



# CODE OF PRACTICE

For Open House, Pathway, Tracker and  
Retail Agreement Licensees

DECEMBER 2010

BIIBAS accredited  
Version 1b

## **A LITTLE BIT ABOUT MARSTON'S**

We operate five breweries and an estate of managed and tenanted pubs spread across England and Wales. We employ around 13,000 people in our breweries, pubs and head office which is based in the City of Wolverhampton. We have a long and proud history of running pubs and brewing fine cask beers. Indeed we celebrated our 175<sup>th</sup> birthday in 2009!

We own 500 managed pubs and 1,700 tenanted pubs. We run Banks's, Marston's, Jennings, Ringwood and Wychwood breweries. We pride ourselves on the excellence of our customer service and being at the heart of thriving local communities.

## **INTRODUCTION TO OUR CODE OF PRACTICE**

We always strive to set high standards in everything we do. We will always do our best to take a straightforward approach so that you know where you are with us.

We believe that our openness, coupled to practical business support, gives you the best chance of achieving long term success.

Running a pub is a challenging business and it calls for a professional approach. It's not enough for your customers to like you. To be successful you need to have a range of skills from managing your staff to marketing your pub to staying on top of your finances.

We believe passionately that you should not take on a pub without taking proper independent advice and without having the necessary skills. And once you are in your pub you should take advantage always of professional support and opportunities for further skill development: by doing so you will be able to drive the success of your pub.

We have designed our code to ensure that you have the necessary skills, advice and information to take on a pub and to have every chance to make a real success of it.

**Our code of practice has been accredited by the BIIBAS. It sets out our responsibilities and the support we provide to you.**

This Code of Practice follows the pub industry Framework Code of Practice developed by the British Beer and Pub Association, BII and the Federation of Licensed Victuallers Associations. It has been accredited by BII Benchmarking and Accreditation Services Ltd (BIIBAS) and is not capable of being unilaterally altered. Any future revisions will be carried out in consultation with BIIBAS.

## **WHAT EVERYTHING MEANS**

We have included a glossary of terms at the back of this Code to help you understand it in full.

## **YOUR 'HOW TO' GUIDE TO YOUR AGREEMENT WITH MARSTON'S**

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## **DECIDING WHAT'S THE BEST WAY TO RUN A PUB**

There are several different ways to start a career in running pubs.

You could opt to become a pub manager where you receive a salary and the potential to earn bonus and you are an employee of the pub company. (We employ pub managers within our Marston's Inns and Taverns division)

You can choose to be the licensee of one of our Retail Agreement pubs. In this situation you will be self-employed but running your own business with relatively little risk (you only need a security deposit of £5,000) and with reward coming from a percentage of the weekly ex. VAT sales.

If you wanted more freedom to run your own business you could become a self-employed tenant. With greater freedom comes the potential for bigger rewards but also more risk. A tenant is bound by a three or five year agreement, which can be renewed at our discretion, but it is not protected by the Landlord and Tenant Act. A tenant cannot sell on his agreement to another party.

A step on from being a tenant is a self-employed lessee. Through a lease agreement you assume greater responsibility for the pub and its condition. You will be protected by the Landlord and Tenant Act and can sell on the lease. A lessee takes on greater risk but has the opportunity to create value from his endeavours.

Finally, you could choose to buy your own pub and operate as a Free Trade, self-employed, licensee.

## **HOW TO CHOOSE THE RIGHT PUB FOR YOU**

If you are keen to run one of our pubs you should contact our support team on telephone no. 0844 848 3236 or online at [www.marstonpubcompany.co.uk](http://www.marstonpubcompany.co.uk). Our team can discuss with you how to make an online application; at this point you will be able to see detailed information on a range of available pubs in the area you are looking, you will also be able to see our range of training workshops and a whole host of information to help you make a decision on which style of pub to apply for. There is also a range of tools to help you build a business plan and profit forecast which will be essential to your application.

Within 1 working day of your call or application we will send you a copy of our Code of Practice and a DVD/CD explaining what we are about and the agreements we offer.

You must complete the BII's web based pre-agreement training course, known as PEAT. This will enable you to properly assess any agreement that we offer to you and to understand better the opportunities and risks associated with running your own pub.

Upon receipt of your on-line application we will contact you to discuss your application. If you have applied for a specific pub we will arrange a viewing of the property and a meeting with the Business Development Manager for the pub. The BDM will be able to provide you with the necessary information to enable you to make an informed decision about your future business. At this stage we will confirm which agreement is available for the pub together with the asking rent and likely ingoing costs. We will also discuss any skills development courses available and attendance on the one day "Access" workshop.

Our full range of agreements are described in the tables which appear on pages 12 – 14.

## **First Meeting**

At the interview we will provide you with the following information, or a date when we can have the information sent to you:

### **Property Pack**

- We will provide a general description of the pub including any likely changes to the area that we are aware of (including details of planned investment on other Marston's pubs in the local area), licence and any historical enforcement action, rateable value and details of outstanding appeals. We will also supply to you details of any restrictions on the use of the pub that we are aware of including planning restrictions. Finally, with the pack we will also include a copy of the agreement, schedule of condition together with a list of items you will be responsible to repair and any relevant certificates such as gas, electricity and asbestos.
- An asking rent will be provided together with details of how we have arrived at this rent. This will include a shadow profit and loss account detailing expected turnover, costs and likely profit to be made from the pub in question.

### **Operation Pack**

- To enable you to make an informed decision about how your pub will trade we will provide you with the previous 3 year's trade history of all drinks supplied by us, and the revenue derived from the operation of gaming machines where it is known. We will also provide the current product price list, discount scheme and details of mandatory and supplementary training courses.
- We will advise you about industry benchmarking studies, such as the ALMR's (Association of Licensed Multiple Retailers) and also the FLVA Green Paper (see Appendix 1), which may help you to prepare your business plan.
- We will provide any extra information which you may request if we can. If we are not able to do so we will let you know why.
- Our representative will explain all of the above and ask you to confirm that you have received this information by signing an information supply form.

## **Second Meeting**

If you are keen to take on the pub our BDM will arrange to meet you for a second time. At this meeting you will be asked to bring a business plan for the pub prepared with professional advice. For details on what we expect a business plan to include please visit our website.

We will agree suitable times for you to visit the pub that you are interested in so that you can view it at various trading times.

If we agree with your business plan and wish to appoint you to your chosen pub we will send to you the agreed Heads of Terms that includes a valuation sheet illustrating how your rent has been constructed. You need to sign both documents to show your agreement and to return them to us at our Burton address for the attention of the legal administrator. The address is: Marston's Pub Company, The Brewery, Shobnall Road, Burton-on-Trent, Staffordshire. DE14 2BG.

Upon receiving a signed copy of your Heads of Terms and valuation sheet we will instruct our teams to begin formalising your agreement and ensuring the pub you have chosen is made ready for possession.

With the Heads of Terms offer letter you will also receive a further DVD/CD. This has extended information from existing licensees on how to prepare for taking over your new business. There are tips and hints on everything you are likely to come across in the first days of trading your new pub. On the CD are all the forms and documents you will require for your business to become

compliant with current legislation. There are also some very useful checklists. All the documents on the CD are printable.

### **Getting ready**

#### **Insurance**

Prior to taking ownership you must arrange for insurance to cover your business when you begin to trade. We will arrange for an independent insurance company to contact you to explain what cover we expect you to have and also offer you a competitive quote to enable you to make an informed decision about cost. No charge is made for this competitive quote and no commission is taken by Marston's. You can arrange the cover yourself with an alternative insurer if that is what you would prefer to do. As a summary your insurance should cover employers liability; public liability; fixtures & fittings (new for old); stock; business interruptions; cash; glass; licences; the cash in gaming machines; and domestic contents insurance.

#### **Fixtures & Fittings**

The fixtures and fittings commonly referred to as F&F are the items identified within the formal typed valued inventory, a copy of which we will give to you.

At the time of the lease / tenancy agreement being signed and approved the payment method for the F&F and fitting must also be agreed. The cost of the F&F will be identified from the F&F valued inventory. The F&F could be sold to you by the outgoing licensee or us depending on which party owns it at that time.

There are three accepted ways to pay for the F&F

**Outright ownership:** Pay in full to Marston's either 5 working days prior to the agreement commencement date if the valuation is known, or on the day of change based upon the F&F valued inventory.

**Conditional Sale Agreement (CSA):** We operate an arrangement whereby we may assist a retailer by entering into a conditional sale agreement for the sale of fixtures and fittings.

The CSA will be agreed in principle prior to the change date. A deposit amount equal to or more than the current rate of VAT will be collected on the agreement commencement date by the BDM. The final figure for the CSA will be based upon the valued F&F inventory.

When taking a loan, the Consumer Credit Act applies in certain circumstances. Before you take up a CSA with us we will inform you if the Consumer Credit Act applies to your financial agreement with us.

**Rental:** This option is available at our discretion. If we agree to allow you to rent the F&F from us, we will set up the agreement for a maximum of 12 months. We will expect you, at the end of this short term agreement, to either purchase the F&F outright or enter into a CSA. The rental figure will be 20% of the valued F&F inventory. If in the future either of the F&F purchase options above are agreed, any payment made under the rental plan will act as a deposit towards the agreed cost of the F&F.

In all of the 3 options above, the repair and replacement responsibility for the F&F included in the inventory is with the licensee named within the lease / tenancy agreement.

#### **Deposit Money**

In return for operating one of our pubs we require you to place with us a trading deposit of £5,000 or 25% of the rent, whichever is higher. If you are trading under a company name we may ask for a higher deposit. We will retain your deposit in an interest bearing account held at Barclays Bank. The interest payable will be detailed in your agreement. We will pay you any interest due together with the original sum less any amounts owed by you within 28 days of your agreement

ending. Please note in the case of Ultra Advance a further deposit is required which equates to an additional 10% of the Ultra charge.

With regard to our Tracker and Pathway agreements, we also require you to pay a sum into a decorating fund. The amount you will pay per annum will be between £1,000 to £3,000 as appropriate to the size of the pub in question.

You may apply to release monies from your decorating fund to carry out repairs to your pub by putting your request in writing to your General Manager. Before we release funds we will require you to provide invoices as confirmation that you have had the repair works carried out in your pub. If there is any money remaining in the decorating fund at the end of the agreement we will refund this to you after taking off all amounts that we need to carry out any outstanding work that you still must do under the agreement within 28 days of your agreement ending.

If we sell our interest in the asset before your agreement terminates we will pass onto the purchaser your trading deposit plus interest owed and, if applicable, any sums accrued in your decorating fund.

The deposit received will be held and will serve as a Security Bond, the value of which will be refunded, minus any accounting deficits and shortfalls, on vacation of the property. Whilst held by Marston's, the Security Bond funds will neither earn interest nor attract any administrative charge relating to the management of the bond funds. If this policy should change we will write to you and inform you of the new applicable rate.

## **Licences**

Marston's will ensure the pub has a Premises Licence. Marston's would normally expect the Premises Licence to be held by you in your name. However, the original Premises Licence will be retained by our Solicitors and a certified copy will be issued to yourselves. Marston's will arrange for the Premises Licence to be transferred into your name and for the appointment of a nominated Designated Premises Supervisor. You will be responsible for the cost of these applications. You will be required to obtain a Personal Licence to enable you to trade. Before any licensing work is undertaken by us you will be provided with a quote for the work that is to be carried out. If you wish to undertake the process with another Solicitor or by yourself you have the right to do so.

You will be responsible for payment of the annual premises licence fee to the local Council or alternatively for reimbursing Marston's in the event we make the payment on your behalf.

If the Licence is put in jeopardy then Marston's will take such steps as are necessary to protect the Licence and reserve the right to recharge you for the cost of doing so.

## **WHAT YOU NEED BEFORE TAKING ON ONE OF OUR PUBS**

Before you take possession of your chosen pub the following information must be sent to our Burton address for the attention of your legal administrator.

1. Signed agreement and Shadow P. & L. which has been jointly agreed by you and us.
2. Evidence that you hold a relevant personal licence.
3. Evidence that you have completed PEAT (Pre-Entry Awareness Training) and our 'Access' our 1 day introductory training course unless you can prove that you have completed a similar QCA accredited course within the last 2 years. You must also confirm that you will attend any required training course identified during the Access course.
4. A business plan assessed and approved by a suitable third party business adviser (such as an accountant, solicitor, chartered surveyor, independent financial adviser) and your designated Business Development Manager.
5. Evidence of capital, e.g. 3 months worth of bank statements, to cover the cost of fees for training, working capital, legal costs, charges for third party advice, F&F, stock and deposits. If a loan has been arranged to pay for fixtures and fittings, stock and glassware you must submit a signed copy of your credit agreement.
6. Written evidence that you have taken adequate professional advice about the agreement being offered to you and outgoings you must pay.
7. Evidence that you have inspected the pub carefully and taken independent professional advice from a surveyor where you are taking on an agreement with repairing liability culminating in your signing to approve the Schedule of Conditions.
8. You must present to Marston's a certificate from your insurer confirming insurance is in place.
9. Details of any third party interest in your operation/agreement.
10. You must be able to pay for the trade and decorating deposits required for the pub.

## **WHAT YOUR RESPONSIBILITIES ARE FOR STAFF**

When you take over a pub you may become liable for the contracts of employment of any employees who have been working at the pub. This liability arises under the Transfer of Undertaking Protection of Employment Regulations (TUPE). It is your responsibility to ensure that prior to taking over the pub you have ascertained the extent of your possible liabilities under TUPE and in particular the employees to whom TUPE may apply.

## **WHAT AGREEMENTS DO WE OFFER?**

If you have an existing agreement with us, which is protected by the Landlord and Tenant Act, you are not obliged by this new code to change your agreement. You can remain on your existing agreement without alteration. Equally you can discuss with your BDM the opportunity to convert to one of our new agreements or add on the Advance option described below if you think that would suit your business better. If a change to a new agreement or the addition of the Advance option is the right thing to do and the terms of it are mutually acceptable, we will make the necessary arrangements to effect the change. Please be aware that such changes may incur charges which we will confirm to you before proceeding.

If you are considering taking on one of our pubs we offer a range of agreements to match your business plan and aspirations. Following this section we have provided a table which provides an at-a-glance summary of our four main agreements. Below are the key points of each agreement. We also describe one of two options which you can bolt onto our Open House base lease agreement to give you even greater choice.

### **Retail Agreement**

The retail agreement is a 5 year agreement designed to remove as much risk as possible to help you to run your business as successfully as possible. We retain responsibility for all repairs, investment, property insurance and running bills, which have been mutually agreed between us. We supply your pub with drink and food products to sell and we provide full marketing support and advice on how to sell them professionally. We also arrange the provision of all gaming machines, pool tables etc. In return, you take responsibility for paying the staff you decide to employ, the council tax for your living accommodation and business insurance.

The net turnover (not including machines) is split between us and you. You retain a minimum of 20% of the turnover whilst we keep 80% and we keep 100% of the machine take. You are responsible for the VAT payable on your share of the net turnover. You do not pay any rent to us.

This agreement is not protected by the Landlord and Tenant Act so you do not have the security of tenure which is afforded by this law.

### **Tracker Agreement**

This is a fully tied 3 year agreement designed to allow your rent to go up and down in line with your volumes and to give you the opportunity to earn more income from your business. To achieve this we do not charge a fixed rent. We replace this with a payment to us of £75 for every barrel of wet products (ales, lagers, ciders, bottled products, wines, spirits and soft drinks) you purchase per week. If you order less than one barrel of wet products in any one week we make a charge of £100 in lieu of rent. These charges are only applicable to the first 200 barrels which you purchase in any one year. For every barrel you purchase over 200 barrels (in any one year) we remove the £75 charge. In addition, although you remain tied to a machine supplier of our choice you retain 100% of the income after duty, license fees and supplier charges. There is no rent review and we retain responsibility for external repairs. To increase flexibility you have the ability to break the agreement every 12 months if you so wish.

This agreement is not protected by the Landlord and Tenant Act so you do not have the security of tenure which is afforded by this law.

### **Pathway Opted Out Agreement**

This is a fully tied (for drinks and machines) 3 or 5 year agreement designed to help remove some of the costs encountered with your business. Marston's retain responsibility for external repairs and provide support if your business begins to fail through no fault of your own. There are no rent reviews to consider and although the rent is linked to RPI we have ensured it can move

down as well as up. We cap any RPI increases to a maximum of 5% in any one year. We offer discounts of £50 per barrel on purchases over and above an agreed target. You cannot assign the agreement to another party.

This agreement is not protected by the Landlord and Tenant Act so you do not have the security of tenure which is afforded by this law.

#### Open House base lease Agreement

This is a fully tied lease, which can extend from 5 to 30 years. It provides you with the ability to plan for the long term. Your rent is not linked to RPI and support is available if your business begins to fail through no fault of your own. To ensure your rent remains fair there is a rent review (on a tied basis) every 5 years that allows the rent to move both upwards and downwards. You have the ability to assign your business at any time subject to payment of a fee to us, presently £6,000.

This agreement is protected by the Landlord and Tenant Act.

#### Advance option (a bolt-on to the Open House base lease)

This is a supplemental option which you can bolt on to the Open House base lease. This 3 year option allows you to buy drinks from us at free trade prices (benchmarked against our own free trade customer base). You remain fully tied to us for drinks and machines. The additional discounts achieved above the drinks' prices of the base lease are paid for through an incremental charge. However, we reduce this charge by £3,900 in the first year only and £2,600 per year in all subsequent years of the option to help you to build your business. Once the charge is agreed it is fixed for 3 years and you will be able to buy every drink product at the lower prices from your first order after completion of this option.

#### Ultra Advance option (a bolt-on to the Open House base lease)

Designed the same way as Advance this supplemental option allows you to purchase your drinks from any source for a period of 3 years. You will not be obliged to buy any drinks from us. Also you are not tied to us for your machines' supply. To reflect our desire to retain your business we will offer you drinks' prices that beat our free trade benchmarked prices. The incremental charge we calculate for this option is based on these better prices. The fixed charge for this option is therefore likely to be high.

If you choose this agreement you will have little or no support from us compared to our other agreements.

To help you to evaluate these options we will provide you with a side by side summary showing the terms of the Open House Base Lease, the Base Lease with the Advance bolt-on option, and the Base Lease with the Ultra Advance bolt-on option.

**For the Advance option and the Ultra Advance option we make no rent adjustment to your base lease but calculate an incremental charge for the additional discounts which you will earn. The charge is fixed for 3 years and is based upon your current purchases. We endeavour to use current trade to ensure that the charge is set as fairly as possible. By fixing the charge for three years you benefit if you grow your wet sales above existing levels. Please be aware that if your sales fall your fixed charge remains payable and this is a risk you must consider. We will review the discounts and the corresponding charge every 3 years to ensure that they remain appropriate for the prevailing market conditions.**

**SUMMARY OF MARSTON'S PUB COMPANY AGREEMENTS**

<b>LEASE TERMS</b>	<b>RETAIL AGREEMENT</b>	<b>TRACKER</b>	<b>PATHWAY AGREEMENT</b>	<b>BASE LEASE – FULLY TIED</b>
<b>Term</b>	5 years	3 years	3 or 5 years	5, 10, 15, 20, 25 OR 30 years
<b>1954 Landlord &amp; Tenant Act – Security of Tenure</b>	Not covered	Not covered	Not covered	Within Act
<b>Rents</b>	No rent	£75 paid on every barrel purchased. Once 200 barrels have been purchased no rent is charged on volume above this. At least 1 brewer barrel must be purchased per week otherwise a levy fee of £100 is payable.	Payable over 12 months.	Payable over 10 months with no payment in January and February
<b>Rent Review</b>	Not Applicable	No rent review	No rent review	5 yearly review to open market value on a tied basis. Rent can move upwards or downwards. If rent cannot be agreed licensee can refer the matter to a RICS Arbitration panel or PIRRS.
<b>Rent RPI</b>	Not Applicable	Applicable upwards and downwards. Maximum increase capped at 5% per annum.	Applicable upwards and downwards. Maximum increase capped at 5% per annum.	No RPI
<b>Supplement Charge</b>	Marston's retain 80% of net turnover plus all machine income. Tenant retains 20% of net turnover.	Not Applicable	Not Applicable	Not Applicable

<b>LEASE TERMS</b>	<b>RETAIL AGREEMENT</b>	<b>TRACKER</b>	<b>PATHWAY AGREEMENT</b>	<b>BASE LEASE – FULLY TIED</b>
<b>Discounts</b>	Not Applicable. Marston's to supply products on a sale or return policy.	£20 for every barrel purchased.	£50 for every barrel purchased over an agreed target.	No discounts.
<b>Price Increase Mechanic</b>	Not Applicable	Full WSP increase applies	Full WSP increase applies	Full WSP increase applies
<b>Tie</b>	Fully Tied	Fully Tied	Fully Tied	Fully Tied
<b>Assignment</b>	With Marston's consent.	No	No	With Marston's consent. Assignment fee of £6,000. No automatic AGA request.
<b>Insurance</b>	Marston's insure structure with no recharge. Tenant insures the business.	Marston's insure structure and recharge £520 p.a. Tenant insures the business. £500 excess to be paid by tenant on a claim	Marston's insure structure and recharge £520 p.a. Tenant insures the business. £500 excess to be paid by tenant on a claim,	Marston's insure structure and recharge. Lessee insures the business. £500 excess to be paid by tenant on a claim,
<b>Service Charge</b>	No charge	Applicable	Applicable	Applicable
<b>Cooling Off Period</b>	None	3 months	3 months	3 months
<b>Break Clause</b>	Tenant and Landlord break clause with 6 months notice.	Tenant every 12 months. Landlord Break Clause every 3 months notice.	If required landlord/tenant break clause with 3 months notice.	None
<b>Gaming Machines (income after duty, licence fees and supplier costs)</b>	Marston's retain 100% of Machine income.	Fully tied with 100% of income being the tenants.	Fully tied with 50/50 split of income.	Fully tied with 50/50 split of income.
<b>Security Deposit</b>	£4,000	£4,000	£5,000 or 25% whichever is the greater.	£5,000 or 25% of rent whichever is the greater.

LEASE TERMS	RETAIL AGREEMENT	TRACKER	PATHWAY AGREEMENT	BASE LEASE – FULLY TIED
<b>F &amp; F</b>	Marston's retain responsibility	Purchase outright. Loan facility from Marston's available.	Purchase outright. Loan facility from Marston's available.	Purchase outright. Loan facility from Marston's available.
<b>Cellar Cooling</b>	Provided as part of landlord's F&F.	Provided as part of landlord's F&F.	Provided as part of landlord's F&F.	Provided as part of landlord's F&F.
<b>Dispense equipment</b>	Provided and maintained by Marston's at no extra cost	Provided and maintained by Marston's at no extra cost	Provided and maintained by Marston's at no extra cost	Provided and maintained by Marston's at no extra cost.
<b>Repair</b>	Marston's retain responsibility for internal and external repairs to be completed as and when Marston's deem the work necessary.	Marston's retain responsibility for external repairs to be completed as and when Marston's deem the work necessary. Tenant responsible for internal repairs.	Marston's retain responsibility for external repairs to be completed as and when Marston's deem the work necessary. Tenant responsible for internal repairs.	Lessee required to fully repair. Provisions permitting twice yearly inspections by Marston's.
<b>Decoration</b>	Marston's responsibility every 4 years.	Tenant's responsibility every 4 years.	Tenant's responsibility every 4 years.	Lessee's responsibility every 4 years.
<b>Decorating Deposit</b>	Not Applicable	Tenant required to pay into monthly deposit. Tenant to draw out as and when required.	Tenant required to pay into monthly deposit. Tenant to draw out as and when required.	Not Applicable
<b>Business Plan Requirement</b>	Yes	Yes	Yes	Yes
<b>Material Change Support</b>	Support available if business begins to fail.	Support available if business begins to fail.	Support available if business begins to fail.	Support available if business begins to fail.
<b>Stocktaking</b>	Regular stocktakes arranged and paid by Marston's	Open book stocktaking mandatory in first year. Tenant pays subsidised rate to Marston's nominated supplier	Stocktaking arrangements made by tenant	Stocktaking arrangements made by lessee

## **HOW WE SET THE RENT FOR YOUR PUB AND THEN REVIEW IT**

### Letting Rent (Applicable to all agreements except Tracker and Retail agreement)

We believe that every pub should have a fair market rent. When we set your initial rent, we want to charge a rent which is in line with current industry practice and represents the open-market value of your pub. The rent will be constructed using the Royal Institution of Chartered Surveyors valuation guidelines taking into account any legislative changes. Examples of details to be taken into account within the valuation include:

- the trading level of the pub when run by a reasonably efficient operator;
- market conditions;
- rents of similar properties;
- the pricing and discount structure for tied products;

For clarity the rent will not include:

- Income derived from machines if you are tied and we receive a share of the income.
- Trading levels above and beyond that expected for a reasonably efficient operator.

A shadow profit & loss account will be produced for you by a suitably qualified person, employed by Marston's. The shadow P&L will usually take the following form:

1. The level of turnover that a reasonably efficient operator can achieve will be assessed. This turnover is referred to as the fair maintainable turnover and will include all parts of the operation: drinks, food, accommodation, gaming machines and other sales.
2. Following the completion of the cost of sales an estimate of the gross profit by category will be made.
3. The likely operational expenditure a reasonably efficient operator would incur running the pub will be assessed. This will include the actual rates payable if published by the Valuation Office Agency or an estimate if not known.
4. Our valuation will subtract the likely running costs from the potential gross profit to leave what we believe to be the fair maintainable net profit (FMNP) that could be achieved at the pub.
5. An allowance from the FMNP will be made to reflect your interest on capital invested in the business. Capital could include for example the cost of stock, working capital and fixtures and fittings. The remaining sum will be the divisible balance.
6. Your rent will be determined by a split of the divisible balance. The split will be a matter for discussion but in simple terms it will ensure each party is rewarded for owning and operating the business. Market evidence will guide the split but in most cases our share will be between 35% to 65% of the divisible balance.

Examples of matters considered when estimating the split of divisible balance include:

Lease types  
Location of pub  
Domestic accommodation  
Type of operation  
Trading potential

A signed copy of the valuation will be attached to your agreement for future reference.

**If your agreement makes provision for your rent to be linked to the Retail Price Index (RPI), we will calculate your new rent on the anniversary of your agreement and inform you. The rent can only be increased by a maximum of 5% per annum and can be reduced if the RPI falls by any amount.**

## Rent Review

Your agreement and offer letter show how often we will review your rent and the assumptions/disregards used to assess a new rent. The procedure we will follow to complete the review of your rent will be as follows:

- We will notify you and commence negotiations at least three months before the rent review date. At the point of negotiation we will provide you with:
  - A shadow profit and loss account illustrating income sources and likely costs incurred running a business from your pub.
  - A 3 year history of all wet products sold to you by Marston's for your pub. If we are not able to do so we will explain why.
  - Assumptions and disregards made to estimate profitability including the extent of your tie arrangement and price you purchase your products from Marston's.
  - An explanation of how any trade you have built up over and above a reasonably efficient operator is to be disregarded together with the value of any documented improvements made to the pub by you.
  - Any comparable property rents supporting the P&L.
- Upon agreement of a rent we will update our system and forward to you a rent review statement to sign in order to complete the matter.

Your rent can move down as well as up at the time of your review.

**We will not enforce any Upward Only Rent Reviews if they exist in your present agreement.**

If you require us to remove an upwards only rent review clause you should put your request in writing to your Regional Estates Manager (REM) and we will make arrangements for a deed of variation to be completed. Please be aware you will be responsible for the costs associated with this.

If we do not agree the new rent before the rent review date we will offer you the ability to have the matter settled by an independent expert either through the BII administered Pubs Independent Rent Review scheme (PIRRS) or the RICS third party referral process, the choice being yours.

If you elect for the PIRRS scheme we will be bound by the expert determination and you will waive your right to further referral via the RICS process. Further details of the PIRRS scheme can be found at [www.pirrscheme.com](http://www.pirrscheme.com).

You can elect to use PIRRS at the time of a lease renewal if the only matter of debate is the rent.

**We are committed supporters of the PIRRS scheme.**

Until we have agreed the new rent, you will continue to pay the rent you were paying just before the review date. If the new rent is more than the existing rent you must pay us the difference for the period that has passed since the review date. If the new rent is lower than what you currently pay we will pay you the difference for the period that has passed since the review date. In both cases interest will be paid at 4% above the base rate of Barclays Bank plc (or any other reputable bank we nominate).

## **HOW YOU CAN PAY FOR RENT, GOODS AND SERVICES**

Your payment terms will be agreed when you sign your agreement, however we offer the following payment terms:

### Direct Debit

Payment will be collected from your bank account either on a weekly basis or twice monthly (on the 14<sup>th</sup> and 28<sup>th</sup> of each month).

### Week on Week

Payment for each order is due within a week and must be paid at the latest the day before your next delivery day.

### Cash with Order

Payment is due before an order is released and should be made by 1pm on the day prior to regular delivery day.

In each of the above terms, payment for rent and any other monies owed to us will be collected at the same time as that for goods ordered.

In some circumstances it may be necessary for us to review and amend payment terms. In such circumstances we will fully explain the changes and the reasons for these.

## **HOW WE PRICE DRINKS YOU BUY FROM US**

### Pricing Structure

We will publish a current price list twice a year, however a current price list can be requested at any time, and can be found on our website (only available to our customers). Our website price list is our most up to date price list.

The prices in this list will be dependent on the terms of your agreement - either tied, Advance or Ultra Advance.

Our pricing is segmented as follows:

Tied agreements – The manufacturers' wholesale prices apply.

Advance agreements – We will benchmark these discounts against our own free trade pricing. If there is a fundamental change in the discount levels of a particular brand, we reserve the right to change these discounts. This will result in the corresponding reduction in the Advance charge.

Ultra Advance agreements – we will offer a price list that is better than our benchmarked free trade price list. If there is a fundamental change in the discount levels of a particular brand, we reserve the right to change these discounts. This will result in the corresponding reduction in the Ultra Advance charge.

**A price list showing the prices for all agreements will be supplied with this Code of Practice.**

### Price increases

You will be informed of any price changes as they happen, please see Appendices 1,2 and 3. These will depend on your agreement:

Tied Agreements – see appendix 2

Advance agreements – see appendix 3

Ultra Advance agreements – see appendix 4

## **WHAT YOU ARE OBLIGED TO BUY FROM US – THE TIE**

What our agreements include:

Tied agreements (Retail, Tracker, Pathway, Open House, Advance)

- Fully Tied for all beers, ciders, stout, wines, spirits, soft drinks, packaged alcoholic drinks and gaming machines, including Amusement with Prize Machines (AWP), Skill with Prize Machines (SWP), Pool tables and Jukeboxes.

You are not tied for any other products apart from those listed above, with the exception of Retail Agreements where you are also tied for all food and ancillary products.

Being fully tied brings a wide range of benefits, from a Business Development Manager dedicated to your area, to a host of costs saving and sales driving solutions as a result of our group buying power. Also, we have a team of people that will be able to help with your drinks offer, including a category development team to get the best out of your range, and promotions, and our team of Beer Quality Technicians to both train you and to help you serve great beer.

Free of Tie agreements ( Ultra Advance)

- Free of tie for all drinks and gaming machines, including AWP, SWP, Pool tables and Jukeboxes

If you are free of tie, then you get none of the support that you will get by being tied. In addition, you will need to arrange your own cellar services technical support

However, we can supply these services at competitive rates due to our buying power. Please see the section 'How we can develop your business'.

## **WHAT HAPPENS IF YOU BREAK THE TIE**

The tie obliges you to buy all designated products from us. You cannot buy any of these products from anywhere else. If you do break the terms of your tie in your agreement then you will be liable to liquidated damages, your pub could be repossessed, or in certain circumstances you could face a custodial sentence. How we deal with a breach of your agreement can be found in the section 'How We Use Dispense Monitoring equipment' and Appendix 5.

You cannot buy outside of the terms of your agreement without permission from your BDM in each individual case confirmed by letter or e-mail. If we cannot supply a product ordered from us in an acceptable time frame then you should contact your BDM. A purchase outside of the tie in your agreement is not permitted under any circumstances without his/her written permission.

## **WHAT REPAIRS YOU AND US ARE RESPONSIBLE FOR**

If you enter into a long-term lease with us, we will repair the building so that it is in reasonable condition. Our surveyors will prepare a list of work that we will be responsible for, a copy of which will be attached to your agreement. We will try to finish this work within the first six months of your lease. If you have any concerns about the work we have planned, please get independent advice.

Your responsibilities for repairs depend on the agreement you are taking on. Your agreement states clearly your responsibilities. A schedule of condition will be attached to your agreement and you will be responsible at the end of your agreement to hand the property back in a condition no worse than this schedule.

A property survey is undertaken by a suitably qualified person employed by Marston's, the fee for this will be included within the survey issued to you. The fee for this is currently £90 for each inspection. There are currently 2 inspections per pub per year.

In our Tracker and Pathway agreements we have set up a decorating fund that you will pay into. This will allow you to save up for the decorations and minor repairs you will have to carry out in the future.

## **OUR AND YOUR RESPONSIBILITIES FOR INSURANCE**

If you want to operate a Marston's pub we will insure the structure of the building against the insured risks detailed in Appendix 6. On a Retail Agreement we will pay for the cost of insurance whilst on a Tracker and Pathway you will be recharged the relevant amount, currently £520. For a lease the amount recharged will be the premium for the rebuild of the pub calculated with reference to the Building Cost Information Service guide and floor area. A copy of this calculation will be provided to you.

If you obtain a cheaper quote for the insurance recharge you should put this to your General Manager in writing with details of the insurer. If we accept the quote is on a like for like basis we will price match for you.

There is an excess payment of £500 that you must pay before any claim can be made.

## **HOW WE PROVIDE ESSENTIAL SERVICES TO YOU**

We have been able to negotiate special rates for a number of essential services that we believe will benefit you. Before your agreement starts, we will tell you the yearly service charge that applies for the services we will carry out on your behalf at these special rates.

These services include:

- Giving you advice about rateable values and dealing with appeals;
- Maintaining cellar-cooling equipment;
- Maintaining fire extinguishers (not including emergency lights);
- Inspecting and certificating gas appliances every year;
- Servicing your central heating boiler every year;
- Inspecting lifts each year (if your pub has any);
- Emptying your septic tank (if your pub has one); and
- Surveys for asbestos control and checking for radon gas.

The current charge for this is £750 per year, and is payable along with your rent, phased in the same way and applies to all our agreements excluding our Retail Agreement.

## **HOW WE TAKE YOUR ORDER AND DELIVER YOUR BEER**

You will be able to place your order either on line or with your Customer Services Advisor or both dependent on your agreement.

Normal orders will be placed on Day 1 and we will normally deliver on Day 3. For example, an order placed on Tuesday will normally be delivered on Thursday.

Where you require an additional delivery we will try and accommodate this on our next scheduled delivery in your area at no cost. However, where we have to make special arrangements we reserve the right to charge for this. You will be notified of any charges at the time of requesting an extra delivery. The charge for this is currently £75.00 (excluding VAT).

If there is an error in your delivery you should ensure that this is detailed on your delivery note at the time by your drayman. Occasionally we may not have the products in stock to complete your order. We will endeavour to offer you a suitable replacement or deliver the product as soon as possible after your normal delivery day at no extra charge.

## **HOW WE CAN HELP TO DEVELOP YOUR BUSINESS**

### **a. Skills development**

We are committed to identifying and meeting your needs for training.

You must hold a personal licence before taking on one of our pubs and have evidence that you have completed a Pre-Entry Awareness Training Course (PEAT).

You must take part in our 'Access' course – an introduction to running a pub, before you are appointed to your chosen pub. The cost of this is £150 per single/couple. Once you have done this we will complete a skills assessment audit and agree with you what additional training will most help you to be successful and ensure that it is available to you in a timely fashion. You must ensure that either you or your staff have received any mandatory training (eg food safety, fire risk assessment) and we will advise you about this on the Access course.

The exceptions to this will be if you have prior experience of running a successful tenanted pub for the last 5 years or can demonstrate that you have completed a similar QCA accredited course within the last 2 years.

Bona fide multiple operators who have completed their first Access course or demonstrated similar accredited training will not need to attend the Access course for subsequent agreements. However, we strongly recommend that their management team should attend the Access course unless they have completed a similar accredited course within the last 2 years.

Our courses give you the skills which you need to help increase sales, manage costs and develop your business effectively. Many of our courses are either free or heavily subsidised by us.

Examples of courses available include:

- 4 Bespoke Coaching Sessions in your pubs
- BIIAB – ILRO (Introduction to Licensed Retail Operations)
- NCPLH – National Certificate for Personal License Holders
- Cellar Management. This course is free to all our tenants and training will be delivered in their own pub within the first week of them taking over their new business.
- Catering Consultants visit

### **b. Marketing**

We work alongside you to make the most of your business by providing appropriate marketing material. We will source promotional activity from all relevant suppliers for you to use to grow your business. Some promotional material may require additional payment, some will be funded by us.

**We will never make a profit on promotional materials.**

Our website, My Marston's, is designed to give you access to a wealth of resources such as menu printing, special offers, payroll and cost reduction schemes. It is an invaluable tool for your pub. **Where we can pass on to you the benefits of our buying power for services, we promise that we will do so without taking any commission for ourselves.**

Our Full House Manual contains over 70 themed events ideas to bring customers into your pub. You will be given one of these once you are appointed and any updates will be issued by your BDM. Replacements copies can be requested from your BDM.

Your Customer Service Adviser will keep you up to date with drinks activity and offers on a weekly basis. The most up to date information on our promotional activity is available on our MyMarstons website.

### **c. Your support team**

We have a dedicated team of professionals who are available to support your business. These include the following.

- Your Business Development Manager (BDM) is an experienced professional who will help you make the most of your pub. He/she will carry out a full business review with you at least once every 13 weeks. You can expect your telephone calls and e-mails to be dealt with promptly (wherever possible, the same working day) and to get a straight answer to any questions which you might have.
- Your Customer Services Adviser usually can answer any of your questions directly and if she cannot she will ensure that the right person calls you back promptly.
- Your General Manager (GM) is a senior manager in charge of your BDM and a team of his/her colleagues. If you cannot get hold of your BDM, you can contact your GM.
- Your Beer Quality Technician (BQT) will help you to sell your draught products in the very best quality and will conduct minor repairs to keep things running smoothly. There will be a BQT on call between 9am and 6pm every day of the week, however during weekends and Public Holidays this is for emergencies only. There may be a charge for this depending on your agreement.
- Your Surveyor will help with property issues which are our responsibility and will give you advice about issues which are your responsibility.
- Our Gaming Machines Executives can advise you how to get the best from your fruit machines (known as AWP's), quiz machines, Jukeboxes and pool tables.
- Our Training Coordinator can give you details of all the training course that we run (some in conjunction with our suppliers), and show you how to get the best out of our training schemes.
- Group Buying Benefits – as part of Marston's PLC we regularly negotiate prices which are better than that available to an individual purchaser. These include food, waste disposal, utilities, EPOS systems, Calor Gas, pub equipment, cellar equipment (eg stillaging systems), stock takes and PDQ machines. Your BDM will be able to advise you on how these can help your business.
- Catering Advice is provided by our external consultants. You can speak to your BDM about receiving help from them.
- Legal Advice is provided through our dedicated telephone service 24/7.
- Rating Advice can be gained from our retained advisers.
- Other office based support can be provided when you need it.

You can find the contact numbers for all of the above on line and in your starter pack when you take over your pub.

### **d. Dispense equipment**

We will provide and maintain the equipment enabling you to dispense all draught products. Doing so may incur a charge, dependent on your agreement; this will be made clear at the outset. Please see the schedule at the back of this Code of Practice.

It is your responsibility to ensure that this equipment is kept in proper working order.

### **e. Ullage**

If a problem with either the beer quality or a container is found, then the licensee should place a call into their local BQT.

If there is less than 3 gallons taken out of the container, then the following will apply.

The BQT will call, usually within 24 hours, and will try to rectify the problem, however if they cannot, they will destroy the beer on site, and will complete the paperwork that writes this off in accordance with HMRC procedures. A request for credit will be sent that day or the day after to our head office, and then a credit will be raised for the appropriate amount. This is usually done within a further 48 hours, and is applied to the customer's trading account.

If there is more than 3 gallons taken out of the container, then credit will not be given unless the equipment is found to be faulty, eg the container is leaking or the spear is found to be defective.

**f. Ongoing independent support**

As well as taking in-depth professional independent advice before moving into your pub, we strongly advise you to use an accountant to make sure that your business finances stay on track.

You do not have to show us your accounts. However, we can support you better and identify opportunities and challenges more quickly if you do share them with us.

We have a wide range of advisers you can contact if you need assistance to find independent trade experts.

### **HOW WE TRAIN AND DEVELOP OUR BDMS**

All of our BDMs have to complete our 'Pedigree People' development programme which requires them to complete a broad range of training modules which incorporate the BIIAB Profitable Business Portfolio course. We will evolve our Pedigree People Programme to stay current with training developments from the BII and other professional training organisations.

We have an extensive range of additional courses available to BDMs through our Group wide people development programme. In addition we expect our GMs to carry out regular on the job training to constantly improve the skills of their BDMs. Such training is recorded and the results shared with the Operations Director of Marston's Pub Company on a monthly basis.

## HOW WE DEAL WITH GAMING MACHINES

Prior to you signing your agreement, you will be provided with all the details of the gaming machines in the pub, including AWP, SWP, Pool tables and Jukeboxes.

This information will include:

- Tie status
- Number of machines
- Historical income
- Assessment of profit

We operate 2 models for machine ties, in line with your drinks agreement:

- 1) Fully tied (Tracker, Pathway, Open House, Advance) – you must operate machines supplied by our nominated suppliers. **We receive no commission or other payment incentives from these suppliers.** Your share will be 50% of the profit after VAT, licence duty and supplier costs. The remaining 50% goes to us. Machine collections will be organised by our nominated machine supplier. We will ensure that everything is done to make sure you get the best deal on the most appropriate machine and to also maximise the profit from the machine, by:

- Requesting machine/content changes when necessary
- Implementing new technological developments
- Using dedicated machine managers to drive machine income
- Securing a constant level of service from our nominated suppliers

Your obligations are to ensure that:

- The machines are switched on during working hours
- They are kept in good working order
- Service calls are raised where appropriate in good time
- Machines are refilled when necessary
- You have insurance for cash in the machines

It is your responsibility to make up any shortfalls from the machines and also to cover the cost of any thefts.

There may be variances to the share of the profits eg:

- Tracker agreements, you are still tied, but 100% of the profit after VAT, licence duty and supplier costs, goes to you.
- Retail agreement – Marston's take 100% of the profit after VAT, licence duty and supplier costs. We will make up any shortfalls and cover the costs of any thefts.

- 2) Free of Tie (Ultra Advance) – in exchange for a charge, you can choose to source your own supply of gaming machines. These must be from a registered machine supplier, and you must pay VAT and licence to the HMRC and have the correct gaming permits in place. Whatever profit you earn from machines is yours alone: we take no share. You will get no support from Marston's at all and you will have to organize your own collections and ensure that suppliers regularly update your machines and the content on these machines. All Ultra Advance additional charges are applied in the same way i.e. phased the same as your rent.

## **WHAT HAPPENS IF YOU OR US WANT TO INVEST IN THE PUB**

Before investing in your pub you need to consider the agreement you are on and to seek professional advice. The value of any improvements which you make to your pub will not be refunded to you when you leave. You must gain written approval to confirm if the improvements you plan to make will be disregarded at rent review. Please remember that the repair and replacement of the F&F included in your inventory is your responsibility.

If you want to refurbish or improve the premises in any way you must write to your Property Surveyor requesting consent. Your correspondence should contain details of the work you wish to carry out and when you want to proceed. Be aware that your pub may be in a Conservation area, be a listed building or the works may need planning permission. In these cases consent will be required from the relevant approving body. Alterations to the structure will require building regulation approval and you should seek advice from a qualified Structural Engineer. You will be responsible for all the necessary applications and costs.

You must not start any of the works until Marston's write to confirm acceptance to your proposal. In all cases statutory approvals will need to be in place prior to any written consent being given by Marston's. Marston's written approval will confirm if the improvements you are making are to be disregarded at rent review. If the works are not to be disregarded our written approval will explain why.

If Marston's agree to contribute to a refurbishment or improvement of the pub we will confirm in writing the works we will carry out and the impact on your fair maintainable trade and, therefore, rent. Please note that Marston's will not directly fund any work undertaken by your contractor. We will only fund directly Marston's approved contractors. No works will commence without your written approval.

With a number of our agreements there is a break clause than can be activated by Marston's. You should consider any investment carefully if your agreement contains such a clause.

## **HOW WE USE DISPENSE MONITORING EQUIPMENT – BRULINES**

We will install dispense monitoring equipment in all sites except those in the following agreement categories:

Retail Agreement  
Advance Agreement  
Ultra Advance Agreement

All equipment will be maintained in good working order, and will be calibrated periodically by our nominated agent.

Where dispense monitoring equipment is installed, the licensee will have access to this information via the Brulines website, up to and until the end of their agreement with us. Access to data after this date is available, however this needs to be requested from Marston's in writing, giving reasons for the request.

All data from dispense monitoring equipment will be analysed by professionally trained analysts. Suitable allowances will be made for cask ale line cleaning.

See Appendix 5 for the procedures for dealing with buying outside of your tie for your agreement.

### **Disputes relating to dispense monitoring equipment**

Any disputes relating to damages levied for buying outside of the tie will be dealt with in the same way as other disputes. Please see the section 'How to make a complaint'.

## **WHAT HAPPENS IF THINGS CHANGE AND AFFECT YOUR PUB**

If through no fault of your own circumstances beyond your control place your business into significant financial difficulty we will evaluate how we can support your business.

If you require our assistance you must write to your Business Development Manager with details of the material change affecting your business. You must also supply supporting financial information including evidence of stock control, financial accounts and independent business advice. If we agree to provide support we will write to you detailing how we will help and the length of time our support will be in place. This support will be provided once you have sent to us your written acceptance of it.

## **HOW TO RENEW YOUR AGREEMENT**

### **Retail, Tracker and Pathway Agreement**

If you take this type of Tenancy agreement from us you are not protected by the Landlord and Tenant Act (1954). This means that you do not have an automatic right to renew and your agreement will expire at the end of the term.

If you want to renew your agreement you should write to your Regional Estate Manager at least 3 months before your agreement's expiry date. We will consider your request but we are not obliged to renew your agreement.

### **Open House Lease**

As long as you have kept to the conditions of your lease you are protected by the Landlord and Tenant Act (1954). This means that at the end of your agreement you have rights of protection, subject to some exceptions qualified by the Landlord and Tenant Act 1954. We strongly recommend you seek legal advice when renewing your agreement.

Marston's will serve on you a notice no more than 12 months but not less than 6 months before the date of expiry. The notice will detail the terms upon which we are prepared to renew your agreement. If you agree with these terms you should sign the notice and send it back to your Legal Administrator. If you disagree with the terms you should inform your Regional Estate Manager in writing the terms you are prepared to accept. Your Regional Estate Manager will open discussions with you before the expiry of your agreement. If you still cannot agree the terms of your new lease by the time your agreement expires you have the right to apply to a court to decide the terms of your new agreement.

For clarification any supplemental agreement will not have this protection.

## **HOW TO ASSIGN YOUR AGREEMENT**

For our Retail Agreement and lease you have the ability to assign with our consent. If you ask to assign we will respond by sending you a guide to selling your lease. The guide will give you details of our fees associated with assigning your lease. Your BDM will work with you to let you know about the professional support and advice that is available to you as well as details of all our procedures.

The potential purchaser of your lease should receive the same commitment and supporting information as a new lessee entering one of our pubs. With this in mind you must provide your assignee: with 3 years trading information (if this is unavailable a reason why must be provided) and you must insist that the assignee demonstrates they have complied with pre entry training and obtained professional business advice and produce a business plan. If we agree to waive any of these conditions we will write to you confirming such a waiver.

We will not unreasonably withhold our permission to assign. However, we will interview the person you plan to sell your lease to. To enable us to make an informed decision we require your potential assignee at the interview to have a competent business plan reflecting a forecast profit and loss account with cash flow, evidence of an acceptable cash reserve and references.

This process will be easier if you have shared all your accounts with them so they can draw up a business plan. We will help you by providing a 5 year volume history. It is highly unlikely we will approve an assignment if we have not seen a competent business plan and proof of funding.

## **HOW TO SURRENDER YOUR AGREEMENT**

### **Cooling off Period (all agreements)**

If you take one of our agreements you have the right to decide within the first three months of entering into the agreement if you have made the right decision. If you decide you do not want to carry on with the commitment you have made, and provided you have fulfilled all your obligations you have the right to end your agreement by following the process detailed below:

1. Within the three month period you should write to your Estates Director stating your desire to leave the pub.
2. Your letter should be sent first class recorded delivery to our registered address, (detailed at the front of your agreement).
3. The letter should give Marston's 6 months notice of your intention to leave the pub. If you require less than 6 months notice we will endeavour to meet your requirement but cannot guarantee this. In all cases we will not allow your notice period to be less than 3 months from the date of your letter.
4. We will confirm in writing our response to your proposal.
5. Your BDM will then be in touch to agree a way forward with you.

No penalty charge will be made if you exercise your right to terminate under the cooling off period and you have complied with all your agreement obligations.

### **Tracker / Retail Agreement**

The Tracker Agreement allows you to end your agreement also on the first and second anniversary of your agreement by following the above process. Please note we also have a right to end this agreement throughout the term with 3 months notice in writing.

The Retail Agreement allows you to end your agreement at any point in time by following the above process. Please note we also have the right to end this agreement, without reason, throughout the term with 6 months notice in writing.

### **Outgoing Settlement**

After you have left your pub we will provide to you an outgoing settlement statement within 28 days of your agreement ending which will detail what we owe to you (for example, deposit) and what you owe to us (for example, outstanding invoices) with a resulting balance payable. Arrangements in relation to fixtures and fittings will be made according to the particular situation prevailing in your pub, for example we may chose to purchase your F&F at an agreed valuation and account for this on your outgoing settlement.

## **YOUR RESPONSIBILITIES TO HAND BACK THE PUB IN GOOD ORDER - DILAPIDATIONS**

This term is normally used to cover defects or disrepair which you as the tenant/lessee will be required to deal with or pay to have remedied when you vacate the premises. The works required should enable the pub to be handed back to Marston's in the same condition as at the commencement of your agreement.

Dilapidation schedules will be used at the following times:

- At the end of the agreement term: a Terminal Schedule
- During the agreement term including exercise of break options: an Interim Schedule
- At forfeiture or surrender of the lease.

A terminal schedule would be generated within 14 days of your notification to us in writing of your intention to end your agreement. An interim schedule would take place at any time (with prior notification from us) during your agreement. If there is forfeiture or surrender of the lease agreement then a terminal schedule would take place within 14 days of your departure. In all cases a copy of the priced schedule will be sent to you either electronically or by recorded delivery. Upon receipt you must confirm to the Property Surveyor who is identified within the report, your intention to do the following:

- Carry out the identified work and agree a date for a reassessment.
- Or agree that the identified works will not be undertaken by you and the dilapidation costs will be part of your final settlement figure.
- If you disagree with the works identified on our dilapidation schedule you should write to your Property Surveyor within 14 days of receipt with details of why you believe the schedule to be incorrect. If after further discussions we still cannot agree upon the necessary works you have the right to ask for a review to be carried out by a suitably qualified independent surveyor, the cost for which will be borne equally by both parties.

We can manage and carry out the works for you but you will be charged and this will form part of your final settlement figure.

If we do not receive any communication then the full cost of the dilapidation charge will form part of your final settlement figure.

If during the term we identify repairs that are your responsibility and you fail to remedy the problem we will write to you giving you one months notice to complete the works. Failure to make good will result in Marston's entering your pub to put right those outstanding repairs. You will be charged for the works undertaken.

## **HOW TO MAKE A COMPLAINT**

If you think that we have failed in any way to follow this code of practice you may use our complaints procedure in the following way to settle any disagreement that has arisen.

Send your complaint by e-mail or in writing to your BDM who will try to respond to you within two working days. If your BDM is not available you can contact your customer services adviser who will deal with your complaint on your behalf.

After this if you are not happy with the way we have dealt with your complaint you can refer the matter to the GM for your region who will investigate and consider all relevant circumstances to reach a decision.

If you are still unhappy you can refer the issue to the Operations Director or Managing Director who will try to respond within one working week and consider all relevant circumstances to reach a decision.

We promise that if we have not met our responsibilities we will acknowledge this and we will put right our mistake.

If you believe that we have not adhered to this Code in our dealings with you and, you have failed to obtain a satisfactory resolution through our complaints process you may contact BIIBAS. BIIBAS will pass on this information to us and it will use its good offices to ensure, as far as possible, that there are no misunderstandings, or personality issues, that are standing in the way of a more fruitful dialogue between us and you.

### **OUR POLICY ON RESTRICTIVE COVENANTS**

If a pub is to be sold from our estate the sale will not be subject to a covenant restricting the use of the building to any particular form of business.

Marston's Pub Company Code of Practice should be signed by both parties signifying that they have both understood and agreed the terms and obligations set out in the company code.

We would be grateful if you could sign to confirm that you have received this Code of Practice and that you will be bound by it just as we are bound by it.

Before signing we recommend strongly that you should seek professional advice so that you can be confident about the commitment you are making to us.

Public House Name: .....

Public House Address: .....  
.....  
.....  
.....

MPC Director

Licensee

Name: Alistair Darby .....

Name: .....

Signature:  .....

Signature: .....

Date: .....

Date: .....

## **FLVA GREEN PAPER**

### **SOME IMPORTANT POINTS TO CONSIDER WHEN TAKING OVER (OR LEAVING) A PUBLIC HOUSE**

1. Ensure you visit every part of the building before taking over.
2. Signing a Tenancy at Will gives no security under the Landlord & Tenant Act – seek advice before signing and making any investment.
3. Engage a solicitor conversant with licensed property leases.
4. Get a structural survey if you are responsible for the repairs.
5. Obtain a copy of the full Premises Licence (not just the summary) and carefully note details of all conditions imposed and trading hours.
6. Obtain a copy of the Premises Licence plan and check areas covered for the sale of alcohol and provision of regulated entertainment. Pay attention to any outdoor areas.
7. Carry out due diligence exercise by speaking to the Police, Environmental Health Officer and other appropriate responsible authorities to establish if there are any current issues.
8. Check if there is a Highways Act Licence in place for outside tables and chairs.
9. Copy of lease and next rent review date.
10. Details of designated premises supervisor in situ.
11. Engage a qualified accountant.
12. Engage a qualified stocktaker.
13. Draw up a business plan with relevant information – see below.
14. Details of staff responsibilities (see below under TUPE).
15. Details of any possible outstanding claim against the business.
16. Details of any equipment on hire purchase/rental agreement.
17. Ensure you have full and correct insurance cover for the business.
18. Apply for Gaming Licences/Permits.
19. Apply for PRS and PPL licences and SKY TV if appropriate.
20. Notification of changed address to licensing authority where you received your personal licence.

### **OTHER IMPORTANT INFORMATION:**

- The last three years accounts
- Last three years barrellage details
- Dilapidation report (if and when any outstanding work is to be completed)
- Health and safety risk assessment policy
- Fire risk assessment
- Disability discrimination audit
- Asbestos survey
- Portable electrical appliance test certificate (PAT)
- Five year full electrical report
- Gas safety certificate
- Energy performance certificate
- Service records of:
  - Fire extinguishers
  - Security system
  - Outside play equipment
  - Tills and all other equipment used in the business
- Complete inventory schedule (i.e. items to be left on the premises)

## **TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**

The above Regulations came into force in April 2006 and place responsibility on both the transferor and the transferee. At least a fortnight before a transfer of a business takes place the transferor (present employer) must pass on certain information in writing to the transferee (new employer). It is important therefore to collect the following information and arrange to meet and consult with all staff before taking over or leaving the premises. Failure to do so will be costly.

- All employees terms and conditions
  - Employee's name, address and date of birth
  - Details of when employment commenced
  - Details of service with previous employers which count
  - Any break in employment
  - Job title and duties
  - Rate of pay
  - Pay intervals (hourly, weekly, monthly, etc.)
  - Breakdown of hours of work
  - Any outstanding holiday entitlement
  - Details of holiday entitlement and when holiday year commences
  - Sickness scheme
  - Details of any pension scheme in operation
- Any grievance and disciplinary action that has taken place over the past two years
- Any court or tribunal cases from the last two years or any possible outstanding case the transferor might consider could be brought
- Any collective agreement that will have effect after the transfer (this might be in place when a managed house transfers to leased)
- A transferor or transferee will be held jointly responsible for the failure to consult with employees representatives, Trade Union officials or if none available then all staff.

(A decision by an appeal tribunal ruled that the maximum award should be thirteen weeks pay for failure to consult with employees in a transfer).

If the required information is not made available two weeks before the change over, the in-going licensee can take the outgoing one to a tribunal. (The award is a minimum of £500 per employee).

It is also important to obtain details of any staff training achievements.

## **UTILITIES (GAS AND ELECTRICITY)**

When there is a changeover at a premises the in-going business person does not have to inherit the agreements with the previous owner.

**PRICE INCREASE MECHANICS - RETAIL, TRACKER, PATHWAY, OPEN HOUSE AGREEMENTS**

Draught Products - We will pass on the manufacturer's full wholesale price increase, effective from the date as notified to us from the brand owner. This will be communicated to you, in writing, at least 7 days before the effective date.

Packaged Beers, Ciders and Alcopops - We will pass on the manufacturer's full wholesale price increase, effective from the date as notified to us from the brand owner. This will be communicated to you, in writing, at least 7 days before the effective date.

Wines, Spirits and Minerals - we use a banded pricing system, where a percentage of the manufacturer's wholesale price increase is passed on, when notified to us by the brand owner. Any changes will be communicated to you, in writing, at least 7 days before the effective date.

In certain circumstances, we may choose not to pass on the full increase, or we may choose to hold the increase for a certain period of time. You will be notified of this in writing.

We will pass on any duty or legislative increases in full once they are effective to us.

**PRICE INCREASE MECHANICS – ADVANCE**

Draught products - we will pass on 60% of the manufacturer's wholesale price increase, effective from the date as notified to us from the brand owner. This will be communicated to you, in writing, at least 7 days before the effective date.

Packaged beers, ciders and alcopops - we will benchmark this against the free trade market, predominately Bookers. Any increases will be communicated to you, in writing, at least 7 days before the effective date.

Wines, spirits and minerals - we use the banded pricing system, where a percentage of the manufacturer's wholesale price increase is passed on, when notified to us by the brand owner. Any increases will be communicated to you, in writing, at least 7 days before the effective date.

In certain circumstances, we may choose not to pass on the full increase, or we may choose to hold the increase for a certain period of time. You will be notified of this in writing.

We will pass on any duty or legislative increases in full once they are effective to us.

**PRICE INCREASE MECHANICS – ULTRA ADVANCE**

Draught Products - We will pass on the manufacturers full wholesale price increase, effective from the date as notified to us from the brand owner. This will be communicated to you, in writing, at least 7 days before the effective date.

Packaged Beers, Coders and Alcopops - We will pass on the manufacturers full wholesale price increase, effective from the date as notified to us from the brand owner. This will be communicated to you, in writing, at least 7 days before the effective date.

Wines, Spirits and Minerals - we use a banded pricing system, where a percentage of the manufacturer's wholesale price increase is passed on, when notified to us by the brand owner. This will be communicated to you, in writing, at least 7 days before the effective date.

In certain circumstances, we may choose not to pass on the full increase, or we may choose to hold the increase for a certain period of time. You will be notified of this in writing.

We will pass on any duty or legislative increase in full once they are effective to us.

**PROCEDURES FOR DEALING WITH BREACHES**

**What happens if you source drinks outside the terms of your agreement**

If either

- a. an analyst who is evaluating your sales and purchase data, finds a negative variance on the dispense monitoring report.

or

- b. a representative of Marston's or one of our suppliers finds stock purchased from another source on site not in accordance with the tie in your agreement.

or

- c. both of the above

Then

A visit will be made by a representative of Marston's or our agents (in this case Brulines) to discuss the data with you to establish if a breach of your tie has occurred.

If you are suspected of buying products from someone else when you are tied to buy them from us, we will gather evidence to support our case. This evidence could include (but is not limited to):

- Physical evidence of foreign stock on site
- Physical evidence of foreign dispense equipment on site
- Physical evidence of empty containers of foreign stock on site
- Physical evidence of deliveries being made of foreign stock by third parties
- Evidence of consistent nil orders but stock found on site.
- Inspections/visits without notice
- Inspections/visits outside normal business hours

If a breach has occurred and there is evidence, the following stages will apply:

- 1) We will calibrate the dispense monitoring equipment again to validate its accuracy. The bought out quantity and value could be adjusted downwards in the light of these results. However, we will never increase the quantity and value.
- 2) We may choose to deal with the breach by way of you signing an undertaking that you will pay damages for loss of profits, and that you will not breach your agreement again. The loss of profits figure you will be charged will vary depending on agreement, but will not exceed £150 per barrel. By way of guidance if you have already signed two undertakings, then we may immediately seek possession. This is entirely at our discretion. You will also be charged an administration fee (currently £300 + VAT) for dealing with this breach. This charge will be applied to your trading account and must then be paid in line with your existing payment terms.
- 3) We may choose to take out a court injunction, forcing you to stop buying tied products from other sources. If this injunction is not complied with we can enforce it, which could result in a custodial sentence.

These courses of action are for guidance only and do not in any way limit our enforcement rights under the agreement. Each case will be dealt with on its merits.

## **What happens if you bypass or tamper with dispense monitoring equipment**

If either

- a. an analyst who is evaluating your sales and purchase data is suspicious about dispense data that leads them to believe that tampering or bypassing may be happening,
- or
- b. a representative of Marston's or one of our suppliers suspects that you are tampering with or bypassing dispense monitoring equipment
- or
- c. both of the above.

Then

A visit will be made by a representative of Marston's or our nominated supplier to discuss the data with you to establish if tampering or bypassing has occurred.

If you are suspected of tampering with or by passing dispense monitoring equipment, we will gather evidence to support our case. This evidence could include (amongst other things) all the items listed previously in the evidence required for buying out.

If tampering with or bypassing dispense monitoring equipment is proven, then we will arrange for an engineer to come out to your pub to reset all the equipment, calibrate the equipment, and make it tamper evident. We will charge you for this call, and also for the time spent by our agents to prove that you have tampered with or bypassed the equipment. The estimate for these costs is approx £2,000 for a minor incident of tampering, and £3,800 for a major incident requiring more investigation. You will be requested to sign an undertaking not to breach your agreement again. We will reset your dispense monitoring equipment and verify your actual sales volumes. You will then be charged liquidated damages for the negative variances based on these actual sales volumes and the administration fee (currently £300 + VAT).

You will also receive a written warning, notifying you that if you are caught tampering with or bypassing our dispense monitoring equipment again we will proceed immediately for possession.

This is by way of guidance only and in no way restricts our rights of enforcement under the agreement, which may include an immediate application for an injunction or possession.

## **What happens if you source gaming machines outside the terms of your agreement**

If we suspect that you are either sourcing or operating gaming machines outside of the terms of your agreement, then a visit will be made by a representative of Marston's or our nominated supplier to discuss this with you to establish if a breach of your tie has occurred.

If a breach has occurred and there is evidence, the following stages will apply:

- 1) We may choose to deal with the breach by way of you signing an undertaking that you will pay damages for loss of profits, and that you will not breach your agreement again. The loss of profits figure you will be charged will vary depending on agreement, but will not exceed £150 per machine per week. By way of guidance if a pub has already received two undertakings, then we may immediately seek possession. This is entirely at our discretion. You will also be charged the administration fee (currently £300+VAT) for dealing with this breach. This charge will be applied to your trading account and must then be paid in line with your existing payment terms.
- 2) We may choose to take out a court injunction, forcing you to stop using machines supplied from other sources. If this injunction is not complied with, then we can enforce it, which could result in a custodial sentence.

These courses of action are for guidance only and do not in any way limit our enforcement rights under the agreement. Each case will be dealt with in its merits.

Appendix 6



Policy	Cover	Insured Risks	Excess	Limits/Restrictions/ Warranties	Insurer	Marston's Group Policy Ref
Material Damage	All of Marston's property and interest for which you are responsible.	Physical Loss or Damage arising from Fire, Explosion, Riot, Storm, Burst Pipes, Lightning, Aircraft, Subsidence, Malicious Damage, Flood and Impact by Third Party Vehicle	£500	Excludes Earthquakes, Theft	Royal & Sun Alliance and Zurich Commercial	RKK299410

**GLOSSARY OF TERMS**

Item	
Agreement	A contract between two or more parties with an exchange of promises. Enforceable by law there is a specific remedy for a breach of promise.
Asking Rent	The rent requested by the landlord when marketing a property "To Let".
Assignment	A transfer of rights (agreement) held by one party—the assignor—to another party—the assignee.
AWP	Amusement with prizes. These are machines such as fruit machines (digital or traditional analogue).
Barrel	A barrel is 36g of draught beer, cider and stout, and packaged beers, cider, stout and packaged spirits such as Smirnoff Ice. A barrel of Wines, Spirits and Minerals is 15 gallons equivalent.
BDM	Business Development Manager. Your local representative who is responsible for the day to day relationship between you and Marstons, and for helping you to develop your business.
Benchmarked Free Trade Prices	The price comparable with Marston's independent free trade or a major Cash & Carry (normally Booker)
BII	British Institute of Innkeeping
BIIBAS	British Institute of Innkeeping Benchmarking and Accreditation Services
BQT's	Beer Quality Technicians. The team of people that you can call when you have an emergency where you cannot serve draught drinks, and the team that will help with advice and training on how to serve quality drinks.
Building Cost Information Service	Forming part of the RICS the Building Cost Information Service (BCIS) is a leading provider of cost and price information for the UK construction industry.
Business Interruptions	Events that prevent a pub from trading for a period of time eg flooding or fire
Business Plan	A formal statement of business goals, reasons why the goals are attainable, and the plan for reaching those goals. Included will be background information about the team attempting to reach those goals.
Cellar Cooling	The equipment in your cellar that keeps your cellar at the required temperature
Cellar Services Technical Support	Maintenance of current equipment used to dispense draught beers, ciders and stouts, plus installation of new equipment.
CSA	Conditional Sale Agreement. An agreement to pay for fixtures and fittings over a period of time.
Customer Services Advisor	The representative of Marston's who takes your order over the phone.
Decorating Fund	A deposit fund paid into monthly by tenants. The money from the fund is used to repair the property. Marston's cannot use the money unless repairs are not put into order.
Deposit	Money lodged with a landlord as security that the terms of an agreement will be fulfilled.

Item	
Designated Premises Supervisor	The person who is nominated as the single point of accountability in a premises, licensed to sell alcohol. To be a Designated Premises supervisor you must be a Personal Licence holder.
Dilapidations	The disrepair for which a tenant or landlord is liable when a premises has been agreed to be given up in good repair
Dispense Monitoring Equipment (Brulines)	Equipment that is part of your draught dispense equipment. This provides data to our nominated agent (currently Brulines) of what you have dispensed, and this is compared to the volume that you have purchased. This is to monitor that you are buying from us all the products that you sell.
Divisible balance	Fair maintainable net profit less an allowance to reflect capital invested in the pub. Rent is determined as a split of this resulting divisible balance.
Employers Liability	The employer's responsibility for accidents occurring in the workplace or during the course of employment as a result of the employer's breach of duty of care.
EPOS	Electronic Point of Sale equipment, such as tills, printers, and cash draws
Fixtures and Fittings	Items, both loose and fixed to the property, used for the running of a business.
FLVA	Federation of Licensed Victuallers
FMNP	Fair Maintainable Profit. The level of profit that a Reasonably Efficient Operator (REO) would expect to make from the unit based on an assessment of the market's perception of the potential earnings of the property. It should reflect all costs and outgoings of the REO and an appropriate annual allowance for periodic expenditure such as decoration, refurbishments and renewal of trade inventory.
FMT	The level of trade that a Reasonably Efficient Operator would expect to achieve on the assumption that the property is properly repaired, maintained and decorated.
Gaming Machines	All AWP and SWP machines, plus Jukeboxes and Pool tables.
GM	General Manager. Your BDM's line manager.
Gross Profit	Net sales minus cost of goods sold.
Heads of Terms	The principle terms of the agreement to be signed in a summary document.
High Net Worth	An individual who received in the previous financial year a net income of not less than £150,000 a year or had throughout that year net assets with a total value of not less than £500,000.
HMRC	Her Majesty's Revenue and Customs
Industry Benchmarking studies	Publicised surveys of the margins and costs associated with various typical pub styles.
Inventory	A list for goods and materials held available in stock by a business.
Landlord and Tenant Act (1954)	An act of the United Kingdom Parliament extending to England and Wales. Part II of the act is a statutory code governing business tenancies (including Public Houses). This part of the act gives business tenants a degree of security of tenure, i.e. a business tenant may not be evicted simply by the giving of notice to quit or by the ending of a fixed term of the tenancy. The landlord must serve a notice on the tenant, giving them an opportunity to respond.
Lease	A lease is a legally binding contract requiring the lessee (user) to pay the lessor (owner) for use of an asset.

<b>Item</b>	
Letting Rent	The rent requested by the landlord when marketing a property "To Let".
Liquidated Damages	The damages that we will charge for loss of profits if you buy goods from somewhere else when you are tied to buy them from us.
MAT	A moving annual total is the aggregation of the most recent twelve months of trading data
MPC	Marston's Pub Company
Net Turnover	Total turnover, less the current rate of VAT.
Operational Expenditure	Costs incurred running a business.
Opted Out	An agreement that does not have the protection afforded by the Landlord and Tenant Act 1954.
Outstanding appeals	Any appeals which may be in the process of being heard/resolved.
PEAT	Pre-Entry Awareness Training
Personal Goodwill	The value of profit generated over and above market expectations which would be extinguished upon sale of the property, together with those financial factors related specifically to the current operator of the business such as taxation, depreciation policy, borrowing costs and the capital invested in the business.
Personal Licence	A personal licence allows a person to sell alcohol, or authorise the sale of alcohol, under the authority of a premises license.
PIRRS	Pub Independent Rent Review Scheme. A scheme managed by the BII to provide an efficient route for landlord and tenants to agree a rent.
Planning Restrictions	Terms to be met before a planning consent becomes active.
Premises Licence	A licence that authorises a premises to be used for licensable activities, namely the sale of alcohol or the provision of regulated entertainment or late night refreshment.
Profit and Loss	A company's financial statement that indicates how the revenue (money received from the sale of products and services before expenses are taken out) is transformed into the net income (the result after all revenues and expenses have been accounted for).
Public Liability	Public liability is part of the law of tort focusing on civil wrongs. An applicant (the injured party) usually sues the occupier under common law based on negligence and/or damages. Claims are usually successful when it can be shown that the owner/occupier was responsible for an injury, therefore they breached their duty of care.
Reasonably efficient operator	A competent operator of a business acting in an efficient manner. The concept involves the trading potential of the property rather than the actual level of trade under the existing ownership so it excludes personal goodwill.
Rent	A payment made for the temporary use of a good, service or property owned by another.
Rent Review	A prescribed date or time when the rent is reconsidered.
Rent Valuation Sheet	A sheet detailing how the rent is calculated. The sheet is to be signed by a Regional Estate Manager and licensee once it is agreed.

<b>Item</b>	
Repairing Liability	The repairs that an occupier or landlord has agreed to be responsible for.
Restrictive Covenants	An agreement that is restrictive in nature.
RICS	Royal Institution of Chartered Surveyors.
RPI	Retail Price Index.
Schedule of Condition	A schedule detailing the condition of a premises. The schedule will highlight works required to put the property back into a pre agreed state.
Section 25 notice	This notice is used to inform a tenant either of proposed terms for a new lease or to oppose renewal.
Shadow Profit and Loss	A profit and loss sheet created for the property that a reasonably efficient operator could achieve.
SWP	Skill with prizes. These are predominately quiz machines or machines that require you to use your skill or expertise to win, rather than chance.
Tenancy	An agreement that does not have the protection afforded by the Landlord and Tenant Act 1954.
Terminal Schedule	A schedule of condition served at the end of an agreements term.
Third Party Business Advisor	A suitably qualified individual to advise on financial, legal and property matters.
Upward Only Rent Reviews	A rent review that does not allow the rent to fall beneath the passing rent.
Wet	All drinks, including hot drinks
WSP	Wholesale Price. The suppliers recommended selling price, before any discounts, including Duty and excluding VAT