

DATED _____ 2010

EXAMPLE ONLY

(1) MARSTON'S PLC

AS AGENT AND ATTORNEY FOR [MARSTON'S PUBS LIMITED]

- and -

(2) [RETAILER]

- and -

(3) [INDIVIDUAL]

RETAIL AGREEMENT

Relating to

[PUB NAME & ADDRESS]

A rectangular logo with a dark background and a gold border. The word "RETAIL" is written in a bold, gold, sans-serif font in the center.

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THIS AGREEMENT is made on

2010

BETWEEN:

- (1) **MARSTON'S PLC** a company registered in England and Wales under number 31461 whose registered office is at Marston's House, Brewery Road, Wolverhampton WV1 4JT acting as agent and attorney for an in the name of [**MARSTON'S PUBS LIMITED**] registered in England and Wales under number [05453367] of the same registered office ("**Marston's**");
- (2) [] a company [registered in England and Wales under number [] whose registered office] [incorporated under the laws of [] [country] whose principal place of business] is at [] ("**Retailer**"); and
- (3) [] ("**Individual**").

BACKGROUND

- A. Marston's has, through extensive research and practical experience, developed the concept of the Marston's Branded Retail Outlet using the Trading Format.
- B. Marston's has developed a substantial reputation and goodwill in the Trading Format, the System and the Marston's IPR and is the exclusive owner of all rights in the Trading Format, the System and the Marston's IPR.
- C. Marston's will provide certain Marston's Services to the Retailer to assist the Retailer to carry on the Marston's Branded Retail Outlet as set out in this Agreement.
- D. The Retailer has agreed to purchase the Products from Marston's (or in the manner instructed by Marston's from time to time).
- E. The Retailer wishes to be granted the right by Marston's to carry on the Marston's Branded Retail Outlet at the Premises and Marston's has agreed to such appointment subject to and upon the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meanings:
 - 1.1.1 "**Agreement**" means this agreement and any document referred to, completed or to be completed in accordance with its provisions;
 - 1.1.2 "**Agreement Year**" means a year commencing from the Commencement Date or any anniversary thereof;
 - 1.1.3 "**Control**" means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise;
 - 1.1.4 "**Commencement Date**" means the date of this Agreement;
 - 1.1.5 "**Excluded Property**" means such part or parts of the Premises which the Retailer must maintain and repair at the Retailer's own cost, as set out in schedule 3;
 - 1.1.6 "**Float**" means such minimum amount of cash required in respect of each till and/or Machine to operate the Marston's Branded Retail Outlet, as specified by Marston's from time to time;

- 1.1.7 "**Force Majeure Event**" means any circumstance beyond the reasonable control of the parties including, but not limited to acts of God, fire, explosion, serious adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages but, for the avoidance of doubt, nothing shall excuse the Retailer from any payment obligations under this Agreement;
- 1.1.8 "**Operating Manual**" means the written specification of the know-how, methodologies, processes, techniques, systems, schemes, policies and procedures relating to all aspects of the Marston's Branded Retail Outlet which have been developed and compiled by Marston's and which are to be implemented by the Retailer in operating the Marston's Branded Retail Outlet, together with any variation to such written specification notified by Marston's to the Retailer in writing from time to time, a copy of which is set out in schedule 2;
- 1.1.9 "**Guarantee and Indemnity**" means the Guarantee and Indemnity as set out in schedule 4 upon which the Individual, amongst other things, guarantees the obligations of the Retailer under this Retail Agreement and indemnifies Marston's against any and all losses incurred by Marston's as a result of the Retailer's failure to perform its obligations under this Retail Agreement;
- 1.1.10 "**Individual**" means the person or persons named in the Particulars as such (if any);
- 1.1.11 "**Interest**" means interest at four per cent (4%) over the base rate for the time being of Barclays Bank plc (or if such base rate ceases to be published then at such other comparable rate as Marston's may designate);
- 1.1.12 "**IPR**" means, without limitation, all patents, copyright and related marks, trade marks, service marks, trade, business and domain names, websites, web pages, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world);
- 1.1.13 "**Lease**" means the lease of the Premises of even date made between Marston's (1) [and] the Retailer (2) [and the Individual(s) (3)];
- 1.1.14 "**Management Charge**" means the service charge excluding VAT payable by the Retailer to Marston's in accordance with clause 7.3 in consideration of the Retailer's permission to operate the Marston's Branded Retail Outlet;
- 1.1.15 "**Marston's Branded Retail Outlet**" means all business carried on from time to time or operated at the Premises by the Retailer using the distinctive business format, methodologies and specifications developed and/or implemented by Marston's, as more particularly described in the Operating Manual, together with Marston's IPR;
- 1.1.16 "**Marston's IPR**" mean(s) any IPR, other than New IPR which Marston's may permit or procure permission for the Retailer to use in the course of or in connection with the Marston's Branded Retail Outlet;
- 1.1.17 "**Marston's Services**" means the specialised services provided by Marston's to the Retailer in connection with the Marston's Branded Retail Outlet;

- 1.1.18 "**Marston's Trade Account**" means the account which Marston's shall make available to the Retailer for the deposit of the Total Weekly Turnover, payment of the Management Charge and the purchase of the Products, the use of which is more particularly set out in the Operating Manual;
- 1.1.19 "**New IPR**" means any IPR that arise or are obtained or developed by any party in the course of or in connection with the Marston's Branded Retail Outlet;
- 1.1.20 "**Personal Licence**" means a personal licence as set out in the Licensing Act 2003;
- 1.1.21 "**Premises**" means the land and buildings (including any fixtures, fittings or other equipment therein) described further in schedule 1 from which the Marston's Branded Retail Outlet will be carried on by the Retailer;
- 1.1.22 "**Premises Licence**" means a premises licence as set out in the Licensing Act 2003 relating to the Premises and held in Marston's name;
- 1.1.23 "**Products**" means such Products as Marston's shall notify to the Retailer from time to time and make available to the Retailer for use in connection with or for resale at the Marston's Branded Retail Outlet;
- 1.1.24 "**Retailer Services**" means such services as the Retailer may procure under clause 6.19 in connection with the Marston's Branded Retail Outlet;
- 1.1.25 "**RRP**" means a retail price of the Products recommended by Marston's from time to time;
- 1.1.26 "**Service Fee**" means subject to the terms of clause 7.4, an amount equal to [20]% of the Total Weekly Turnover which shall be payable to the Retailer in consideration of the performance by the Retailer of its obligations under this Agreement;
- 1.1.27 "**System**" means the information, specifications and methodologies relating to the management and operation of the Marston's Branded Retail Outlet and the methods of marketing and promoting the Marston's Branded Retail Outlet, as detailed in the Operating Manual;
- 1.1.28 "**Trading Format**" means the name and style of the premises, as detailed in the Operating Manual, under which the Marston's Branded Retail Outlet is to be carried on;
- 1.1.29 "**Total Weekly Turnover**" means the total weekly gross takings of the Marston's Branded Retail Outlet including all cash and credit transactions and sums received in the Marston's Branded Retail Outlet but excluding any customer refunds, bona fide discounts or rebates suffered by the Retailer and the value of all bona fide free offers or discounts made or given by the Retailer as part of any special promotion in the ordinary course of business (all of which shall have received Marston's prior written approval) and excluding VAT;
- 1.1.30 "**Services**" means such services as Marston's shall make available to the Retailer for use at or in connection with the Marston's Branded Retail Outlet and as set out in the Operating Manual;
- 1.1.31 "**Working Day**" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.
- 1.2 In this Agreement (unless the context otherwise requires):
- 1.2.1 the words "including" and "include" and words of similar effect shall not limit the general effect of the words which precede them;

- 1.2.2 words importing the singular shall include the plural and vice versa;
 - 1.2.3 use of any gender includes the other genders;
 - 1.2.4 the headings, contents list and front sheet are for reference only and shall be ignored in its construction;
 - 1.2.5 references to a numbered clause or schedule are references to the clause or schedule of this Agreement so numbered; and
 - 1.2.6 references to a statutory provision includes a reference to that statutory provision as from time to time amended, extended or re-enacted any regulations made under it.
- 1.3 The Operating Manual, as updated and varied from time to time, shall be deemed incorporated in this Agreement and if there is any conflict between the provisions of this Agreement and the Operating Manual, the Operating Manual shall prevail.

2 GRANT OF OPERATING LICENCE

- 2.1 Marston's hereby grants the Retailer, and the Retailer hereby accepts, a licence in respect of the Marston's Branded Retail Outlet at the Premises on the terms set out in this Agreement to:
- 2.1.1 carry on the Marston's Branded Retail Outlet from the Premises; and
 - 2.1.2 use the System, IPR and Trading Format supplied by Marston's in accordance with the instructions set out in the Operating Manual or as otherwise specified by Marston's from time to time for the sole purpose of carrying on the Marston's Branded Retail Outlet at the Premises.
- 2.2 The Retailer agrees that Marston's shall be entitled to operate or make use of or license to any person other than the Retailer the right to operate other Marston's Branded Retail Outlets under the Trading Format. Consequently, nothing in this Agreement shall confer an exclusive right to the Retailer in respect of the same.

3 TERM

- 3.1 This Agreement takes effect on the Commencement Date and shall continue in force for a period of [5] Agreement Years ("**Term**").
- 3.2 Marston's may, at its sole option, renew this Agreement for a further term of [5] Agreement Years provided that:
- 3.2.1 the Retailer has not committed any material breach of any provision of this Agreement and has performed its obligations under this Agreement to the satisfaction of Marston's;
 - 3.2.2 if Marston's so requires, such renewal shall be effected by the parties entering into a new agreement in Marston's then current form of Retail agreement;
 - 3.2.3 the Retailer and all employees of the Retailer complete any refresher training or re-training as Marston's requires prior to the end of the Term; and
 - 3.2.4 the Retailer gives up any and all claims it may have against Marston's.
- 3.3 The Agreement shall automatically terminate at the end of the tenth Agreement Year, unless terminated earlier in accordance with this Agreement.
- 3.4 Clause 3 is subject to the rights of termination within this Agreement.

4 MARSTON'S OBLIGATIONS

- 4.1 Marston's shall provide the Retailer within 30 Working Days of the Commencement Date with:
- 4.1.1 a copy of the Operating Manual;
 - 4.1.2 any other materials deemed appropriate by Marston's;
 - 4.1.3 an initial training programme to be attended by the Retailer in or as near as possible to the Premises as reasonably practicable, provided that the Retailer shall bear the cost of any travel and subsistence involved in connection with such training.
- 4.2 Marston's shall, for so long as this Agreement continues in force:
- 4.2.1 provide the Retailer with the Marston's Services and such advice, know-how and guidance as are reasonably necessary to enable the Retailer to operate the Marston's Branded Retail Outlet in accordance with the System and the Operating Manual, and reasonable facilities for consultation with regard to any problems arising from time to time in relation to the Marston's Branded Retail Outlet, the System or the Operating Manual;
 - 4.2.2 provide such training, assistance and other services as is specified in the Operating Manual in or as near as possible to the Premises, provided that the Retailer shall bear the cost of the training courses and any travel and subsistence involved in connection with such training;
 - 4.2.3 keep an up to date copy of the Operating Manual at its registered office and give the Retailer no less than 10 Working Days' notice of any changes, together with full written details of such changes to enable the Retailer to keep its copy of the Operating Manual up to date;
 - 4.2.4 supply or procure the supply of Products to the Retailer in accordance with the provisions of clause 6 and the Operating Manual;
 - 4.2.5 supply the Floats for any Machines (as defined in clause 6.21 below) of such level as Marston's considers appropriate in its absolute discretion; and
 - 4.2.6 keep the Premises (except those matters referred to in clause 5.1.8) insured for the full rebuilding value to cover the Insured Risks but such insurance may be through itself or from a subsidiary or group company and provide the Retailer with a summary of the policy if so requested.

5 RETAILER'S OBLIGATIONS

- 5.1 The Retailer shall, all at its own cost:
- 5.1.1 attend and complete such training as Marston's shall provide, to Marston's satisfaction, within such timescale as Marston's shall require, and failure by the Retailer to comply with this obligation and/or failure to successfully complete such training as is required by Marston's shall be deemed to be a material breach of this Agreement;
 - 5.1.2 enter into a Lease in respect of the Premises and without delay thereafter comply fully with the terms of such Lease;
 - 5.1.3 use its best endeavours to avoid damage to any part of the Premises and to maintain the Premises to the standards and in the manner set out in the Operating Manual and the Lease regarding (without limitation) fixtures, fittings, equipment, hygiene and layout, and permit Marston's to use the deposit towards the repair of

any damage to any part of the Premises arising as a result of the Retailer's failure to comply with this clause 5.1.3;

- 5.1.4 diligently carry on the Marston's Branded Retail Outlet strictly in accordance with the System and the Operating Manual, and use its best endeavours to promote and expand the business of the Marston's Branded Retail Outlet, in order to increase the Total Weekly Turnover;
 - 5.1.5 employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of the Retailer's obligations under this Agreement, the System and the Operating Manual, and procure that such personnel attend any training required from time to time by Marston's whether prior to their appointment or during the course of their employment;
 - 5.1.6 comply with such energy and utilities management schemes and policies as Marston's shall notify to the Retailer from time to time, and permit Marston's or its authorised representatives to audit the Premises for the purposes of devising or assessing such schemes and policies;
 - 5.1.7 operate the Marston's Branded Retail Outlet:
 - a) during the hours specified by Marston's; and
 - b) in accordance with the Premises Licence; and
 - c) in compliance with all relevant laws and regulations (including, without limitation, in respect of licensing, health and safety, food and fire safety, weights and measures, trading standards and price marking).
 - 5.1.8 take out and maintain an insurance policy with a reputable insurance company to be approved by Marston's which includes, without limitation, cover in respect of liability for third parties and employees, public liability, loss of profits and business continuity and interruption;
 - 5.1.9 note Marston's interest on the insurance policy specified in clause 5.1.8 and produce to Marston's on demand full particulars of the insurance and the receipt for the then current premium;
 - 5.1.10 immediately notify Marston's of any event or circumstance (including any enforcement or prohibition notices) which may damage the goodwill, perception or reputation of Marston's or the Marston's Branded Retail Outlet;
 - 5.1.11 inform Marston's immediately of any change of Control of the Retailer or any other change in the Retailer's organisation or method of doing business which might affect the performance of the Retailer's obligations under this Agreement; and
 - 5.1.12 be responsible for the maintenance and repair of any and all Excluded Property, in accordance with the standards set out in the Operating Manual, and which are set out in schedule 3.
- 5.2 The Retailer shall:
- 5.2.1 at the end of each day, reconcile all income and sales (whether by cash or otherwise), bankings and other deposits, petty cash expenditure, payments and deliveries (including the Marston's Trade Account balance) in the manner specified in the Operating Manual;
 - 5.2.2 allow Marston's (or its authorised representative) to enter the Premises at reasonable times and without notice for the purposes of evaluating the Retailer's

compliance with this Agreement and/or the Operating Manual, or to undertake audits of stock, cash or payment records and management;

- 5.2.3 only use stationery, invoices, signs, packaging and other materials in connection with the Marston's Branded Retail Outlet as have been approved by Marston's and state on all such materials that the Marston's Branded Retail Outlet is under licence from Marston's;
 - 5.2.4 use only the Products and Services in connection with the Marston's Branded Retail Outlet, save in respect of the Retailer Services;
 - 5.2.5 not act in a way which will incur any liabilities on behalf of Marston's, nor pledge the credit of Marston's;
 - 5.2.6 maintain stocks of the Products at levels specified in the Operating Manual (the "**Required Product Levels**"), if any, and which are adequate for the Retailer to meet the requirements of the Marston's Branded Retail Outlet;
 - 5.2.7 regularly communicate to Marston's any experience or know-how gained by the Retailer while operating the Marston's Branded Retail Outlet, or any improvement or modification to the System;
 - 5.2.8 permit Marston's, or any duly authorised representative of Marston's, to inspect the Premises to confirm that the Retailer is complying with its obligations under this Agreement;
 - 5.2.9 utilise any petty cash allowance agreed with Marston's strictly in accordance with the rules set out in the Operating Manual and for no other purpose;
 - 5.2.10 promote and advertise the Marston's Branded Retail Outlet provided that all materials and promotional literature used to do this are either provided by or approved by Marston's in advance in writing before use;
 - 5.2.11 observe all directions and instructions from Marston's relating to the promotion and advertisement of the Marston's Branded Retail Outlet or Products;
 - 5.2.12 give due and serious consideration to any decision it makes to amend the RRP of any product, to ensure that such amendment (whether by way of increase or decrease) shall not unreasonably adversely affect the goodwill, perception or reputation of Marston's or the Marston's Branded Retail Outlet;
 - 5.2.13 not make any written statement as to the quality or manufacture of the Products without the prior written approval of Marston's; and
 - 5.2.14 comply in all respects with any rules relating to the responsible promotion and/or sale of alcohol in respect of the Marston's Branded Retail Outlet which are set by or approved in writing by Marston's.
- 5.3 The Retailer shall, in connection with the Marston's Trade Account:
- 5.3.1 permit Marston's to deduct from the Marston's Trade Account the cost of the Products which have been delivered to the Retailer and which have not been returned to Marston's within 30 Working Days of delivery or in accordance with clause 6.4.6 below;
 - 5.3.2 permit Marston's to deduct the Management Charge from the Marston's Trade Account on the first Working Day of each calendar week and shall ensure that the Marston's Trade Account has sufficient funds to allow Marston's to make such a deduction;

- 5.3.3 allow Marston's representatives to enter the Premises at all times and without notice to investigate the Retailer's accounts and records and verify compliance by the Retailer of its obligations in respect of the Marston's Trade Account; and
- 5.3.4 use the Marston's Trade Account strictly in accordance with the rules which are as set out in the Operating Manual or as separately notified to the Retailer when the Marston's Trade Account is set up.

6 PRODUCTS AND RETAILER SERVICES AND MACHINE INCOME

- 6.1 The Retailer shall only purchase Products from Marston's and as set out in the Operating Manual, in order to preserve the quality, uniformity and high standard of the Products used in the Marston's Branded Retail Outlet.
- 6.2 Marston's shall use reasonable endeavours to meet all orders for the Products forwarded to Marston's by the Retailer in accordance with Marston's terms of delivery.
- 6.3 The sale of Products to the Retailer pursuant to this Agreement is subject to Marston's standard conditions of sale in force from time to time and in the event of a conflict between the meaning of a term in this Agreement and a term in the standard conditions of sale, the meaning in this Agreement shall prevail.
- 6.4 The Retailer shall, in respect of the Products:
 - 6.4.1 carry out all and any measures reasonably necessary or required by Marston's to maintain the Required Stock Levels;
 - 6.4.2 store and handle the Products as instructed by Marston's or as set out in the Operating Manual;
 - 6.4.3 be liable for any damage or loss to the Products following delivery and shall immediately inform Marston's if any such damage or loss occurs;
 - 6.4.4 take all reasonable and proper precautions and comply with Marston's reasonable requests to safeguard the Products;
 - 6.4.5 take such other reasonable steps as Marston's may require from time to time in order to ensure that the Products are kept safely and in their optimum condition (including in accordance with any specific manufacturer's instructions or recommendations);
 - 6.4.6 only return Products (or destroy Products which are due to be returned and certify such destruction to Marston's) in accordance with the Operating Manual.
- 6.5 Each delivery of Products supplied by Marston's shall be deemed to be an offer (the "**Offer**") by Marston's to sell the Products to the Retailer.
- 6.6 The Retailer shall be deemed to accept the Offer (thereby concluding a "**Contract of Sale**") in respect of the Products following the earlier of:
 - 6.6.1 the sale or use of the Products by the Retailer or third party;
 - 6.6.2 opening the packaging, the Products or doing any other thing which means that the Products cannot in Marston's opinion be sold or returned to Marston's; or
 - 6.6.3 the end of the Product's shelf life (which is deemed to be a period 6 weeks prior to any Best Before or Use By date).

- 6.7 During the Term of the Agreement, the Retailer shall only be entitled to offer the Products for sale in the Marston's Branded Retail Outlet.
- 6.8 The Retailer shall use the Products in date order (i.e. stock expiring soonest will be sold first) or, where there is no expiry or use date, on a first in/first out basis.
- 6.9 Without prejudice to clause 6.6, Products not returned or used by the Retailer within 90 days of the date of delivery shall be deemed to be accepted on the 91st day after delivery and a Contract of Sale shall be deemed concluded between the Retailer and Marston's with respect to such Products on the date on such Contract of Sale date.
- 6.10 Marston's may, in accordance with the Operating Manual, deduct the cost of the Products from the Marston's Trade Account at any time following the date on which a Contract of Sale is formed.
- 6.11 In the event that the Marston's Trade Account does not have sufficient funds to cover the cost of the Products, the Retailer shall pay Marston's in cleared funds within 5 Working Days of notice of the amount due.
- 6.12 In the event that this Agreement is terminated, the Retailer shall, on request from Marston's, immediately pay to Marston's all unpaid invoices and interest and, in respect of Products supplied for which no invoice has been submitted, Marston's may submit an invoice, which shall become payable immediately on receipt.
- 6.13 Risk of damage to or loss of Products will pass to the Retailer on delivery of Products to the Marston's Branded Retail Outlet.
- 6.14 Notwithstanding delivery and the passing of risk in the Products, property in the Products will not pass from Marston's until Marston's has received in cash or cleared sums full payment of the Price and all other sums which are due, owing or payable by the Retailer to Marston's or in respect of which the Retailer will, or may in the future, become liable to make payment to Marston's.
- 6.15 Until property in the Products passes to the Retailer:
- 6.15.1 the Retailer will keep the Products as Marston's fiduciary bailee. The Retailer will keep Products separate from those of the Retailer and third parties and keep Products properly stored, protected, insured and identified as Marston's property.
- 6.15.2 subject to 6.15.3 below the Retailer may resell Products in the ordinary course of its business but will account to Marston's for the proceeds of sale or otherwise of Products, including insurance proceeds. Until the Retailer has accounted to Marston's for the proceeds of sale or otherwise of Products, the Retailer will hold the relevant debt due to the Retailer and the relevant proceeds on trust for Marston's. The Retailer will keep all such proceeds separate from any moneys or property of the Retailer and third parties.
- 6.15.3 Marston's may revoke the Retailer's power of sale in respect of Products. The power of sale will automatically cease if a petition is presented, any order made or any resolution passed or any other action taken for or with a view to the Retailer's winding up or administration or (being an individual) bankruptcy, or an administrative receiver, receiver, liquidator or administrator or similar officer is appointed in respect of the whole or any part of its undertaking, property or assets or if it convenes a meeting for the purpose of making, or proposing to enter into, any

agreement for the benefit of its creditors. This also applies to any analogous proceedings in any other jurisdiction.

- 6.15.4 Marston's may at any time require the Retailer to deliver up to Marston's those Products which have not been re-sold. If the Retailer fails to do so or if the power of sale has been revoked or ceased in accordance with this Agreement, Marston's may enter the premises of the Retailer or any third party where Products are stored or reasonably believed to be stored and re-possess them and for this purpose the Retailer grants Marston's its agents and employees an irrevocable right and licence to enter any premises where Products and any other such Products are or may be stored with or without vehicles during business hours.
- 6.15.5 The Retailer may not pledge or in any way charge by way of security any of Products which remain the property of Marston's.
- 6.15.6 Marston's shall be entitled to recover the price of Products together with any VAT payable thereon notwithstanding that property in any of Products has not passed from Marston's to the Retailer.
- 6.16 On termination of any trading arrangements between the Retailer and Marston's howsoever caused Marston's and the Retailer's rights contained within these provisions will remain in full force and effect.
- 6.17 If any part of these provisions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the remaining parts of these provisions shall not be affected.
- 6.18 The Retailer shall be responsible for ensuring that there are no discrepancies between the stock and cash (or cash equivalent) assets which should be held at the Marston's Branded Retail Outlet, following reconciliation of Products sold, cash (or cash equivalent) banking and stock ordered and delivered. Audits of such stock and cash (or cash equivalent) assets shall be undertaken on a monthly basis by or on behalf of Marston's as part of the Marston's Services or on weekly intervals if so required by Marston's. In the event that there is a discrepancy between the stock or cash (or cash equivalent) assets actually held and the stock or cash (or cash equivalent) assets which should be held of more than 1.5%, Marston's shall be entitled to deduct the value of the discrepancy from the Service Fee and to deduct an amount equal to the discrepancy from the Marston's Trade Account no less than 5 Working Days following the date on which the discrepancy was identified.
- 6.19 Subject to clause 6.18, the Retailer shall only be entitled to enter into contracts for Retailer Services on its own account and at its own cost without the prior written approval of Marston's in respect of the Marston's Branded Retail Outlet, subject to an annual maximum value per contract of £1,000 excluding VAT, in respect of the following services:
 - 6.19.1 day-to-day cleaning of the Premises;
 - 6.19.2 window cleaning;
 - 6.19.3 door staff;
 - 6.19.4 provision and maintenance of plants and flowers; and
 - 6.19.5 entertainment services at the Premises.
- 6.20 The Retailer shall ensure that any contract for Retailer Services shall last no longer than 3 months rolling, shall be terminable for any reason upon no more than 1 month's written notice, and the terms of such contract shall be recorded in writing, signed off by both parties and a copy shall be retained at the Premises.

6.21 The Retailer shall be entitled to procure from Marston's such number and type of gaming and non-gaming machines (each a "**Machine**") as the parties shall agree in writing in accordance with the terms of this Clause 6.21 and 100% of all income received in respect of each Machine shall belong to Marston's absolutely and be collected as Marston's direct.

6.22 The Machine float shall be provided by Marston's in accordance with clause 4.2.5 of this Agreement.

7 CHARGES

7.1 The Retailer shall, no later than the Commencement Date, pay to Marston's a deposit of £[●] excluding VAT. The deposit shall be non-refundable in the event of a breach by the Retailer of clause 5.1.3 or clause 7.2 or in the event of a termination in accordance with clause 12.2.

7.2 Marston's shall provide the Floats in the sum of £[●] on the first day on which the Retailer is granted access to the Premises. The Retailer shall within 4 weeks of the Commencement Date repay to Marston's £[●] by direct credit to the Marston's Trade Account to reimburse Marston's in respect of the Floats. Subject to the Retailer reimbursing Marston's and subject to clause 8.5, the Floats shall be refunded to the Retailer in the event of the expiry or termination of this Agreement.

7.3 The Retailer shall pay to Marston's a Management Charge each calendar week equal to [80]% of the Total Weekly Turnover.

7.4 Marston's may increase the Management Charge not more than once in any Agreement Year by not more than 1% in any Agreement Year, subject to a maximum increase of 5% in the Term (and any renewed Term thereafter) and the Service Fee shall decrease by the equivalent percentage accordingly.

7.5 Subject to clause 7.4, the Retailer shall be entitled to the Service Fee each calendar week which shall be paid to the Retailer by BACS transfer or by cheque at Marston's discretion, no less than 5 Working Days following the end of the week to which the Service Fee applies.

8 PAYMENT

8.1 The Retailer shall pay any and all expenses, costs and charges incurred by it in the performance of its obligations under this Agreement unless Marston's has expressly agreed beforehand in writing to pay such expenses, costs and charges.

8.2 The Retailer shall be responsible for the collection, remittance and payment of any and all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the operation of the Marston's Branded Retail Outlet.

8.3 If the Retailer fails to pay any amount due to Marston's under this Agreement on the due date, Interest shall be added to such amount for the period from and including the date of receipt (whether before or after judgment).

8.4 Marston's reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 in lieu of Interest.

8.5 Without prejudice to any other right or remedy, Marston's reserves the right to set off any claim it may have against the Retailer against any monies payable by it to the Retailer or against any monies (whether by way of deposit or otherwise) paid by the Retailer to Marston's.

8.6 Any dispute regarding any invoice or other request for payment shall be referred to the dispute resolution procedure set out in clause 17.

9 COMPLIANCE WITH LAWS

- 9.1 The Retailer shall comply with all relevant legislation in operating the Marston's Branded Retail Outlet, obtain any licences or permits necessary for operating the Marston's Branded Retail Outlet, and shall pay any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the operation of the Marston's Branded Retail Outlet.
- 9.2 The Retailer shall, where necessary, adapt the System and Operating Manual to ensure that the operation of the Marston's Branded Retail Outlet complies with the applicable local laws and submit the alterations to Marston's for approval, provided that Marston's approval shall not constitute a warranty or representation that such alterations have the effect intended by the Retailer.

10 INTELLECTUAL PROPERTY

- 10.1 The Retailer shall enter into a formal licence on Marston's standard form in respect of Marston's IPR connected to the Marston's Branded Retail Outlet if required to do so by Marston's.
- 10.2 Marston warrants that it is fully authorised to licence Marston's IPR connected to the Marston's Branded Retail Outlet and that such licences will not infringe the rights of any third parties.
- 10.3 The Retailer acknowledges that copyright in the Operating Manual vests in Marston's, and shall not take, and shall procure that no one else takes, any copies of the Operating Manual without Marston's prior written consent.
- 10.4 The Retailer acknowledges that ownership of domain names, web pages, web sites that use or refer to the Marston's Branded Retail Outlet or the business shall vest in Marston's, and the Retailer shall assign and shall procure the assignment of such ownership to Marston's, with full title guarantee and free from third party rights.
- 10.5 The Retailer acknowledges that nothing in this Agreement or the licences referred to at clause 10.1 shall operate to vest any right, title or interest in Marston's, the Trading Format, or the Operating Manual or other Intellectual Property connected to the Marston's Branded Retail Outlet in the Retailer.
- 10.6 The Retailer shall, if Marston's so requests, assist Marston's in registering any Trade Marks or other Intellectual Property but shall not obtain registration as the proprietor unless expressly authorised to do so by Marston's in writing.
- 10.7 The Retailer shall assign and shall procure the assignment of any New IPRs that arise in connection with the Marston's Branded Retail Outlet at the Premises, with full title guarantee and free from third party rights. Marston's licenses the Retailer to use those New IPRs, free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Retailer to operate the Marston's Branded Retail Outlet at the Premises. If this Agreement is terminated, this licence will automatically terminate.
- 10.8 If the Retailer becomes aware of any infringement or suspected infringement of the Trade Marks, or the Trading Format or any other Intellectual Property connected to the Marston's Branded Retail Outlet:
- 10.8.1 the Retailer shall notify Marston's immediately;
 - 10.8.2 Marston's shall have control over and, at its own cost, shall conduct any such proceedings in such manner as it shall determine; and
 - 10.8.3 the Retailer shall provide all reasonable assistance as Marston's may request.

11 INDEMNITY AND LIMITATION OF LIABILITY

- 11.1 The Retailer shall indemnify Marston's against any loss (including but not limited to the loss of cash or stock), cost or expense incurred by Marston's arising from any act, omission, neglect or default of the Retailer, its agents, employees, licensees or customers in connection with the Marston's Branded Retail Outlet.
- 11.2 The Retailer shall indemnify and keep indemnified Marston's from and against any and all claims, losses, liabilities or expenses suffered or incurred by Marston's as a result of or pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 arising from the transfer of the Retailer's employees whether to Marston's or another Retailer, after termination or expiry of this Agreement for whatever reason.
- 11.3 Nothing in this Agreement excludes or limits the liability of a party for death or personal injury caused by that party's negligence or for fraudulent misrepresentation.
- 11.4 Marston's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to an amount equal to the Management Charges received from the Retailer in the 12 months prior to the event or circumstance giving rise to the claim.

12 EXPIRY AND TERMINATION

- 12.1 This Agreement shall terminate automatically:
 - 12.1.1 on the expiry of the Term subject to clauses 3.1 and 3.2; and/or
 - 12.1.2 on the expiry or termination of the Lease for any reason.
- 12.2 Marston's may terminate this Agreement immediately at any time by written notice to the Retailer if the Retailer or the Individual:
 - 12.2.1 is disqualified from holding a Personal Licence, or is convicted of any offence which might result in the loss or suspension of such Personal Licence or which may jeopardise the Premises Licence, or causes any conditions to be applied to the Personal Licence or Premises Licence which Marston's believes may harm the Marston's Branded Retail Outlet in any way;
 - 12.2.2 fails to commence the Marston's Branded Retail Outlet within the timeframe specified by Marston's;
 - 12.2.3 fails to operate the Marston's Branded Retail Outlet in accordance with the System, the Operating Manual or any other instructions from Marston's;
 - 12.2.4 fails to provide any financial information or make any payment due to Marston's under this Agreement for a period of 3 Working Days after the information or sum has become due;
 - 12.2.5 purports to assign any rights or licences granted under this Agreement other than in accordance with the terms of this Agreement;
 - 12.2.6 fails to obtain any prior written approval or consent from Marston's expressly required under this Agreement;
 - 12.2.7 discloses or permits the disclosure of any of the Operating Manual or other Confidential Information (as defined in clause 18) other than as permitted by this Agreement;
 - 12.2.8 has committed a material or continuing default and, where this default is capable of remedy, has failed to remedy the default within 30 days of receiving a notice specifying the default and requiring its remedy;

12.2.9 is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 or if any step or proceeding is taken or made with regard to it for:

- a) a voluntary arrangement or composition or reconstruction of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrator, administrative receiver or similar officer of it or the whole or any part of its undertakings, assets, rights or revenues; or

any similar step or proceeding is taken or made in any jurisdiction to which it is subject;

12.2.10 is convicted of a criminal offence;

12.2.11 becomes subject to a change of Control or abandons the Marston's Branded Retail Outlet;

12.2.12 has provided false information about itself or the proposed business prior to entering into this Agreement and the Lease which Marston's relied on in deciding whether to enter into this Agreement and the Lease;

12.2.13 is abusive or violent towards or physically or verbally threatens any of Marston's employees; or

12.2.14 closes the Premises or stops trading for more than 5 working days without getting Marston's prior written permission.

12.3 Marston's may terminate this Agreement immediately at any time by written notice to the Retailer if the Premises are subject to enforced closure due to any reason which is or should reasonably have been within the control of the Retailer, or in the event of the loss of the Premises Licence for any reason.

12.4 Marston's shall be entitled to terminate this Agreement at any time following the Commencement Date, upon provision of no less than 6 months' written notice to the Retailer.

12.5 The Retailer shall be entitled to terminate this Agreement at any time following the Commencement Date, upon provision of no less than 6 months' written notice to Marston's.

13 CONSEQUENCES OF EXPIRY AND TERMINATION

13.1 Upon the expiry or termination of this Agreement for whatever reason, the Retailer and (if applicable) the Individuals shall:

13.1.1 cease to operate the Marston's Branded Retail Outlet, use the System and trade under the Trading Format and not hold themselves out as being the operator of the Marston's Branded Retail Outlet;

13.1.2 cease to use the IPR and do anything Marston's requests in respect of cancelling any registered licences;

13.1.3 return all copies of the Operating Manual in its possession to Marston's, and either return to Marston's, or comply with Marston's instructions with regard to disposing of, any stationery, paperwork, packaging or signs using or incorporating any IPR;

- 13.1.4 cease to contact or deal with customers in respect of the Marston's Branded Retail Outlet and give all Retailer Services contracts and information to Marston's, including details of enquires from such customers or potential customers;
 - 13.1.5 make any payments owing to Marston's or to creditors of the Retailer;
 - 13.1.6 transfer the ownership of the assets used in the Marston's Branded Retail Outlet and the Premises to Marston's;
 - 13.1.7 immediately cease operating any websites or domain names that refer to the Marston's Branded Retail Outlet or the business and assign or procure the assignment of all rights in such websites or domain names to Marston's at the Retailer's sole cost;
 - 13.1.8 immediately provide vacant possession of the Premises and leave the Premises in a clean and tidy state and condition free from rubbish and in compliance with its obligations in this Agreement, the Operating Manual and the Lease.
- 13.2 Upon the expiry or termination of this Agreement for whatever reason:
- 13.2.1 any right of action or remedy which shall have accrued, or shall afterwards accrue, to either party shall not be prejudiced or affected; and
 - 13.2.2 all provisions which are, expressly or impliedly, to survive this Agreement shall remain in force and in effect.
- 13.3 Subject to the completion of a satisfactory audit of stock, cash and inspection of the Premises by Marston's or its authorised representatives; and subject always to clause 8.5, where this Agreement is terminated in accordance with clause 12.4 or upon expiry of the this Agreement (but not where this Agreement is terminated in accordance with clause 12.2, the Retailer shall be entitled to the refund of the deposit set out in clause 7.1 and the Float set out in clause 7.2.

14 MARSTON'S STEP-IN RIGHTS

- 14.1 The Retailer agrees that Marston's shall be entitled (but not obliged) to step in and take over the operation of the Marston's Branded Retail Outlet:
- 14.1.1 where the Retailer is in breach of any of its obligations under this Agreement for more than 2 consecutive months; or
 - 14.1.2 from the date of notice of termination of this Agreement until expiry thereof or vacant possession of the Premises is provided, whichever is the later.
- 14.2 The Retailer shall provide Marston's with all assistance required by Marston's and shall not obstruct Marston's where Marston's steps in to operate the Marston's Branded Retail Outlet in accordance with clause 14.1 above.
- 14.3 Unless this Agreement is terminated, the period of step in shall cease when Marston's gives notice to the Retailer that it is satisfied that the events giving rise to the step in have ceased to be applicable.

15 NON-COMPETITION

- 15.1 For the duration of this Agreement, neither the Retailer nor the Individual shall:

- 15.1.1 operate the Marston's Branded Retail Outlet or any part of the System at any location other than the Premises or operate any business from the Premises other than the Marston's Branded Retail Outlet;
 - 15.1.2 solicit customers for the Marston's Branded Retail Outlet in any territory where Marston's has appointed an exclusive Retailer or which has been reserved by Marston's to itself; or
 - 15.1.3 either directly or indirectly, be involved within 3 miles of the Premises in a business similar to or competing with the Marston's Branded Retail Outlet .
- 15.2 For a period of twelve months following expiry or termination of this Agreement for whatever reason, the Retailer shall not directly or indirectly be involved in a business similar to or competing with the Marston's Branded Retail Outlet within 3 miles of the Premises.

16 INDIVIDUAL

- 16.1 The Individual hereby agrees to guarantee and indemnify the Retailer's obligations arising under this Agreement on the terms and conditions set out in schedule 4.
- 16.2 A breach of the Guarantee and Indemnity referred to in this clause 16 by the Individual shall constitute a material breach of this Agreement, which shall entitle Marston's to terminate the Agreement immediately.
- 16.3 The Individual shall:
- 16.3.1 hold at least 51% of the shares in the Retailer;
 - 16.3.2 be a director of the Retailer; and
 - 16.3.3 devote time and attention to ensure the smooth operation of the Marston's Branded Retail Outlet including attendance at the Premises during key trading sessions, if required to do so in the Operating Manual.
- 16.4 In the event of the death of the last of the Individuals, the personal representatives of such Individuals shall have 10 Working Days from the date of such death to notify Marston's whether they wish to sell the Marston's Branded Retail Outlet to Marston's or to a beneficiary of the Individuals or other third party, subject to Marston's consent and the conditions in clause 20 being complied with.
- 16.5 In the event of the incapacity of the Individuals at any time Marston's may (whether requested to do so by the Individuals or otherwise) at the sole cost of the Retailer which shall be recoverable as part of the Management Fee appoint a manager to ensure that the Marston's Branded Retail Outlet is operated in a satisfactory manner and preserve the goodwill associated with the Marston's Branded Retail Outlet pending the recovery of the Individuals.
- 16.6 In the event of the incapacity of the Individuals lasting for a continuous period of 10 Working Days or a total period of 20 Working Days Marston's may require the Retailer to dispose of the Marston's Branded Retail Outlet.

17 DISPUTE RESOLUTION

- 17.1 If any dispute arises between the parties under or in connection with this Agreement and it cannot be resolved by good faith negotiations between the parties' immediate contract representatives, it shall be escalated to senior management level within 5 Working Days of a written request from either of the parties.
- 17.2 If the dispute is not resolved within 5 Working Days from the date of escalation to senior management level, then the matter shall be referred to mediation.

18 CONFIDENTIALITY

- 18.1 In this clause 18, "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by Marston's to the Retailer whether before or after the date of this Agreement including, but not limited to, information relating to the Marston's Branded Retail Outlet, or any of Marston's other operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 18.2 During the term of this Agreement and for a period of 5 years after termination or expiry of this Agreement for any reason the Retailer:
- 18.2.1 shall not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
 - 18.2.2 shall not disclose Confidential Information to any person except with the prior written consent of Marston's except in accordance with clauses 18.3 and 18.4;
 - 18.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.
- 18.3 During the term of this Agreement the Retailer may disclose Confidential Information to any of its directors, other officers, employees, sub-contractors and suppliers (a "Recipient") to the extent that disclosure is necessary for the purposes of this Agreement.
- 18.4 Before disclosure of Confidential Information to a Recipient, the Retailer shall ensure that such Recipient is made aware of and complies with the Retailer's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement, however, the Retailer shall remain principally liable for any breach of the obligations of confidentiality in this clause 18 by a Recipient.
- 18.5 Clauses 18.2 to 18.4 do not apply to Confidential Information which:
- 18.5.1 is at the Commencement Date or becomes at any time after that date publicly known other than by the Retailer's or Recipient's breach of this Agreement;
 - 18.5.2 can be shown by the Retailer to Marston's satisfaction to have been known by the Retailer before disclosure by Marston's to the Retailer;
 - 18.5.3 is or becomes available to the Retailer otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure;
 - 18.5.4 is required to be disclosed by law.

19 FORCE MAJEURE

- 19.1 If a party (the "**Affected Party**") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:
- 19.1.1 provided that the Affected Party complies with clause 19.1.2 its obligations under this Agreement shall be suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
 - 19.1.2 as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other party (the "**Non-Affected Party**") in writing of:
 - a) the Force Majeure Event;
 - b) the date on which the Force Majeure Event started; and

- c) the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement.

19.1.3 the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement;

19.1.4 as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the Non Affected Party in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

19.2 If the Force Majeure Event continues for more than 3 months the Non-Affected Party may terminate this Agreement by giving not less than 30 days' notice in writing to the Affected Party.

20 ASSIGNMENT AND SUB-CONTRACTING

20.1 This Agreement is personal to the Retailer and the Retailer shall not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, this Agreement.

20.2 Notwithstanding clause 20.1, the Retailer may transfer the Marston's Branded Retail Outlet with the prior written consent of Marston's (not to be unreasonably withheld or delayed) if:

20.2.1 the Retailer has complied with all its obligations under, and there are no subsisting breaches of, this Agreement and the Lease;

20.2.2 the proposed purchaser meets Marston's minimum standards with respect to business experience, financial standing and any other relevant criteria including the successful completion of initial training; and

20.2.3 all payments due to Marston's have been made.

20.3 The Retailer shall not sub-contract the performance of any of its obligations under this Agreement.

20.4 The proposed purchase shall simultaneously accept a transfer of the Lease which (notwithstanding the terms of the Lease) Marston's will consent to where consent is provided to the transfer of this Agreement.

21 NOTICES

Any notice given by one party to the other under this Agreement must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given 2 Working Days after the date of posting. Notices shall be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in writing by one party to the other for the purpose of receiving notices after the date of this Agreement. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

22 FURTHER ASSURANCE

The Retailer shall at the request and cost of Marston's do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this Agreement.

23 SEVERANCE

- 23.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 23.2 If any provision of this Agreement is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

24 THIRD PARTIES

A person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

25 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other. Save where expressly stated in this Agreement, neither party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.

26 WAIVER AND CUMULATIVE REMEDIES

- 26.1 The rights and remedies provided by this Agreement may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of this Agreement or of a default under this Agreement shall not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 26.2 The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies provided at law or in equity.

27 VARIATION

With the exception of the Operating Manual, no variation or alteration of any of the provisions of this Retail Agreement shall be effective unless it is in writing and signed by or on behalf of each party.

28 ENTIRE AGREEMENT

- 28.1 This Agreement, together with the Operating Manual and any other documents referred to herein or in the Operating Manual, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes, cancels and nullifies any previous agreement between the parties relating to such matters.
- 28.2 Each of the parties acknowledges and agrees that in entering into this Agreement, the Operating Manual and the documents referred to in either, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 28.3 Nothing in this clause 28 shall operate to exclude any liability for fraud.

29 GOVERNING LAW AND JURISDICTION

29.1 This Agreement and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

28.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with this Agreement or the legal relationships established by or in connection with this Agreement.

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED for and on behalf of)
MARSTON'S PLC)
acting as attorney for) Director
[MARSTON'S PUBS LIMITED]

SIGNED by)
duly authorised for and on behalf of)
[RETAILER]) Director

SIGNED by **[INDIVIDUAL]**)
in the presence of:)

Signature of Witness
Name (in BLOCK
CAPITALS)
Address
.....
.....
.....

SCHEDULE 1
THE PREMISES

SCHEDULE 2
OPERATING MANUAL

SCHEDULE 3
EXCLUDED PROPERTY

SCHEDULE 4

GUARANTEE AND INDEMNITY

1 DEFINITIONS AND INTERPRETATION

1.1 In this schedule 4 the following definitions apply and in all other cases defined terms shall have the meaning ascribed to them in clause 1:

"Retailer's Liabilities" all money and liabilities of whatever nature now or at any time in the future due, owing or incurred from or by the Retailer to Marston's (whether or not jointly with anyone else) arising pursuant to the Retail Agreement and/or the Lease;

"Expenses" all losses, costs and expenses incurred by Marston's at any time in connection with the Retailer's Liabilities, the terms of this Guarantee and Indemnity or in preserving, defending or enforcing the terms of this Guarantee and Indemnity;

"Warranties" the representations and warranties set out in Annex 1 of this Guarantee and Indemnity.

1.2 References to paragraphs are to paragraphs of this Guarantee and Indemnity.

1.3 All headings and titles are inserted for convenience only and do not affect the interpretation of this Guarantee and Indemnity.

2 GUARANTEE AND INDEMNITY

2.1 In consideration of Marston's entering into the Retail Agreement [and/or the Lease] with the Retailer and in consideration of the sum of £1 (the sufficiency and receipt of which is acknowledged by the Individual), the Individual, at the request of the Retailer, as primary obligor, hereby covenants and agrees:

2.1.1 unconditionally and irrevocably to guarantee the due and punctual payment and discharge to Marston's on demand of all the Retailer's Liabilities, present and future indebtedness and other liabilities to Marston's, whether actual or contingent and whether incurred solely or jointly and of all interest, charges and expenses payable by the Retailer to Marston's on any account whatsoever; and

2.1.2 to pay on demand to Marston's as principal debtor by way of indemnity any item or amount which Marston's claims to be included in the Retailer's Liabilities but which is not recoverable from the Individual under this Guarantee and Indemnity on the basis of the guarantee at paragraph 2.1.1.

3 EXPENSES

The Individual hereby covenants and agrees to pay the Expenses on demand to Marston's as principal debtor on a full indemnity basis.

4 CONTINUING SECURITY

The Individual's obligations under the terms of this Guarantee and Indemnity are personal and continuing and shall not be satisfied, discharged or affected by any intermediate payment or settlement of account.

5 PAYMENT

5.1 The Individual will make all payments to Marston's under the terms of this Guarantee and Indemnity in full, without set-off or counterclaim (save as required by law) including without limitation Marston's costs and expenses.

5.2 A certificate by Marston's of the amount so payable shall be conclusive unless manifestly incorrect. Marston's may make demand on the Individual without prior demand on the Retailer.

5.3 If at any time the Individual is required by law to make any deduction or withholding in respect of taxation from any payment due under this Guarantee and Indemnity to or for the account of Marston's then the Individual shall pay to Marston's such sum as will, after the deduction or withholding has been made, leave Marston's with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

5.4 A demand shall be sufficiently served on the Individual if made to them at their respective addresses set out above (or such other address as is notified in writing by the Individual to Marston's, such notice to be effective on receipt) by letter or facsimile and shall be effective in receipt.

5.5 The Individual agrees that Marston's may at any time:

5.5.1 use any money it receives under the terms of this Guarantee and Indemnity or otherwise in relation to the Retailer's Liabilities to pay off or reduce any of the Retailer's Liabilities it chooses; and

5.5.2 place on or take off a suspense account any monies received in relation to the Retailer's Liabilities, whether from the Individual or otherwise, in order to preserve the rights of Marston's to prove for the full amount of the Retailer's Liabilities against the Retailer or any other party, save that the interest due to Marston's in respect of any and all monies owed by the Retailer in connection with the Retailer's Liabilities shall be calculated by reference to the whole of the amount due, less an amount equal to that held in the suspense account.

5.6 If the Retailer is wound-up, Marston's may prove in such winding up for all the indebtedness and shall be entitled to retain the whole of the distribution paid to it, to the exclusion of any rights of the Individual as debtor in competition with Marston's, until any such claim of Marston's has been satisfied in full.

6 INDIVIDUAL'S OBLIGATIONS

6.1 The Individual represents and warrants that the Warranties are true and accurate as at the date of this Retail Agreement.

6.2 The Individual shall not be discharged by time or any other concessions given to the Retailer or any third party by Marston's or by anything Marston's may do or omit to do or by any other dealing or thing which, but for this provision, would or might discharge the Individual.

- 6.3 This Guarantee and Indemnity shall:
- 6.3.1 be in addition to and independent of any other guarantee, indemnity or security held by Marston's at any time and will not be affected by the same;
 - 6.3.2 be a continuing guarantee, shall not be discharged by any intermediate settlement of the indebtedness and shall remain in effect until the Retailer's Liabilities are discharged in full;
 - 6.3.3 remain in force notwithstanding (and the Individual's obligations under this Guarantee and Indemnity shall not be impaired affected or discharged by) any failure, defect, illegality or unenforceability of any of the Retailer's obligations in respect of the Retailer's Liabilities or any other matter which might operate to prevent Marston's enforcing the obligations of the Retailer;
 - 6.3.4 where given by more than one person, be binding on each such person jointly and severally; and
 - 6.3.5 enure to the benefit of Marston's, its successors and assigns.
- 6.4 Marston's may demand payment under the terms of this Guarantee and Indemnity without making a demand or taking any other action against the Retailer or any other surety or Individual of the Retailer.
- 6.5 Marston's may without notice to the Individual and without the Individual's consent:
- 6.5.1 vary in any way the Retail Agreement and the Retailer's obligations thereunder;
 - 6.5.2 renew, refrain from enforcing or release any present or future security or guarantee or indemnity which Marston's holds from the Retailer or any other person;
 - 6.5.3 deal or not deal with any right it might have against the Retailer or any other person; and/or
 - 6.5.4 give time to the Retailer or any other person to pay or settle any claim which Marston's may have or enter into any agreement to accept a lesser sum in full and final settlement,
- and in each case the Individual's liability to Marston's under the terms of this Guarantee and Indemnity will not be released or reduced.
- 6.6 The Individual's obligations will not be affected by:
- 6.6.1 any variation, release or waiver of the Retailer's Liabilities;
 - 6.6.2 the Retailer's Liabilities reducing to nil or fluctuating;
 - 6.6.3 the Retailer being wound-up or entering into any insolvency proceedings or reconstruction;
 - 6.6.4 the Individual's death, bankruptcy or mental incapacity;
 - 6.6.5 anything else which might otherwise discharge the guarantee given by the Individual at paragraph 2.

7 RESTRICTIONS

- 7.1 The Individual hereby undertakes and agrees that he will not without the prior written consent of Marston's:
- 7.1.1 claim any right or set-off or counterclaim against the Retailer;
 - 7.1.2 claim or prove for any payment from the Retailer;
 - 7.1.3 take any security or the benefit of any rights against the Retailer;
 - 7.1.4 make any claim in the insolvency of the Retailer;
 - 7.1.5 accept repayment of any amount owing by the Retailer to him;
 - 7.1.6 without the prior written consent of Marston's, take any promissory note, bill of exchange, mortgage, charge or other security, of any kind from the Retailer in respect of its liability to Marston's pursuant to this Guarantee and Indemnity;

in each case whether in relation to any counter-indemnity from the Retailer to the Individual or otherwise.

- 7.2 The Individual hereby undertakes and agrees that he will not without the prior written consent of Marston's:
- 7.2.1 enter into any other personal guarantee or indemnity, whether in relation to the debts and liabilities of the Retailer or otherwise; or
 - 7.2.2 grant any security over personal property to any personal or business creditor, whether in relation to the debts and liabilities of the Retailer or otherwise; or
 - 7.2.3 do or omit to do anything which might lead to the appointment of a receiver or liquidator over any or all of the assets of the Retailer or allow the Retailer to make a composition with or assignment for the benefit of any of its creditors or commit any act of insolvency or enter into voluntary liquidation.

- 7.3 The Individual shall not be permitted to assign or sub-contract any of its obligations under this Guarantee and Indemnity.

8 GENERAL

- 8.1 The Individual agrees that Interest will be calculated both before and after judgment on a daily basis and compounded in accordance with the usual practice of Marston's from time to time.
- 8.2 The Individual agrees to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as Marston's may from time to time require for the purpose of giving Marston's the full benefit of this Guarantee and Indemnity.

ANNEX 1

REPRESENTATIONS AND WARRANTIES

1 Powers

The Individual has the power and authority to execute, deliver and perform its obligations under this Guarantee and Indemnity and the transactions contemplated by them.

2 Non-contravention

The execution, delivery and performance of the obligations in, and transactions contemplated by this Guarantee and Indemnity does not and will not contravene any document, agreement or instrument binding on the Individual or its assets, or any applicable law or regulation.

3 Authorisations

The Individual has taken all necessary action and obtained all required or desirable consents to enable it to execute, deliver and perform its obligations under this Guarantee and Indemnity and to make this Guarantee and Indemnity admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

4 Binding obligations

The Individual's obligations under this Guarantee and Indemnity are, subject to any general principles of law limiting obligations, legal, valid, binding and enforceable.

5 Litigation

No litigation, arbitration or administrative proceedings are taking place, pending or, to the Individual's knowledge, threatened against it or any of its assets.

6 Assets not immune to action

None of the Individual's assets is entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement).

7 No default

No event or circumstance is outstanding which constitutes a default under any deed or instrument which is binding on the Individual, or to which its assets are subject, which might have a material adverse effect on the Individual's ability to perform its obligations under this Guarantee and Indemnity.

8 Ranking of obligations

The Individual's payment obligations under this Guarantee and Indemnity rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

9 Governing law

The choice of English law as the governing law of this Guarantee and Indemnity will be recognised and enforced in the Individual's jurisdiction of incorporation and any judgment

obtained in England in relation to this Guarantee and Indemnity will be recognised and enforced in that jurisdiction.