

FRANCHISE AGREEMENT: MATTER FORM

Dated

Parties

(name of franchisor) [whose [registered office or principal place of business] is at or whose address for service within the jurisdiction of the courts of [England and Wales is] (address)] (the Franchisor)

(name of franchisee) [whose [registered office or principal place of business] is at or whose address for service within the jurisdiction of the courts of [England and Wales]is](address)] (the Franchisee)

Recitals

The Franchisor operates through [its own and] franchised outlets under the Trade name a business of (insert brief details only because a technical description of the franchised business will be included in the definitions clause) according to the Method.

The Franchisor is the registered proprietor of the Trade Mark[s] [and the [owner or licensee] of the [copyright or Design Rights]] [and the [patentee or licensee] of the Patents] comprised in the intellectual Property.

The Franchisor is the proprietor of the [Copyright] [Design copyright] in the plans and designs for the [buildings] [structures] fixtures fittings including colour schemes pattern of furnishings dress styles of staff and the like used in the Method

The Franchisee wishes to operate the Business

Definitions

The following terms shall have the following meanings:

‘Accounting Reference Date’: (insert date) in each year of the term

‘Advertising Contribution’: [two point five per cent (2.5%)] of the gross turnover of the business

‘Business’: commencing and undertaking a business of (give details)[at the Location][within the Territory] in accordance with the method

‘Commencement Date’: (insert date) or the date set out at the head of this Agreement]

‘Conditions’: the provisions [contained in clauses [5 to9] or set out [overleaf or below] which shall be incorporated into this Agreement in their entirety]

‘Continuing Fees’: Franchise fees of [five per cent (5%)] of the Gross Turnover of the Business

‘Credit Limit’

‘Time: days from date of [invoice or delivery]

Value:.. [pounds sterling or units of the Currency] at any time in respect of [products or services] [invoiced or delivered] [or such other period or value limits as may be later agreed under this Agreement]

‘Currency’: [pounds sterling]

‘Date’: a day on which the banks are open for business in [England] or (if the banks are

closed on that day) the next such day following and subjects to this any reference to a particular date shall include that day itself

‘Expiry Date’: (date) or such later Date as shall result from any extension of the Term under clause [5.22]

‘Gross Turnover’: the gross takings of the Business in respect of the products sold and the services supplied and business dealings entered into in each [calendar month or week] of the term which shall be the gross sums receivable at the time of such sale supply or entering into in each [calendar month or week] and not solely the cash received or the cash banked and whether or not invoiced.

In calculating the gross savings there shall be included for the relevant [calendar month or week] all payments (if any) received under any insurance policy covering loss of profits

The following shall not be included in the gross sums receivable:

3.11.2.1 All Value Added Tax (VAT) or any similar tax or excise duty replacing it or in addition to it

any benefit arising from or accruing to the Business solely attributable to any sale of equipment permitted by this agreement.

The following shall not be deducted so as to reduce the gross sums receivable:

any customer refunds or allowances

credit card discounts or charge suffered by the Franchisee

the cost of any free offers or discounts made or given by the Franchisee as part of any special promotion unless required or authorized by the Franchisor

‘Initial Fee’: as an initial fee the sum of (insert initial fee)

‘Insurance Premium’: the premium for the insurance arranged by the Franchisor described [later in this Agreement or in the Conditions]

‘Intellectual Property’: all or any of the following:

Trade Mark[s] (describe) of which the Franchisor is the registered proprietor in the Territory [and which [is or are] applied to the [products or services] or brief details of which are set out in Schedule] and applications for registration of any such marks

Trade Name (insert name) [or the names under which the Franchisor sells the Products]

Patents of which the Franchisor is [patentee or licensee] in the Territory and [which relate to the products or their manufacturer or brief details of which are set out in schedule] and applications for the grant of any such patents.

Copyrights and Design Rights held by the Franchisor in any written material plans designs or other work relating to the products or the method

Designs whether or not registered or protected by copyright devised or acquired by the Franchisor and applied in the manufacture assembly and sale of the products and the method

Permitted Name

The software described in the Manual

‘Location’: [(describe premises to be used for the Business) or a site approved by the Franchisor within the Territory] as described in clause [6.68]

‘Manual’: the Franchisor’s standard operating manual as updated from time to time [serial number]

‘Method’: a business conducted in accordance with the manual using the Intellectual property and any necessary know-how trade secrets methods of operating insignia identifying materials methods of advertising style and character of equipment and insurance arrangements specified in the Manual.

‘Minimum fee’ a minimum payment [to be set against the Continuing Fees] of [£....]

‘Minimum Package’:

3:19:1 the equipment products stock of all types

3:19:2 the minimum staff levels [at the location]

Stipulated in the Manual from time to time during the Term

3.20 ‘Minimum Performance’:[£...] of Gross Turnover of the Business in each [year] of the Term increasing by [the rate of increase of the Retail Price Index in the [Territory or United Kingdom]or the average of the rates of inflation according to the published government statistics of all the nations included in the Territory [during the preceding year or since the last Accounting Reference Date]

3.21 ‘Notice Period’:

3.21.1 for default notice [30] days

3.21.2for any other notice or termination [60] days

3.22 ‘Payment Dates’

3.22.1 for the Initial Fee: on the signing of this Agreement

3.22.2 for the Insurance Premium: within the relevant Notice Period

3.22.3 for the Advertising Contribution and the Continuing Fees:[on Friday] of each week in respect of the Business during the immediately preceding seven(7)days or on the [tenth] day of each calendar month in respect of the Business in the immediately preceding calendar month]

3.22.4 for the Minimum Fee: every [Friday]

3.23 ‘Permitted Name’: (*insert proposed name of franchised outlet*)

3.24 ‘Processor’: the computer and other equipment listed in the Manual from time to time to be used by the Franchisee in the Business

[3.25 ‘Products’: the products briefly described in the schedule.... or other products substituted in accordance with this Agreement]²

3:26 ‘Promotion Fund’: the fund to be maintained by the Franchisor for advertising purposes in accordance with clause [5.4] [of the conditions]

[3.27‘services’: the services forming part of the Business and described in the Manual]

3:28 ‘Term’:.... years starting on the Commencement Date and ending on Expiry Date unless extending or earlier determined as provided by this Agreement

3:29 ‘Territory’: the geographical area of (*insert description of area*) [and shown edged red on the map attached to this Agreement]

Grant [and reservations]

4.1 In consideration of the payment of the Initial Fee [the Minimum Fee] [the Insurance Premium] [the Advertising Contribution] and the Continuing Fees by the Franchisee to the Franchisor [on the Payment Dates] and of and subject to the agreements on part of the Franchisee in this Agreement the Franchisor grants to the Franchisee the right to carry on

the Business

- 4.1.1 at and from the location
- 4.1.2 within the Territory
- 4.1.3 for the Term
- 4.1.4 under the Permitted Name
- 4.1.5 in accordance with the Method
- 4.1.6 in accordance with the Manual

The Franchisor reserves power:

- [4.2.1 to decline to accept any order from or through the Franchisee]
- [4.2.2 to [continue to] sell direct to customers in the Territory [by mail order only]
[or to service national accounts even if the head office of the customer is
located in the Territory or if the products are delivered to offices of the
customer in the Territory]
- [4.2.3 to vary the specification and the price of the Products]
- [4.2.4 to vary schedule.... either by the withdrawal from that schedule of Products
which the franchisor proposes to withdraw from its product range or by
addition to that schedule [after consultation with or with the agreement of]
the Franchisee of further Products]

(If the conditions are to be printed overleaf or as a separate attachment the signature blocks of the parties should appear here)

CONDITIONS

Franchisor's obligations

The Franchisor agrees with the Franchisee throughout the Term:

To permit the Franchisee to carry on the Business

To permit the Franchisee to:

- operate the Business under the Permitted Name or such other names or styles
as may be specified or approved in writing by the Franchisor
- promote the Business under the terms of this Agreement

Not to derogate

Not to derogate from the grant

5.3 Manual and update

To lend to the franchisee for the term a copy of the manual and to update the manual from time to time

5.4 General advertising

Subject to the performance of its obligations by the franchisee:

- 5.4.1 to promote the trade name and method in the british isles or such areas of

the british isles as it considers appropriate in such newspapers, magazines, radio, television, directories, pamphlets, or other media as it may from time to time consider suitable [in consultation with the franchisee and other Franchisees]

for this purpose to pay the advertising contribution paid by the franchisee and all other franchisees of the franchisor into the promotion fund annually to provide the franchisee with an audited account of the income and expenditure of the promotion fund

[5.4.4 to charge the amount of the advertising contribution to each of its own [stores or outlets] and to pay the same into the promotion fund] and expenditure of the promotion fund by the franchisor shall be deemed satisfactory compliance with such promotional obligations the promotional fund being held in trust by the franchisor for its franchisees provided that if at any time the franchisor's promotional expenditure exceeds the money in the promotional fund such excess expenditure may be set off as a first charge against subsequent money received by the promotion fund.

Point-of- service advertising

To make available to the Franchise e [free of charge or at cost or at the prices then charged to other Franchisees of the Method] point-of-service advertising material for issue to customers or potential customers (including the places of business and telephone numbers of other franchisees)]

Initial advertising

In due time for the Commencement Date to advertise the Business and the date of such commencement in such newspapers, magazines, radio, television, directories, pamphlets or any other media as it may consider appropriate devoting to such a purpose a sum not less than [£...]

Initial training

To provide within... days of the date of this Agreement at a place chosen by the Franchisor training [free of charge] in the Method during a period of not less than...days for the Franchisee [and (*list other persons who will receive training*)

Training of substitute personnel

In the event of any of the persons required under the terms of this Agreement to undergo a course training ceasing to act in the Business after completing such training, to provide the persons who will act in the Business in their place with similar training [in case the Franchisee himself cannot give such training] at the expense of the Franchisee

Improvements to the Method

To improve and develop the method and to provide free of charge such further training [at the expense of the Franchisee or free of charge] to the Franchisee and other persons engaged in the conduct of the Business as may from time to time appear necessary in the light of such improvements or developments [at reasonable fees based upon the length of service and number of employees of the Franchisor engaged in such further training]

Equipment

To supply to the Franchisee in due time for the commencement of the Business the [equipment and other items specified in the Manual or the Minimum Package] [at the prices [and hire charges] specified in the Manual]

Annual conference for franchisees

To organize and hold at its own cost at least once annually at a place convenient to the majority of the franchisees a conference of franchisees to discuss the method (including possible improvements in the method) and the business.

Consultation

To consult with the Franchisee and to give to the Franchisee the benefit of his knowledge and experience in connection with any problems relating to the method and to make available as promptly as is reasonably practicable members of the Franchisor's staff competent to give such advice or assistance as it may be possible or necessary to give or recommend such independent experts as may appear necessary the Franchisee being responsible for paying the standard daily charge of the Franchisor for such staff [as set out in the manual] [and for the fees and expenses of such experts]

Procuring supplies etc

To assist the Franchisee in procuring such supplies services and equipment in addition to those supplied by the Franchisor as may be required by the Franchisee to commence and operate the Business and as far as possible to negotiate and obtain from suppliers discount rates for furnishing such supplies

Credit cards

To promote charge and credit cards and plans in accordance with the procedures established from time to time to make the operation of the method more convenient for customers and to create new and reliable customers

Staff engagement service

To make available to the Franchisee its staff engagement service for the provision of trained and other staff for employment in the business

No discrimination between franchisees

To make available to the Franchisee all services and facilities which the Franchisor makes available to its other franchisees [and company owned outlets] including improvements in and addition to the method

Indemnity

To indemnify and keep indemnified the Franchisee from and against any and

all loss damage or liability whether criminal or civil suffered [and legal fees and costs incurred] by the Franchisee in the course of conducting the business because of:

any act neglect or default of the Franchisor or its agents employees licensees or customers

the proven infringement of the intellectual property rights of any third party

any successful claim by any third party alleging libel or slander in respect of any matter arising from the [supply of the [products or services] or conduct of the business] in the territory

Provided that such liability has not been incurred by the Franchisee through any default by it in carrying out the terms of this Agreement.

Insurance

To maintain [at its own cost or subject to prompt payment of the Insurance Premium by the Franchisee] a [comprehensive or specific] insurance policy [with an insurer of repute in the [British Isles]] to cover the liability of the Franchisor in respect of any act or default for which it may become liable to indemnify the Franchisee under the preceding clause

To arrange that the [minimum or total] cover [per claim] of that policy is (insert sum) on [each annual date or the Accounting Reference Date]

To increase such cover by the [rate of increase in the Retail Price index in the [Territory or United Kingdom] or average of the rates of inflation according to published government statistics of all the nations included in the Territory] [during the preceding year or since the last Accounting Reference date]

To procure that the Franchisee is a payee of and a party to that policy

To arrange a comprehensive block policy [with an insurer of repute [in the British Isles] to cover the Franchisee [and the other franchisees of the Franchisor] and the Franchisor for all [usual] risks associated with the Method [and the Business] subject to prompt payment by the Franchisee of the Insurance Premium]

Support and information

To support the Franchisee in its efforts to promote the [Business or sales or other dealings in the Products or supply of the Services] and in particular [at its own expense or at the expense of the Franchisee]

to supply samples of the products

to supply patterns of the product

to supply user's manuals for the products [in the language[s] used in the Territory]]

to provide and promptly update information about the products

to provide courses for the instruction of [the employees of] the Franchisee in the demonstration of the products and in the provision of proper after-sales service at (address) [at the expense of [the Franchisee] excluding travel subsistence and salary]]

to hold seminars for the Franchisor's [agents or representatives or brokers] [active in the Territory]]

Delivery of Products

Subject to availability to supply to [the Franchisee or the customers of the

Franchisee] [in the Territory] the Products which:
comply [in all respects] with relevant government or other regulations [in the Territory]
are of merchantable quality
conform to sample
are at prices notified to the Franchisee by the Franchisor [monthly]
are delivered with all reasonable dispatch
are in accordance with the usual business terms of the Franchisor from time to time in force]

Maintenance of Intellectual Property

To maintain the Intellectual Property during the Term and not to cause or permit anything which may damage or endanger it or the Franchisor's title to it or assist or suffer others to do so

Extension of Term

To extend the Term [at the option of the Franchisee] for [one] further period[s] of Years commencing on the day following the expiration of the Term provided that the Franchisee:
has achieved [the performance targets set out in Schedule Or otherwise required under the terms of this Agreement or the Minimum Performance throughout the Term]
has properly observed and performed his obligations under this Agreement throughout the Term
pays to the Franchisor a renewal fee of% of the Gross Trunover of the Business in the calendar year prior to the Expiry Date
serves a notice on the Franchisor requiring such extension not later thandays before the Expiry Date
[accepts that the terms of this Agreement shall apply to any extension of the Term under this clause or executes a new agreement on the Franchisor's standard terms current at the expiry of this Agreement.

Extension of Territory

To give to the Franchisee not less than [30 days']written prior notice of the Franchisor's intention to appoint any person (other than the Franchisee) and of the terms of such appointment to conduct the Business in any place adjoining or withinmiles from the perimeter of the Territory or (insert other relevant details) and such notice may be treated by the Franchisee as an offer of an equivalent appointment and before its expiry the Franchisee may give written notice to the Franchisor that it will take up such appointment on such terms.
Not to offer to any other person terms more favourable than those contained in the notice withindays of the expiry of that notice

Extension of Products

To add to the Products the goods listed in Schedule.Provided that the Franchisee:
has achieved [the performance targets set out in Schedule or otherwise required under the terms of this Agreement or the minimum Performance]
has properly observed and performed its obligations under this Agreement throughout the

Term [so far]

serves a notice on the Franchisor requiring that such addition be made not later thandays before the Expiry Date

executes a new agreement in respect of the addition on the Franchisor's standard terms current at the date of the notice

Credit Limit

Subject to the performance by the Franchisee of all its obligations to allow the Franchisee credit up to and in accordance with the provisions of the Credit Limit

Credit review

To review the Credit Limit [monthly or quarterly or annually] [on the last day of each month or on the usual quarter days or on each anniversary of this Agreement] and subjects to the strict performance and observance by the Franchisee of all its obligations under this Agreement to increase the Credit Limit by the proportion by which the [turnover or sales] of the [Products or Services] of the Franchisee has increased since the last review

Supply of Services

To supply the Services stipulated in the Manual

Exclusive Territory

Not itself to operate nor to grant any other person the right to operate a business using any part of the Intellectual Property [and other insignia and identifying materials, methods of advertising and publicity forming part of the Method] in the Territory [nor itself to supply the Products to third parties [in the Territory]

Or

Non-exclusive territory

Before granting to any person a licence to use the Method in the Territory, to offer the licence to the Franchisee and if the Franchisee refuses it not to offer a licence to use the Method in the Territory to any other person on more favourable terms. If the Franchisee fails to send notice to the Franchisor of his acceptance of such offer of a licence within (specific period) of his being offered the licence, the Franchisee shall be deemed to have refused such offer

Manual

To keep the Manual up to date and in the case of loss of or damage to the Manual in the possession of the Franchisee to provide a further copy at the expense of the Franchisee

Software

To deliver the Software to the Franchisee and install it in the Processor prior to the commencement of the Business

To commission the Software and to procure that it functions in the Processor properly without faults or defects and in accordance with its specification

To replace without charge as soon as practicable any of the Software which is defective

To provide support for the software throughout the Term to such reasonable standards as are generally accepted throughout the data-processing industry

To provide initial training in the use of the Processor and the Software for the Franchisee or one of its employees the cost of which shall be included in the Initial Fee

To maintain modify and update the Software throughout the Term and to amend it in such manner as renders it useable on any new Processor specified by the Franchisor for the use of franchisees

To employ staff or engage consultants who are suitably qualified to enable it to perform its obligations adequately under this sub-clause.

Processor

To notify promptly Beta of any modification or upgrades of the Processor

Franchisee's obligations

The franchisee agrees with the Franchisor throughout the Term:

Commencement conditional on training

Not to commence the Business until [the Franchisee or one senior director of the Franchisee] [and (list other persons who will receive training)] who will be responsible for the management of the business [has or have] undergone the course of training provided by the Franchisor under clause [5.7] and been approved as competent by the Franchisor

No untrained personnel

Not to permit any person to act or assist in the Business in the place of persons trained in accordance with clause 6.1 unless and until such person has undergone a course of training by the Franchisor under clause [5.8] and has been approved as competent by the Franchisor

Further training

To procure that [the Franchisee or the senior director of the Franchisee] [and the other persons mentioned in clauses [5.7] and [5.8]] shall attend such further periods of training as may from time to time reasonably be required by the Franchisor

Training expenses

To pay the travel and subsistence expenses of [the Franchisee or the senior director] [and of its employees and the salaries of any of those employers incurred during such training] [together with the Fees charged by the Franchisor for such training from time to time]

Engagement of Staff

Within days of the commencement of the Business to [engage all staff and other persons required for the commencement and operation of the Business or engage the staff part of the Minimum Package]

Training of staff

To ensure that its staff and their replacements and all persons required under the times of this Agreement to undergo training in the Method and modifications to and improvements in the Methods do so and

If and whenever required by the Franchisor to procure that they attend for the specified period at the place selected by the Franchisor for such purpose and

To pay the travel and subsistence expenses involved of [the Franchisee or the senior director] [and of its employees and the salaries of any of its employees incurred during such training] [together with the fees charged by the Franchisor for such training from time to time]

Conformity with the method and other businesses

To conform in all aspects and at all times with the method (as modified from time to time as provided by this Agreement)

Not to do or suffer to be done anything additional to or not in accordance with the method without the previous consent in writing of the Franchisor

To ensure that the Business conforms with other businesses operated in accordance with the method in particular with regard to quality service and cleanliness (the Franchisee acknowledges that such conformity is of the utmost importance to the successful operation of the Business and other businesses operated in accordance with the method and the protection of the good will attaching to the Trade Name and Method)

Minimum opening hours

To operate minimum opening hours for the Business as follows; Mondays to Friday's inclusive (excepting statutory holidays) (set out hours) or other business hours that are usual in the area in which the Location is situated

Or

To open for the conduct of the Business for the hours and at the time stipulated in the Manual]]

Promotion of the Business

Diligently to promote and make every effort steadily to increase the Business by such advertisements signs entries in telephone or trade directories or other forms of publicity as may be approved by the Franchisor as provided by this Agreement and by distributing to customers and potential customers in the most effective manner point-of-service advertising material provided by the Franchisor

To expend not less than % of the Gross Turnover of the Business [between each Accounting Reference Date or in each year of the Term] in such promotion.

Promotion of the Method

To use every reasonable means in the conduct of the Business to promote the Method and to co-operate with the Franchisor and other franchisees of the Franchisor in promoting and developing it

Special promotion

To co-operate with the Franchisor and other franchisees of the Franchisor in any advertising campaign sales promotion programme or other special activity in which the Franchisor may engage or specify including the display of point-of-service advertising and the distribution of special novelties promotional literature and the like the costs of which shall be borne [in accordance with clauses 5.5 and 5.6 or by the franchisee] [including the costs of free offers discounts and the like or notwithstanding which the costs of free offers discounts and the like shall be borne by the Franchisee]

Diligence

At all to work diligently to protect and promote the interests of the Franchisor

Payments

To pay the Franchisor (or as the Franchisor directs) [without demand deduction or set-off] ⁹ on the relevant Payment Dates (time being of the essence):

6.13.1 The Initial Fee, which shall cover

6.13.1.1 initial training

6.13.1.2 initial advertising

6.13.1.3 [supply of equipment and other matters specified in the Manual or that part of the Minimum Package stipulated in clause [3.19.1] of this Agreement]

The [Advertising Contribution and the] continuing Fees

The Minimum Fee

[6.13.4 The Insurance Premium]

Contingent payment

If for any reason the Franchisor is prevented by law from requiring the Franchisee to obtain [its supplies for the Business or the products] from the Franchisor and the Franchisee ceases to purchase all or any part of [such supplies or the Products] from the Franchisor, to pay the Franchisor [without demand deduction or set-off] a further fee of... % of the Gross Turnover of the Business [on the Payment Dates of the continuing Fees]

6.15 No competing products

- [6.15.1 Not to manufacture sell or use [in the course of the provision of the Services] goods competing with he Products but nothing in this restriction to spare parts and accessories]¹⁰
- [6.15.2 To sell or to us in the course of the provision of the Services exclusively goods matching the minimum objective specifications laid down [in the Manual]]¹¹
- [6.15.3 To sell or use in the course of the provision of the Services only the Products]^{12]}

6.16 Restriction on active sales

Not to seek customers for [the Products or Services] outside the Territory]¹³

6.17 No change of location

Not without the Franchisor's consent to change the location of the Business]¹⁴

6.18 Interest in competitors

Not to acquire any financial interest in the capital of a competing Undertaking which would give the Franchisee power to influence the Economic conduct of such influence]¹⁵

6.19 Customer restrictions

To sell the Products only to end-users to other franchisees of the Franchisor and to resellers within other channels of distribution supplied by The Franchisor or by others with its consent]¹⁶

Good faith

In all matters to act loyally and faithfully towards the Franchisor

Compliance

To obey the Franchisor's orders and instructions and in the absence of any such orders or instructions in relation to any particular matter to act in such a manner as the Franchisee ought reasonably to have considered to be the most beneficial¹⁷

Disclosure

On entering into this or any other agreement or transaction with the Franchisor during the Term or any continuation of it to make full disclosure of all material circumstances and of everything known to it respecting the subject matter of the contract or transaction which would be likely to influence the conduct of the Franchisor including in particular the disclosure of other agencies or franchises in which the Franchisee is interested directly or indirectly

Pass on information

Without prejudice to the Franchise's right to supply such

Customers promptly ¹⁸ to refer to the Franchisor any inquiries
From prospective customers or other leads outside the Territory

To supply to the Franchisor information which may come in its
Possession, which may assist the Franchisor to effect sales or other
Dealings [for the Business or in the Products or in the Services] outside
the Territory

To pass on any information which may prejudice [sales of the Products
or supplies of the Services or the Business] in any way

Registered user

Where required by the Franchisor [to join with the Franchisor in making or
to make] application to become [the registered user or the licensee] of any
part of the Intellectual Property

Protection of Intellectual Property

Not to cause or permit anything which may damage or endanger
the Intellectual property or other intellectual property of the Franchisor
or the Franchisor's title to it or assist or allow others to do so

To notify the Franchisor of any suspected infringement of the
intellectual Property or other intellectual property of the Franchisor

To take such reasonable action as the Franchisor shall direct (as the
expense of the Franchisor) in relation to such infringement

To affix such notices to the Products or their packaging or advertising
associated with the Business as the Franchisor shall direct

To compensate the Franchisor for any use of the Intellectual
property otherwise than in accordance with this Agreement

To indemnify the Franchisor for any liability incurred to the
third parties for any use of the Intellectual Property otherwise than in
accordance with this Agreement

On the expiry or termination of this Agreement forthwith to cease to
use the Intellectual Property [save as expressly authorized by the
Franchisor in writing]

Not to apply for registration of the Trade Name or the Permitted Name
as a trade mark but to give the Franchisor as the Franchisor's expense
any assistance it may require in connection with the registration of the
of the Trade Name or the Permitted Name as trade mark in any part of
the world and not to interfere with in any manner nor to attempt to
prohibit the use or registration of the Trade Name or any similar name
or designation by any other licensee of the Franchisor

Not to tamper with any markings or name plates or other indication of
the source of origin of the Products, which may be placed by the
Franchisor on the Products

Not to use the Intellectual Property otherwise than permitted by this
Agreement

Not to use any name or mark similar to or capable of being confused

with the Trade Name, the Permitted Name or the Trade Mark
Not to use the Intellectual Property except directly in the Business
Not to use the Trade Name, the Permitted Name or the Trade Mark or any derivation of them in its corporate name
To hold any additional goodwill generated by the Franchisee for the Intellectual Property or the Business as bare trustee of the Franchisor
To use the Permitted Name as its only Trade Name
To display such notices concerning the Intellectual Property or the relationship between the parties on its stationery [and at the location] as is stipulated in the Manual from time to time¹⁹

[6.25.17 Not to register the Permitted Name as its trade name at (*insert name of business names registry*) without the consent of the Franchisor]

Save that the Franchisee acknowledges that the Trade Name is well known and valuable nothing in clauses 6.25.1-6.25.17 shall be interpreted as prohibiting the Franchisee from challenging the validity of any part of the Intellectual Property²⁰

Secrecy

Not at any time during or after the Term to divulge or allow to be divulged to any person any confidential information other than to persons who have signed a secrecy undertaking in the form approved by the Franchisor

Not to permit any person to act or assist in the Business until such person has signed such an undertaking

Neither during the Term nor at any time after its expiry to use any confidential information provided to the Franchisee by the Franchisor under the terms of this Agreement for purposes other than running the Business but after expiry of the Term this obligation shall cease if such confidential information becomes generally known or easily accessible other than by the Franchisee's breach

Restriction on employment of Franchisor's personnel

Not to employ or offer to employ any person who was at any time during the period of [..... years] immediately before such employment or offer employed by the Franchisor or by any person (including a franchisee of the Franchisor) who was at that time operating a business under the Trade Name or according to the Method and not directly to induce any such person to leave his or her employment

Sales Reports

To supply to the Franchisor [by first class prepaid mail or by electronic means if required by the Franchisor] [monthly or from time to time upon request or on payment of the Continuing Fees or on the Payment Dates] sales reports and other information in the form stipulated by the Franchisor in the manual concerning the Business

Accounts

To keep accurate and separate records and accounts in respect of the [supply of the [products or services] or conduct of the Business] and in accordance with good accountancy custom [in the Territory] have them audited by qualified auditors once a year during the term Submit copies [certified by such auditors] to the Franchisor within [90] days of the [Accounting Reference Date or end of the financial year of the Franchisee] Keep them for not less than [3] years Within 14 days of submission or receipt to supply to the Franchisor a copy of each VAT return or assessment in respect of the Business

Auditors

To appoint as the accountants and auditors of the Franchisee the [chartered] accounts nominated by the Franchisor

Customer list

To keep a list of actual and potential customers for the [products or services or business] and to supply a copy of it to the Franchisor upon request

Inspection of books and premises

To permit the Franchisor at all reasonable times to enter the Location or any other premises used in connection with the Business for the purpose of carrying out checks on such premises [vehicles used in the Business] the Products sold and the Services provided and the inventory and accounts of the Business [and all other things material to the Business]

Notice

To comply with the terms of any Default notice (as defined by clause [8.3] of the provisions of this Agreement and requiring the breach to be remedied so far as it may be but nothing in this clause is intended to require the Franchisor to serve notice of any breach before taking action in respect of it.

Best endeavours

To use its best endeavours [to sell the products or to provide the services] [and to offer for sale a minimum range and stock of the products as specified in the manual and to plan its reordering of such products adequately in advance] and [to procure the greatest volume of turnover for the Business consistent with good service to the public or to achieve a minimum turnover of] [And to honour customer warranties in respect of the products irrespective of the source of supply]

Protect goodwill

Throughout the term to protect and promote the goodwill associated with the method

Foreclosing suppliers

Not to manufacture sell or use in the course of the provision of services goods competing with the products but nothing in this clause shall be construed as extending this restriction to spare parts and accessories

Business not to be carried on other than from the Location

Not to carry on the Business or any part of the Business other than from the location [without the consent of the Franchisor]

No other Business [at the Location]

Not to carry on or permit to be carried on any other business [at the Location] nor to extend the scope or range of the Business

Orderly conduct

To conduct the Business in an orderly and businesslike manner and in compliance with all such policies and operating standards as may from time to time be specified by the Franchisor (particularly in the Manual) and generally to maintain the standards of quality of the Method

Compliance with laws

To comply in the conduct of the Business with all applicable laws byelaws and regulations of a government nature applicable to the Business or its conduct

Honour credit cards

To honour such charge and credit cards and plans as may from time to time be issued or approved by the Franchisor in accordance with the terms and conditions laid down by the Franchisor or in the manner from time to time prescribed by the Franchisor and to participate in and comply with the terms and provisions of a central billing programme and other credit plans programmes and procedures specified by the Franchisor

Pay suppliers promptly

To pay promptly all suppliers of the Business in accordance with their usual terms and conditions

Repair decoration replacement and renewal

To keep the Location and furnishings in a good state of repair and decoration and to replace and renew equipment so as to enhance the reputation of the Trade Name the Method and the Business but in any event as required by the Manual or as may be required by the Franchisor

Indemnity

To indemnify and keep indemnified the Franchisor from and against any and all loss damage or liability whether criminal or civil suffered [and legal fees and costs incurred] by the Franchisor because of:
any neglect or default of the Franchisee or its agents employees licensees or customers in connection with the Business or the Location

any other reason so long as such loss damage liability fees or costs resulted from the Business and was not due to any default of the Franchisor.

No sub-licenses

Not to grant any sub-licence of the Method or any part of it

Assignment and novation

Not to assign charge or otherwise deal with this Agreement in any way without the consent of the Franchisor

In the case of an intended assignment by the Franchisee such consent shall not be reasonably withheld in the following circumstances (set out particular circumstances eg)

[6.46.2.1 the proposed assignee shall directly with the Franchisor to be bound by the terms of this Agreement or the then standard franchise agreement of the Franchisor]

Delegation

Not to delegate any duties or obligations arising under this Agreement otherwise than may be expressly permitted under its terms

Director reliance

Because this Agreement is and all rights and licenses granted to the Franchise under this Agreement are personal to the Franchise [and in[directors or shareholders]] not to assign them wholly or partly save in accordance with these provisions

Feedback

To communicate to the Franchisor any experience gained in the Business which may improve the method and to grant to the Franchisor and to the other franchisees of the method free of charge a non-exclusive licence to use any such improvements

No description as agent

Not to describe itself an agent or representative of the Franchisor except as expressly authorized by this Agreement

No pledge of credit

Not to pledge the credit of the Franchisor in any way

Standard terms

To make contracts with customers for the [products or services or Business] on the standard terms and conditions set out in the Manual and not to take orders from customers unless they have assented to such terms

Maximum prices

Not to advertise or charge customers prices in excess of the prices specified by the Franchisor in the Manual from time to time [provided that the Franchise shall be free to charge the public prices less than such maxima at any time during the Term]

Notice that the Business operates under licence

To give notice in such places as the Franchisor may from time to time in writing require that the Business is operated under licence from the Franchisor

To procure that promotional material and advertisements shall include a statement that the Business is operated under licence from the Franchisor and such other information as the Franchisor may deem necessary to inform third parties that it does not accept liability for the acts debts or defaults of the Franchisee

No breach of insurance policies

Not to cause or permit any breach of any insurance policy maintained under the provisions of this Agreement

Insurer to notify late payment of premium

To note on all policies maintained by the Franchisee in accordance with the provisions of this Agreement [the interest of the Franchisor and] that the insurer shall notify the Franchisor in the event of the late payment of any premium by the Franchisee

Staff gratuities

To ensure so far as practicable that staff pay gratuities into a common pool and that the total of such gratuities shall be divided amongst the staff of the Business equally irrespective of their standing but excluding [the Franchisee or [partners or directors] of the Franchisee]

Staff dress and appearance

To ensure that all staff engaged in the operation of the Business dress in [accordance with the regulation in the Manual or the manner required by the Franchisor from time to time] and at all times present a neat and clean appearance and render competent sober and courteous service to customers in accordance with the procedure laid down in the Manual

No advertisement etc

[To procure that any advertisement or information display concerning the business or the Franchisee complies with the standards laid down in the manual or to procure that no advertisements, signs, entries in telephone directories or other forms of publicity whether relating to the business or not shall be used in connection with the business or displayed on or at the location unless the same have first been submitted to and approved as to content, form, colour, number, location and size by the Franchisor or a previous consent in writing by the Franchisor has been given]

No slot machines

Not to permit vending equipment or gaming machinery or any slot machine of any description on or around the Location [(except as specifically authorized in writing by the Franchisor)]

No Credit

Not to extend credit to customers without the prior written consent of the Franchisor but

to sell only on delivery against payment terms

In the event of the Franchisor authorizing credit to be extended to any particular customer to acknowledge the right of the Franchisor to stipulate for such increase in the price of the [products or services] as it thinks fit

Pay expenses

To pay all expenses of and incidental to the carrying on of the Business

No Warranties

Not to make any representation to customers or to give any warranties other than those contained in any standard terms and conditions set out in the Manual

Act as principal

In all correspondence and other dealings relating directly or indirectly to [the sale or other dispositions of the [products or services] or the business] clearly to indicate that it is acting as principal

Not to tamper with products

To sell the products in the same condition as that in which it receives them and not to alter or remove or tamper with them or any markings or name plates or indications of the source of origin on them or any packaging supplies by the Franchisor

Insurance

To obtain and keep in full force and effect at all times a policy or policies or insurance covering public liability for injury to persons or property with policy limits and provisions conforming to such requirements as the Franchisor may from time to time prescribe

To deliver to the Franchisor copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement and to ensure that the Franchisor and its other franchisees of the Method shall be entitled to the benefit of such insurance.

Credit Limit

Not to attempt to exceed the Credit Limit in any way

Set-off

Not to set off for any reason any money payable by the Franchisee to the Franchisor [for supplies of the products or under this Agreement]

VAT

Wherever applicable to pay to the Franchisor VAT or any tax or duty additional to or replacing the same during the Term charged or calculated on the amount of the Initial Fee [the Minimum Fee] the continuing Fees the Advertising Contribution [and the Insurance premium] or other payment made by the Franchisee to the Franchisor under the

provisions of this Agreement

Within 14 days of submission or receipt to supply to the Franchisor a copy of each return or assessment in respect of VAT or any other tax or duty additional to or replacing the same

[Erection or Conversion] of the Location

At its own cost and expense in accordance with the plans approved in writing by the Franchisor [to erect a building or structure on the site or to convert the premises] approved by the Franchisor for the carrying on the Business

To take all reasonable steps to ensure that the works undertaken in accordance with the plans are completed within [and if such works are not completed by that date otherwise than by force Majeure or failure without fault of either party to obtain a necessary consent the Minimum Fee during the period of operation of that period of operation of the business shall nevertheless be payable as from the expiration of that period without prejudice to the right of the Franchisor to terminate this Agreement for failure as stated above and to retain as liquidated damages all sums then paid by the Franchisee to the Franchisor]

Promptly to apply for and diligently to prosecute the obtaining of all necessary consents for [the construction of the building or structure or conversion of the premises] for the carrying on the Business including consents for signs, hoarding, parking facilities, access ways and the like and to obtain the approval of police fire and any other relevant authority and all licences required to carry on the Business in a lawful manner.

Software

To use only the Software supplied by the Franchisor in the Processor and only in the business

To attend training in the use of the processor and the software or to procure that one of its employees does so

When required by the Franchisor to attend such further training in such use at its own expense

Not to cause or permit any person to make a copy of the software at any time during the term except as permitted under sub-clause [6.71.11] of this agreement.

To permit the Franchisor to inspect and operate the processor and the software [for the purpose of making copies] in accordance with sub-clause [6.32] of this agreement

To notify the Franchisor immediately it discovers any faults or defects in the software

To co-operate fully with the Franchisor in the diagnosis and cure of any such fault or defect

To use only the current version of the software stipulated in the Manual from time to time

Not to engage any person [except as authorized in advance by the Franchisor] to provide support services for the software

To provide to the Franchisor at the expense of the Franchisee with all necessary facilities materials and records to enable the Franchisee to supply such support services

To keep a copy of the software and all records maintained by it in the processor in a secure place [away from premises used in [the business or the location] on a sound disaster defence basis

Not to permit any person (except a person who has signed the non-disclosure and non-competition undertakings required by the Franchisee and set out in the Manual) to use the

processor or the software.

Not to corrupt or interfere with any software or other processing material used by the Franchisor from time to time

Processor

Not to use any computer equipment other than the processor in the business

Not to use the processor for any purpose other than in the business

Not to modify the processor in any way without the prior consent of Alpha

Not to allow the processor to be on line in such manner that any third party unauthorized by the Franchisor has the opportunity of gaining access to it and the software

To replace or modify the processor at its expense in the manner required by Alpha from time to time during the term

To notify Alpha immediately it discovers any faults or defects in the processor

To have the processor properly serviced and maintained by a dealer authorized to service the processor

Termination

Time

On the Expiry Date

Low orders

In the event that the Minimum Performance is not achieved [at anytime or during the period stipulated in clause [9.30] of [this Agreement or these conditions] or for [two] consecutive financial periods during the term] [provided that in such event the Franchisor at its discretion may require this agreement to continue and may treat such lack of achievement as an event to which [clauses 9.30.1 and 9.30.2 (inclusive) shall apply or clause 9.30.2 shall apply]

Fundamental breach

On the occurrence of any of the following events which are fundamental breaches of this Agreement:

Failure to comply with the terms of any default notice (as defined by clause 7.8) within the time stipulated

Failure to pay the [minimum fee] on any of the relevant payment dates

Any breach by the Franchisee of clause [6.26] of this agreement

Any assignment or other disposal of this agreement [or the location by the Franchisee

Any challenge by the Franchisee to any part of the Intellectual Property

(specify other events)

Provided that the Franchisor may waive any breach of this Agreement by the Franchisee

Insolvency

If the Franchisee goes into liquidation either compulsory or voluntary

(save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets or if the Franchisee makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things

Conduct prejudicial

If the Franchisee engages in any conduct prejudicial to the Business [or the marketing of the [products or services]] generally

Change of management or control

If any material change occurs in the management or control of the Business and in particular any change of directors [or shareholders] of the Franchisee save in accordance with the provisions of this Agreement.

Notice

If either of the parties gives to the other not less than days' prior notice expiring [at any time not earlier than Years after the Commencement Date or on any Accounting Reference Date]

Default Notice

In the event of a breach by the Franchisee of any of the provisions of this Agreement [other than or including] a fundamental breach specified in clause [7.3] the Franchisor may serve notice (a 'Default Notice') requiring the breach to be remedied within the time stipulated in that notice at the discretion of the Franchisor (but nothing in this clause shall require the Franchisor to serve notice of any breach before taking action in respect of it)

8 Termination

Procedures

On the expiry or other termination of this Agreement the Franchisee undertakes

to dispose of all products in hand in accordance with the Franchisor's direction.

To procure the transfer of the telephone [and telex and electronic mail] numbers of the Business to such person as the Franchisor directs

To destroy all stationery used in the business

To return to the Franchisor all samples and publicity promotional and advertising materials used in the Business

Forthwith to cease to use the Intellectual Property (the Franchisee's licence to use which is terminated) and to sign such confirmation of cessation of use of the Intellectual Property as is required by the Franchisor

To return to the Franchisor all originals and copies of all documents and information in any form containing or covering in any way any part of the Intellectual property

Immediately to cease carrying on the Business

[to apply for the Permitted Name to be removed from the register of business names at (insert name of business names registry) or for the Permitted Name to be assigned to the

Franchisor or its nominee]

8.2 Financial consequences

... days prior to the expiry of the Term or... days after the receipt of notice terminating this Agreement the Franchisee shall furnish to the Franchisor a complete and accurate up-to-date stock check with estimates of turnover of the Business to such date and not later than... days after such date pay to the Franchisor any sums due under this Agreement

No competition³⁹

In consideration of the grant of a franchise under clause 4 of this Agreement the Franchisee agrees:

8.3.1 neither during the Term nor for [12] months⁴⁰ after the termination of this Agreement to be concerned or interested either directly or indirectly in any business which is involved in the supply of goods or services which are similar to the Products or the services [either] [at the Location or the Territory or within a radius of ... miles of the Location] nor to damage the goodwill of the Business which survives termination in any other way⁴¹

not during the Term to be concerned or interested either directly or indirectly in any business which is involved in the supply of goods or services which are similar to the Products or the Services in a territory where it would compete with any member of the (*name*) network⁴²

[8.3.3 not within [12] months⁴³ after the termination of this Agreement to be concerned or interested either directly or indirectly in any business at the Location which is involved in the supply of goods or services which are similar to the Products or the Services or to damage the surviving goodwill of the Business in any other way]

8.3.4 Not at any time within [12] months after the termination of this Agreement:

to solicit the customers or former customers of the

Business with the intent of taking their custom or

to employ or offer to employ any person who immediately

before such employment or offer of employment was employed by the Franchisor or who immediately before such employment or offer of employment was employed by any person (including a franchisee of the Franchisor) who was at the time operating a business according to the Method or to employ or offer to employ any person who who was so employed at any time during the 12 months preceding such employment and not directly or indirectly to induce any such person to leave his or her employment

To procure that all directors and shareholders of the Franchisee (in case of a company being the Franchisee) enter into direct covenants of similar contents to those contained in the sub clauses 8.3.1 to 8.3.4 above with the Franchisor⁴⁵

Miscellaneous

Warranty of power to enter Agreement

Each of the parties warrants its powers to enter into this Agreement

9.2 Warranty of title to Intellectual Property

The Franchisor warrants that it is [entitled to the Intellectual Property *or* authorized by the beneficial owner of the Intellectual property to make the Grant

Change of directors or shareholders

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

Or

Death or incapacity

9.3.1 In the event of the death of the Franchisee the personal representatives of the Franchisee shall have... days from the date of the death to notify the Franchisor of their decision:

to continue the Business or

to assign this Agreement to any beneficiary of the will or intestacy or to a third party and in either case the provisions set out in clause [6.46] shall apply

In the event of the incapacity of [the Franchisee *or (name(s) of key*

Director(s) of the Franchisee)] at any time or in the event of such incapacity or his death (but prior to any sale transfer or assignment in accordance with clause [6.46] the Franchisor shall have the right to appoint personnel to supervise the conduct of the Business to ensure that the Business is operated in a satisfactory manner to preserve the goodwill associated with the Business pending the recovery of [the Franchisee *or (name(s) of key director(s) of the Franchisee*)] or such assignment

In the event of the incapacity of [the Franchisee *or name(s) of key director(s) of*

of the Franchisee)] lasting for a continuous period of... days or a total of ... working days the Franchisor may require the Franchisee to dispose of the Business whereupon the provisions of clause [6.46] of his Agreement shall apply

If so requested by the Franchisee or the personal representatives of the

Franchisee the Franchisor may act as a non-exclusive agent for the sale of the Business and in such event shall be paid [a reasonable fee and its expenses or a fee of ...% of the total sales price and its reasonable expenses] for the same]

Sale of the Business

if at any time the Franchisee wishes to sell transfer assign or otherwise part with the business or any part of it or the location or any interest in it shall immediately give notice of that desire to the Franchisor and offer by notice in writing to the Franchisor to sell the same to the Franchisor

if the Franchisor accepts such offer within 28 days the Franchisee shall sell and the Franchisor shall purchase the assets included in such offer for the consideration and on the condition ascertained as set out below and the sale and purchase of such assets shall be completed within of the date of the acceptance or the date on which the price becomes ascertained if later

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

On sale or transfer by the Franchisee of any part of the Business or of the Location the rights of the Franchisee in so far as they relate to such assets so disposed of shall terminate but without prejudice to the existing obligations of the Franchisee

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

No third party who acquires the business or any part of it or the location or any interest in any of them shall have disclosed to him the contents of the manual or any part of it nor shall he be entitled to operate under the permitted name the trade name or by the method or any part of it unless such person has been approved by the Franchisor and has agreed to be bound by the terms and conditions of the standard franchise agreement used by the Franchisor at the time for a period not less than the residue of the term (including any option to extend the term) in accordance with the provisions of this agreement

The Franchisee shall pay to the Franchisor the reasonable costs and expenses incurred by the Franchisor in the assessment of any and each person for approval under clause 9.4.6

Cheques

The Franchisee shall be entitled to pay any cheques received in payment only of accounts rendered by the Franchisee in which the payee is (insert name of franchised business) into his own bank account and where necessary for this purpose the Franchisee shall have the Franchisor's authority to endorse such cheques to the same extent as if the Franchisor were payee of them provided always that the drawer's name and address or cheque card number is recorded on the reverse side.

Payment of fees

The continuing fees [the Advertising Contribution] and the Minimum Fee shall be

payable notwithstanding that any intellectual property rights of the Franchisor shall be invalid cease to exist or otherwise fail to protect the Franchisor or the Franchisee

Incorporation of Manual

All the provisions of the manual as amended or revised from time to time or any new edition of it are incorporated into and form part of this Agreement as though fully set forth in it and in the event of any conflict between a term of this Agreement and a provision in the Manual this Agreement shall prevail

Franchisor's right to the method

The Franchisee acknowledges the Franchisor's exclusive rights:

To the method and all parts of it including without limitation all amendments and modifications to it and all advertising matter slogans and the like which may from time to time be used to promote the method

To make such additions or modifications to the method including the addition renewal or substitution of intellectual property rights as may from time to time appear to the Franchisor necessary to promote and improve the method and to amend or revise the manual accordingly

To use and license others to use the method

To grant this license and to grant licenses to others to use the method

Other licenses

The Franchisor may without liability to the Franchisee grant a license to any entity in (specify areas) to [manufacturer or sell the products or provide the services or use the Intellectual property] or for any purpose except in direct competition with the Franchisee in the business in the Territory

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

Interest

All sums due from either of the parties to the other which are not paid on the due date (without prejudice to the rights of the Franchisor under this Agreement) shall bear interest from day to day at the annual rate of% over the current Bank plc daily base rate with a minimum of% per year

Receipt

The receipt of money by either of the parties shall not prevent either of them from questioning the correctness of any statement in respect of any such money

Force Majeure

Both parties shall be released from their respective obligation in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the control of the parties renders performance of the Agreement impossible whereupon:

all money due to the Franchisor shall be paid immediately and the Franchisee shall forthwith cease carrying on the business the Franchisor shall not be obliged to continue to provide the Services stipulated in the Manual]]

Provided that this clause shall only have effect at the discretion of the Franchisor except when such event renders performance impossible for a continuous period of [364 days]

Severance

In the event that any provision of [this Agreement or these Conditions] is declared By any judicial or other competent authority to be void, voidable illegal or otherwise unenforceable [or indications of the same are received by either of the parties from any relevant authority] [the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Franchisor it may be served from this Agreement or the remaining provisions of this Agreement shall remain in full force and effect unless the Franchisor in the Franchisor's discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event the Franchisor shall be entitled to terminate this Agreement by [30] days' notice to the Franchisee and the provisions of the clause 8 shall apply accordingly

Retention of title

The products and any other goods delivered by the Franchisor to the Franchisee shall remain the sole and absolute property of the Franchisor as legal and equitable owner until such time as all money due to the Franchisor has been paid to the Franchisee but shall be at the Franchisee's risk from the time of delivery to it

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

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

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

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

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

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

Reservation of rights

[All rights not specifically and expressly granted to the Franchisee by this

Agreement are reserved to the Franchisor

or

The Franchisor reserves the right notwithstanding anything to the contrary contained in this Agreement

to decline any order or to submit any quotation or tender on any inquiry transmitted to the Franchisor by the Franchisee

to [continue to] sell and supply the products direct to [its existing] customers in the Territory [whose names and addresses are set out in Schedule ...]

in the event of any delay in payment by the Franchisee to the Franchisor of any money due to the Franchisor to

9.15.3.1 reduce the Credit Limit to whatever amount the Franchisor considers appropriate

9.15.3.2 cease accepting orders from and the supply of [Products or Services] to the Franchisee or any of its customers]

Whole agreement

The Franchisee acknowledges that this Agreement [and these Conditions] contain the whole agreement between the parties and it has not relied upon any oral or written representation made to it by the Franchisor or its employees or agents and has made its own independent investigation into all matters relevant to the Business

Supersedes prior agreements

This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties

Discretion

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

Change of address

Each of the parties shall give notice to the other of change or acquisition of any address or telephone telex or similar number as soon as practicable and in any event within 48 hours of such change or acquisition

Notices

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by telex or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by telex or by electronic mail to the correct telex number (with correct answerback) or correct electronic mail number of the addressee

Headings

Headings contained in this Agreement are for reference purposes only and shall

not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate

Joint and several and gender

All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successors in title to the parties

No partnership

The parties are not partners or joint ventures nor is the Franchisee to act as agent of the Franchisor saves as authorized by this Agreement

Franchisor's right to assign

This Agreement and all rights under it may be assigned or transferred by the Franchisor and:

9.24.1 in the event of any such assignment in consideration of the Franchisor procuring in favour of the Franchisee and other franchisees of the method and undertaking from the assignee to be bound by the Franchisor's obligations under this Agreement the Franchisee shall in favour of such assignee agree in writing to be bound by the terms of this Agreement

if required to do so by the Franchisor or the assignee the Franchisee shall re-execute this Agreement

9.25 Proper law and jurisdiction

This Agreement shall be governed by [English] law in every particular including formation and interpretation and shall be deemed to have been made in [England]

Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in [London]

The submission by the parties to such jurisdiction shall not limit the right of the Franchisor to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate

Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause [9.20]

In the event that the Franchisee is resident outside [England] its address for service in [England] shall be the address for such service nominated in clause 1 of this agreement and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Franchisee

9.26 Survival of terms

No term shall survive expiry or termination of this agreement unless expressly provided

9.27 Waiver

The failure by the Franchisor to enforce at any time or for any period any one or more of

the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement

Costs

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

Payment not on time

In the event that the Franchisee fails to pay any money due to the Franchisor on time the Franchisor may:

9.29.1 cease immediately to take orders from and to deliver goods and services to the Franchisee

9.29.2 thereafter impose whatever credit limit it considers appropriate in respect of the business of the Franchisee

Low sales

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

9.30.1 then to appoint management personnel to supervise the Business at the expense of the Business to assist the Franchisor to increase sales and/or

to reduce the area of the Territory in proportion to such sales

9.31 New outlets

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

in the event that the Franchisee fails to notify the Franchisor of such agreement within 90 days or fails to open such further outlet in the Territory within six months of such notice the Franchisor shall have a right to reduce the Territory to enable it to provide an exclusive area in which a new franchisee may trade using the method and the Intellectual property without any liability to the Franchisee

9.32 Prior obligation

The expiration or termination of this Agreement shall not relieve either of the parties of their prior respective obligations or impair or prejudice their respective rights against the other

9.33 Restrictive Trade Practice Act 1976

No provision of this Agreement, or of any agreements or arrangements of which it forms part, which is subject to registration under the Restrictive Trade Practices Act 1976 shall

take effect until the day after particulars of such agreement have been furnished to the Director General of Fair Trading pursuant to the terms of Section 24 of the Act.

(Note: although this clause is commonly found in franchise agreements, its use is not recommended. Its effect is to suspend the operation of clauses until particulars have been furnished. The most likely circumstance in which the clause is likely to come into operation is where a franchisee has been granted an exclusive territory (see paragraphs 43.6 [1182] ante), and after termination has set up a competing business contrary to the restraint of trade covenant in the franchise agreement (see paragraphs 36 [1167], 37[1170] ante). Failure to furnish particulars would render the restraint of trade covenant unenforceable under the Act, as would this clause. In other words, the clause will simply cause to happen what would happen anyway if the Franchisor's legal advisers have failed to check the agreement properly to ensure that particulars of it do not have to be furnished. The clause appears to be superfluous, and potentially dangerous to the extent that it appears to provide a safeguard against careless advice, when in reality it does not)

(insert VAT and Data Protection Act clauses, if appropriate: see Form 3 clauses 9.24,9.25 [1266] ante)

(if the Conditions are not a separate attachment the signatures of the parties should appear here)

SCHEDULE[S]

(insert details as appropriate)

(signatures (on behalf) of the parties)

