

DATED _____ 200

Reference: [MZM]

[LIMITED /PLC]

- and -

[[LIMITED]]

-and-

[NAME OF PRINCIPAL]

REVISED JUNE 2001

STANDARD CLAUSES
FOR A UNIT FRANCHISE AGREEMENT

Note: Separate forms should be used for Corporate Franchisees and Sole Trader/Partnership Franchisees. Versions with and without lease agreement provisions may also be needed

Note: This set of agreement clauses deliberately does not commence with long lists of definitions. It is not a lawyers document; it needs to be understood by lay clients and their franchisees. The definitions are established in the narrative and an index to where they may be found is in Clause 26. Essentially this is part of our clients sales literature and it must be laymen user friendly.

In view of the recently adopted new EC Block Exemption Regulation would you please liaise with MM or Stephen Rose on any questions relating to competition issues so we can be sure we have a uniform approach.

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¹ Amend clause numbers as appropriate

² Consider use of separate form. A separate form is essential if the Consumer Credit Act applies

THIS FRANCHISE AGREEMENT is made on 200

BETWEEN:

- (1) [Limited/PLC] ("the Franchisor") Registered Number []whose registered office is at []
- (2) [] ([together]³ "the Franchisee" which expression shall where the context so admits include the personal representatives of the Franchisee)

OR

- (2) [Limited] ("the Franchisee") Registered Number []whose registered office is at []
- (3) [] of [] ("the Principal" which expression shall where the context so admits include the personal representatives of the Principal)⁴

1. PRELIMINARY

- 1.1 The Franchisor has the right in the United Kingdom of Great Britain and Northern Ireland to conduct the business of [] and to franchise others to conduct that business (the "[] **BUSINESS**") under and with the benefit of the reputation and goodwill in the name of [] ("the Trade Name")⁵

OR

[Fast Food Franchise]

- 1.1 The Franchisor has expended time effort and money in developing and in obtaining and acquiring knowledge about the conduct of a business ("the [] **BUSINESS**) comprising a restaurant format and operating system ("the System") utilising the Franchisor's methods trade secrets and know-how and its specialised novel and unique techniques knowledge and expertise skill and proprietary information relating to the development and operation of limited menu restaurants known as [] ("the Trade Name") and has established a [substantial demand and] goodwill for the said restaurants and a [substantial and exclusive]⁶ reputation and goodwill in the Trade Name
- 1.2 The System⁷ includes for the maintenance of the common identity and the reputation of the [] **BUSINESS** and the [] **NETWORK** methods of

³ If franchisee is partnership

⁴ Delete if sole trader or partnership is franchisee plus additional references to the Principal and clause 16 and the appropriate clause 17

⁵ If the Franchisor is licensed under a master franchise agreement or the trade marks are owned by another entity

⁶ This should be used sparingly where it is a recognised brand and these words are fully justified

⁷ This is a suggested wording which may well need to be amended to meet the needs of the client

preparation merchandising and packaging used in or in connection with the operation of the said restaurants and a recognised design decor and colour scheme for the restaurant premises kitchen and dining area equipment and layout service format standards of quality and uniformity of products and services offered ingredients recipes and procedures for accounting inventory and management control which are secret and confidential and the exclusive property of the Franchisor

- 1.2 The Franchisor operates⁸ [and has granted] and may from time to time grant franchises permitting the operation of the System under the Trade Name at certain premises ("the [] **NETWORK**")
- 1.3 The Franchisee desires to obtain the benefits of the Franchisor's knowledge skill and experience and the right to operate a business providing the Menu Range under the Trade Name in accordance with the System from the Said Premises as hereinafter described ("a(n) [] **OUTLET**")
- 1.4 [The Franchisor (has applied to register) (is the registered proprietor of) certain trade marks (the "Trade Marks") which have become associated with the System and the Menu Range and has agreed to the Franchisee using the Trade Marks upon the terms and conditions hereinafter appearing] **OR**
- 1.5 [] Limited (" ")⁹ is the owner of the (registered and/or unregistered) trade marks [] ("the Trade Marks") the Trade Name the System and the Goodwill and has caused or will cause application to be made to register the Trade Marks which have become associated with the System and the Menu Range and has agreed with the Franchisor that the Franchisor shall have the right and authority but not the obligation to enter into sub-franchises with the Franchisee authorising the use by the Franchisee of the Trade Marks which the Franchisee will be required to use in connection with its conduct of the Said Business in accordance with the System]
- 1.5 The Trade Name is associated with uniformly high standards of manufacture preparation service merchandising and food and wine products within a specific menu range ("the Menu Range")

OR [Products (Retail) Franchise]

- 1.3 [The Franchisor has expended time money and effort in developing and in obtaining and acquiring knowledge about the conduct of the business ("the [] **BUSINESS**") of the distribution merchandising and promotion of the sale of []

8

This clause should reflect the reality in the early stages of the networks development

9

Where another entity (parent company/offshore company) owns the trade marks

("the Said Products") and has established a [substantial demand and]⁶ goodwill for the Said Products under and a [substantial and exclusive]⁶ reputation and goodwill in the name [] ("the Trade Name")

- 1.6 The methods trade secrets and know-how ("the System") of distribution merchandising promotion and packaging used in or in connection with the sale of the Said Products under the Trade Name are secret and confidential and are the exclusive property of the Franchisor
- 1.7 The System includes methods of [] used or in connection with the operation of the [] **BUSINESS** and for the maintenance of a common identity and reputation of the [] **BUSINESS** and the [] **NETWORK** a recognised design decor and colour scheme for the business premises occupied [and vehicles used] for the purposes of the Said Business (as hereinafter defined) equipment furniture layout service format standards of quality and uniformity of products and services offered and procedures for accounting inventory and management control
- 1.8 The Franchisor operates⁸ [and has granted] and may from time to time grant franchises permitting the operation of business to sell the Said Products under the Trade Name in accordance with the System at certain premises ("the [] **NETWORK**")
- 1.9 The Trade Name is associated with uniformly high standards of distribution merchandising and promotion
- 1.10 The Franchisee desires to obtain the benefits of the Franchisor's knowledge skill and experience and the right to sell the Said Products under the Trade Name in accordance with the System from the Said Premises as hereinafter described ("a(n) [] **OUTLET**")
- 1.11 [The Franchisor (has applied to register) (is the registered proprietor of) certain trade marks (the "Trade Marks") which have become associated with the System and the Said Products and has agreed to the Franchisee using the Trade Marks upon the terms and conditions hereinafter appearing]

OR

⁶ This should be used sparingly where it is a recognised brand and these words are fully justified

⁶ This should be used sparingly where it is a recognised brand and these words are fully justified

1.12 [] Limited ("[]"⁹ is the owner of the (registered and/or unregistered) trade marks [] ("the Trade Marks") the Trade Name the System and the Goodwill and has caused or will cause application to be made to register the Trade Marks which have become associated with the System and the Said Products and has agreed with the Franchisor that the Franchisor shall have the right and authority but not the obligation to enter into sub-franchises with the Franchisee authorising the use by the Franchisee of the Trade Marks which the Franchisee will be required to use in connection with its conduct of the Said Business in accordance with the System]

OR [Services Franchise]

1.1 The Franchisor has expended time effort and money in developing and in obtaining and acquiring knowledge about the conduct of the business ("the [] **BUSINESS**) [comprising a range of services ("the Services") described in the [] Schedule hereto and has established a [substantial demand and]⁶ goodwill for the [] **BUSINESS** under and a [substantial and exclusive]⁶ reputation and goodwill in the name [] ("the Trade Name")

1.13 The methods trade secrets and know-how ("the System") of conducting and marketing the [] **BUSINESS** are secret and confidential and are the exclusive property of the Franchisor

1.14 The System⁷ includes methods of [] used in or in connection with the operation of the [] **BUSINESS** and for the maintenance of a common identity and reputation of the [] **BUSINESS** and the [] **NETWORK** a recognised design decor and colour scheme for the business premises occupied [and vehicles used] for the purposes of the Said Business (as hereinafter defined) equipment and furniture layouts service format standards of quality and uniformity of products and services offered and procedures for accounting inventory and management control

1.15 The Franchisor operates⁸ [and has granted] and may from time to time grant franchises permitting the operation of businesses providing the Services under the

⁹ Where another entity (parent company/offshore company) owns the trade marks

⁶ This should be used sparingly where it is a recognised brand and these words are fully justified

⁶ This should be used sparingly where it is a recognised brand and these words are fully justified

⁷ This is a suggested wording which may well need to be amended

⁸ This clause should reflect the reality in the early stages of the networks development

Trade Name in accordance with the System from certain premises ("the [] NETWORK")

- 1.16 The Trade Name is associated with uniformly high standards of service and quality of work
- 1.17 The Franchisee desires to obtain the benefit of the Franchisor's knowledge skill and experience and the right to [provide the Services and to] operate the System under the Trade Name from the Said Premises hereinafter described ("an [] OUTLET")
- 1.18 [The Franchisor (has applied to register) (is the registered proprietor of) certain trade marks (the "Trade Marks") which have become associated with the System and the Services and has agreed to the Franchisee using the Trade Marks upon the terms and conditions hereinafter appearing] **OR**
- 1.7 [] Limited "[]"⁹ is the owner of the (registered and/or unregistered) trade marks [] ("the Trade Marks") the Trade Name the System and the Goodwill and has caused or will cause application to be made to register the Trade Marks which have become associated with the System and the Services and has agreed with the Franchisor that the Franchisor shall have the right and authority but not the obligation to enter into sub-franchises with the Franchisee authorising the use by the Franchisee of the Trade Marks which the Franchisee will be required to use in connection with its conduct of the Said Business in accordance with the System]

NOW IT IS AGREED as follows:-

2. RIGHTS GRANTED [PRODUCTS]

2.1 Subject to and in accordance with the terms of this Agreement the Franchisor grants to the Franchisee the [non] exclusive right and the obligation within the area ("the Territory") [specified in Schedule []] for the purposes of the Said Business to:

2.1.1 use the System;

2.1.2 use the Trade Name the Trade Marks and other symbols insignia distinctive designs and plans or specifications owned by []⁹ and/or the Franchisor together with the benefit of []⁹ 's] the Franchisor's

⁹

Where another entity (parent company/offshore company) owns the trade marks

accumulated experience knowledge and Goodwill (hereinafter defined) relating to the distribution merchandising and promotion of the sale of the Said Products

- 2.1.3 use the copyright of the Franchisor free of royalty in any printed matter or other matter (other than software) distinctive features marks decor fabric designs and drawings and any other relevant matter or materials
- 2.2
 - 2.2.1 The Franchisor hereby (for the avoidance of doubt) exclusively reserves to [itself] [himself] and/or []⁹ all rights not expressly hereby granted including (but not limited to) the right to exploit the [] **BUSINESS** anywhere where and in any way in which it would not infringe any rights expressly granted to the Franchisee in this Agreement
 - 2.2.2 The Franchisor gives no undertaking to the Franchisee not expressly given in this Agreement and nor shall any undertaking on the part of the Franchisor be implied for any reason including any practice or course of conduct embarked upon by the Franchisor and/or the parties hereto
- 2.3 In this Agreement the expression "the Said Business" shall mean the business carried on by the Franchisee in exercise of the above rights and pursuant to and in accordance with this Agreement
- 2.4 The Said Business shall only be carried on by the Franchisee from premises ("the Said Premises") at [] (or at an address in [] to be agreed between the parties)
- 2.5 In this Agreement the word "Goodwill"¹⁰ includes
 - 2.5.1 the goodwill and all rights in and associated with or arising from []⁹ and/or the Franchisor's copyright material the System the Trade Name the Trade Marks and any other intellectual property rights of the Franchisor and
 - 2.5.2 any additional goodwill generated from their use or exploitation in the Said Business including (without limitation) the use or exploitation on the Internet (hereinafter defined)

2.6 To avoid any doubt the Franchisee acknowledges that the Goodwill shall at all times belong to and be vested in the Franchisor [or] and that the Franchisee only has the right to benefit from the Goodwill to the extent and upon the terms provided by this Agreement

2. RIGHTS GRANTED [SERVICES]

2.1 subject to and in accordance with the terms of this Agreement the Franchisor grants to the Franchisee the [non] exclusive right and the obligation within the area ("the Territory") specified in the [First] Schedule hereto for the purposes of the Said Business to:

2.6.1 use the System [and provide the Services];

2.6.2 use the Trade Name the Trade Marks and other symbols insignia distinctive designs and plans or specifications owned by []⁹ and/or the Franchisor together with the benefit of ['s]⁹ and/or the Franchisor's accumulated experience knowledge and Goodwill (hereinafter defined) relating to the Services

2.6.3 use the copyright of the Franchisor free of royalty in any printed matter or other matter (other than software) [(including recipes)] distinctive features marks decor fabric design and drawings and any other relevant matter or materials

2.7 2.2.1 The Franchisor hereby (for the avoidance of doubt) exclusively reserves to [itself] [himself] and/or []⁹ all rights not expressly hereby granted including (but not limited to) the right to exploit the [] **BUSINESS** anywhere where and in any way in which it would not infringe any rights expressly granted to the Franchisee in this Agreement

2.2.2 The Franchisor gives no undertaking to the Franchisee not expressly given in this Agreement and nor shall any undertaking on the part of the Franchisor be implied for any reason including any practice or course of conduct embarked upon by the Franchisor and/or the parties hereto

2.8 In this Agreement the expression "the Said Business" shall mean the business carried on or to be carried on by the Franchisee in exercise of the above rights and pursuant to and in accordance with this Agreement

- 2.9 The Said Business shall only be carried on by the Franchisee from premises ("the Said Premises") at [] or (at an address in [] to be agreed between the parties)
- 2.10 In this Agreement the word "Goodwill" includes
- 2.10.1 the goodwill and all rights in and associated with or arising from []⁹ and/or the Franchisor's copyright material the System the Trade Name the Trade Marks and any other intellectual property rights of the Franchisor and
- 2.10.2 any additional goodwill generated from their use or exploitation in the Said Business
- 2.11 To avoid any doubt the Franchisee acknowledges that the Goodwill shall at all times belong to and be vested in []⁹ and/or the Franchisor and that the Franchisee only has the right to benefit from the Goodwill to the extent and upon the terms provided by this Agreement
- 2.12 [The Franchisor warrants that it has been authorised to enter into this Agreement]¹¹

3. TERM OF AGREEMENT

This Agreement shall subject to the provision for termination hereinafter contained subsist for a term ("the Term") of [] years from and including the [] day of [] One thousand nine hundred and [] [the date of this Agreement] with the benefit of the Franchisee's right to a new agreement contained in clause 4 below

4. RIGHT TO A NEW AGREEMENT

- 4.1 The Franchisee shall have the right to require the Franchisor to enter into a new agreement ("the New Agreement") to take effect immediately following the end of the Term subject to the conditions and terms which follow
- 4.2 Subject to the following conditions precedent the Franchisee shall exercise such right by giving written notice ("the Franchisee's Notice") to the Franchisor so that it is received between 6 (six) months and 3 (three) months before the Term ends. The conditions precedent are that:
- 4.2.1 there shall be no outstanding breach by the Franchisee of the terms of this Agreement¹³; and

¹¹ Where another entity owns the trade marks

4.2.2 the Franchisee shall have substantially observed and performed the terms and conditions of this Agreement

4.3 The terms of the New Agreement shall be that:

4.3.1 the Franchisee shall undertake to carry out at [his] [its] own expense within a period of [] days (or such longer period as may be specified by the Franchisor) from the date of the notification by the Franchisor to the Franchisee such works of renovation modernisation and refurbishment and to replace such fixtures signs furnishings vehicles and equipment as may be necessary to comply with the Franchisor's requirements to bring the [] **OUTLET** up to the then current standards of design and decor of the [] **NETWORK** and to comply with any relevant statutory or other requirements or regulations; and

4.3.2 the Franchisee [and] the Franchisor [and the Principal] shall enter into the New Agreement for a period at least equal to the Term upon the terms contained in the Franchisor's then current form of franchise agreement¹⁴ which will include a provision similar to Clause [5] unless the Franchisor's reversionary interest in the Said Premises is less than said period plus 10 days provided however that:

4.3.2.1 the Franchisee shall not pay any sum expressed to be by way of initial fee (however described) but shall pay a renewal fee [in the sum of £] or [of a sum equal to [] per cent of the initial fee then payable to the Franchisor by new franchisees]; and the Franchisor shall not be obliged to provide any of the initial or other obligations contained in such agreement which are appropriate to the establishment in business of a new franchisee; and

4.3.2.2 [the New Agreement may not contain a right to require the Franchisor to enter into a new agreement]¹⁵

4.3.3 the Franchisee shall upon the execution of the New Agreement be deemed to have released and discharged the Franchisor from and against all claims

¹³ If the Franchisee is in breach, the Franchisor does not have to give notice to cure

¹⁴ Enables renewal on an up-to-date form of franchise agreement.

¹⁵ This tackles the issue of providing a perpetually renewable agreement

and demands whether or not contingent which the Franchisee may have against the Franchisor arising from this Agreement or otherwise in any way out of the relationship between the Franchisor and the Franchisee

4.3.4 The Franchisee's right to require the Franchisor to enter into the New Agreement shall cease and be of no effect if after the service of the Franchisee's Notice and prior to the entry into of the New Agreement the Franchisee shall fail to carry out the works and replacements referred to in clause [4.3.1] or shall commit a breach of this Agreement such as to justify the termination of this Agreement or which may result in its termination

5. [¹⁶LEASE OF PREMISES

5.1 IF the Franchisor owns the freehold interest in the Said Premises then (subject to the obtaining of the Court Order hereinafter mentioned unless the Franchisor shall waive this requirement) the Franchisor shall grant to the Franchisee and the Franchisee shall accept a lease of the Said Premises ("the Franchisee's Lease") in the form of the draft annexed hereto for a term of years equal to the Term but if the Court Order is not obtained by the date of this Agreement the term of the Franchisee's Lease shall commence on the day following the date of the Court Order and shall expire on the last day of the Term at the rent (payable from the date specified by the Franchisor but not being a date earlier than the date of commencement of this Agreement) which shall be such sum as shall be agreed between the Franchisor and the Franchisee or failing such agreement within [] days of the Franchisee's said request such sum as shall be determined by an independent chartered surveyor agreed between the parties (or in the absence of agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors) who shall act as an expert (and whose fees shall be paid by the Franchisee) and shall determine such sum as shall be the full open market rent at the date of this Agreement (subject to review as set out in the Franchisee's Lease) for the Said Premises (together with any rights granted by the Franchisee's Lease) having regard to current rental values and on the basis

5.1.1 of a letting by a willing landlord to a willing tenant disregarding and making no allowance for the value of any rent free period or any reduction in rent in lieu of any rent free period or any reverse premium or other concessions or discount as to rent which such landlord and tenant might reasonably agree

- 5.1.2 that the Said Premises are fit for occupation and use for trading therefrom
 - 5.1.3 that there shall be ignored any restrictions on the use to which the Said Premises may be put
 - 5.1.4 that the Franchisee's occupation of the Said Premises shall be ignored
 - 5.1.5 of it being assumed that the Said Premises are available to let as a whole without payment of a premium but with vacant possession for a term of years equal to the Term and subject to the provisions of the Franchisee's Lease
 - 5.1.6 that the existence of this Agreement shall be ignored
- 5.2 If the Franchisor holds a lease of the Said Premises ("the Lease") then (subject to the obtaining of the requisite consent of any superior landlord and the obtaining of the Court Order hereinafter mentioned unless the Franchisor shall waive this latter requirement) the Franchisor shall grant to the Franchisee and the Franchisee shall accept from the Franchisor an Underlease of the Said Premises ("the Underlease") in the form of the draft annexed hereto with such modifications (if any) as may be required by any superior landlord or as may be required by the Franchisor in order to ensure that the Underlease reflects the terms of the Lease The term of years granted by the Underlease shall either be equal to the Term or equivalent to the residue of the term of years granted by the Lease less ten days (whichever is the shorter) and in either case shall commence on the date of the commencement of the Term but if the Court Order is not obtained at the date of this Agreement the term of the Underlease shall commence on the day following the date of the Court Order and shall expire on the last day of the Term The rent payable shall be the same as that payable pursuant to the Lease or open market rent (if higher) which shall be such sum as shall be agreed between the Franchisor and the Franchisee or failing such agreement within [] days of the Franchisee's said request such sum as shall be determined by an independent chartered surveyor agreed between the parties (or in the absence of agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors) who shall act as an expert (and whose fees shall be paid by the Franchisee) and shall determine such sum as shall be the full open market rent at the date of this Agreement for the Said Premises subject to review in the manner set out in the Underlease (together with any rights granted by the Underlease) having regard to current rental values and on the basis:-
- 5.2.1 of a letting by a willing landlord to a willing tenant disregarding and making no allowance for the value of any rent free period or any reduction in rent in lieu of any rent free period or any reverse premium or other

concessions of discount as to rent which such landlord and tenant might reasonably agree

- 5.2.2 that the Said Premises are fit for occupation and use for trading therefrom
 - 5.2.3 that there shall be ignored any restrictions on the use to which the Said Premises may be put
 - 5.2.4 that the Franchisee's occupation of the Said Premises shall be ignored
 - 5.2.5 of it being assumed that the Said Premises are available to let as a whole without the payment of a premium with vacant possession for a term of years equal to the Term and subject to the provisions of the Underlease
 - 5.2.6 that the existence of this Agreement shall be ignored
 - 5.2.7 and that it shall commence upon the date specified by the Franchisor which shall not be prior to the date of the commencement of the Term
- 5.3 if the Franchisee has identified premises of which the Franchisor approves but for any reason the Franchisee is unable to acquire appropriate occupation rights in respect of such premises then at the Franchisee's request the Franchisor may in its sole discretion endeavour to acquire a freehold or leasehold interest in the Said Premises (upon terms acceptable to the Franchisor) If the Franchisor shall acquire a freehold interest the provisions of clause [5.1] shall apply If the Franchisor shall acquire a leasehold interest the provisions of clause [5.2] shall apply Any premium payable for the acquisition of such leasehold interest by the Franchisor shall be reimbursed by the Franchisee to the Franchisor forthwith upon demand by the Franchisor
- 5.4 The Franchisor and the Franchisee shall forthwith or as soon after the signing of this Agreement as may be possible and practicable apply to the relevant Court for an Order contracting the Franchisee's Lease or the Underlease or (as the case may be) out of the provisions of Sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 In the event of the Court refusing to make such an Order the Franchisor shall be entitled to terminate this Agreement within four weeks after receiving notice of such refusal from the Court and in that event the initial franchise fee shall be repaid to the Franchisee but the Franchisee shall comply so far as the same may be applicable with the provisions of clause []¹⁷

- 5.5 If the consent of any Superior Landlord is required to the grant of the Underlease the Franchisor undertakes to endeavour to obtain such consent as quickly as possible and the Franchisee undertakes to provide all references and other information as may be required to obtain such consent and to enter into any licences required by any Superior Landlord including the provision of a surety or other security (if so required) and shall comply with any other reasonable requirements of the Superior Landlord
- 5.6 If the Franchisee is allowed into occupation of the Said Premises prior to the grant of the Franchisee's Lease or Underlease (as the case may be) it shall be as licensee only and no tenancy shall be created by the Franchisee so entering into occupation which shall be on the same terms and conditions as if the Franchisee's Lease or the Underlease (as the case may be) shall have been granted (save those which are inconsistent with the terms of a licence) And the Franchisee shall pay to the Franchisor a licence fee equivalent to the rents and all other monies which would be payable under the Franchisee's Lease or the Underlease (as the case may be) In the event of the Franchisor giving written notice to the Franchisee to vacate the Said Premises the Franchisee will forthwith vacate and deliver up the same to the Franchisor
- 5.7 If six months from the date of this Agreement the Court Order or any requisite Superior Landlord's consent or both of them has not been obtained for the grant of the Underlease the Franchisor shall have the right to terminate this Agreement on serving fourteen days written notice on the Franchisee The Franchisor will repay to the Franchisee all sums paid by the Franchisee to the Franchisor under the provisions of this Agreement (other than management services fees and advertising contributions) plus a sum equal to the value at cost price of such of the Franchisee's sound and saleable stock fixtures fittings and equipment which are returned by the Franchisee to the Franchisor less
- 5.7.1 a sum being the aggregate of the expenses incurred by the Franchisor and a charge in respect of time spent by the Franchisor or persons employed by it in respect of the Franchisee from the moment of the Franchisee's first contact with the Franchisor The amount of such sum (which shall not exceed any sum paid by way of initial Franchise Fee) shall if requested by the Franchisee be certified by the Franchisor's auditors whose certificate shall be final and binding on both parties
- 5.7.2 a licence fee at the rate provided in clause [4.6] for such period of time as the Franchisee has been in occupation of the Said Premises To avoid any

doubt any profit or loss of the Said Business made while operating shall belong to or be suffered by the Franchisee

- 5.7.3 a sum equal to the cost to the Franchisor of any repairs decorations or replacements to the Said Premises or any equipment fixtures and fittings within the Said Premises which is not wholly attributable to fair wear and tear
- 5.8 The Franchisee's Lease or the Underlease (as the case may be) shall be completed within two weeks of the later of the date of such Court Order or the grant of any necessary consent by any Superior Landlord
- 5.9 The Franchisee shall procure the execution by a person or persons acceptable to the Franchisor and any Superior Landlord (if any) as surety for the Franchisee's Lease or the Underlease (as the case may be) upon its completion
- 5.10 The Franchisee shall enter into such form of licence permitting the alterations and/or fitting out works to the Said Premises by the Franchisee as the Franchisor or any Superior Landlord shall require and (if applicable) the Franchisee shall at his (its) own expense assume the obligations of the Franchisor (in respect of such works) to any Superior Landlord in accordance with the directions of the Franchisor and to the satisfaction of the Franchisor
- 5.11 The Franchisee shall pay all proper costs charges and expenses (including VAT (as hereinafter defined) and disbursements and whether incurred as principal or by way of indemnity to a third party) incurred by the Franchisor in giving effect to the terms of this clause including and without prejudice to the generality of the foregoing legal and surveyor's fees stamp duty and H M Land Registry fees incurred
- 5.11.1 in the acquisition of a freehold or leasehold interest by the Franchisor (including all other professional fees) in accordance with clause [5.3]
- 5.11.2 in the grant or obtaining of any licences pursuant to clause [5.5] and [5.10] and
- 5.11.3 in the grant of the Franchisee's Lease or the Underlease (as the case may be)
- 5.12 The Franchisor may by written notification to the Franchisee direct that the provisions of clause 5.4 shall not apply
- 5.13 To avoid any doubt the provisions of clause [26.10] relating to the right of deduction or set off shall not apply to sums due to the Franchisor under this clause

6.

FRANCHISOR'S INITIAL OBLIGATIONS

To assist the Franchisee in opening for business the Franchisor will (in addition to training to be provided pursuant to the provisions in that respect hereinafter contained) provide to or make available to the Franchisee the following services and/or goods

- 6.1 consultation and advice as to the location suitability and acquisition of the Said Premises
- 6.2 consultation and advice with regard to alterations refurbishment renovation or other work necessary for the conversion of the Said Premises into a(n) [] **BUSINESS**
- 6.3 the use on loan of standard plans drawings and specifications of a(n) [] **BUSINESS**. If it shall be necessary to amend such plans and drawings to suit the Said Premises the Franchisee shall at [his] [its] own expense employ an Architect or Surveyor for the purpose. No plans or drawings so amended shall be used for any purpose until they shall have been approved in writing by the Franchisor
- 6.4 provide the Franchisee with an operational manual or manuals ("the Operational Manual") which shall contain details of the System [and the Services]
- 6.5 consultation and advice with regard to the way in which fixtures fittings and equipment are to be installed in the Said Premises with a view to the efficient operation of the Said Business
- 6.6 general supervision of the said conversion not including day to day or immediate supervision which shall be the responsibility of the Franchisee's Architect or Surveyor
- 6.7 consultation (including consultation with the designated officers and general management of the Franchisor) and advice with a view to enabling the Franchisee to commence the Said Business including advice and consultation with regard to the purchase of materials the selection training and supervision of staff accounting book-keeping advertising and the day to day operation of the Said Business
- 6.8 advice on the stocking requirements and the merchandising of the Said Products comprised in the Franchisee's initial stock inventory of the Said Business prior to its opening
- 6.9 advice on the initial advertising [or promotional] campaign related to the opening of the Said Business and supply free of charge of window posters and leaflets announcing the said opening

either

6.10 [the equipment fixtures and fittings listed in Part I of Schedule 3 hereto ("the Equipment Package") at the price ("the Equipment Package Price") stated in Part II of Schedule 3]

or

6.10 [advice in regard to the equipment fixtures and fittings required for use in the [] **OUTLET** and the provision of the names and addresses of suppliers whose equipment fixtures and fittings comply with the Franchisor's specification and quality standards]

6.11 initial on-site training

6.12 guidance in relation to the commencement of the Said Business

7. FRANCHISOR'S CONTINUING OBLIGATIONS

The Franchisor shall at all times during the subsistence of this Agreement

7.1 provide the Franchisee with details of any alterations and/or improvements in or to the System [or the Services] to enable the Franchisee to keep the Operational Manual up to date. In the event of any dispute the authentic text of the Operational Manual shall be the copy kept as such by the Franchisor at its Head Office. The Operational Manual shall at all times remain the property of the Franchisor. The Franchisee acknowledges that the copyright in the Operational Manual is vested in the Franchisor

7.2 provide the Franchisee with reasonable facilities for consultation with the designated officers of the Franchisor in relation to the conduct of the Said Business with a view to assisting and enabling the Franchisee to maintain the operation of the System

7.3 provide the Franchisee with advice know-how and guidance in such areas as management finance promotion and methods of operation to be employed in or about the System

7.4 provide the Franchisee with a continuing service to assist the Franchisee to achieve and maintain standards of operation and service in respect of the Said Products and otherwise but this provision is subject to the Franchisee providing to the Franchisor such information as it may require to enable the Franchisor to monitor the performance of the Said Business and offer guidance

- 7.5 In order to maintain the identity and the reputation of the [] **BUSINESS** the Franchisor shall make the Said Products available to the Franchisee on its terms of business [set out in Schedule 4] current from time to time. The Franchisor may also from time to time nominate suppliers from whom the Franchisee shall purchase The Said Products upon the suppliers' terms of business current from time to time.
- 7.6 provide the Franchisee with assistance in negotiating contracts and train the Franchisee in techniques to be employed in securing contracts. The Franchisor shall have the right on behalf of the Franchisee to enter into contracts with customers for the supply of services by the Franchisee on such terms as the Franchisor shall in its discretion consider to be in the interests of [the **NETWORK**] [as a whole] [including the provision of reasonable payment terms bearing in mind the potential benefits to the [] **NETWORK**]
- 7.7 request a provider of telecommunications services to provide one or more telephone lines and the numbers allocated thereto for the benefit of the Franchisee at the Said Premises which the Franchisee must utilise only in connection with the operation of the Said Business. The Franchisor shall be the official subscriber for such line or lines
- 7.8 provide the Franchisee at the Franchisee's expense with stationery invoices quotation forms contracts and other documentation for use by the Franchisee in [his] [its] dealings with customers and other third parties
- 7.9 provide and maintain at the expense (but not the cost of illumination) of the Franchisor illuminated and/or non-illuminated fascia signs or other signs on the exterior of the Said Premises in the Franchisor's distinctive style and provide to the Franchisee all necessary plans of such signs The Franchisee shall:
- 7.9.1 at [his] [its] own expense obtain any necessary consents from the Landlord any Superior Landlord local planning and/or building bye-law authority as the case may be;
- 7.9.2 pay to the Franchisor in respect of such signs:
- 7.9.2.1 on entering into this Agreement an initial year's hire fee of £[] [] pounds) ;and
- 7.9.2.2 the cost to the Franchisor from time to time of maintaining such sign or signs such costs to be notified to the Franchisee from time to time in writing and to be paid within twenty eight days following such notification

7.9.2.3 subsequent annual hire fees which shall be the same as the initial year's hire fee at the rate applicable on the date payment is due until the Franchisor notifies the Franchisee of a variation in such hire fee when the varied fee shall be payable from the date stated in such notification until further variation. All annual hire fees shall be paid in each year on the anniversary of this Agreement

8. [¹⁸LEASE OF EQUIPMENT

- 8.1 The Franchisor agrees to lease to the Franchisee [free of charge] the equipment signs and goods (hereinafter called "the Leased Equipment") listed in Part I of Schedule [] hereto and the Franchisee agrees to take the Leased Equipment on lease from the Franchisor [upon the terms as to payment contained in Part II of Schedule []]
- 8.2 The Franchisee shall not sell or offer for sale mortgage or pledge underlet lend or otherwise deal with or part with the possession of the Leased Equipment
- 8.3 The Franchisee shall not interfere with or adjust the Leased Equipment except as specifically authorised in the Operational Manual and the Franchisee shall keep the Franchisor indemnified against all loss and damage to the Leased Equipment caused by wilful or negligent misuse
- 8.4 The Franchisor may affix to the Leased Equipment or any part such plates or other marks indicating that the Leased Equipment is the property of the Franchisor and the Franchisee shall not obliterate deface or cover up the same and the Franchisor shall at all times have access to the Leased Equipment for the purpose of inspecting such plates and keeping the same in good repair
- 8.5 The Leased Equipment shall not be used or be permitted to be used by the Franchisee for any such other purpose other than in the Said Business as provided in the Operational Manual
- 8.6 The Franchisee shall not charge or offer the Leased Equipment as security nor shall the Franchisee permit any lien or other encumbrance to affect the said equipment. [In particular the Franchisee shall inform any person to whom a debenture mortgage charge or other encumbrance over any part of the Franchisee's assets is to be issued that the Leased Equipment is not the property of the Franchisee]

8.7 The Franchisee shall at all times keep the Leased Equipment insured in the joint names of the Franchisor and the Franchisee in its full value against such risks as are usual and appropriate or as are specified by the Franchisor with an insurer previously approved in writing by the Franchisor

8.8 The franchisee shall at [his] [its] own expense return to the franchisor the leased equipment in good working order and in a good state of repair upon the termination of this agreement]

9. FRANCHISEES OBLIGATIONS

In order to maintain the identity and reputation of the [] NETWORK and to maintain the uniformly high standards amongst franchisees carrying on business under the Trade Name in accordance with the System and to protect for the Franchisor the Franchisee and the [] NETWORK the Goodwill and the demand for [the [Said Products and [the Services] [services] sold supplied or provided in the [] BUSINESS] under the Trade Name the Franchisee shall:-

9.1 [Subject to the provisions of clause 5¹⁹] [acquire] [obtain and] retain occupational rights to the Said Premises

9.2 ensure that the Said Premises are without delay following acquisition altered refurbished equipped and fitted out in accordance with the Franchisor's requirements []

9.3 acquire such other equipment books of account and any other items whatsoever which are necessary for the performance by the Franchisee of [his] [its] obligations under this Agreement

9.4 ensure that adequate finance is available to [him] [it] to enable [him] [it] to perform [his] [its] obligations under or pursuant to this Agreement and by way of working capital

9.5 operate the System properly and strictly in accordance with the provisions of the Operational Manual current from time to time. The Franchisee shall not make use of or disclose the Operational Manual to any other person or for any purpose other than for the conduct of the Said Business nor shall [he] [it] make any copies of the Operational Manual or any part. The Franchisee shall further ensure that the Operational Manual with which [he] [it] is provided is kept up to date at all times

- 9.6 use [his] [its] best endeavours to maintain the highest standards in all matters connected with the Said Business and shall not sell anything or provide any service which does not conform with the standards associated with the Trade Name or of which the Franchisor does not approve. The Franchisee shall comply with all instructions given to [him] [it] by the Franchisor with regard to the standards or quality of the [Services] [services provided] and preparation of the [Said Products] [products for sale] (including display merchandising and packaging) in or about the conduct of the Said Business and provide to the Franchisor such information as the Franchisor may require to enable the Franchisor to monitor the performance of the Said Business and to offer guidance to the Franchisee
- 9.7 indicate [his] [its] status as an independent undertaking by:-
- 9.7.1 displaying in such manner and upon such part or parts of the Said Premises as the Franchisor may direct a sign or signs bearing the following words (or such other words to similar effect as may from time to time be specified by the Franchisor) "a []²⁰ franchise owned and operated under franchise by" followed by the Franchisee's name
- 9.7.2 placing upon all letters headings bills invoices and any other documents or literature employed by [him] [it] in connection with the Said Business in such manner and in such place as the Franchisor may direct the following words (or such other words to similar effect as may from time to time be specified by the Franchisor) "a []²⁰ franchise owned and operated under franchise by" followed by the Franchisee's name
- 9.7.3 complying with the requirements of the Business Names Act 1985
- 9.8 not pledge the credit of the Franchisor or represent [himself] [itself] as being the Franchisor or an agent or partner of the Franchisor. The Franchisee shall not permit any person connected in any way with the Franchisee to represent himself or the Franchisee in such a way that others dealing with him or the Franchisee might regard him or the Franchisee as a director officer employee or agent or otherwise authorised to act on behalf of the Franchisor. [The Franchisee being a [corporate entity] no part of the Trade Name or the Trade Marks shall form part of the Franchisee's [corporate name]
- 9.9 use only such signs packaging materials for or in connection with the [display service or sale of the Said Products] [provision of the Services] [sale of the Menu

Items] at the Said Premises [or on [his] [its] vehicles employed in the Said Business] as shall contain the Trade Name the Trade Marks or such other name and/or trade mark and/or symbol as may be designated by the Franchisor from time to time. Without prejudice to any other remedy available to the Franchisor including termination of this Agreement the Franchisor may remove from the Said Premises or such vehicles any material or other thing whatsoever which in the opinion of the Franchisor does not comply with the uniformly high standards associated with the Trade Name or the Trade Marks

- 9.10 operate the Said Business in accordance with the System only under the name or names specified by the Franchisor without any accompanying words or symbols of any nature (save as required by the provisions of this Agreement) unless first approved in writing by the Franchisor. The Franchisee shall not do anything which may adversely affect the Franchisor's rights in or to use the Trade Name or the Trade Marks
- 9.11 decorate any vehicles used by the Franchisee in the conduct of the Said Business with the livery specified by the Franchisor and keep them in a good state of repair and clean condition
- 9.12 not alter or convert the Said Premises in any way nor erect upon them any new building of any kind nor shall any fixtures or equipment of any kind be installed in the Said Premises (whether by way of substitution or addition) and no sign or other medium of display or advertisement shall be erected or altered at the Said Premises without
 - 9.12.1 in every such case the previous consent in writing of the Franchisor and each such alteration erection and installation shall be carried out only in accordance with plans drawings and specifications previously submitted to and approved by the Franchisor in writing; and
 - 9.12.2 the detailed preparation of the said plans drawings and specifications and the day to day or immediate supervision by an architect or surveyor which shall be the responsibility of and at the expense of the Franchisee
- 9.13 In the event that the Franchisor is the landlord of the Franchisee any consent to any of the alterations conversions erection installation or other matters referred to in this Agreement by the Franchisor in its capacity as Franchisor shall be deemed to be approval under the terms of any lease between the parties subject to:
 - 9.13.1 the Franchisee entering into any Deed of Licence which may be required and

9.13.2 subject to any requirements of any Superior Landlord and any other requirements of such lease]

9.14 At all times maintain the interior and exterior of the Said Premises and all its parts in a good state of repair and decoration and clean and orderly and sanitary. If at any time the Franchisor is of the opinion that the Franchisee is not complying with its requirements or any of them the Franchisor may without prejudice to any of the other remedies available to the Franchisor including termination of this Agreement give to the Franchisee a written notice of the steps required by the Franchisor in order to ensure compliance with the said provisions and the Franchisee shall at [his] [its] own expense comply with such requirements forthwith

either

9.15 use only such plant machinery equipment fixtures and fittings in the conduct of the Said Business as shall have been previously approved in writing by the Franchisor. The said plant machinery equipment fixtures and fittings shall be maintained in a condition which meets the operational standards specified in the Operational Manual. The Franchisee shall replace any such items as may become obsolete or inoperable with such item as shall meet the Franchisor's then requirements in respect of a new [] **BUSINESS**. If by reason of any change in or variation to the System or any part of it additional or different plant machinery equipment fixtures and fittings are required the Franchisee shall acquire and install for use such items within such period of time as may be specified by the Franchisor

or

9.15 [use only such plant machinery equipment fixtures and fittings in the conduct of the Said Business as shall have been previously approved in writing by the Franchisor

9.16

9.16.1 save as may have previously been agreed in writing with the Franchisor and subject to the terms of such agreement devote the whole of [his] [its] time and attention to the Said Business during the hours of operation of the Said Business and during such other hours as shall be necessary to perform the administrative marketing promotional and accounting functions required in or about the conduct of the Said Business and in operating the System. The Franchisee shall diligently carry on the Said Business at the Said Premises throughout the Term and shall use [his] [its] best endeavours to promote and extend the Said Business within the Territory²¹ and shall in particular

(not by way of limitation) continuously operate the Said Business at least upon such days and during such hours as the Franchisor shall determine. [The Franchisee shall not in the course of conducting the Said Business operate or take his[its] vehicle(s) outside the Territory]. The Franchisee shall ensure that there are employed in the Said Business such number of staff as in the opinion of the Franchisor are sufficient to enable the Said Business to operate efficiently and to meet the demand for the [Said Products] products and [the Services] [services] [in the Territory]

9.16.1.1 shall not in any way in a manner which will put in jeopardy the identity and reputation of [] **BUSINESS** or the [] **NETWORK** or which results in a failure to comply with Clauses 9.16.1 and 9.17 solicit for business any person firm or company whose residence or business address is outside the Territory

9.16.1.2 The Franchisee shall not in any way in a manner which will put in jeopardy the identity and reputation of [] **BUSINESS** or the [] **NETWORK** or which results in a failure to comply with Clauses 9.16.1 and 9.17 lead any person firm or company whose residence or business premises are outside the Territory to believe that the Franchisee is available to provide the Said Products or any other services to them

9.17 use [his] [its] best endeavours to establish maintain and increase the turnover of the Said Business at the Said Premises and [within the Territory] and to maintain the identity and the reputation of [] **BUSINESS** and of the [] **NETWORK** and to maintain the integrity and to ensure implementation of the System and shall at all times maintain a supply and stock [of the Said Products] [of ingredients for the preparation of the Menu Range] [of such products and materials ["the Said Products"]]²³ as shall be necessary to operate the Said Business in accordance with the System and in quantities] sufficient to meet public demand. The Franchisee shall obtain supplies of the Said Products from the Franchisor or such other suppliers as shall from time to time be approved or nominated by the Franchisor [upon their respective terms of business current from time to time]²⁴. The Franchisee shall not stock or sell any products other than the Said Products.

²³ For a services franchise or a restaurant/fast food franchise. In any event if the term "the Said Products" has previously been defined this may require appropriate redrafting

²⁴ You should advise your client to use standard terms which can be scheduled to the franchise agreement or kept separately (Clause 7.18).

The Franchisee shall promptly and within the due time allowed make payment to all suppliers for goods and services sold or provided to [him] [it] for the purposes of the Said Business. [The Franchisee will promote and preserve the Goodwill and reputation associated with the Trade Names and/or the Trade Marks by promptly replacing where possible or if not possible by refunding the cost of any goods supplied or sold by the Franchisee to [his] [its] customers which are found to have been genuinely defective. [In the event of any customer complaint the Franchisee shall follow the procedure specified in the Operational Manual]

- 9.18 [purchase such of the Said Products as are described in Schedule [] upon the terms and conditions set out in such Schedule]
- 9.19 [be free to fix [his][its] own prices notwithstanding that the Franchisor may recommend prices or set maximum prices]. The Franchisee shall not enter into any agreement arrangement or concerted practice with any other franchisee of the Franchisor or any other person whatsoever in relation to the prices at which the Franchisee will sell [the Said Products] [products] or provide [the Services] any services
- 9.20 [offer for sale such range of the Said Products] [provide such range of [the Services] services [offer for sale such items in the Menu Range] as shall from time to time be specified or approved by the Franchisor] The Franchisee acknowledges that the range of the Said Products the Services and the items in the Menu Range may be amended by addition or deletion by the Franchisor from time to time
- 9.21 ensure that all personnel employed by [him] [it] [including the Principal] in the Said Business shall at all times be clean cleanly and tidily clothed (including where specified use of uniforms) and polite. The Franchisee shall comply with all instructions given to [him] [it] by the Franchisor with regard to the cleanliness clothing appearance or demeanour of [his] [its] staff which in the opinion of the Franchisor are necessary in order to maintain the uniformly high standards associated with the Trade Marks and the Trade Name. If any employee or prospective employee performs or is to perform work which in the opinion of the Franchisor requires special skill or knowledge the Franchisee shall procure or ensure that such employee shall receive such special training and/or take part in such training course as shall be notified by the Franchisor to the Franchisee. If and as required so to do by the Franchisor the Franchisee shall ensure or as the case may be shall procure that such of [his] [its] employees [including the Principal] as shall be specified shall attend for such further training as the Franchisor may prescribe
- 9.22 only employ as the manager of the Said Business a person who has

- 9.22.1 been previously approved in writing by the Franchisor; and
- 9.22.2 successfully passed the Franchisor's training course
- 9.23 not at any time employ or seek to employ any person then employed in any other business in the [] **NETWORK** and shall not directly or indirectly induce any such person to leave his employment without the previous consent in writing of the Franchisor nor shall the Franchisee employ any such person without such consent within six months after the termination of that person's employment
- 9.24 procure from [his] [its] manager for the time being and from such other staff as the Franchisor shall require an undertaking in a form to be supplied by the Franchisor not to use or disclose to any third party any information or knowledge concerning the [] **BUSINESS** the Said Business or the System which may be communicated to such manager or employee or which such manager or employee may acquire pursuant to the discharge of his obligations to the Franchisee. The Franchisee shall take such steps at [his] [its] own expense as the Franchisor may require in order to enforce the said undertaking and/or to restrain any breach of its terms
- 9.25 not do anything which may bring the System into disrepute or which may damage the interests of the Franchisor or the [] **NETWORK** [and in particular and without prejudice to the generality of the foregoing the Franchisee shall not without prior written consent of the Franchisor or save as permitted by any provision of this Agreement and upon the terms contained in the Operational Manual install or permit to be installed upon the Said Premises any vending machine juke box any system for providing music or entertainment or a public telephone²⁶] If the Franchisee installs any system whatever involving the provision of music or entertainment or uses the copyright material of third parties the Franchisee shall obtain and maintain at [its][his] own expense such licences as may be necessary
- 9.26 at all times maintain a list (including names addresses and telephone numbers of all customers and Prospective Customers) ("the Customer List"). In this Agreement "Prospective Customers" are potential or prospective customers from whom the Franchisee has during the relevant preceding year directly solicited custom other than by advertisement or directory entries. The Franchisee shall ensure that the Customer List can be provided to the Franchisor pursuant to and in compliance with the Data Protection Act 1998

- 9.27 permit the Franchisor without any further or other authority save this consent which the Franchisee gives and agrees not to revoke to speak and/or write to customers about the [Said Products][Services] [services] and [Menu Range] being provided to such customers by the Franchisee (and if necessary the Franchisee shall make arrangements to enable the Franchisor to do so) so as to ensure that the standards associated with the System are being achieved and maintained
- 9.28 use only such stationery invoices quotation forms contracts and other documentation and literature of whatever nature in [his] [its] dealings with third parties as the Franchisor shall provide (at the Franchisee's expense) stipulate or approve
- 9.29 if so requested by the Franchisor the Franchisee send to the Franchisor a copy of each contract entered into by the Franchisee with customers and of all invoices for additional work performed from time to time
- 9.30 use any telephone line or lines (including mobile telephone lines) and/or the number allocated to thereto provided by the Franchisor exclusively for conducting and operating the Said Business and reimburse the Franchisor on demand for all charges made by the supplier of telecommunications services in connection with the installation continuance and use of any such line. The Franchisee shall not subscribe for any telephone lines whose numbers shall be made public in any telephone or other directory of any nature whatsoever nor shall any such other telephone lines be employed in such manner as would associate such number with the Trade Name the Trade Marks or any of them or the Said Business
- 9.31 observe and perform all contractual obligations entered into by the Franchisor as provided by clause 7.5 and shall keep the Franchisor fully and effectually indemnified against all claims demands damages costs or expenses which may be incurred or received by the Franchisor resulting from any breach by the Franchisee of the provisions of this clause or from any other act default or neglect of whatsoever nature on the part of the Franchisee
- 9.32 comply with all statutory or other legal requirements and all regulations of local or other authorities which apply to the Said Business
- 9.33 at the request of the Franchisor provide prospective franchisees of the Franchisor with such information as such prospective franchisees may properly require and the Franchisee shall at all times be courteous and co-operative in all [his] [its] dealings with such prospective franchisees
- 9.34 **not during the term of this Agreement except as provided in clause 7.34.2 be directly or indirectly interested or concerned in any business which**

- 9.34.1 competes with the [] BUSINESS or the [] NETWORK ("a Competing Business") save that
- 9.34.2 the Franchisee may be interested or concerned in a Competing Business:
- 9.34.2.1 with the prior written consent of the Franchisor; or
- 9.34.2.2 under the terms of this Agreement or any other agreement with the Franchisor currently in force; or
- 9.35 not during the Term except for the sole purpose of conducting the Said Business divulge or use whether directly or indirectly for [his] [its] own benefit or for the benefit of any person firm or company other than the Franchisor any information or knowledge concerning the System which may be communicated to the Franchisee or which the Franchisee may acquire in carrying out [his] [its] obligations under this Agreement
- 9.36 attend at [his] [its] own expense all meetings of franchisees of the Franchisor which the Franchisor may organise
- 9.37 [purchase the Equipment Package at the Equipment Package Price]
- 9.38 not during the Term enter into any transaction or arrangement which causes The Trading Schemes Act 1996 to apply to the [] NETWORK
- 9.39 not at any time register or use as a domain name on the Internet any of the Trade Name or Trade Marks or any part thereof or any name or word likely to be confused with or similar to any of the Trade Name or Trade Marks or any part thereof without the prior written consent of the Franchisor and subject to any conditions which the Franchisor may impose
- 9.40 not at any time make any registration or publish any material on the Internet concerning the Said Business or the System or which indicates or implies an association with the Franchisor and/or the [] BUSINESS²⁸ without the prior written consent of the Franchisor and subject to any conditions which the Franchisor may impose
10. TRAINING

- 10.1 The Franchisor shall initially train the Franchisee [including the Principal] and [²⁹] of [his] [its] staff in the operation of the System. [Such initial training shall be provided to the Franchisee and [his] [its] staff without charge but] the Franchisee will be responsible for paying any travelling food and accommodation expenses which [he] [it] may incur during the period of training. [If at any time during the initial period of training it shall become apparent to the Franchisor that the Franchisee [or the Principal] does not meet the Franchisor's standards and requirements the Franchisor shall have the right upon notice in writing forthwith to terminate this Agreement and shall return to the Franchisee any Initial Franchise Fee paid less a deduction (which shall not exceed £)³⁰ representing the cost to the Franchisor of the provision to the Franchisee of the services which the Franchisor has provided up to the date of such termination and the Franchisee shall comply so far as the same may be applicable with the provisions of clause [19]³¹
- 10.2 The Franchisor shall have the right to require [staff of] the Franchisee [including the Principal] to attend further training courses at any time during the subsistence of this Agreement if
- 10.2.1 it considers attendance at such courses to be advisable; or
- 10.2.2 it wishes to train the Franchisee in new and improved techniques which have been devised and which the Franchisee will be required to put into effect in operating the System; and
- 10.2.3 such additional training will be provided at the expense of the Franchisee
- 10.3 The Franchisee shall establish and maintain an initial and continuing training programmes for [his] [its] staff in accordance with the requirements contained in the Operational Manual³²
11. IMPROVEMENTS
- 11.1 The Franchisor may conceive and develop new and improved methods of conducting a business in accordance with the System and other additions modifications or innovations to the System which it may consider desirable.

²⁹ It is advisable if a Franchisor to indicate numbers to specify the particular job function of those whom they will train

³⁰ Establishing a ceiling provides a franchisee with some comfort that he will not be ripped off.

³¹ Consequences of termination

³² This is not always appropriate

- 11.2 The Franchisor agrees [subject where necessary to the consent of [³³] to make such improvements additions modifications and innovations available to the Franchisee at the earliest possible opportunity after they have in the opinion of the Franchisor been fully developed.
- 11.3 The Franchisee for [his] [its] part will notify the Franchisor of any improvements additions modifications or innovations in the method of operation which [he] [it] may consider would assist in the development of the System and which the Franchisor will evaluate.
- 11.4 The Franchisee shall not introduce any improvement addition modification or innovation into the conduct of the Said Business or of the System without the Franchisor's written consent.
- 11.5 The Franchisee shall when required to by the Franchisor in writing introduce any improvement addition modification or innovation to the System and the conduct of the Said Business at the time or times and in the manner specified in such written requirement and the System shall thenceforth be deemed to have been varied as so specified
- 11.6 In order that the Franchisee the Franchisor and its other franchisees may all benefit from the free interchange of ideas the Franchisee shall permit the Franchisor or [³³] to introduce into the System and or the Operational Manual any improvements additions modifications or innovations which may have been notified by the Franchisee to the Franchisor without any payment being made to the Franchisee

12. FEES

- 12.1 Upon the execution of this Agreement the Franchisee shall pay to the Franchisor the sum of £[] by way of Initial Franchise Fee ("the Initial Franchise Fee")³⁴

or

- 12.1 The Franchisee shall pay to the Franchisor the sum of £ [] by way of Initial Franchise Fee ("the Initial Franchise Fee") [plus the Equipment Package Price.] Payment shall be made as to £[] upon execution of this Agreement as to £[] upon the commencement of training and as to £[] [upon [delivery of] notification to the Franchisee from the Franchisor that the Franchisor is ready able

³³ The company identified in Clause 1.5 if appropriate

³⁴ Consideration may be given to splitting the initial fee into component elements if the franchisee may get some tax benefits. The Franchisor may expose himself to problems if he takes this course and a claim is later made. This approach should therefore be adopted with great caution.

and willing to deliver] the Equipment Package] [on or before the date upon which the Said Business is commenced]

12.2 In this Agreement the expression "Gross Revenues" shall mean all gross sums receivable (whether or not payment is made) by the Franchisee in the conduct of the Said Business from whatever source including the assumed Gross Revenues of the Franchisee for the purposes of calculating any loss of profits or business interruption insurance claims but shall not include VAT

12.3 In this Agreement the expression "Periodic Accounting Interval" shall mean the intervals in each year specified as such by the Franchisor in the Operational Manual]

either

2.3 [During the subsistence of this Agreement the Franchisee shall pay to the Franchisor a management services fee ("the Management Services Fee") in respect of each trading period of one week which fee shall be such sum as is equal to []% ([] per cent) of the Gross Revenues (as hereinafter defined) of the Franchisee during such week] or a proportionate part for any trading period of less than one week]

or

12.3 [During the subsistence of this Agreement the Franchisee shall pay to the Franchisor a management services fee ("the Management Services Fee") in respect of each trading period of one calendar month which fee shall be such sum as is equal to []% ([] per cent) of the Gross Revenues of the Franchisee during such calendar month or a proportionate part for any trading period of less than one calendar month]

or

12.3 [During the subsistence of this Agreement the Franchisee shall pay to the Franchisor a management services fee ("the Management Services Fee") in respect of each Periodic Accounting Interval (as hereinafter defined) which fee shall be such sum as is equal to []% ([] per cent) of the Gross Revenues of the Franchisee during such interval]

either

12.4 [The Franchisee shall remit to the Franchisor by prepaid first class mail postmarked not later than the Tuesday of each week the total of the fees so calculated in respect of the preceding week (ending at close of business on the previous Saturday) without deduction whatsoever]

or

12.4 [The Franchisee shall remit to the Franchisor by prepaid first class mail postmarked not later than the seventh working day of each month the total of the fees so calculated in respect of the preceding month without any deduction whatsoever]

or

2.4 The Franchisee shall remit to the Franchisor by prepaid first class mail postmarked not later than the seventh working day of each Periodic Accounting Interval the total of the fees so calculated in respect of the preceding Periodic Accounting Interval without any deduction whatsoever]

[Optional addition :- Provided however that the Franchisee shall if so required by the Franchisor enter into a direct debit mandate with [his] [its] bankers for the time being and shall from time to time authorise the Franchisor to receive payment of any monies payable to it pursuant to this Agreement [including for sales of the [Said Products] on the due date for payment]]

12.5 The Franchisee shall remit to the Franchisor by prepaid first class mail on each of the usual quarter days a sum by way of property management fee equal to [%] per cent)) of the annual rent payable by the Franchisee under the Franchisee's Lease or the Underlease or any licence fee which may be payable the first payment (or a proportionate part as the case may be) from the date upon which the Franchisee shall or go into occupation of the Said Premises to the next following quarter day shall be made on the entry into of this Agreement]³⁵

12.6 In the event of any default in payment on the due date of any sums due under this Agreement the Franchisor may until payment is made (in addition to all other remedies available to it) suspend the provision to the franchisee of the Said Products and other goods and services and the performance of the Franchisor's obligations under this Agreement

12.7 The Franchisee acknowledges and agrees that [he] [it] has no reason to withhold payment of such fees by right of [his] [its] dissatisfaction with the Franchisor's performance of its obligations pursuant to this Agreement and that if [he] [it] is so dissatisfied [he] [it] will pursue other remedies at law which may be available to [him] [it]

12.8 In the event of any default in the payment of any sums which may be due from the Franchisee to the Franchisor whether under or in pursuance of this Agreement or otherwise the Franchisee shall pay to the Franchisor:-

35 If there is an underlease this may be applicable

12.8.1 interest at the rate of 2% (two per cent) per month on the outstanding amount calculated on a day to day basis from the due date for payment until payment. This clause shall apply during the Term and after it is terminated and shall continue to apply notwithstanding that the Franchisor obtains judgment against the Franchisee

12.8.2 its proper legal costs and disbursements incurred in recovering or seeking to recover the sums due to it

12.9 The liability of the Franchisee to pay the Management Services Fees shall subsist notwithstanding the failure of the Franchisee to discharge [his] [its] obligations to remit the [weekly] [monthly] [periodic] statement of Gross Revenues as required by this Agreement. In the event of the failure by the Franchisee to remit the [weekly] [monthly] [periodic] statement of Gross Revenues [he] [it] shall be under an obligation to pay on account of [his] [its] liability for the Management Services Fees a sum during each [week] [month] [or periodic accounting interval] during which such failure occurs equal to the average [weekly] [monthly][periodic accounting interval] sum paid by [him] [it] by way of the Management Services Fee over the last preceding period of four weeks during which the Franchisee made payment plus (%) (per cent) per [week/month] until a full audited statement of the Gross Revenues for the period during which the failure continues has been verified by the Franchisor's auditors at the Franchisee's expense when the Franchisee shall forthwith pay any shortfall or be credited by the Franchisor with any overpayment which such audit may reveal.

13. ACCOUNTING AND REPORTING

The Franchisee shall:

13.1 [instal and use an Electronic Point of Sale system ("EPOS") specified by the Franchisor] [maintain a cash register approved by the Franchisor which accumulates sales and which has no re-setting devices]. The Franchisee shall accurately record all transactions through [such cash register] [EPOS system and shall ensure that the Franchisor shall have access to the Franchisee's EPOS at such times as the Franchisor shall require for the purpose of obtaining information relating to the Said Business which is available through the proper operation of EPOS. In the event of any breakdown of or a fault developing in the Franchisee's EPOS the Franchisee shall manually keep accurate records of transaction which shall be entered into the EPOS as soon as may be practicable following rectification of the cause of the breakdown or fault]

- 13.2 maintain an accurate account and record of all Gross Revenues and prepare a statement of Gross Revenues made in each [week] ending at the close of business on [Saturday] and remit the same to the Franchisor by prepaid first class mail postmarked not later than the [Tuesday] of the next following week or if required by the Franchisor by fax or e-mail
- 13.3 maintain on the Said Premises in a form approved by the Franchisor (and preserve the same for at least six years after the end of the financial year to which they relate and thereafter for so long as any dispute shall remain outstanding between the parties) full and accurate books of account and all underlying or supporting records and vouchers [including the cash register rolls] as well as floppy or hard discs on which such information may be stored relating to the Said Business and permit the Franchisor (or any person firm or company nominated by the Franchisor) during business hours to inspect and take copies of the said books of account records floppy and hard discs. If on any such inspection a discrepancy is found between the sums reported as Gross Revenues and the actual Gross Revenues for any reporting period the Franchisee shall without prejudice to any other rights which the Franchisor may have reimburse the Franchisor for all costs incurred in conducting such inspection including travel hotel subsistence salaries and fees.

either

- 13.4 [carry out not less than two full physical inventories in each year and supply copies in writing to the Franchisor within four days after the date of completion of each inventory]

or

- 2.4 [carry out a full physical inventory on the last day of each month and supply copies in writing to the Franchisor by the fourth day of the month following]

or

- 13.4 [carry out a full physical inventory on the last day of each Periodic Accounting Interval and supply copies in writing to the Franchisor by the fourth day after the end of the said interval.]

- 2.5 [provide the Franchisor by the fourth day of each month with a profit and loss statement in respect of the preceding month's trading such statement to be completed in accordance with the instructions in that respect contained in the Operational Manual]

or

- 13.5 provide the Franchisor by the fourth day of each Periodic Accounting Interval with a profit and loss statement in respect of the preceding Periodic Accounting Interval's trading such statement to be completed in accordance with the instructions in that respect contained in the Operational Manual]
- 13.5 for each of [his] [its] accounting years supply to the Franchisor not less than two financial statements (including a balance sheet and profit and loss account) the first being an interim statement covering the first six months of the said year and the other for the Franchisee's full accounting year which shall be certified to the Franchisor as correct by the Franchisee's Auditor who shall be a registered auditor. Such certificates and financial statements shall be delivered to the Franchisor within thirty days from the end of the said interim period or as the case may be within ninety days from the end of the said accounting year
- 13.6 be registered with HM Customs and Excise for VAT at the date hereof and shall deliver to the Franchisor within twenty-one days after the due date for its submission to HM Customs and Excise a copy of the Franchisee's return relating to VAT and deliver to the Franchisor a copy of any assessment to VAT which may be raised by HM Customs and Excise in relation to the Said Business. The Franchisee shall not during the Term cease for any reason to be registered for VAT with HM Customs and Excise. In the event that such registration ceases for any reason whatsoever this Agreement shall automatically and forthwith determine without prejudice to any of the Franchisor's rights contained herein³⁶. For the avoidance of doubt in the event that this Agreement determines pursuant to this clause, the provisions of clause [20]³⁷ and the other provisions of this Agreement which by their nature or effect survive termination will continue in force
- 13.7 provide such further information relating to the Said Business as the Franchisor shall in its discretion think necessary to assist the Franchisor in the discharge of its duties or the enforcement of its rights under the provisions of this Agreement

14. ADVERTISING

- 14.1 In consideration of the Franchisor agreeing to conduct direct and indirect advertising marketing and promotion of the [] **NETWORK** the Franchisee shall pay to the Franchisor an amount equal to []% ([] per cent) of all Gross Revenues by [weekly] [monthly] [periodic] payments to be made at the same time as payment is made of the Management Services Fee [The

³⁶ If all Franchisees are VAT registered the network will be excluded from the provisions of the Trading Schemes Act 1996

³⁷ Consequences of Termination clause

Franchisor will expend on such advertising a sum equal to [%] of the Gross Revenues of outlets of the [] **NETWORK** owned or operated by it or by a member of the same Group as that to which the Franchisee belongs ("the Franchisor's Outlets").

- 14.2 [The Franchisor will expend one half of all such amounts received from the Franchisee on direct or local advertising and for the purposes of this paragraph the term "direct or local advertising" shall mean all advertising effected through the medium of local radio or television broadcasts newspapers periodicals or billboard advertising internet and other electronic media and the Franchisor shall have the right to apportion such expenditure between the Franchisee and any other franchisee(s) of the Franchisor in the advertising or marketing area in which the Said Business is conducted in such manner as the Franchisor shall think fit.]
- 14.3 [The Franchisor shall expend the [balance of the] amounts so received upon such advertising and/or marketing and promotional activities (including public relations) as the Franchisor shall in its discretion think fit. The Franchisor shall not be under any obligation to expend on advertising and promotion in each year any greater sum than the aggregate of the Contributions received from all franchisees of the Franchisor [and/or the Franchisor's Outlets]]
- 14.4 The Franchisee shall not conduct or carry on any advertising whatsoever without the prior written consent of the Franchisor. In the event of the Franchisor initiating any advertising campaigns the Franchisee shall purchase signs cards notices or displays which may be supplied to [him] [it] by the Franchisor or as it may direct and shall at [his] [its] own expense prominently display and advertise such campaign
- 14.5 The Franchisee shall prominently display and maintain at [his] [its] own expense the advertising signs cards notices or displays supplied to the Franchisee by or on behalf of the Franchisor and the Franchisee shall not use or exhibit on or in connection with the Said Premises or the Said Business any other signs cards notices or other display or advertising matter unless the Franchisor has given its consent thereto in writing and unless such matter shall have been obtained from a supplier approved by the Franchisor who will not unreasonably withhold its consent and approval. All approved advertising matter shall be installed and all advertising matter of whatever kind shall be maintained at the expense of the Franchisee who shall be responsible for obtaining any necessary planning bye-law or other consents therefor. Without prejudice to any other remedy of the Franchisor including termination of this Agreement the Franchisor may remove from the Said Premises without incurring any liability to the Franchisee any signs cards notices or other display or advertising matter which has not been supplied or approved by the Franchisor and without the

Franchisee's consent save this consent which the Franchisee gives and agrees not to revoke and the Franchisor may keep or destroy any sign card notice or other display or advertising matter. Whenever so instructed by the Franchisor the Franchisee shall remove from the Said Premises temporarily or permanently as the case may be any advertising matter removal of which is necessary in the opinion of the Franchisor for the purpose or in consequence of any particular advertising or promotion campaign instituted by the Franchisor

14.6 The Franchisee acknowledges that nothing in this Agreement imposes upon the Franchisor the duty or the obligation to provide direct advertising or promotion within the [Franchisee's catchment area] [Territory] and/or in relation to the []
OUTLET

14.7 The Franchisor shall at the end of each of its financial years arrange for an audited account to be prepared by the Franchisor's Auditors of the sums received and expended by the Franchisor pursuant to the provisions of clauses 14.1 14.2 and 14.3³⁸. The Franchisor will on the written request of the Franchisee forward to the Franchisee an Auditor's certificate (which shall be conclusive and binding on the parties hereto) showing the total of such receipts and payments. If that account shall show that the Franchisor has either overspent or underspent the monies available as aforesaid the amount overspent (including cost of money borrowed or advanced) may be recovered by the Franchisor from the next year's contributions and the amount underspent shall be added to the contributions for expenditure during the next financial year

15. INSURANCE

15.1 The Franchisee shall take out and maintain insurance cover [(in the joint names of the Franchisor and Franchisee and any other interested parties³⁹)] at the Franchisee's expense and with an insurance company approved by the Franchisor [(or if the Franchisor shall arrange an Insurance Scheme for franchisees the Franchisee shall insure through such schemes unless [the][it] can obtain the same level and range of cover with an insurer approved by the Franchisor at a lower premium cost)]

15.1.1 against loss (including loss of profits and business interruptions) or damage arising from fire explosion impact burglary [terrorism]; and

³⁸ It is advisable to provide for this as some have been challenged on these sums in the past

³⁹ Whether or not the Franchisor is jointly named as an insured or merely has his interest noted should be discussed with his broker

- 15.1.2 against such other risks and in such minimum sums as the Franchisor may from time to time stipulate and in such minimum sums as the Franchisor may require against all liability (including product liability) of the Franchisor and/or the Franchisee and/or any supplier of the Franchisee to the Franchisee's employees and/or to members of the public; and
- 15.1.3 the failure by the Franchisor to notify the Franchisee of the minimum sum to be covered by insurance shall not relieve the Franchisee of the obligation to arrange such cover in such amounts as would be prudent under the circumstances. The Franchisor shall not incur any liability to the Franchisee for such failure as aforesaid
- 15.2 [The Franchisee may make such arrangements for additional cover as [he] [it] thinks fit provided that such arrangements are previously produced to and confirmed in writing by the Franchisor [as not containing any provisions which might affect any Franchisee Insurance Scheme] and the Franchisee shall ensure that the Franchisor's interest is noted on such policies³⁹ and shall from time to time furnish the Franchisor on demand or on renewal or replacement with copies of the policies and evidence that the then current premiums therefor have been paid The Franchisee shall arrange with [his] [its] insurers that no policy will be terminated or cancelled for whatever reason unless 14 days notice of the insurers intention has been given to the Franchisor
- 15.3 The Franchisee shall not do or permit anything to be done which may vitiate any insurance policies or which may prevent the Franchisee or the Franchisor from receiving any moneys under such policies
16. TRADE MARKS
- 16.1 [In this clause where the interest or circumstances so require the expression "the Franchisor" shall include or as the case may be mean]⁴⁰
- 16.1 The Franchisee shall only use the Trade Name and the Trade Marks in connection with the operation of the Said Business and only in the form and manner approved by the Franchisor from time to time
- 16.2 The Franchisee shall not use the Trade Marks in any way which may prejudice their distinctiveness or their reputation or the Goodwill including not using the Trade

Names the Trade Marks or the Future Trade Marks (as defined in clause 16.5) in a generic manner

- 16.3 The Franchisee shall when requested render to the Franchisor assistance (including but not limited to evidence of user) in obtaining registrations of the Trade Marks including the execution of any documentation which may be necessary to establish the Franchisor as the owner of the Trade Marks
- 16.4 In no circumstances shall the Franchisee apply for registration as proprietor of the Trade Name or the Trade Marks or any part of them or which would conflict with the Trade Name or the Trade Marks or use or apply for any mark which is identical with or similar to the Trade Name or the Trade Marks so as to amount to infringement or passing off nor shall the Franchisee take any action which may be detrimental to the reputation of the Trade Marks or put any registrations or applications to register at risk
- 16.5 If at the time the Franchisor desires to apply for registration of a trade mark ("the Future Trade Marks") and has so applied and the Franchisee is deemed in law to have rights in such trade mark so as to make it necessary for an application to be proceeded with (in whole or in part) in the name of the Franchisee the Franchisee shall at the request and expense of the Franchisor make and proceed with such application and do all acts and execute documents necessary for obtaining registration in the name of the Franchisee and thereupon the Franchisee shall assign such registration to the Franchisor or as the Franchisor may direct and the Franchisee shall be entitled to the like rights in respect of any Future Trade Marks of the Franchisor used in the [] **BUSINESS** (including the Trade Marks) as are granted by this Agreement in respect of the Trade Marks
- 16.6 The Franchisor at its absolute discretion shall be entitled under the provisions of the Trade Marks Act 1994 to apply to register the Franchisee as licensee of the Trade Marks or the Future Trade Marks which are registered or in respect of which a registration application is pending. The Franchisor shall not be liable in any way whatsoever for late registration or non registration of the Franchisee for whatever reason.
- 16.7 The Franchisee shall in all representations of the registered Trade Marks and the Future Trade Marks used by [him] [it] on the Said Products append in a manner approved by the Franchisor such inscription as is usual or proper for indicating that such Trade Marks are registered
- 16.8 The Franchisee shall immediately notify the Franchisor of all infringements or imitators of the Trade Marks the Future Trade Marks the Trade Name or any

business which appears to be or is attempting to pass itself off as a(n) [] **OUTLET** or a member of the [] **NETWORK** which come to [his] [its] attention or any attempts to challenge the Franchisee's right to use any of the Trade Marks the Future Trade Marks or the Trade Name or to carry on the Said Business as a(n) [] **OUTLET** so long as this Agreement shall subsist. The Franchisor shall take such action (if any) as it in its sole discretion considers appropriate and any rights which the Franchisee may have under Sections 30 and 31 of the Trade Marks Act 1994 are expressly excluded. The Franchisee agrees to provide such co-operation as the Franchisor shall request in the prosecution of any such action including the provision of evidence and being named as a party to any legal proceedings. The Franchisor shall have the conduct of any such action and pay all legal expenses and costs which may arise from the joining of the Franchisee as a party save such legal expenses and costs which the Franchisee may incur by taking separate legal advice. The Franchisee shall not without the prior written consent of the Franchisor take any action of whatever nature based upon the Trade Marks the Future Trade Marks the Trade Name or any common law rights which the Franchisee is licensed to use or exercise pursuant to this Agreement or any licence entered into between the parties

16.9 No warranty expressed or implied is given by the Franchisor with respect to the validity of any of the Trade Marks or the Future Trade Marks

17. SALE OF BUSINESS

17.1 The Franchisee shall not have the right to assign this Agreement or to grant any sub-franchises but [he] [it] shall have the right to sell the Said Business with the prior written consent of the Franchisor and subject to satisfying the provisions of clause 17.4

17.2 The Franchisee shall as soon as possible submit to the Franchisor a copy of each written offer or full details of any other offer which the Franchisee proposes to accept received from any prospective purchaser to purchase the Said Business from the Franchisee and:-

17.2.1 a financial statement of affairs and the business history of the prospective purchaser; and

17.2.2 details of all terms which may have been agreed or are proposed to be agreed between the Franchisee and the prospective purchaser; and

17.2.3 a warranty by the prospective purchaser so far as the statement required by clause 17.2.1 is concerned and by the Franchisee in all other respects that

such details are complete and accurate in all respects and that there has been no information withheld such warranty shall be effective not only on the date upon which it is given but also at the time of any sale of the Said Business by the Franchisee to the Franchisor or any approved third party;

17.3 Subject to clause 17.4 and 17.5 the Franchisor undertakes to enter into a franchise agreement with a purchaser of the Said Business who is acceptable to it ("the Purchaser") for a period equal to the unexpired Term commencing with the date of the sale of the Said Business but otherwise upon similar terms and conditions to the Franchisor's then appropriate current form of franchise agreement excluding the payment of any sum expressed to be by way of Initial Fee however described

17.4 Subject to clauses 17.2 and 17.5 the conditions required to obtain the Franchisor's written consent to the sale of the Said Business by the Franchisee to the Purchaser may include that:-

17.4.1 the Purchaser shall:

17.4.1.1 submit his offer in writing;

17.4.1.2 be bona fide and at arms length;

17.4.1.3 shall satisfy the Franchisor's requirements with respect to personal qualities, business qualifications, suitability for maintaining the cohesion of the [] **NETWORK** and any other matters which the Franchisor may consider relevant;

17.4.1.4 successfully complete a programme of initial training by the Franchisor; and

17.4.1.5 the Purchaser (and any other person required by the Franchisor pursuant to Clause 17.4.7 or otherwise) must enter into a confidentiality undertaking⁴² or a franchise agreement prior to entering into such training as may be required by the Franchisor

17.4.2 the Franchisee [or the Purchaser] shall pay to the Franchisor:

17.4.2.1 a sum equal to [the sum then being charged by the Franchisor to new franchisees by way of Initial Franchise Fee (or if the Franchisor shall not then be offering franchises at the same

Initial Franchise Fee as was last charged by the Franchisor adjusted for any increase in the Retail Price Index between the date such fee was last charged and the date of the application by the Franchisee for consent to the sale of the Said Business)

OR

- 17.4.2 []% ([] per cent) of the sale price of the Said Business to cover the costs to the Franchisor of dealing with the application for consent (including any previous abortive applications) manager and staff which may be necessary; and
- 17.4.2.2 if the Franchisor has introduced the Purchaser to the Franchisee a further []% ([] per cent) of the sale price of the Said Business
- 17.4.3 the Franchisee must not at the time of [his] [its] application for consent be in breach of any of [his] [its] obligations to the Franchisor under the terms of this Agreement
- 17.4.4 the Purchaser shall not be engaged or concerned or interested in any way in any business which carries on a business which is similar to or competes with the [] **BUSINESS** or be a member of a Group of companies one of whose members carries on such a business
- 17.4.5 the Purchaser shall be registered with HM Customs and Excise for VAT
- 17.4.6 the Franchisor shall require to be satisfied that the Purchaser has adequate financial resources bearing in mind (inter alia) the purchase price to enable [him][it] to trade profitably. The Franchisor in so satisfying itself shall not be taken to be making any representations or giving any warranties to the Purchaser
- 17.4.7 if the Purchaser is a company the Franchisor shall require to be satisfied:
- 17.4.7.1 that the individual or individuals who will have ultimate effective voting or de facto control of such company satisfy the provisions of Clause 17.4 and
- 17.4.7.2 with the suitability of the other persons who will be directors of and or shareholders in the Purchaser and
- 17.4.7.3 with the shareholding structure and

17.4.7.4 with the arrangements between the shareholders in such company

and the Purchaser shall procure that such of its directors and/or any individuals having de facto control of such company and/or its shareholders as the Franchisor may require shall join it in entering into the standard form of franchise agreement then currently in use by the Franchisor for corporate franchisees as Principals

17.4.8 the Franchisor shall have the right to require changes to be made to the Sale and Purchase Agreement proposed to be entered into by the Franchisee and the Purchaser if it considers that there are provisions which may be detrimental to its interests

17.4.9 payment is made by the Franchisee of all costs and all obligations by or of the Franchisee to the Franchisor and any nominated or approved suppliers are discharged including any sum due under clause 17.4.2 without any right of deduction or set-off

17.5 The Franchisor shall in addition to its other rights under this Agreement have an option to purchase ("the Purchase Option") the Said Business for the same amount and upon the same terms as are offered to the Franchisee and notified to the Franchisor pursuant to clause 17.2. The Franchisor shall have a period of 30 (thirty) days after receipt of such written offer and the information referred to in clause 17.2, to exercise the Purchase Option by notice in writing to the Franchisee. The sale and purchase shall be completed within 20 (twenty) days following the service of such notice by the Franchisor or if any landlord's licence is required [10] [(ten)] days after such licence shall have been obtained or if earlier [10] [(ten)] days after the service of written notice by the Franchisor to the Franchisee waiving the requirement to obtain such licence. The Franchisee shall notify the Franchisor of any variation in the terms offered by any prospective purchaser and the said period of 30 (thirty) days shall re-commence as from the date of such notification of a variation in the offered terms

17.6 If the Franchisor shall not exercise the Purchase Option the Franchisee shall be entitled within the period of six months thereafter to proceed with [his] [its] application to sell the Said Business to the Purchaser or another prospective purchaser upon the same or on terms no more favourable to a purchaser than those notified to the Franchisor pursuant to clause 17.2 subject to the prospective purchaser satisfying the provisions of clause 17.4

17.7 Upon the Franchisor exercising the Purchase Option; or if the Franchisor does not exercise the Purchase Option and the Franchisee sells the Said Business upon the Franchisor entering into a franchise agreement with a prospective purchaser; and upon the satisfaction of the conditions referred to in clause 17.4 in particular

(without derogating from the generality of the foregoing provisions) and the successful completion by the prospective purchaser of the programme of initial training the Franchisor and Franchisee shall each be deemed to have released the other from the terms of this Agreement save for those provisions which by their nature or effect survive termination. In addition the Franchisee shall be deemed to have released and discharged the Franchisor from and against all claims and demands whether or not contingent which the Franchisee may have against the Franchisor arising from this Agreement or otherwise in any way out of the relationship between the Franchisor and the Franchisee

For corporate franchisees

- 17.8 [For the purpose of this clause where the Franchise is a company any change in the direct indirect or ultimate beneficial ownership of the issued share capital or of the de facto control of the Franchisee or of the Group of which the Franchisee is a member shall be deemed to be an assignment of this Agreement]

For partnership franchisees

- 17.9 For the purpose of this clause where the Franchisee is a partnership any change in the constitution of such partnership or in the terms of the partnership agreement shall be deemed to be an assignment of this agreement

18. PRINCIPAL'S GUARANTEE⁴³

THE Principal covenants and undertakes with the Franchisor:

- 18.1 that the Franchisee will duly observe and perform all the obligations contained in this Agreement on the Franchisee's part to be observed and performed
- 18.2 that if the Franchisee shall fail to observe and perform any of the said obligations or fail to pay for any [of the Said Products] or [other products or] services supplied to the Franchisee or to make payment when due of the Management Services Fees or the advertising contribution or any other sums which may be payable by the Franchisee under this Agreement the Principal will be liable for such default and shall make payment of any sums so due upon demand being made by the Franchisor
- 18.3 that he will (as a distinct and separate obligation) indemnify and render harmless the Franchisor in respect of all losses damages claims costs and expenses which the Franchisor may incur or suffer by reason of its entry into continuation of or termination of this Agreement

- 18.4 that he will if requested so to do by the Franchisor execute the Franchisee's Lease or the Underlease to be granted to the Franchisee pursuant to the provisions of clause [5] as a surety for the performance by the Franchisee of its obligations under the Franchisee's Lease or the Underlease
- 18.5 that he will devote his full time attention and effort to the management and operation of the Said Business except to the extent and in the manner expressly and previously agreed in writing by the Franchisor
- 18.6 that he will ensure that at all times there are not less than two directors of the Franchisee (including himself)
- 18.7 **that he will not make use of any of the Franchisor's intellectual property rights of whatsoever nature (including the Goodwill) and will not disclose to any third party or make use of any of the elements of the System about which he may acquire knowledge by virtue of the training he may have received from the Franchisor his involvement in the Said Business or his shareholding in or directorship of the Franchisee. The Principal hereby warrants that save pursuant to an agreement entered into with the Franchisor prior to the execution of this Agreement or as disclosed by the Principal in writing and annexed to this Agreement and signed by the parties hereto he had no direct knowledge of**
- 18.7.1 **the [] BUSINESS; or**
- 18.7.2 **how to operate a business similar to the [] BUSINESS; or**
- 18.7.3 **how to conduct the [] BUSINESS; or**
- 18.7.4 **the System.**

The Principal accordingly agrees that consequent upon the Franchisor relying on the warranty and statements referred to above The Principal would not without the benefit of the System be able to run or participate in any business similar to or which competes with the [] BUSINESS. The Principal accordingly undertakes during the Term and thereafter not to be engaged concerned, involved in any capacity whatsoever in a business other than the Said Business which carries on a business similar to or which competes with the [] NETWORK where the System would enable such a similar or competing business to conduct its business or would assist or enhance its performance unless the System as a package shall enter the public domain otherwise than in breach of contract or trust by any person having knowledge thereof

18.8 in order to prevent the System from directly or indirectly benefitting competitors that he will not for the period of one year following termination of this Agreement

18.8.1 within [a radius of () mile[s] from the Said Premises] [the Territory] (except as the holder of not more than five per cent (5%) of the shares in any company whose shares are listed or dealt in the Stock Exchange or other recognised public market) directly or indirectly be engaged or concerned or interested in any capacity whatsoever in any business which carries on a business similar to or which competes with the [] BUSINESS

either

18.8.2 [directly or indirectly be engaged concerned or involved in any capacity whatsoever in a business which carries on a business similar to or which competes with the [] NETWORK within a radius of () miles from any premises (other than the Said Premises) in the United Kingdom on or upon which the [] BUSINESS is being carried on by any franchisee of the Franchisor or by the Franchisor itself if the Franchisee shall have provided services or sold the Said Products to customers whose address or place of business is within any such radius]

or

18.8.2 [directly or indirectly be engaged concerned or interested in any capacity whatsoever in a business which is similar to or which competes with the [] BUSINESS within any territory (other than the Territory) in the United Kingdom served by any member of the [] NETWORK or by the Franchisor itself within which a customer of the Franchisee shall have its address or place of business]

18.8.3 directly or indirectly solicit or tout for business from any person who was during the period of two years prior to such termination a regular customer of or in the habit of dealing with the Said Business

18.9 that he will not at any time following termination of this Agreement directly or indirectly be engaged concerned or interested in a business which utilises or duplicates the System or any significant part of it or use the Trade Name or the

Trade Marks the Future Trade Marks or any name or mark likely to be confused therewith.

18.10 the liability of the Principal under this clause shall not be in any way affected or impaired by the Franchisor giving time or showing any indulgence whatsoever to the Franchisee

19. DEATH OF FRANCHISEE

19.1 If a sole Franchisee (or if more than one the last surviving Franchisee) shall die during the Term the personal representatives of such deceased Franchisee shall decide within a period of 3 (three) months from the date of death of the last surviving Franchisee whether they wish the Said Business to be carried on by a relative or relatives or beneficiary or beneficiaries of such deceased Franchisee.

19.2 If it is so decided and the personal representatives together give written notice of the decision within such period of 3 (three) months to the Franchisor providing the name or names (if such be the case) and address(es) of such relatives or beneficiaries together with such other information as the Franchisor may require. On the Franchisor being satisfied that such individual or individuals would be acceptable as a Franchisee as if a purchaser of the Said Business by applying the provisions of clause [17.4.1] and subject to the provisions contained in clauses 17.4.3, 17.4.4, 17.4.5 and 17.4.8 the Franchisor will not exercise any option it may have to purchase the Said Business but will consent to an assignment of this Agreement to such individual or individuals subject to them entering into direct covenants with the Franchisor to observe and perform the terms and conditions contained in this Agreement

19.3 If the personal representatives of such deceased Franchisee wish to sell the Said Business then a purchaser for the Said Business shall be sought with all possible speed to the intent that if the Franchisor shall decide not to exercise the Purchase Option a purchaser acceptable to the Franchisor subject to the provisions set out in clauses 17.4.1 to 17.4.8 (inclusive) shall be found the Said Business may be sold in accordance with the provisions contained in clause [17] to such purchaser within the period of six months from the date of death of the Franchisee or as the case may be of the last Franchisee to die

19.4 If requested in writing by the personal representatives the Franchisor will if it is practical and possible for it to do so provide a manager to manage the Said Business during the period of 3 (three) months specified in clause 19.1. The Franchisor shall be entitled to a sum for the provision of such manager equal to:

- 19.4.1 the salary of the manager; and
 - 19.4.2 the travelling accommodation and subsistence expenses of the manager; and
 - 19.4.3 50% of the aggregate of the items referred to in clauses 19.4.1 and 19.4.2 plus VAT such sum to be paid at weekly intervals on the [Tuesday] of each week;
- 19.5 The Franchisor will also if requested (subject as is mentioned in clause 19.4) provide such a manager for an additional period of up to three months after the initial three months upon the same terms and conditions so as to enable the personal representatives to arrange a sale of the Said Business
- 19.6 In the event of any failure promptly to pay to the Franchisor any fee for the provision of the services of a manager the Franchisor shall be released from its obligations to provide a manager without prejudice to its claim for payment of any sum due but not paid
- 19.7 The manager shall act as the agent of the Franchisee and the Franchisor shall have no liability for any act neglect or default of or by the manager
- 19.8 If the said personal representatives do not arrange to dispose of the Said Business as provided in clauses 19.1 and 19.2 within the period of six months referred to in clause 19.3 or notify the Franchisor that neither course will be adopted the Franchisor will be entitled:
- 19.8.1 to withdraw the services of the manager;
 - 19.8.2 to terminate this Agreement by 30 (thirty) days notice in writing given within 7 (seven) days from the end of such 6 (six) month period or such notification if sooner; and
 - 19.8.3 to purchase the Said Business at its then market value [less 20% thereof] on the basis that this Agreement has been terminated by notice in writing given to the personal representatives. Notice to purchase ("the Notice to Purchase") shall be given by the Franchisor to the Franchisee within fifteen days from the expiration of such period of 6 (six) months or notice by the personal representatives pursuant to clause 19.3 if sooner and shall constitute together with the terms of this clause a binding contract. So far as they are applicable mutatis mutandis the provisions set out in clause 21.3⁴⁵ shall apply to the purchase as if they were here repeated in full save

that the said personal representatives shall sell with limited title guarantee;
and

- 19.8.4 if the parties shall be unable to agree upon the market value within ten days after the service of the Notice to Purchase the valuation shall be determined at the joint expense of the parties by a valuer to be nominated at the request of either party by the President for the time being of the Royal Institution of Chartered Surveyors; and
- 19.8.5 the personal representatives shall be obliged to continue operating the Said Business to best advantage in accordance with the terms of this Agreement during the 30 (thirty) day notice period and until the Franchisor shall take possession of the Said Business as hereinafter provided;
- 19.8.6 the Franchisor shall be entitled to possession of the Said Business at the end of the said period of ten days upon placing the amount offered by it for the Said Business in a clients' deposit account with the Franchisor's solicitors to be released upon the valuation being made to such of the parties and in such proportions as the valuation shall render appropriate

19.

DEATH OF PRINCIPAL

- 19.9 If the Principal (or if more than one the last surviving Principal) shall die during the Term the Franchisee shall decide within a period of 3 (three) months from the date of the death of such Principal whether a relative or beneficiary of such Principal should enter into a covenant with the Franchisor substituting him for the deceased in the capacity of Principal under the terms of this Agreement
- 19.10 If it is so decided the Franchisee shall give written notice of the decision within such period of 3 (three) months to the Franchisor giving the name and address of such relative or beneficiary together with such other information as the Franchisor may require. On the Franchisor being satisfied that such individual would be acceptable as a Principal as if a purchaser of the Said Business by applying the provisions of clause 17.4.1 and subject to the provisions set out in clauses 17.4.4, 17.4.5, 17.4.6 and 17.4.7 the Franchisor will not exercise the Purchase Option and will enter into an agreement with the Franchisee and such relative or beneficiary substituting such individual as Principal under the terms of this Agreement. Provided that the Franchisor is satisfied:
 - 19.10.1 that such individual will have effective voting or de facto control of the Franchisee; and

- 19.10.2 with the suitability of the other persons who will be shareholders in the Franchisee; and
- 19.10.3 with the shareholding structure; and
- 19.10.4 with the arrangements between the shareholders in the Franchisee
- 19.11 If the Franchisee shall not within the said period of 3 (three) months nominate an individual as Principal in accordance with and subject to the provisions of clause 19.1 then a purchaser for the Said Business shall be sought with all possible speed to the intent that if the Franchisor shall decide not to exercise the Purchase Option and if a purchaser acceptable to the Franchisor under the provisions set out in clauses 17.4.1 to 17.4.8 (inclusive) shall be found the Said Business shall be sold in accordance with the provisions of clause 19 to such purchaser within the period of 6 (six) months from the date of death of the Principal
- 19.12 if requested in writing by the Franchisee the Franchisor will if it is practical and possible for it to do so provide a manager to manage the Said Business during the period of three months specified in clause 19.1. The Franchisor shall be entitled to a sum for the provision of such manager equal to:
 - 19.12.1 the salary of the manager; and
 - 19.12.2 the travelling accommodation and subsistence expenses of the manager; and
 - 19.12.3 50% of the aggregate of the items referred to in clauses 19.4.1 and 19.4.2 plus VAT such sum to be paid at weekly intervals on the [Tuesday] of each week
- 19.13 the Franchisor will also if requested (subject as is mentioned in clause 19.4) provide such a manager for an additional period of up to three months upon the same terms and conditions so as to enable the Franchisee to arrange a sale of the Said Business
- 19.14 in the event of any failure promptly to pay to the Franchisor any sum for the provision of the services of a manager the Franchisor shall be released from its obligations to provide a manager without prejudice to its claim for payment of any sum due but not paid
- 19.15 the manager shall act as the agent of the Franchisee and the Franchisor shall have no liability for any act neglect or default of or by the manager
- 19.16 if the Franchisee does not arrange a substitution of the Principal within the said period of 3 (three) months as provided in clause 19.1 or a sale of the Said Business

within the said period of 6 (six) months as provided in clause 19.2 the Franchisor shall be entitled:

- 19.16.1 to withdraw the services of the manager
- 19.16.2 to terminate this Agreement by 30 (thirty) days notice in writing given within 7 (seven) days from the end of either the 3 (three) months period as provided in clause 19.1 or the six month period as provided in clause 19.2 as the case may be; and
- 19.16.3 to purchase the Said Business at its then market value [less 20% thereof] on the basis that this Agreement has been terminated by notice in writing given to the Franchisee. Notice to purchase the ("Notice to Purchase") shall be given by the Franchisor to the Franchisee within fifteen days from the expiration of the period of 6 (six) months and shall constitute together with the terms of this clause a binding contract [so far as they are applicable the mutatis mutandis provisions set out in clause [] shall apply to the purchase as if they were here repeated in full; and
- 19.16.4 if the parties shall be unable to agree upon the market value within ten days after the service of the Notice to Purchase the valuation shall be determined at the joint expense of the parties by a valuer to be nominated at the request of either party by the President for the time being of the Royal Institution of Chartered Surveyors
- 19.16.5 the Franchisee shall be obliged to continue operating the Said Business to best advantage in accordance with the terms of this Agreement during the 30 (thirty) day notice period and until the Franchisor shall take possession of the Said Business as hereinafter provided;
- 19.16.6 the Franchisor shall be entitled to possession of the Said Business at the end of the said period of 10 (ten days) upon placing the amount offered by it for the Said Business in a clients' deposit account with the Franchisor's solicitors to be released upon the valuation being made to such of the parties and in such proportions as the valuation shall render appropriate
- 19.17 the Franchisee shall if requested by the Franchisor do all such acts and things and shall execute all such deeds and documents as may be necessary to give effect to the provisions contained in this clause

20. TERMINATION

The Franchisor may terminate this Agreement by written notice to the Franchisee

- 20.1 if the Franchisee shall fail to commence the Said Business within the period of [] [weeks] [months] from the date of this Agreement or
- 20.2 the Franchisee [or the Principal] shall:
- 20.2.1 neglect or fail to perform or observe any of the agreements or conditions on the Franchisee's [or the Principal's] part to be performed or observed under this Agreement or
- 20.2.2 the Franchisee shall fail to provide [the Said Products][the Services][services] to the standards required by the Franchisor or as set out in the Operational Manual and such default neglect or failure
- 20.2.2.1 affects the quality of the [Said Products or] [the Services] [services] provided to customers; or is
- 20.2.2.2 a failure to make payment of any sums owing by the Franchisee [or the Principal] to the Franchisor on the due date; or
- 20.2.2.3 is a failure to provide the Franchisor with reports accounts or other information pursuant to this Agreement; and
- 20.2.3 in any such case as is referred to in Clause 20.1.1 and 20.2.2 the Franchisee [or the Principal as the case may be] shall fail to remedy such default neglect or failure (where capable of remedy) to the Franchisor's satisfaction within [] [days] after written notice from the Franchisor or in the case of any other default neglect or failure within [] days after written notice from the Franchisor; or
- 20.3 if the Franchisee shall fail to keep the [] **OUTLET** open for trading for a consecutive period of [()] days unless this is because of major refurbishment or repair or because of the effects of explosion flood or fire or for a reason to which the Franchisor has given its prior written consent or
- 20.4 if [the Franchisee's Lease or Underlease are terminated or forfeited for any reason whatsoever or]⁴⁶ if the Franchisee's right to occupy the Said Premises is terminated or
- 20.5 if the Franchisee [or any of them] [or the Principal] shall in the franchise application or supporting details have provided the Franchisor with information which contains any false or misleading statements or omits any material fact which may make any statement misleading or

- 20.6 if the Franchisee shall refuse to permit the Franchisor or its representative to have access to the Said Premises as provided in this Agreement
- 20.7 if the Franchisee shall challenge the validity of the Trade Name the Trade Marks the Future Trade Marks the System or any intellectual property rights of the Franchisor⁹ or shall bring the Trade Name the Trade Marks the Future Trade Marks or the System into disrepute which (not by way of limitation) shall include committing a crime for which the punishment may be imprisonment; or
- 20.8 if there shall be a purported or deemed assignment of this Agreement or of the Said Business other than a sale of the Said Business under and in accordance with the provisions of clause 17 or
- 20.9 if (without prejudice to the generality of the provisions of this clause and to any other rights or remedies available to the Franchisor) the Franchisor shall on reasonable grounds suspect that any information concerning the Franchisor's business the System or particulars of any communication from the Franchisor to the Franchisee is being or has been communicated in any way to any competitor of the Franchisor by the Franchisee or any of [his] [its] employees [(or by the Principal or any of the Franchisee's shareholders)] or any other person associated with the Franchisee or such employees [the Principal or any shareholder]

[Sole Trader/Partnership]

- 20.10 [if the Franchisee [(or any of them)] shall become insolvent make any arrangement or composition with his creditors or shall have a bankruptcy petition presented against him (or any of them) or shall have a receiver appointed of all or any part of his or their assets or if the Franchisee (or any of them) takes any similar action in consequence of debt or] OR

[Corporate Franchisee]

- 20.9 [if the Franchisee shall become insolvent enter into liquidation whether compulsorily or voluntarily otherwise than for the purpose of amalgamation or reconstruction or if an administration order shall be made in respect of the Franchisee or
- 20.10 if the Franchisee shall make any arrangement or composition with its creditors or shall have a Receiver (including an Administrative Receiver) appointed of all or any part of its assets or if the Franchisee takes any similar action in consequence of debt or

- 20.11 if the Principal (or any of them) shall have a bankruptcy petition presented against him or them or become insolvent or shall make any arrangement or composition with his creditors or shall take any similar action in consequence of debt]; and
- 20.12 a default neglect or failure of the same agreement or condition which has occurred more than twice in any period of one year shall be deemed to be a persistent default neglect or failure and in the case of persistent default neglect or failure the Franchisor shall be entitled to terminate this Agreement forthwith by written notice to the Franchisee who shall not be entitled to any period of grace within which to remedy any such default neglect or failure.
- 20.13 and this Agreement shall automatically and forthwith determine:
- 20.13.1 if there shall be any breach of the provisions of clause []⁴⁸ by the Franchisee; or
- 20.13.2 pursuant to clause [13.8]⁴⁹ if the Franchisee shall cease for any reason to be registered for VAT with HM Customs and Excise
- 20.14 all rights of the Franchisee under this Agreement shall cease if the Franchisor shall terminate this Agreement under the provisions of this clause

21. CONSEQUENCES OF TERMINATION

- 21.1 the termination of this Agreement the Franchisee will
- 21.1.1 immediately discontinue the use of the Trade Name the Trade Marks the Future Trade Marks signs cards notices and other display or advertising matter indicative of the Franchisor or of any association with the Franchisor or of the Said Business or [the Said Products][the Services][services] [Menu Range] of the Franchisor; and
- 21.1.2 make or cause to be made such changes in signs cards notices and other display or advertising matter buildings and structures as the Franchisor shall direct so as effectively to distinguish the [] **OUTLET** from its former public appearance marketing image and look including but not by way of limitation a change in the colours used. If the Franchisee shall within 30 (thirty) days of such direction fail or omit to make or cause to be made any change then the Franchisor shall have power (without incurring

⁴⁸ Cross reference Franchisee's Obligations and the clause prohibiting the Franchisee from doing anything which causes The Trading Schemes Act 1996 to apply

⁴⁹ Cross reference to the clause requiring the Franchisee to be registered for VAT found in the Accounting and Reporting clause

any liability to the Franchisee) without the consent of the Franchisee save this consent which the Franchisee gives irrevocably to enter upon the Said Premises and to make or cause to be made any such change at the expense of the Franchisee which expense the Franchisee shall pay on demand;

21.1.3 when demanded to by the Franchisor and (except in the case of items supplied to the Franchisee free of charge) upon payment of its reasonable market value deliver up to the Franchisor all stationery literature signs cards notices other display or advertising matter and any other article bearing the name of the Franchisor or the Trade Name or the Trade Marks or the Future Trade Marks which may be the property of the Franchisee;

21.1.4 return at the Franchisee's expense all items which may have been loaned to the Franchisee by the Franchisor including all copies of the Operational Manual;

21.1.5 pay forthwith to the Franchisor (without any deduction or right of set-off)

21.1.5.1 all sums of money which may be payable or owing (whether or not then due for payment) from the Franchisee to the Franchisor

21.1.5.2 the Franchisor's proper legal costs incurred in the preparation and service of the termination notice together with all disbursements reasonably and properly incurred if this Agreement shall have been terminated by the Franchisor under clause [20]

21.2 The Franchisee shall further and forthwith upon such termination

21.2.1 transfer to the Franchisor all copies and records of the Customer List and provide the Franchisor with a list (including names addresses and telephone numbers) of all Prospective Customers (so far as [he][it] is aware)

21.2.2 assign to the Franchisor in such form as the Franchisor shall require the benefit of such contracts with customers as the Franchisor may specify and pay over to the Franchisor any sums received on account of such contracts (without any deduction or right of set off)

21.2.3 join with the Franchisor or as the Franchisor may direct in cancelling any licence to use the Trade Marks and the Future Trade Marks.

21.2.4 cease using the telephone lines [provided by the Franchisor in accordance with the provisions hereof] [and any other lines] of which the numbers have

been publicly associated with the Said Business and the Trade Name the Trade Marks and the Future Trade Marks and shall do all such acts and things including the signature of any document which may be necessary to ensure that the future use of such telephone lines and the numbers allocated thereto by the Franchisor or its nominee is assured

- 21.2.5 cease the use of all material of whatever nature of which the copyright is vested in the Franchisor or where its continued use would in any way infringe the Franchisor's copyright

and if the Franchisee shall fail to comply with the provisions of clauses 21.2.3, 21.2.4 and 21.2.5 the Franchisor is by this Agreement irrevocably appointed the agent of the Franchisee with full authority to give such notices and sign such documents as may be appropriate to give effect to their provisions.

- 21.3 Upon the termination of this Agreement the Franchisor shall have the option ("the Termination Option") to purchase the Said Business on the following basis

21.3.1 the fixtures fittings and equipment employed in the Said Business at their current market value ("Current Market Value"); and

21.3.2 the stock at cost or net realisable value ("the Cost") whichever is the lower; and

[either - if no Lease of Said Premises clause]

21.3.3 the Franchisee's interest in the Said Premises at a price ("the Price") equal to the value in the open market with a willing vendor and willing purchaser with vacant possession and in assessing the value in the open market there shall be disregarded (to avoid any doubt) any value attributable to the Said Premises by reason of:-

21.3.3.1 the occupation of the Said Premises by the Franchisee

21.3.3.2 the Goodwill and

21.3.3.3 alterations and improvements carried out to the Said Premises and

21.3.3.4 the existence of this Agreement]

[or - if Lease of Said Premises clause (clause 5)]

19.3.3 The Franchisee shall surrender the Franchisee's Lease or as the case may be the Underlease for a nominal sum of One pound (£1) without prejudice to any claim the Franchisor may have against the Franchisee for the breach by

the Franchisee of any of the terms covenants or conditions contained in the Franchisee's Lease or as the case may be the Underlease]⁵⁰

- 21.4 The Termination Option may be exercised by the Franchisor by notice in writing to the Franchisee ("the First Notice") within 30 (thirty) days from the termination of this Agreement unless the Franchisee has validly exercised [his] [its] right to require the Franchisor to enter into and shall have entered into a New Agreement
- 21.5 The Franchisor and the Franchisee shall attempt to reach agreement on the value of the assets employed in the Said Business (other than the said stock). If such agreement has not been reached within thirty days from the service of the First Notice an independent valuer shall be appointed at the joint expense of the parties hereto to make a valuation of the Current Market Value and the Price on the basis set out above which shall be made as expert and not as arbitrator and shall be binding on the parties hereto. If the parties are unable to agree on the valuer so to be appointed within 40 (forty) days from the service of the First Notice the valuation shall be made at the joint expense of the parties by a valuer to be nominated at the request of either party by the President for the time being of the Royal Institution of Chartered Surveyors. The valuer shall determine such valuation as quickly as possible but in any event within 30 (thirty) days following his appointment
- 21.6 If within 30 (thirty) days after the determination of the Current Market Value and the Price the Franchisor shall give notice ("the Second Notice") to the Franchisee of its intention to purchase the said assets at the aggregate of the Current Market Value [and] the Cost and the Price then there shall immediately come into force a contract ("the Contract") for the sale and purchase of the assets
- 21.7 The Contract shall incorporate the Third Edition of the Standard Conditions of Sale except insofar as the said Conditions are inconsistent with the terms of this Agreement and in any event:-
- 21.7.1 no deposit shall be payable
- 21.7.2 the contractual completion date shall be 28 days from the service of the Second Notice or (in the case of the purchase of a leasehold interest) 7 days from the date upon which any superior landlord's licence to assign shall have been obtained (whichever is the later)
- 21.7.3 Title shall be deduced:

- 21.7.3.1 in accordance with Section 110 of the Land Registration Act 1925 (in the case of a sale of registered land)
- 21.7.3.2 and shall commence with a Conveyance on sale completed at least 15 (fifteen) years before the service of the Second Notice (in the case of a sale of freehold unregistered land) and
- 21.7.3.3 shall commence with the lease under which the Said Premises are held (in the case of a sale of leasehold unregistered land)
- 21.7.4 the sale shall be with vacant possession of the Said Premises on completion
- 21.7.5 the Franchisee shall sell with full title guarantee and
- 21.7.6 on completion (or so soon thereafter as it shall be ascertained) the Franchisor shall pay to the Franchisee the cost price or if lower the realisable value of the sound saleable stock ("the Cost") to be agreed between the parties hereto or in default of agreement at such cost as may be certified by the valuers normally employed by the Franchisor who shall act as experts and not as arbitrators
- 21.7.7 in the case of the sale of a lease the Contract shall be conditional upon the obtaining of consent to the assignment of such lease by all requisite reversioners (unless this requirement shall be waived by the Franchisor)
- 21.8 [Without prejudice to the rights of the Franchisor upon termination of this Agreement the Franchisor may in writing require the Franchisee to continue operating in its ordinary course the business formerly carried on pursuant to this Agreement and in accordance with the terms of this Agreement and upon such request being made the Franchisee shall comply with the requirement and the provisions of this clause and when complying with the provisions of this clause 21.8 the Franchisee shall
 - 21.8.1 not increase remuneration of any employees
 - 21.8.2 not change the terms of employment of any employees
 - 21.8.3 not do anything which is not of a routine unimportant nature
 - 21.8.4 not do anything which affects or is likely to affect materially or adversely the prospects of such business; and
 - 21.8.5 the Franchisee shall keep the Franchisor fully and effectively indemnified against all claims demands damages costs and expenses which may be

made against or incurred by the Franchisor arising from the conduct by the Franchisee of such business; and

it is expressly provided that the Franchisor may at any time by written notice to the Franchisee withdraw its requirement for the Franchisee to continue operating the business which is being carried on pursuant to a requirement made under this clause 21.8.

21.9 Bearing in mind the knowledge the Franchisee has acquired of the System and the necessity to prevent the System or any part thereof from directly or indirectly benefiting competitors upon the termination of this Agreement:

21.9.1 the Franchisee shall not within [a radius of () mile[s] from the Said Premises] [the Territory] (except as the holder of not more than (5%) five per cent of the shares in any company whose shares are listed or dealt in The Stock Exchange or other recognised public market) and for a period of one year thereafter directly or indirectly be engaged concerned or interested in any capacity whatsoever in a business which carries on a business similar to or which competes with the [] BUSINESS

either

21.9.2 [the Franchisee shall not for a period of one year thereafter directly or indirectly be engaged concerned or interested in any capacity whatsoever in a business which carries on a business similar to or which competes with the [] NETWORK within a radius of () mile[s] from any premises (other than the Said Premises) in the United Kingdom on or upon which the [] BUSINESS is being carried on by any franchisee of the Franchisor or by the Franchisor itself] [if the Franchisee shall have provided Services or sold the Said Products to customers whose place of business or residence is within any such radius] ^{See note 41}

or

21.9.2 [the Franchisee shall not for a period of one year thereafter directly or indirectly be engaged concerned or interested in any capacity whatsoever in a business which is similar to or which competes with the [] BUSINESS within any territory (other than the Territory) served by any member of the [] NETWORK or by the Franchisor itself in the United Kingdom within which a customer of the Franchisee shall have its address or place of business

21.9.3 the Franchisee shall not for the period of one year thereafter directly or indirectly solicit or tout for business from any person who was during

the period of two years prior to such termination a regular customer of or in the habit of dealing with the Said Business

21.9.4 the Franchisee shall not at any time thereafter directly or indirectly be engaged concerned or interested in a business which utilises or duplicates the System or any significant part of it or use the Trade Name or the Trade Marks the Future Trade Marks or any name or mark likely to be confused therewith

21.9.5 the Franchisee shall maintain the System and other information relating to the conduct of the Said Business notified to the Franchisee in strict confidence and secret and shall only use them for the purpose of conducting the Said Business and shall not use disclose publish or otherwise make it available to any third party but this provision shall not apply to the System if it has become generally known or easily accessible otherwise as a package or in breach of trust than through a breach of this Agreement or other default of the Franchisee

22. ENTIRE AGREEMENT; FAILURE TO EXERCISE RIGHTS NOT TO BE A WAIVER

22.1 In this clause the expression "Pre-Contractual Statements" includes written or oral pre-contractual statements or agreements, financial statements, profit projections representations warranties inducements or promises made innocently or negligently

22.2 The Franchisee's waiver contained in this clause shall be irrevocable and unconditional but it is expressly provided that such waiver shall not exclude any liability of the Franchisor for Pre-Contractual Statements made by it fraudulently

22.3 The Franchisee acknowledges that [he] [it] has been

22.3.1 told that if there are any Pre-Contractual Statements which [he] [it] considers have been made to [him] [it] which would have induced [him] [it] to enter into this Agreement [he] [it] is obliged to submit particulars thereof to the Franchisor so that any misconceptions or misunderstandings can be resolved after which an agreed form of Pre-Contractual Statements on which the Franchisee has relied may be annexed to and form part of this Agreement

22.3.2 given the opportunity to provide to the Franchisor particulars of such Pre-Contractual Statements which [he] [it] considers have been made

to [him] [it] which would induce [him] [it] to enter into this Agreement and agrees that [he][it] shall be deemed not to have relied upon any Pre-Contractual Statements made or given or purportedly made or given by the Franchisor unless such a written statement is annexed hereto.

22.4 **This Agreement [together with the Franchisee's Lease or the Underlease entered into between the parties]⁵¹ therefore contains the entire agreement between the parties and accordingly no Pre-Contractual Statements shall add to or vary this Agreement or be of any force or effect and unless such Pre-Contractual Statements are either contained in this Agreement or in an annexure the Franchisee waives any right [he] [it] may have to sue for damages and/or rescind this Agreement**

22.5 **No failure of the Franchisor to exercise any power given to it under this Agreement or to insist upon strict compliance by the Franchisee with any obligation and no custom or practice of the parties at variance with the terms of this Agreement shall constitute any waiver of any of the Franchisor's rights under this Agreement**

22.6 **Waiver by the Franchisor of any particular default by the Franchisee shall not 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 of the Franchisee affect or impair the Franchisor's rights in respect of the said default or any other default of any kind**

23. SEVERABILITY

23.1 If any term or provision or any part thereof (in this clause called "the Offending Provision") of this Agreement shall be declared or become unenforceable invalid or illegal for any reason whatsoever including but without derogating from the generality of the foregoing a decision by any competent domestic Court or the European Court of Justice the Commission of the European Union an Act of Parliament European Union legislation or any statutory or other bye-laws or regulations or any other requirements having the force of law the other terms and provisions of this Agreement shall remain in full force and effect as if this Agreement had been entered into without the inclusion of the Offending Provision.

23.2 In the event that the exclusion of any Offending Provision shall adversely affect the Franchisor's right to receive payment of fees or remuneration by whatever means payable to the Franchisor (including but without prejudice to the generality of the foregoing the Franchisor's right [exclusively] to supply or nominate or approve suppliers the Franchisee with and of the [Said Products and/or]]Services] [services] or materially and/or adversely affect the Trade Marks the Future Trade Marks the Trade Name or the System then the Franchisor shall have the right to terminate this Agreement upon 30 (thirty) days notice in writing to the Franchisee provided however that before the service of such notice the Franchisor and the Franchisee shall use their best efforts by good faith discussions to agree within a period of 60 (sixty) days from the date when the Franchisor initiates such discussion process (time in this respect shall be of the essence) upon alternative enforceable provisions which will have the same practical effect for the Franchisor as the Offending Provision.

23.3 Upon any agreement having been reached the new provisions shall be incorporated in this Agreement and the Franchisor shall not be entitled to terminate this Agreement under the provisions of this clause by reason of that particular event

24. ACKNOWLEDGEMENTS AS TO ADVICE GIVEN AND OTHER MATTERS

24.1 **The Franchisee acknowledges that the Franchisor in giving advice to and assisting the Franchisee in establishing the Said Business (including but without prejudice to the generality of the foregoing recommending equipment and materials site selection profit projections and the assessment of the suitability of the Franchisee) bases its advice and recommendations on experience actually obtained in practice and is not making or giving any representations guarantees or warranties except that its advice is based upon such previous experience as it has and the degree of success or lack of success in its dealings on its own account and with its franchisees.**

24.2 **The Franchisee acknowledges that [he] [it] has been advised by the Franchisor to discuss [his] [its] intention to enter into this Agreement with other franchisees of the Franchisor and [his] [its] business advisors and that [he] [it] must decide on the basis of [his] [its] own judgement of what [he] [it] has been told by the Franchisor or such other franchisees whether or not to enter into this Agreement.**

24.3 **The Franchisee further acknowledges that [he] [it] recognises that the business venture contemplated by this Agreement involves business risks and that [his] [its] success will be affected by the Franchisee's ability and commitment as an independent [businessperson] [business entity]**

- 24.4 Except where the context otherwise requires each of the restrictions contained in this Agreement and in each clause and paragraph shall be construed as independent of every other restriction and of every other provision of this Agreement and the existence of any claim or course of action by the Franchisee against the Franchisor whatsoever shall not constitute a defence to the enforcement by the Franchisor of any of the said restrictions
- 24.5 It is expressly agreed between the parties hereto that having regard to the recitals and other provisions of this Agreement each of the restrictive covenants contained in this Agreement and in each clause and paragraph is reasonably necessary for the protection of the Franchisor and the Franchisor's [and/or the⁵³] intellectual property rights and the other franchisees of the Franchisor and does not unreasonably interfere with the freedom of action of the Franchisee.
- 24.6 The Franchisee acknowledges that [he] [it] has been advised by the Franchisor to obtain independent legal advice before executing this Agreement and confirms that he[it] has taken such legal advice and that [he] [it] is fully aware of its provisions and accepts that they are fair and reasonable in all the circumstances known to or in the contemplation of the Franchisor and the Franchisee as at the date of this Agreement.
- 24.7 In particular the Franchisee acknowledges that the provisions of this Agreement relating to the limits on the Franchisee's right to make deductions or set offs (to which [he] [it] may claim to be entitled) against payment of the Management Services Fees and the advertising contribution are fair and reasonable. The Franchisee recognises that [his] [its] failure or refusal to make payments of such fees or contributions because of [his] [its] dissatisfaction with the Franchisor's performance may result in [his] [its] continued involvement in the [] NETWORK being subsidised by other franchisees who make payment of such fees and contributions. [He] [It] also recognises that [his] [its] failure to pay such fees and contributions may adversely and materially affect the provision of services to franchisees who are members of the [] NETWORK. The Franchisee accepts that the remedies available to [him] [it] which are not affected by the set off or deduction provisions of this Agreement are sufficient for [his] [its] purposes including as they do a right to sue for damages and if appropriate acceptance of any repudiatory conduct on the part of the Franchisor

24.8 **The Franchisee warrants that save pursuant to an agreement with the Franchisor entered into prior to the execution of this Agreement or as disclosed in writing and annexed to this Agreement and signed by the parties hereto [he] [it] had no direct knowledge of**

24.8.1 **the [] BUSINESS; or**

24.8.2 **how to operate a business similar to the [] BUSINESS; or**

24.8.3 **how to conduct the [] BUSINESS; or**

24.8.4 **the System**

The Franchisee accordingly agrees that consequent upon the Franchisor relying on the warranty and statements referred to above the Franchisee would not without the benefit of the System be able to run or participate in any business similar to or which competes with the [] BUSINESS. The Franchisee accordingly undertakes during the Term and thereafter not to be engaged concerned, involved in any capacity whatsoever in a business other than the Said Business which carries on a business similar to or which competes with the [] NETWORK where such System or any part thereof would enable such a similar or competing business to conduct its business or would assist or enhance its performance unless the System as a package shall enter the public domain otherwise than in breach of contract or trust by any person having knowledge thereof

24.9 **In order to enable the Franchisor to ascertain whether the Franchisee is complying with the obligations imposed upon [him] [it] under this Agreement and in order to enable the Franchisor to enforce rights given to it by this Agreement the Franchisor may at any time enter the Said Premises without any other consent of the Franchisee save this consent which the Franchisee gives and agrees not to revoke**

25. **NO WARRANTIES WITHOUT AUTHORITY**

The Franchisee shall make no statements representations or claims and shall give no warranties to any customer or Prospective Customer in respect of [the Said Products sold by the Franchisee or] the Services or the System or any of them save such as are implied by law or may have been specifically authorised by the Franchisor such authority to be given either in writing or in the Operational Manual in its form current at the time of the making by the Franchisee of such statement representation claim or the giving by the Franchisee of such warranty. The Franchisee undertakes with the

Franchisor to keep it fully and effectually indemnified against all claims demands losses expenses and costs which the Franchisor may incur as a result of any breach by the Franchisee of this provision or of any other provision contained in this Agreement

26. ASSIGNMENT BY FRANCHISOR

The Franchisor may assign (or otherwise deal with) the benefit and burden of this Agreement without any consent from the Franchisee subject in the case of an assignment to the assignee entering into a direct covenant with the Franchisee thereafter to observe and perform all the Franchisor's obligations contained in this Agreement. The submission by the assignee to the Franchisee of a contract to the above effect duly executed by the assignee shall be deemed to be in compliance with the requirements of this clause and the Franchisor shall thenceforth be discharged from all obligations under this Agreement

27. VAT

27.1 In this Agreement "VAT" means Value Added Tax and includes any similar tax replacing it or adding to it

27.2 All sums payable to the Franchisor under or in connection with this Agreement shall be exclusive of VAT and the Franchisee shall also pay to the Franchisor an amount equal to the amount of any VAT chargeable by reference to the value of any supply made by the Franchisor to the Franchisee under or in connection with this Agreement. Any such amount ("the VAT Amount") shall become due for payment by the Franchisee as follows:-

27.2.1 if the VAT Amount is payable in respect of a cash sum payable by the Franchisee and the time of the relevant supply for VAT purposes is later than the date on which such cash sum is payable by the Franchisee the VAT Amount shall become payable on the same date as the date for payment of such cash sum

27.2.2 in any other case the VAT Amount shall become payable on the date on which the relevant supply for VAT purposes is treated as taking place in accordance with Section 6 Value Added Tax Act 1994

27.3 To avoid any doubt (and without prejudice to the Franchisee's liability to pay an amount equal to any VAT which may be chargeable in respect of any supply made by the Franchisor to the Franchisee) where under or in connection with this Agreement the Franchisee agrees to pay or contribute to (or indemnify the

Franchisor or any other person in respect of) any costs such costs shall be taken to be increased by a sum equal to any VAT chargeable on it except to the extent that the Franchisor obtains a credit for the same as allowable input tax. In this clause the word "costs" includes any costs fees expenses outgoings or any other liability of the Franchisor or a third party

28. DEFINITIONS⁵⁴

- 28.1 In this Agreement obligations and liabilities assumed by more than one person are assumed jointly and severally unless otherwise specified
- 28.2 In this Agreement references to clauses and other provisions are references to clauses and other provisions of this Agreement.
- 28.3 In this Agreement reference to statutes or statutory provisions include those statutes or statutory provisions as amended extended consolidated re-enacted or replaced from time to time and to any order regulations instruments or other subordinate legislation and to any former statute or statutory provision replaced (with or without modification) by the statute or statutory provision referred to except to the extent that any amendment or modification enacted after the date of this Agreement would increase or extend the liability of any party to this Agreement.
- 28.4 There shall be deemed to be incorporated into the Purchase Option hereinbefore contained for the purchase in certain circumstances by the Franchisor of the Said Business the Third Edition of the Standard Conditions of Sale so far as the same shall be applicable to the assets the subject of the Purchase Option and are not varied by or inconsistent with the provisions of the Purchase Option
- 28.5 Where under any of the provisions of this Agreement the Franchisor's consent or approval is required to be given or obtained such consent or approval to be effective and binding on the Franchisor (unless deemed by a provision in this Agreement to have been given) must be in writing and signed by a director of the Franchisor
- 28.6 Where in this Agreement there is a reference to a requirement of the Franchisor (however expressed) it shall be deemed to include any requirement contained in the Operational Manual
- 28.7 Where in this Agreement there is reference to any matter to be specified by the Franchisor notice of such specified requirements may be communicated by way of amendment or addition to the Operational Manual

- 28.8 Where in this Agreement there is a duty imposed upon the Franchisee to send money reports or information to the Franchisor postmarked not later than a certain day which for any reason (including but not limited to strikes or non-collection of post) the Franchisee cannot perform the Franchisee shall be under an obligation to ensure that such money reports or information are received by the Franchisor not later than during the second day after the day upon which posting should have taken place
- 28.9 Where there are references in this Agreement to "terminate" or "termination" such words shall where the context admits be deemed to include the determination or termination of this Agreement for any cause including the termination of this Agreement by effluxion of time where the Franchisee has not entered into a New Agreement under [clause 3] hereof
- 28.10 Where in this Agreement there is a requirement on the part of the Franchisee to make payment without right of deduction or set off the Franchisee shall be entitled to make a deduction or set off in respect of undisputed liquidated sums owing by the Franchisor to the Franchisee including credits given or to which the Franchisee may be entitled in respect of defective goods supplied by the Franchisor under the terms of any agreement between the Franchisor and Franchisee⁵⁵
- 28.11 In this Agreement the words "the Said Business" where the context so admits shall include all assets employed in or about the conduct of the Said Business including the freehold or leasehold interest of the Franchisee and/or the right to occupy the Said Premises
- 28.12 In this Agreement the expression "Group" in relation to a body corporate means the body corporate or any other body corporate which is its ultimate holding company or subsidiary and any other body corporate which is a subsidiary of that holding company or a subsidiary of any subsidiary of that holding company
- 28.13 In any contract resulting from the exercise by the Franchisor of an option to purchase the Said Business from the Franchisee pursuant to this Agreement the Franchisee will indemnify the Franchisor and keep the Franchisor indemnified on demand against all liabilities costs claims proceedings fines penalties compensation Court or tribunal order, awards and demands arising from any liability or obligation of the Franchisee in any way connected with or relating to the employment of [the Principal and] any of the Franchisee's employees in the Said Business or the

⁵⁴ Section 61 of the Law of Property Act 1925 contains definitions which are implied in documents (a) "month" means calendar month (b) "person" includes a corporation (c) the singular includes the plural and vice versa (d) the masculine includes the feminine and vice versa. These words do not need to be defined in the agreement.

⁵⁵ See *Stewart Gill Ltd v Horatio Myer & Co Ltd* [1992] 2 All ER 257 and *Connaught Restaurants v Indoor Leisure Times* 27 July 1993

termination of such employment (including statutory obligations and contractual rights and obligations) which may be transferred to the Franchisor pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 1981 and any subsequent re-enactment or modification thereof

28.14 [The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it]

or

19.14 [] has the right to enforce this Agreement in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this clause the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

28.15 Any reference in this Agreement to a right of set off shall include legal and equitable rights of set off

28.16 Any reference in this Agreement to the "Internet" shall mean a network of computers linked by communication software or any successor or similar and/or alternative communication technology

28.17 In this Agreement the expressions below listed have the meanings attributed to them in the clauses set opposite the expression

"the expression"

"clause"

the [] **BUSINESS**

[the Said Products]

the Trade Name

the System

[the Menu Range]

[the Services]

the [] **NETWORK**

a(n) [] **OUTLET**

[Cl. 1.5 definition of company]

the Trade Marks

[the Territory]

the Said Premises

the Said Business

Goodwill

the Term

the New Agreement

[the Franchisee's Lease]

[the Lease]
[the Underlease]
the Operational Manual
[the Equipment Package]
[the Equipment Package Price]
[the Leased Equipment]
the Customer List
Prospective Customers
a Competing Business
[Initial Franchise Fee]
[Management Services Fee]
Gross Revenues
Periodic Accounting Interval
EPOS
the Franchisor's Outlets
the Future Trade Marks
the Purchaser
the Purchase Option
Notice to Purchase
the Termination Option
Current Market Value
the Cost
[the Price]
the First Notice
the Second Notice
the Contract
Pre-Contractual Statements
the Offending Provision
VAT
the VAT Amount

29. [ARBITRATION]⁵⁶

29.1 ANY dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to any thing or matter arising out of or in connection with this Agreement (except under or in relation to either clause [20] or clause [21])⁵⁷ shall be referred to arbitration in accordance with the Arbitration Scheme of the British Franchise Association provided that

29.2 Notwithstanding [the application of arbitration to] disputes or differences arising out of this Agreement the Franchisor shall not be prevented from terminating and or

⁵⁶ We do not recommend Arbitration - the BFA scheme has not been well used or run by the Chartered Institute of Arbitrators if a client wants arbitration please discuss with MM

⁵⁷ Cross reference to Termination and Consequences of Termination clauses

enforcing this Agreement and/or from applying to a competent court to enforce its provisions or applying for injunctive relief

29.3 If the Franchisor applies to a court to enforce the provisions of this Agreement or seek injunctive relief the Franchisee agrees not to apply for a stay of proceedings pending arbitration which agreement the Franchisee undertakes not to revoke]

30. NOTICES

ANY Notice required to be given pursuant to this Agreement by the Franchisor may be delivered personally or by sending it by first class prepaid post if to the Franchisee at the Said Premises [and if to the Principal at his last known address]. Any notice required to be given by [the Principal or] the Franchisee may be given by leaving the same with the Franchisor's Secretary at or by posting it by first class prepaid post to the Franchisor's then registered office. Where a notice is sent by post under the provisions of this clause service shall be deemed to have been effected at the expiration of 72 (seventy-two) hours (excluding bank holidays) after the same was posted whether or not it shall have been received

31. CLAUSE HEADINGS NOT PART OF THIS AGREEMENT

THE clause headings in this Agreement are solely for ease of reference and this Agreement shall not be construed by reference thereto

AS WITNESS the hands of the parties hereto

SCHEDULE 1

THE TERRITORY

SCHEDULE 2

THE SERVICES

SCHEDULE 3

Part I

the Equipment Package [clause 6.10]

Part II

the Equipment Package Price [clause 6.10]

SCHEDULE 4

Part I

The Leased Equipment [clause 8.1]

Part II

Payment Terms (clause 8.1)

SCHEDULE 5

Terms for supply of the Said Products

