any of the Proprietary Marks as part of its corporate name;
- (n) not without the previous consent in writing of the Franchisor to be concerned or interested either directly or indirectly [in the supply of any [goods or services] or] [any business [in the Territory]] which is or are similar to or competitive with the [Products] [Services] [Business];
- (o) [not to supply directly or indirectly [the Services] [any of the Products] outside the Territory or to any person in the Territory knowing or having reason to believe that they would be re-sold or re-supplied outside the Territory;]

- (p) not to conduct the Business outside the Territory;
- (q) in relation to the Proprietary Marks:
 - (i) not to cause or permit anything which may damage or endanger the Proprietary Marks or other intellectual property of the Franchisor or the Franchisor's title to it or assist others or allow others to do so;
 - (ii) to take such reasonable action as the Franchisor shall direct (at the expense of the Franchisor) in relation to such infringement;
 - (iii) to affix such notices to the Products or their packaging or advertising associated with the Business as the Franchisor shall direct;
 - (iv) to compensate the Franchisor for any use by the Franchisee of the Proprietary Marks otherwise than in accordance with this Agreement;
 - (v) to indemnify the Franchisor for any liability incurred to third parties for any use of the Proprietary Marks otherwise than in accordance with this Agreement;
 - (vi) on the expiry or termination of this Agreement forthwith to cease to use the Proprietary Marks;
 - (vii) not to tamper with any markings or name plates or any other indication of the source of origin of the Products which may be placed by the Franchisor on the Products;
 - (viii) not to use the Proprietary Marks otherwise than as permitted by this Agreement;
 - (ix) not to use any name or mark similar to or capable of being confused with the trade name the Permitted Name or the Trade Mark;
 - (x) not to use the Proprietary Marks except directly in the Business;
 - (xi) to hold any additional goodwill generated by the Franchisee for the Proprietary Marks or the Business as their bare Trustee for the Franchisor;
 - (xii) to use the Permitted Name as its only trade name;
 - (xiii) to display such notices concerning the Proprietary Marks on its stationery and at the Premises as stipulated in the Operating Manual from time to time;
- (r) not to carry on or permit to be carried on any other business at the Premises or extend the scope or range of the Business;
- (s) not to delegate any duties or obligations arising under this Agreement otherwise than as may be expressly permitted under its terms;

- (t) not to describe itself or act as agent or representative of the Franchisor except as expressly authorised by this Agreement and not to pledge the credit of the Franchisor in any way and to give notice in such places as the Franchisor may from time to time in writing require that the Business is operated under licence from the Franchisor and is independent from the Franchisor and to procure that all stationery quotations orders invoices promotional material and advertisements shall include a statement that the Business is operated under licence from the Franchisor and such other information as the Franchisor may deem necessary to inform third parties that it does not accept liability for the acts debts or defaults of the Franchisee;
- (u) not to extend credit to customers without the prior written consent of the Franchisor but to sell only on delivery against payment terms; and
- (v) not to attempt to exceed the Credit Limit in any way.

8.2 The Franchisee covenants during the Term and for a period of [one] year after the expiration or termination for any reason of this Agreement whether itself or together with any other person, firm or company in any capacity whatsoever save as authorised hereunder directly or indirectly:

- (a) not to be engaged, or interested, or concerned in the [sale of the Products] [provision of the Services] or any like [products] [services] or in any business which is in the sole opinion of the Franchisor similar to or competitive or in conflict with the Business in the Territory; and
- (b) not to employ or seek to employ any person who is at that time or has at any time in the previous two years been employed by the Franchisor or any other franchisee of the Franchisor or any business carried on under the Proprietary Marks using the System nor otherwise directly or indirectly induce or seek to induce any such person to leave his or her employment; and
- (c) not to solicit customers or former customers of the Business nor divert or seek to divert any custom from the Franchisor or any other franchisee of the Franchisor.

8.3 The Franchisee hereby acknowledges that the Operating Manual and all other information and knowledge relating to the System is of a strictly confidential nature and accordingly the Franchisee covenants that it will not and it will procure that no other person shall at any time without the prior written consent of the Franchisor whether before or after termination of this Agreement divulge or use whether directly or indirectly for its own benefit or that of any other person, firm or company any of such information or knowledge relating to the System which may be communicated to or otherwise acquired by the Franchisee, its directors, agents or employees.

9. ADVERTISING

9.1 In consideration of the Franchisor accepting responsibility for [national] [local] advertising to ensure general public recognition and acceptance of the Proprietary Marks and the System, the Franchisee shall pay to the Franchisor on each

Accounting Reference Date, or if such day is not a Business Day, on the next Business Day thereafter throughout the Term the Advertising Contribution.

9.2 The Franchisor shall pay the Advertising Contribution which it shall receive from the Franchisee and its other franchisees operating the System into a separate fund which will be held in trust for all of the franchisees and shall expend such funds in maintaining, administering, directing and preparing local regional and national advertising including television, radio, magazine and newspaper campaigns, representation at trade exhibitions and the publication and dissemination of leaflets, brochures and other marketing materials to franchisees utilising the System. Expenditure of the said funds by the Franchisor shall be deemed satisfactory compliance with its promotional obligations hereunder, provided that if at any time the Franchisor expends monies in excess of those standing to the credit of the fund such excess expenditure may be set off as a first charge against subsequent monies received by the fund.

9.3 The advertising fund shall be audited annually by such firm of chartered accountants as the Franchisor shall nominate and the Franchisor shall provide to the Franchisee an audited account of the income and expenditure of the fund.

9.4 In addition to the Advertising Contribution the Franchisee will expend in aggregate, not less than _____ per cent. per annum of its annual Gross Turnover on local advertising including maintaining in local telephone and trade directories advertisements in the form and style prescribed by the Franchisor. The Franchisee will not publish any other advertising material unless and until samples thereof have been submitted to the Franchisor and the Franchisee has obtained the prior written approval of the Franchisor to the use of such advertising materials. The Franchisee will immediately cease the use or display of any advertising material deemed inappropriate by the Franchisor, upon receipt of a request from the Franchisor so to do.

9.5 The Franchisor will make available to the Franchisee point of sale and advertising materials including posters, leaflets, displays, flyers, stickers, signs, cards and notices and the Franchisee shall at its own expense prominently display, maintain and distribute the same as the case may be.

9.6 The Franchisee will co-operate with the Franchisor and the other franchisees of the Franchisor in any special advertising or sales promotion or other special activity and will contribute such sums for this purpose and purchase from the Franchisor and utilise in the Business point of sale and other advertising material and will engage in other promotional advertising activities as the Franchisor may direct including free offers, discounts and sales the costs of which shall be borne by the Franchisee.

10. INSURANCE

10.1 The Franchisee shall at its own expense obtain and maintain with an insurance company acceptable to the Franchisor, public liability and such other insurance specified in the Operating Manual in such minimum sums and conforming to such policy limits and provisions as the Franchisor may from time to time require.

10.2 The Franchisee shall from time to time furnish to the Franchisor on demand copies of all such insurance policies and evidence that all premiums due have been paid. The Franchisee will procure the entry of a note on all such policies that the insurer shall notify the Franchisor in the event of late payment of any premium in respect thereof by the Franchisee.

OR:

[The Franchisor agrees that it will arrange a comprehensive block policy with an insurer of repute to cover the Franchisee and the other franchisees of the Franchisor and the Franchisor for all [usual] risks associated with the System and the Business subject to prompt payment by the Franchisee of the Insurance Premium].

11. PROPRIETARY MARKS

11.1 The Franchisor warrants that it is entitled to license the Proprietary Marks to be utilised in the System throughout the Term and that the use of the Proprietary Marks by the Franchisee in the Territory will not constitute an infringement of the rights of any third party and will fully and effectively indemnify the Franchisee for and against all loss, damage, costs, claims and expenses arising out of any such infringement.

11.2 The Franchisee shall at the Franchisor's expense render to the Franchisor all reasonable assistance to enable the Franchisor to obtain registration in any part of the world of any of the Proprietary Marks. In no circumstances will the Franchisee apply for registration as proprietor or interfere with in any manner or attempt to prohibit the use of any of the Proprietary Marks in any part of the world but if at the time the Franchisor desires to apply for registration and has so applied, the Franchisee is deemed in law also to be the proprietor of any trade mark or if for any other reason the Franchisor shall so request, the Franchisee shall at the Franchisor's expense make in its own name or jointly with the Franchisor and proceed with such application as the Franchisor may direct and do all such acts and things and execute all such documents necessary for obtaining such registration and thereupon the Franchisee shall assign such registration and all other rights in such trade mark to the Franchisor.

11.3 The Franchisee acknowledges that the goodwill and all other rights in and associated with the Proprietary Marks vest absolutely in the Franchisor and that it is the intention of the parties that all such rights will at all times hereafter and for all purposes remain vested in the Franchisor and in the event that any such rights at any time accrue to the Franchisee by operation of law or howsoever otherwise the Franchisee will at its own expense forthwith on demand do all such acts and things and execute all such documents as the Franchisor shall deem necessary to vest such rights absolutely in the Franchisor.

11.4 In the event that a registration is obtained for any of the Proprietary Marks subsequent to the date hereof, the Franchisee shall be entitled to such like rights under such registration as are granted by this Agreement in respect of the other registered trade marks comprised at the date hereof in the Proprietary Marks, and shall be entitled to and at the request of the Franchisor shall enter into a registered user agreement in a form prescribed by the Franchisor in respect thereof.

11.5 The Franchisee will notify the Franchisor forthwith of any and all circumstances coming to the attention of the Franchisee, its directors, agents and employees which may constitute an infringement of any of the Proprietary Marks or any suspected passing off by any unauthorised person and shall take such reasonable action in connection therewith as the Franchisor may direct at the expense of the Franchisor.

11.6 The Franchisee shall take such action in relation to the use of any of the Proprietary Marks in the Business as the Franchisor may from time to time direct in order to make clear that the Proprietary Marks are the subject of patent copyright or trade mark protection.

12. IMPROVEMENTS AND INNOVATIONS

12.1 The Franchisor agrees to make any such improvements, additions or modifications of or to the System devised or developed in accordance with its obligations under clause 6(f) above available to the Franchisee without delay, who shall when required to do so by the Franchisor but not before introduce any such improvement, addition or modification into the Business at the time and in the manner specified by the Franchisor in writing and the System shall thereupon be deemed to have been so varied.

12.2 The Franchisee will notify the Franchisor of any improvements, additions or modifications of or to the System which may assist in the operation of the Business and the Franchisor may introduce such improvements additions or modifications without any obligation to make any payment therefor.

12.3 The Franchisee will not itself introduce any improvement, addition or modification of or to the System into the Business without the prior written consent of the Franchisor so to do.

13. OPERATING MANUAL

13.1 Throughout the Term the Franchisor will provide the Franchisee with full written details of any alterations or variations to the form of the Operating Manual to enable the Franchisee to keep the copy thereof in its possession up-to-date.

13.2 The Franchisor shall keep at its head office a definitive copy of the Operating Manual as revised and modified from time to time which in the event of any dispute as to the contents or import thereof shall be the authentic text.

13.3 The Franchisee shall conduct the Business strictly in accordance with the Operating Manual, the terms of which shall be deemed incorporated into and shall form part of this Agreement as if set forth fully herein. In the event of any conflict between the terms of this Agreement and the terms of the Operating Manual the former shall prevail.

13.4 The Operating Manual shall at all times remain the sole and exclusive property of the Franchisor and the Franchisee hereby acknowledges that the copyright

therein vests in the Franchisor and will not take and will procure that no other person will take any copies thereof without the prior written consent of the Franchisor.

14. FEES AND PAYMENT

14.1 In consideration of the grant of the right and licence to operate the Business, the Franchisee shall pay to the Franchisor or such other person as the Franchisor may direct:

- (a) upon the execution of this Agreement the Initial Fee which shall include the cost of initial training and advertising and the other matters specified in the Operating Manual as included in the Initial Fee but shall not include equipment, delivery and installation charges or any other matter not so specified as included which shall be invoiced separately to the Franchisee and paid promptly by the Franchisee in accordance with the Franchisor's standard terms and conditions of supply;
- (b) on each Payment Date in respect of each calendar month during the Term a continuing franchise fee equal to _____ per cent. of the Gross Turnover of the Franchisee during each such calendar month; and
- (c) a further management services fee of £_____ by standing order on such dates as the Franchisor shall specify which fee may be increased from time to time by such percentage as the Franchisor shall reasonably consider appropriate having regard to such factors as the level of service being offered and any rise in the Retail Price Index during the Term.

14.2 In the event that any sums due to the Franchisor are not paid by the Franchisee on the due date, such sums shall bear interest from day to day at an annual rate of 4 per cent. above the base rate from time to time of _____ Bank PLC as well after as before judgment in respect thereof.

15. ACCOUNTS AND RECORDS

The Franchisee shall:

- (a) maintain an accurate account and record of the Gross Turnover and all purchases made by the Business in each month up to the close of business on the last Business Day of each month, and shall prepare in a form approved by the Franchisor a monthly financial statement thereof and shall remit the same to the Franchisor on or before each Payment Date;
- (b) maintain at the Premises in a form approved by the Franchisor full and accurate books of account and shall keep detailed management and accounting records including all supporting vouchers, invoices and delivery notes and shall permit the Franchisor or its duly authorised agent during business hours to inspect any such accounts and records and to take copies thereof at the expense of the Franchisor;

- (c) prepare and promptly furnish to the Franchisor all such other accounting and management information set out in the Operating Manual in the form therein specified and any other information as the Franchisor may from time to time require;
- (d) at the Franchisee's expense in each accounting year during the Term have all such accounts and records audited by a qualified Chartered Accountant and supply a full set of such audited accounts which shall include a balance sheet and profit and loss account to the Franchisor within three months after the Accounting Reference Date in each year;
- (e) preserve all such accounts and records for not less than three years notwithstanding the expiry or termination of this Agreement;
- (f) permit auditors nominated by the Franchisor at the expense of the Franchisee to undertake such audits as the Franchisor may consider reasonably necessary on reasonable notice during normal business hours; and
- (g) within 14 days of submission or receipt to supply to the Franchisor a copy of each Value Added Tax return or assessment in respect of the Business.

16. SALE OF BUSINESS

16.1 All the rights and licences granted to the Franchisee hereunder are personal to the Franchisee who shall have the right to assign and sell the Business only subject to the following conditions and with the prior written consent of the Franchisor.

16.2 Subject as hereinafter provided the Franchisor hereby undertakes to grant to a purchaser of the Business acceptable to it a franchise for a period equal to the unexpired term granted by this Agreement or for not less than _____ years whichever shall be the greater commencing on the date of the sale of the Business on similar terms and conditions to those contained in the Franchisor's then current standard franchise agreement.

16.3 The conditions required to obtain the written consent of the Franchisor to the sale of the Business by the Franchisee shall be as follows:

- (a) any proposed purchaser shall submit a detailed offer in writing which shall be a bona fide offer at arm's length and such purchaser shall fulfil all the standards and criteria deemed necessary by the Franchisor with respect to such matters as business experience, financial status and ability and shall complete a programme of initial training to the satisfaction of the Franchisor;
- (b) the Franchisee or the proposed purchaser shall pay to the Franchisor the sum of £ _____ to cover the costs to the Franchisor of dealing with the application for consent and the training of the proposed purchaser and its manager and staff, and if the Franchisor has been instrumental in introducing the proposed purchaser a further sum equal to _____ per cent. of the sale price;

- (c) the Franchisee must not at the time of the application for consent be in breach of any of its obligations hereunder;
- (d) the shareholders and directors of any company intending to purchase the Business must be acceptable to the Franchisor according to the criteria set out in clause 16.3(a) above and shall undertake to the Franchisor in writing in such form as the Franchisor shall require to observe and perform all the obligations on the part of the Principal contained in the then current form of franchise agreement used by the Franchisor for corporate franchisees; and
- (e) the payment by the Franchisee of all monies due to the Franchisor pursuant to this clause 16 or otherwise howsoever, but without any deduction or set off and the discharge of all other obligations owed by the Franchisee to the Franchisor.

16.4 The Franchisee shall forthwith on receipt thereof submit to the Franchisor a copy of any proposed purchaser's written offer to purchase the Business together with:

- (a) a detailed financial statement of affairs and business history of the proposed purchaser; and
- (b) full written details of any other terms which have been agreed between the Franchisee and the proposed purchaser.

16.5 On receipt of the information specified in clause 16.4 the Franchisor shall have an option to purchase the Business for the same amount and upon the same terms as the proposed purchaser has offered save that the Franchisor shall not be obliged to purchase or take an assignment of any lease of the Premises. The Franchisor shall have a period of thirty days after receipt of such information to exercise its option to purchase by notice in writing to the Franchisee. The Franchisee shall notify the Franchisor of any variation in the terms offered by any prospective purchaser which variation shall forthwith be submitted in writing to the Franchisor and the said period of thirty days shall recommence as from the date of notification to the Franchisor of such variation. If the Franchisor serves notice exercising its option the sale and purchase shall be completed within twenty-eight days following due service of such notice. If the Franchisor does not serve notice exercising its option the Franchisee shall thereafter be free to sell, transfer or assign the Business upon the terms of the said written offer.

OR:

[16.2 If at any time the Franchisee wishes to sell transfer assign or otherwise part with the Business or any part of it or the Premises or any interest in it it shall immediately give notice of that desire to the Franchisor and offer by notice in writing to the Franchisor to sell the same to the Franchisor.

16.3 If the Franchisor accepts such offer within 28 days the Franchisee shall sell and the Franchisor shall purchase the assets included in such offer for the consideration and on the conditions ascertained as set out below and the sale and

purchase of such assets shall be completed within _____ days of the date of acceptance or the date on which the price becomes ascertained if later.

16.4 The price and conditions of such sale and purchase shall be as agreed between the parties the price representing the [net market value] of the assets to be sold [but without taking into account goodwill or any additional value arising from a sale of the Business as a going concern] and the conditions shall be such as in the circumstances would be normal and reasonable and in the event of a failure to agree on the price and conditions these shall be settled by a chartered accountant chosen by the parties or (in the event of a failure to agree on the choice of a chartered accountant within 14 days) by the President for the time being of the Institute of Chartered Accountants in England and Wales and such chartered accountant shall act as an expert and not as an arbitrator and his decision shall be conclusive and binding on the parties and the costs of such chartered accountant in certifying as above shall be shared equally by the parties.

16.5 If within 28 days of the receipt of such notice the Franchisor has not indicated to the Franchisee its acceptance of such offer the Franchisee shall be free within three months of such notice to sell transfer assign lease or sublet or otherwise part with the Business or any part of it or the premises or any part of its interest in them as set out in the notice to the Franchisor.]

16.6 The Franchisee agrees not to disclose any of the contents of the Operating Manual to any prospective purchaser and shall procure that no such prospective purchaser shall use any of the Proprietary Marks nor operate the System or any part thereof without the prior written consent of the Franchisor.

16.7 Upon the sale or transfer by the Franchisee of any part of the Business or the Premises, the rights of the Franchisee in respect thereof shall terminate but without prejudice to the existing obligations of the Franchisee.

17. DEATH OR INCAPACITY OF THE PRINCIPAL [OR THE FRANCHISEE]

17.1 If the Principal shall die during the currency of this Agreement, the personal representatives of the Principal shall within a period of three months from the date of the death notify the Franchisor in writing of their decision whether the Business should be continued by a relative or beneficiary of the Principal. If the personal representatives shall together give such written notice within the said period of three months to the Franchisor giving the name of such relative or beneficiary, then on the Franchisor being satisfied that such individual would be an assignee acceptable according to the criteria specified in clause 16.3(a) above, the Franchisor will not exercise its option referred to in clause 16.5 and will consent to an assignment of this Agreement to such individual subject to the conditions contained in clause 16.3 hereof.

17.2 If the personal representatives of the Principal indicate that they wish to sell the Business to a third party or shall not within the said period of three months assign this Agreement in accordance with and subject to the conditions of clause 17.1 above, then the personal representatives will use their best endeavours to find a purchaser for the Business and the provisions of clause 16 will apply.

17.3 If the personal representatives fail to arrange an assignment of the Business within the said period of three months in accordance with clause 17.2 above or a sale of the Business within a period of six months from the date of the death of the Principal, the Franchisor shall be entitled but not obliged:

- (a) to withdraw the services of any manager appointed pursuant to clause 17.5 below;
- (b) to terminate this Agreement without liability by giving to the personal representatives notice in writing to that effect; and
- (c) to purchase the Business at its agreed market value less _____ per cent. by serving notice in writing upon the personal representatives of its intention so to purchase the Business which notice will constitute a binding contract. The Franchisor shall not be obliged to purchase or take an assignment of any lease of the Premises owned or used for the purpose of the Business.

17.4 If the Franchisor and the personal representatives shall fail to agree a price pursuant to a notice served by the Franchisor pursuant to clause 17.3(c) above within twenty-eight days of the date of such notice, the price shall be determined by an independent Chartered Accountant agreed between the parties or in default of agreement within seven days after the expiration of such twenty-eight day period by a Chartered Accountant appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales on the basis of the [net market value] of the Business without taking account of goodwill or any additional value arising from the sale of the Business as a going concern who shall act as an expert and not an arbitrator and whose decision shall be final and binding upon both parties. The costs of such independent valuation shall be borne equally by the Franchisor and the personal representatives.

17.5 In the event of the death or incapacity for any reason of the Principal the Franchisor shall have the right to appoint a manager of the Business who shall have full powers to run the Business at the expense of the Business and take all steps necessary to preserve the goodwill associated with the Proprietary Marks and the System, and operate the Business in a satisfactory manner pending the recovery of the Principal to the satisfaction of the Franchisor or the assignment of this Agreement in accordance with its terms.

17.6 If the Principal is at any time during the Term incapacitated or in the opinion of the Franchisor unable responsibly to operate the Business for a continuous period of _____ months or a total period of _____ working days in any period of _____ months, the Franchisor may by notice to that effect require the Franchisee to dispose of the Business whereupon the provisions of clause 16 above shall apply.

17.7 If so requested by the Franchisee or the personal representatives of the Principal, the Franchisor may act as a non-exclusive agent for the sale of the Business and in such event will be paid a reasonable fee and its expenses for this service.

17.8 The Franchisee or the personal representatives of the Principal shall if requested by the Franchisor do all such acts and things and execute all such documents as may be necessary to give effect to the provisions of this clause.

18. TERMINATION

18.1 The Franchisor may terminate this Agreement forthwith by giving notice in writing to the Franchisee in any of the following events:

- (a) if the Franchisee fails to acquire the Premises and commence the Business within a period of [three] months from the date hereof;
- (b) if the Franchisee shall at any time fail to pay any amounts due and payable to the Franchisor hereunder;
- (c) if the Franchisee shall fail to submit to the Franchisor in a timely manner any of the accounting or management information required to be so submitted;
- (d) if the Franchisee shall fail to operate the Business in accordance with the System;
- (e) if the Franchisee shall in the opinion of the Franchisor misuse or in any way impair the goodwill associated with any of the Proprietary Marks or take any action to contest the validity or ownership thereof;
- (f) if the Franchisee shall purport to effect any assignment of any of the rights or licences herein granted other than in accordance with the terms hereof;
- (g) if the Franchisee fails to obtain any prior written approval or consent of the Franchisor expressly required by this Agreement;
- (h) if the Franchisee discloses or permits or suffers the disclosure of any part of the Operating Manual or other confidential information contrary to the terms hereof;
- (i) if the Franchisee or any officer, director or employee of the Franchisee gives to the Franchisor any false or misleading information or makes any misrepresentation in connection with entering into this Agreement or at any time during the continuance of this Agreement in connection with the Business;
- (j) if any material change shall occur in the management, ownership or control of the Franchisee or the Business otherwise than in accordance with the provisions of this Agreement;
- (k) if the Franchisee fails to ensure that the Business conforms with the other businesses operated in accordance with the System, in particular with regard to quality, service and cleanliness;
- (l) if the Franchisee or the Principal shall be convicted of any criminal offence or is in the opinion of the Franchisor guilty of gross moral turpitude; and/or

- (m) if the Franchisee otherwise neglects or fails to perform or observe any of the provisions of this Agreement or commits any breach of its obligations hereunder, which breach if remediable is not remedied to the satisfaction of the Franchisor within thirty days of a notice in writing to the Franchisee requesting its remedy, provided that the Franchisor shall not be obliged to give such notice in the case of a persistent breach which shall be one which has occurred more than twice in any twelve month period.

18.2 This Agreement shall automatically terminate without notice being given to the Franchisee in any of the following events:

- (a) if the Franchisee shall become insolvent by reason of its inability to pay its debts as they fall due or shall enter into liquidation whether voluntarily or compulsorily other than for the purpose of a reconstruction or amalgamation or shall make any arrangement or composition with its creditors or shall have a receiver, administrative receiver, manager or receiver and manager appointed of all or any part of its assets or takes or suffers any similar action in consequence of a debt;
- (b) if the Principal [Franchisee] shall become insolvent or commit any act of bankruptcy or suffer the filing of a petition in bankruptcy or shall make any arrangement or composition with creditors or take or suffer any similar action in consequence of a debt; and/or
- (c) if any party takes or threatens any action including but without limitation the commencement of legal proceedings to enforce or foreclose any lien or mortgage over or in respect of any property of the Franchisee or the Principal or to forfeit any estate or interest of the Franchisee or the Principal in the Premises or enters or seeks to enter into possession thereof.

19. CONSEQUENCES OF TERMINATION

19.1 Upon the termination or expiration of this Agreement for any reason, the Franchisee shall:

- (a) immediately pay to the Franchisor the full amount of all monies then or thereafter due together with any interest thereon up until the date of payment _____ days prior to the Expiry Date or _____ days after the receipt of notice terminating this Agreement (as the case may be) the Franchisee having furnished to the Franchisor a complete and accurate up-to-date stock check with estimates of turnover of the Business to such date;
- (b) immediately cease to operate the Business and to use the System and shall not thereafter hold itself out in any way as a franchisee of the Franchisor and refrain from any action that would or may indicate any relationship between it and the Franchisor;
- (c) immediately cease to use in any way whatsoever any and all of the Proprietary Marks and any other trade names, logos, devices, insignia, procedures or

methods which are or may be associated with the Proprietary Marks or the System;

- (d) return to the Franchisor or otherwise dispose of or destroy as the Franchisor shall direct all signs, advertising materials, stationery, invoices, forms, specifications, designs, records data, samples, models, programmes and drawings pertaining to or concerning the Business or the System or bearing any of the Proprietary Marks;
- (e) remove or permanently cover all signs or advertisements identifiable in any way with the Franchisor and in the event of failure promptly so to do, to permit the authorised agents of the Franchisor to enter on the Premises for such purpose;
- (f) return to the Franchisor all copies of the Operating Manual in its possession and under its control;
- (g) return all items of equipment held on loan or hire from the Franchisor under the terms of this Agreement;
- (h) do all such acts and things and execute all such documents as the Franchisor shall require, in particular but without limitation such notification of cessation of use of the Proprietary Marks as is necessary for the purpose of recording the same at the Trade Marks Registry;
- (i) procure the transfer of all telephone lines and numbers used in the Business to such person as the Franchisor may direct;
- (j) otherwise perform its obligations and observe the covenants set out in clauses 8.2 and 8.3 hereof;
- (k) dispose of all Products in hand in accordance with the Franchisor's directions; and
- (l) [vacate the Premises].

19.2 The expiration or termination of this Agreement shall be without prejudice to the accrued rights of the parties and any provision hereof which relates to or governs the acts of the parties hereto subsequent to such expiry or termination hereof shall remain in full force and effect and shall be enforceable notwithstanding such expiry or termination.

20. ACKNOWLEDGEMENTS BY FRANCHISEE

20.1 The Franchisee hereby acknowledges the exclusive rights of the Franchisor to own the System and the Proprietary Marks and all matters comprised therein and itself to utilise the same and to grant to any other person a licence to use the System and the Proprietary Marks and to amend and modify the same by variation, addition, renewal, substitution or howsoever otherwise and to revise the Operating Manual accordingly.

20.2 The Franchisee acknowledges that in giving advice to the Franchisee, assisting the Franchisee to establish the Business, recommending equipment and materials and assessing the suitability of the Franchisee and the Premises, the Franchisor has based its recommendations on experience actually obtained in practice but that the Franchisor does not give any guarantee or warranty with regard to such matters or generally in connection with the sales volume profitability or any other aspect of the Business. The Franchisee acknowledges that he has been advised by the Franchisor to discuss his intention to enter into this Agreement with other franchisees of the Franchisor and to seek other appropriate independent advice, and that the decision to enter into this Agreement has been taken solely on the basis of the personal judgment and experience of the Franchisee having taken such independent advice. Accordingly, the Franchisee acknowledges that no representation, warranty, inducement or promise express or implied had been made by the Franchisor or relied upon by the Franchisee in entering into this Agreement save such as may have been notified by the Franchisee to the Franchisor in writing and are annexed to and incorporated in this Agreement.

20.3 It is hereby expressly agreed between the parties that each of the restrictions contained in this Agreement is reasonably necessary for the protection of the Franchisor and its other franchisees and of the System and the Proprietary Marks and does not unreasonably interfere with the freedom of action of the Franchisee who enters into this Agreement with the benefit of legal advice in full knowledge of all the provisions hereof and the Franchisee acknowledges that all such provisions are fair and reasonable and that in entering into this Agreement the Franchisee accepts no more onerous restrictions than those to which the Franchisee would otherwise have been subject prior to entering into this Agreement.

21. CHANGE OF DIRECTORS OR SHAREHOLDERS

In the event of the death or retirement of any director or any change of shareholders of the Franchisee the appointment of a replacement or the transfer to another shareholder shall be subject to the prior approval of the Franchisor [which shall not be unreasonably withheld] and such replacement or transferee shall enter into such agreement to abide by the terms and conditions of this Agreement as may be required by the Franchisor.

22. WARRANTY OF POWER TO ENTER INTO AGREEMENT

Each of the parties warrants that it has full power and authority to enter into this Agreement and has obtained all consents and complied with all procedures necessary for the entry by it into this Agreement.

23. [RETENTION OF TITLE]

23.1 [The Products and any other goods delivered by the Franchisor to the Franchisee shall remain the sole and absolute property of the Franchisor as legal and equitable owner until such time as payment in respect thereof due to the Franchisor has been paid by the Franchisee but shall be at the Franchisee's risk from the time of delivery to it.

23.2 The Franchisee acknowledges that it is in possession of all such goods as bailee for the Franchisor until such time as they are delivered to a purchaser under the terms of this Agreement.

23.3 Until delivery to a purchaser the Franchisee undertakes to store such goods on the Premises separately from its own goods or those of any other person in a manner which makes them readily identifiable as the Franchisor's goods.

23.4 The Franchisee's right to possession of such goods shall cease if it does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for the winding-up of the Franchisee.

23.5 The Franchisor may for the purpose of examination or recovery of its goods enter upon any premises where they are stored or where they are reasonably thought to be stored.

23.6 The entire proceeds of such goods shall be held in trust for the Franchisor and shall not be mingled with any other money or paid into any overdrawn bank account and shall at all times be identifiable as the Franchisor's money.

23.7 The Franchisee warrants that it is not at the time of entering into this Agreement insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for a winding-up or to exercise any other rights over or against its assets.]

24. WITHHOLDINGS

All payments by the Franchisee under this Agreement of whatever nature shall be made in full without any deduction or withholding (whether in respect of set-off, counter-claim, duties, taxes, charges or otherwise howsoever) unless the deduction or withholding is required by law, in which event the Franchisee shall:

- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
- (b) forthwith pay to the Franchisor such additional amount so that the net amount received by the Franchisor will equal the full amount which would have been received by it had no such deduction or withholding been made;
- (c) pay to the relevant taxation or other authorities within the period for payment permitted by applicable law the full amount of the deduction or withholding; and
- (d) furnish to the Franchisor within the period for payment permitted by the relevant law either:
 - (i) an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld; or

- (ii) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

25. VALUE ADDED TAX

The amounts stated in this Agreement to be payable by the Franchisee are exclusive of United Kingdom value added tax and accordingly the Franchisee shall pay any value added tax properly chargeable in respect of supplies to the Franchisee as contemplated by this Agreement.

26. LOW SALES

The Franchisor may terminate this Agreement in the event that the Minimum Performance arising from the Business at the Premises is not achieved within two years of the Commencement Date or for a continuous period of twelve months at any time thereafter during the Term provided that the Franchisor shall have the right (but not the duty):

- (a) then to appoint management personnel to supervise the Business at the expense of the Business to assist the Franchisor to increase sales; and/or
- (b) to reduce the area of the Territory in proportion to such sales.

27. NEW OUTLETS

27.1 In the event that the Franchisor decides that the Territory is sufficiently large geographically and has a sufficiently large population to justify one or more further outlets for the Business in the Territory it may notify the Franchisee of such decision and on receipt of such notice the Franchisee shall have the right to open such further outlet elsewhere than at the Premises (in an area of the Territory nominated by the Franchisor) provided that the Franchisee informs the Franchisor within 90 days of such notice of its agreement to do so.

27.2 In the event that the Franchisee fails to notify the Franchisor of such agreement within 90 days or in the event of such notification fails to open such further outlet in the Territory within _____ months of such notice from the Franchisor the Franchisor shall have the right to reduce the Territory to enable it to provide an exclusive area in which a new Franchisee may trade using the System and the Proprietary Marks without any liability to the Franchisee.

28. DISCRETION

No decision of exercise of discretion judgment or opinion or approval of any matter mentioned in this Agreement or arising from it shall be deemed to have been made by the Franchisor except if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement.

29. COSTS

Each of the parties shall pay the costs and expenses incurred by it in connection with this Agreement.

30. OTHER LICENCES

30.1 The Franchisor may without liability to the Franchisee grant a licence to any entity in _____ to [manufacture or sell the Products or provide the Services or use the Proprietary Marks] or for any purposes except in direct competition with the Franchisee in the Business in the Territory.

30.2 The Franchisor (or any of its franchisees) using the System may sell to customers through an outlet located outside the Territory without any liability to the Franchisee even if the supplies to any such customer are delivered into the Territory.

31. NO PARTNERSHIP OR AGENCY

The Franchisee shall not pledge the credit of the Franchisor nor represent itself as being the Franchisor nor an agent, partner, employee or representative of the Franchisor and shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of the Franchisor and nothing in this Agreement shall operate so to constitute the Franchisee an agent, partner, employee or representative of the Franchisor.

32. NO WARRANTIES WITHOUT AUTHORITY

The Franchisee shall make no statement, representation or claim and shall give no warranty to any person in respect of the Business, the [Products] [Services] or the System save such as are specifically authorised in the Operating Manual in its form current at the time of the making by the Franchisee of any such statement, representation, claim or warranty.

33. INDEMNITY BY FRANCHISEE

The Franchisee hereby agrees and undertakes fully and effectively to indemnify and keep indemnified the Franchisor as well after as before the expiry or termination hereof from and against all damages, losses, claims, demands, expenses (including legal and professional expenses), costs and liabilities which the Franchisor may at any time incur as a result of any neglect or default of the Franchisee or its agents employees licensees or customers in connection with the Business or the Premises or any other reason so long as such loss, damage, liability, fees or costs resulted from the Business and was not due to any default of the Franchisor.

34. PRINCIPAL'S COVENANT

34.1 The Principal hereby covenants and agrees with the Franchisor as follows:

- (a) to use best endeavours to procure that the Franchisee, its shareholders, directors, agents and employees will duly observe and perform all the

obligations on the part of the Franchisee to be observed and performed. The liability of the Principal hereunder shall not in any way be affected or impaired by the Franchisor giving time or showing any indulgence whatsoever to the Franchisee;

- (b) to devote his full time attention and effort to the Business except to the extent and in the manner expressly and previously agreed in writing by the Franchisor;
- (c) to observe and perform as principal all the restrictions and obligations on the part of the Franchisee to be observed and performed under the terms of this Agreement.

34.2 If there are two or more persons as Principal all covenants and agreements on the part of the Principal shall be deemed to be joint and several covenants.

35. ASSIGNMENT BY FRANCHISOR

This Agreement and all the rights of the Franchisor hereunder may be assigned, transferred or otherwise dealt with by the Franchisor and shall inure to the benefit of the successors and assigns of the Franchisor.

36. RESERVATION OF RIGHTS

All rights and licences not specifically and expressly granted to and conferred upon the Franchisee by this Agreement are for all purposes reserved to the Franchisor.

37. SEVERABILITY

37.1 Each of the restrictions and provisions contained in this Agreement and in each clause and sub-clause hereof shall be construed as independent of every other such restriction and provision to the effect that if any provision of this Agreement or the application of any provision to any person, firm or company or to any circumstances shall be determined to be invalid and unenforceable then save as provided in clause 37.2 below such determination shall not affect any other provision of the Agreement or the application of such provision to any person, firm, company or circumstance all of which other provisions shall remain in full force and effect.

37.2 In the event that any provision of this Agreement shall be held to be invalid or unenforceable by a court of law or other competent authority in a way which in the sole opinion of the Franchisor materially adversely affects the right of the Franchisor to receive payment of fees or other remuneration or the terms on which the Franchisor supplies goods or services to the Franchisee or any territorial exclusivity conferred hereunder or the System or Proprietary Marks, then and in any such case the Franchisor may without liability terminate this Agreement by notice in writing to the Franchisee to that effect and in such circumstances the provisions of clause 19 above will apply.

38. FORCE MAJEURE

None of the parties to this Agreement shall be responsible to any other party for any delay in performance or non-performance due to any causes beyond the reasonable control of the parties hereto, but the affected party shall promptly upon the occurrence of any such cause so inform the other parties in writing, stating that such cause has delayed or prevented its performance hereunder and thereafter such parties shall take all action within its power to comply with the terms of this Agreement as fully and promptly as possible.

39. WAIVER

39.1 No failure of the Franchisor to exercise any power given to it hereunder or to insist upon strict compliance by the Franchisee or the Principal with any obligation or condition hereof and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any of the Franchisor's rights hereunder.

39.2 No waiver by the Franchisor of any particular default by the Franchisee shall affect or impair the Franchisor's rights in respect of any subsequent default of any kind by the Franchisee, nor shall any delay or omission of the Franchisor to exercise any rights arising from any default affect or impair the Franchisor's rights in respect of the said default or any other default of the Franchisee hereunder. Subsequent acceptance by the Franchisor of any payments by the Franchisee shall not be deemed a waiver of any preceding breach by the Franchisee of any of the terms covenants or conditions of this Agreement.

40. NOTICES

40.1 Any notice to be given by one party to [the other/any other party] under, or in connection with, this [Agreement/Transaction Document/Deed] shall be in writing and signed by or on behalf of the party giving it. It shall be served by sending it by fax to the number set out in clause 40.2, or delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in clause 40.2 and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this clause 40). Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at [10am] on the second [Business Day] following the date of posting

provided that in each case where delivery by hand or by fax occurs after [6pm] on a [Business Day] or on a day which is not a [Business Day], service shall be deemed to occur at [9am] on the next following [Business Day].

References to time in this clause are to local time in the country of the addressee.

40.2 The addresses and fax numbers of the parties for the purpose of clause 40.1 are as follows:

[Party]

Address:

Fax:

For the attention of:

[Party]

Address:

Fax:

For the attention of:

40.3 A party may notify [the other/any other] party to this [Agreement/Transaction Document/Deed] of a change to its name, relevant addressee, address or fax number for the purposes of this clause 40, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than [five] [Business Days] after the date on which notice is given, the date following [five] [Business Days] after notice of any change has been given.

40.4 [All notices under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.]

41. ENTIRE AGREEMENT

This Agreement [and *[any other ancillary agreements?]*] set[s] out the entire agreement and understanding between the parties with respect to the subject matter hereof. [This Agreement supersedes all previous agreements, arrangements and understandings between the parties with respect to the subject of this Agreement, which shall cease to have any further force or effect.] It is agreed that:

- (a) [no] [neither] party has entered into this Agreement in reliance upon any representation, warranty or undertaking of [any] [the] other party which is not expressly set out or referred to in this Agreement;

- (b) no director, employee or agent of the Franchisor is authorised to make any representation, warranty or undertaking not contained in this Agreement and the Franchisee has not entered into this Agreement in reliance on any such oral or written representation;
- (c) a party may claim in contract for breach of Warranty under this Agreement but shall have no claim or remedy under this Agreement in respect of misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or untrue statement made by [any][the] other party;
- (d) this clause shall not exclude any liability for fraudulent misrepresentation.

42. AMENDMENTS

No variation or waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorised director or employee of the Franchisor and the Franchisee.

43. NO RIGHTS UNDER CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

[A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.]

44. APPLICABLE LAW

This Agreement and all rights and obligations of the parties hereto shall be governed by and construed in accordance with the Law of England and the parties hereto hereby submit to the jurisdiction of the English Courts.

AS WITNESS this Agreement has been signed by and on behalf of the parties the day and year first before written.

SCHEDULE 1

PROPRIETARY MARKS

1. TRADE MARKS

1.1

2. TRADE NAMES

2.1

3. PATENTS

3.1

4. SOFTWARE

4.1

SCHEDULE 2
THE TERRITORY

SIGNED by)
for and on behalf of)
_____ Limited)
in the presence of:)

SIGNED by)
for and on behalf of)
_____ Limited)
in the presence of:)

SIGNED by)
in the presence of:)

