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**[Subject to contract]**

Date: 2001

# Encyclopaedia Precedent Restaurant Franchise Agreement

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**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_ 2001

**BETWEEN:**

- (1) [ \_\_\_\_\_ ] the registered office of which is [ \_\_\_\_\_ ] (otherwise called the “**Franchisor**”, “**we**”, “**our**”, “**ourself**”, “**us**”);  
and
- (2) [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ]  
the registered office of which is [ \_\_\_\_\_ ]  
(otherwise referred to as the “**Franchisee**”, “**you**”, “**yours**” or “**yourself**”).

**WHEREAS:**

- (A) We have developed the Buster Burger Concept and have established a reputation and distinctive image with the public for the Buster Burger Restaurant.
- (B) We are the proprietors of the Marks which are known as representing high standards of quality family oriented restaurants.
- (C) We wish to expand our franchised network and are therefore willing to grant to you the rights set out herein to enable you to operate a Buster Burger Restaurant from the Premises.
- (D) You desire the right during the continuance of this Agreement to operate a Buster Burger Restaurant from the Premises in the Territory.
- (E) You will enter into a Lease in respect of the Premises.
- (F) You acknowledge that you alone will carry the risk of operating Your Buster Burger Restaurant.
- (G) You acknowledge that you have taken full legal and financial advice on this Agreement prior to its execution.

**WHEREBY IT IS AGREED** as follows:

**1. Definitions**

- 1.1 The following expressions which are frequently used in this Agreement shall have the meanings attributed to them below. Other less frequently used expressions are defined in the body of this Agreement.



the “ <b>Management Fee</b> ”	shall be [ ] pounds [(£ )] per [hour] per person (as increased from time to time plus [ ] per mile travel (as increased from time to time) plus the reasonable costs of hotels and meals plus VAT
the “ <b>Manual</b> ”	is the operating manual, which shall contain full details of the System and the operation of the Buster Burger Restaurants. It includes all updates and other changes made to it by us from time to time
the “ <b>Marks</b> ”	are the “ <b>Buster Burger</b> ” trade mark described in Schedule 4
the “ <b>Menu</b> ”	the selection of food and drink [set out on our standard form menus] to be offered to customers as agreed with us from time to time
the “ <b>Premises</b> ”	are those premises located at [ ]
the “ <b>Promotion and Advertising Fee</b> ”	is a monthly contribution to a national/ regional advertising and promotion fund in a sum equivalent to [two and one half percent (2½%)] of the monthly gross turnover (exclusive of VAT) plus VAT thereon
the “ <b>Service Fee</b> ”	is a monthly service fee in a sum equivalent to [eight and a half percent (8½%)] of your monthly gross turnover (excluding VAT) [in relation to all food, beverages, wines and spirits and any other product sold or service provided at the Premises
the “ <b>System</b> ”	the methods of restaurant operation developed by us the using the Know-How as set out in the Manual or otherwise communicated to franchisees
the “ <b>Term</b> ”	is a period of ten (10) years, commencing the 1st day of April 2002
“ <b>VAT</b> ”	is Value Added Tax

**“Your Buster Burger Restaurant”**

is your individual restaurant as one of our franchisees operating as a Buster Burger Restaurant under this Agreement

- 1.2 The headings in this Agreement are for convenience only and do not affect its interpretation.
- 1.3 In this Agreement, the words “**include**”, “**includes**”, “**including**” and “**such as**” are to be construed as if they were immediately followed by the words “**without limitation**”.
- 1.4 In this Agreement, a person will be deemed to be “**affiliated**” to an Affiliate .
- 1.5 In this Agreement, unless the context clearly indicates another intention, a reference to:
- (a) any gender includes other genders;
  - (b) the singular includes the plural and vice versa;
  - (c) a clause, schedule or party is a reference to a clause of or a schedule or party to this Agreement. The Schedules and Recitals form part of this Agreement and any reference to this “**Agreement**” includes the Schedules and Recitals;
  - (d) Obligations undertaken by more than a single person or company are joint and several obligations;
  - (e) a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision;
  - (f) a document is a reference to the document as from time to time supplemented or varied;
  - (g) writing includes facsimile transmission, electronic mail and similar means of communication;
  - (h) a number of days will be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day which is not a normal working day in England in which case the last day will be the next succeeding day which is a normal working day in both England; and
  - (i) any reference to a person shall include natural persons and partnerships, firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted.



## **2. Conditions Precedent and Rights Granted**

### Rights Granted

We grant to you during the Term and subject to the terms and conditions hereof the rights to carry on a Buster Burger Restaurant from the Premises and use the Marks in accordance with this Agreement.

## **3. Term and Renewal**

3.1 Subject as herein appears this Agreement shall be for the Term.

3.2 We will grant you a Renewal if;

- (a) you give us written notice of such desire no more than nine (9) months nor less than six (6) months prior to the end of the Term;
- (b) at the time such notice is given this Agreement is valid and you are not in breach nor have, during the Term, been in persistent breach of your obligations under this Agreement; and
- (c) you undertake to carry out at your own expense within a period of thirty (30) days (or such longer period as may be specified by us) from the date of the notification of our requirements to you, such works of renovation modernisation and refurbishment as we specify including without limitation the replacement of such fixtures, signs, furnishings, vehicles and equipment as may be necessary to bring the Premises up to the then current standards of design and decor of the Buster Burger Business and to comply with any relevant statutory or other requirements or regulations.

3.3 The renewal agreement will operate from the date of the expiry of this Agreement.

3.4 We confirm that you will be under no obligation, having served the notice referred to in Clause 3.2, to accept the terms of the standard agreement.

3.5 Upon renewal there will be no renewal fee charged but you will pay our legal and administrative costs incurred in connection with such renewal agreement and any associated documentation.

3.6 It is a condition precedent of the grant of such renewal that prior to entering into the new agreement you waive all and any claims you have or may have against us in respect of this Agreement, the Lease or related matters.

- 3.7 Your right to require us to enter into the renewal agreement shall cease and be of no effect if after the service of the notice referred to in Clause 3.2 above and prior to the entry into of the renewal agreement you shall fail to carry out the works and replacements referred to in Clause 3.2(c) above or shall commit a breach of this Agreement such as to justify the termination of this Agreement or which may result in its termination.
- 3.8 You will not be under any obligation to pay any sum stated to be an initial fee and we will not be under any obligation to provide any of the initial obligations or any of the other obligations that are not appropriate on the renewal in the renewal agreement.

#### **4. Premises**

- 4.1 You shall either hold a Lease in respect of the Premises. The terms of the Lease shall have first been agreed in writing by us.
- 4.2 If you hold a Lease you shall:
- (a) observe and perform the agreements obligations covenants and stipulations contained or referred to in the Lease;
  - (b) comply with any notices served on you by any person entitled to the reversion expectant on the term of the Lease and to give us a copy of and full particulars of any such notices;
  - (c) notify us and keep us fully informed of any rent review which takes place pursuant to the Lease and to notify us of any revised rent which is either agreed or determined pursuant to the Lease;
  - (d) enforce the agreements obligations covenants and stipulations on the part of any landlord contained or referred to in the Lease;
  - (e) not vary or agree to vary or to surrender or to agree to surrender the Lease;
  - (f) not assign or otherwise dispose of the Lease to any person other than a Purchaser of Your Buster Burger Restaurant pursuant to and in accordance with the provisions contained in Clause 13.
- 4.3 You shall notify us and give us a copy of and full particulars of any notices received by you relating to the Premises (including any notices served by any statutory public or other competent authority or by the owner or occupier for the time being of any neighbouring or adjoining properties) and to comply with such notices where any owner or occupier for the time being of the Premises is obliged to do so.

## **5. Our Initial Obligations**

We shall:

- 5.1 provide you with the Initial Training;
- 5.2 at our reasonable discretion assist you to establish and operate a Buster Burger Restaurant from the Premises including advice with regard to alterations, refurbishment, renovation or other work necessary for the conversion of the Premises so that it is suitable for the operation of a Buster Burger Restaurant. We will provide you with access to our architects for the purpose of producing a design for the interior of Your Buster Burger Restaurant using the Trade Dress which we must approve;
- 5.3 provide you with the Manual. The Manual and the copyright therein shall at all times remain our property. The term Manual includes all updates and other changes made to it by us from time to time;
- 5.4 advise you on the Equipment that you require to commence Your Buster Burger Business and to provide you with the Initial Package.

## **6. Our Continuing Obligations**

We shall:

- 6.1 train you in the System by providing introductory and periodical refresher courses at such premises and, as and when we, in our full discretion, deem necessary;
- 6.2 give you, free of charge, such reasonable continuing assistance and advice as we consider necessary for the efficient running of Your Buster Burger Restaurant as and when we consider it to be necessary to provide 'on the spot' help and advice;
- 6.3 in addition to the reasonable continuing assistance and advice given to you by us under Clause 6.2 above, help you with Additional Support at the cost described in Clause [ ].
- 6.4 advise on composition of menus, preparation of food and selection of beverages and to update the Menu on a regular basis;
- 6.5 advise you in relation to advertising and public relations;
- 6.6 advise you in relation to staffing levels;
- 6.7 develop and change the Buster Burger Concept as we deem to be appropriate;

- 6.8 ensure that the Manual shall be kept up to date with any alterations and/or improvements in the System and the operation of the Buster Burger Business. In the event of any dispute, as to the content of the Manual, the authentic copy of the Manual shall be the copy kept as such by us;
- 6.9 in order to ensure that the Buster Burger Concept is not diluted and the Buster Burger Restaurant is operated to a consistently high standard and to maintain the common identity and reputation of the franchise, review and audit the Your Buster Burger Restaurant regularly or as often as we deem necessary. You shall, at our request, provide or ensure that there is provided to us all information and documentation and other matters required by us in order for us to carry out such quality control and without prejudice to the generality of the foregoing you will provide us with such confirmation as we require in connection with quality control on such regular basis as determined and notified by us to you;
- 6.10 keep you fully informed of all relevant public health, environmental and other regulations impacting upon Your Buster Burger Restaurant.

## **7. Your Obligations Concerning the Marks**

- 7.1 We authorise you to use the Marks solely for the operation of Your Buster Burger Restaurant and only at the Base or on the [Liveried Vans] and in advertising Your Buster Burger Restaurant for so long as this Agreement subsists and any such usage will be in accordance with the reasonable directions.
- 7.2 You undertake not to do anything to prejudice or damage our goodwill in the Marks or our reputation, and you shall not do anything which is likely to bring the Marks into disrepute. In particular you will operate Your Buster Burger Restaurant only under the Marks and will use the Marks without prefix or suffix. You will not use the Marks as part of your corporate or other name.
- 7.3 If you become aware of any infringement of the Marks by any other party trading with Marks similar or identical to the Marks, you shall immediately notify us thereof in writing but will take no other action against the infringer save as to assist us in any action we may take, in accordance with Clause 7.13 below.
- 7.4 You will use the Marks in connection with the System and the Buster Burger Restaurant, and shall not use any other names in connection with the System and the Buster Burger Restaurant.
- 7.5 You will comply with all reasonable requirements from time to time laid down by us as regards the use and presentation of the Marks.

- 7.6 You will ensure that the Premises and any items regularly used by you in operating a Buster Burger Restaurant, shall carry such words devices and/or designs and in such prominence and colour, as may be specified by us from time to time, complying at all times with Clause 9.33 (Notice of Status) below.
- 7.7 Where required by us you will join with us at our cost and expense in making any application or applications to record this and/or other Trade Mark Licences at such Trade Mark Registry as we require and conform to the terms of such Licence.
- 7.8 Any additional goodwill generated by you for the Marks will be our sole property.
- 7.9 You will under no circumstances apply for registration of any trade or service mark in respect of the Marks or any part of them or colourable imitations of the same.
- 7.10 You will in all representations of the Marks used in Your Buster Burger Restaurant append in a manner approved by us such inscriptions as are usual or proper for indicating that the Marks are unregistered where this is the case. When the Marks are registered you will, in all representations of the Marks used in Your Buster Burger Restaurant, append in a manner approved by us such inscriptions as are usual or proper for indicating that the Marks are registered.
- 7.11 No warranty either express or implied is given by us with respect to the validity of the Marks.
- 7.12 We reserve the right to substitute, add to and/or withdraw those trade marks and other indicia which comprise the Marks at the date of execution of this Agreement if the present Marks can no longer be used or if we, in our sole discretion, determine substitution of different Marks will be beneficial to the Buster Burger Restaurant. In such circumstances, the use of substituted Marks shall be governed by the terms of this Agreement, and you will not be eligible for any compensation for such substitution.
- 7.13 You will use the Marks only in accordance with the System and the standards and specifications associated with and symbolized by the Marks.
- 7.14 You will not use the Marks to incur any obligation or indebtedness on our behalf.

## **8. Your Obligations**

In order to maintain uniform high standards of the Buster Burger the System and the Buster Burger Restaurants, to protect our intellectual property rights and maintain the common identity and reputation of the Buster Burger Restaurants, you hereby agree:

## 8.1 The Premises

(a) *Decor*

to ensure that the Premises are painted, cleaned, maintained, decorated and fitted out in accordance with our requirements from time to time;

(b) *Fitting-Out*

to ensure as soon as reasonably possible after signing this Agreement that the Premises are altered, refurbished, equipped, fitted-out and decorated in accordance with our requirements and to purchase the Equipment necessary to establish and operate Your Buster Burger Restaurant from us or approved suppliers including any suppliers nominated by you and approved by us;

(c) *Liquor Licence*

to ensure that at all times there is in force at the Premises a valid Justices' On-Licence or Part IV Justices' Restaurant Licence and where necessary a Public Entertainment Licence or Performing Rights Society ("PRS") or Phonographic Performance Limited ("PPL") Licence and you shall operate Your Buster Burger Restaurant in total conformity with the terms of the said Justices' Licence, Public Entertainment Licence or PRS or PPL Licence and will comply with all conditions, undertakings, terms, regulations and directions attached to such licences and to adhere at all times to the directions of the Licensing Committee for the petty sessions area in which the Premises are situate and the directions of the liquor licensing officer of the police, the officers of the local authority and the fire authority in relation to the operation of the licensed premises;

(d) *Use of the Premises*

not to carry on Your Buster Burger Restaurant from any location other than the Premises. The Premises must satisfy all planning and environmental and health and safety requirements. You must ensure that food and drink is prepared and dispensed by staff and/or equipment hygienically and free from contamination and adulteration and that the Premises are at all times kept clean and free from waste or litter and to ensure that the Premises at all times comply with the relevant hygiene and public health regulations and the Packaging Waste Regulations. If we at any time are reasonably of the opinion that you are not complying with your obligations under this Clause, we may without prejudice to any other remedies available under this Agreement, give to you a written notice of the steps we require that you take in order to ensure compliance with these obligations and the time limit by which you must have

complied failing which we shall have the right to terminate this Agreement. You will keep the Premises in a good state of repair and decoration in conformity with the terms of the Lease or Underlease of the Premises. You will ensure that you at all times have appropriate consents which are necessary to enable you to carry on **Your** Buster Burger Restaurant from the Premises. You will only operate Your Buster Burger Restaurant from the Premises for so long as we approve them as being consistent with the standards associated with a Buster Burger Restaurant;

## 8.2 Operations

(a) *Carry on Your Buster Burger Restaurant Business*

to operate Your Buster Burger Restaurant under the Marks and no other name and use your best endeavours to promote the Marks;

(b) *Changes to Concept and Menus*

to accept and put into practice such changes to the Buster Burger Concept and the Menus as we in our sole discretion deem fit;

(c) *Charges*

not to supply food or drink (other than to remedy previously provided sub standard food or drink ) without making a proper charge therefor;

(d) *Competition*

during the currency of this Agreement or any Renewal thereof, not to be directly or indirectly engaged concerned or interested in a restaurant business similar to the Buster Burger Restaurants where it would compete with us or one of our franchisees including a financial interest in such a restaurant business that may enable you to influence its economic conduct (but excluding financial interest which does not allow you to influence the economic conduct of such a business);

(e) *Complaints and Inspections*

you must notify us of all material customer or other complaints received by you within twenty-four (24) hours of your receiving the same. You must handle all complaints in such way as we shall from time to time direct. Failing this, we shall be entitled to handle such complaints directly as we, in our complete discretion, think fit, after consultation with you and we may require that you make a full refund of the cost of the meal and any drinks to the

customers concerned. If a customer should commence legal proceedings against you in relation to any food or drink served at Your Buster Burger Restaurant, you must notify us immediately and we shall have the option of taking conduct of the proceedings on your behalf. If you are visited or receive notice that you will be visited by an Environmental Health Trading Standards, or Customs & Excise Officer in connection with a customer complaint regarding any food or drink served at the restaurant or otherwise you must notify us immediately and send us without delay copies of all reports and correspondence and details of any proceedings commenced against you;

(f) *Compliance with Regulations etc*

to at all times comply with all relevant British, European and other health and safety standards or regulations relating to the storage preparation and storing of food stuffs and all statutory and other legal requirements and regulations of local authorities and other bodies;

(g) *Confidentiality and Undertakings*

not to;

- (i) divulge or communicate to any person (other than those whose province it is to know the same or upon our instructions or with our approval), nor
- (ii) use for your own purposes or for purposes other than Your Buster Burger Business,

any of our trade secrets or other confidential information which you may have received or obtained during the Term of this Agreement or any renewal thereof.

You will not reveal to or discuss with the press or any other third party and will ensure that your officers and employees do not reveal to or discuss with the press or any other third party any details of any dispute or disagreement between us and you or between us and any other third party. Such information is confidential.

You will use your best endeavours to prevent the publication or disclosure by any other person of any of such trade secrets or other confidential information. This restriction will apply indefinitely but will cease to apply to information which has come into the public domain other than by way of your breaching this Clause. You will procure that all of your employees and sub-contractors sign our approved form of employment contract immediately prior to



commencing their employment with you, and that your directors sign an undertaking of confidentiality and non-competition in the form contained in Schedule Ten;

(h) *Credit Cards and other schemes*

to participate in any credit card or similar scheme operated or to be operated by us including but not limited to the “Buster Burger Bonus Bonanza” gift token scheme and comply with the terms of such schemes;

(i) *Customers' access to information*

not to withhold information legally required to be given to customers nor make any misleading warranties or representations in respect of the Buster Burger Concept in the conduct of Your Buster Burger Restaurant;

(j) *Diligence*

to use your best endeavours and maintain the highest standards in all matters connected with the Buster Burger Restaurant and to carry on Your Buster Burger Restaurant diligently and in a manner in all material respects reasonably satisfactory to us and as may be reasonably required by us from time to time to maintain our image and reputation and not to conduct Your Buster Burger Restaurant or use the Marks in any way which may adversely affect the reputation of the Buster Burger Restaurant, franchise network or the Marks;

(k) *Employee Training*

to ensure that all your employees are adequately trained as specified in the Manual before actually working in Your Buster Burger Restaurant and retrained by you as and when we deem necessary and not to allow any chef or any person responsible for the management of Your Buster Burger Restaurant to be engaged in or assist with Your Buster Burger Restaurant unless such person has undergone training and displayed a level of competency acceptable to us. At our request you will release your employees on full pay, to us for training upon not less than five (5) working days notice for no more than [one (1)] [five (5)] working days every six (6) calendar months, provided that only one (1) employee is to be so released at any one time and you will be responsible for the cost of salaries and all travel and accommodation and subsistence costs;

(l) *Hours*

to carry on Your Buster Burger Restaurant from the Premises for a minimum of seven (7) days a week for at least a minimum between the hours of 12 noon and 11pm or such other minimum opening hours as we at our sole discretion shall decide;

Further to ensure that the telephone used by you is answered by a competent individual between the hours of 10am and 11pm all year round. An answerphone should be used outside of these hours;

*(m) Inspection and Access to Employees and Customers*

to permit us and/or our agent without any further or other authority or notice, (and, if necessary make arrangements to enable us and/or our agent) to visit the Premises and inspect the quality of Your Buster Burger Restaurant and the Buster Burger Concept and to speak to customers and your employees at the Premises or elsewhere about Your Buster Burger Restaurant and the Buster Burger Concept so as to ensure that the standards associated with the Marks are being achieved and maintained;

*(n) Menus and Merchandise*

To only use the Menus in Your Buster Burger Restaurant and to sell such other merchandise as we deem appropriate from time to time;

*(o) Minimum Charge*

to carefully consider charging the prices which are from time to time recommended by us;

*(p) Misappropriation of Funds*

in order to protect the reputation of the Buster Burger Restaurants and the goodwill in the Marks you must not:

- (i) withhold, misdirect or appropriate for your own use any funds withheld from your employees' wages for any of such employees' taxes, insurance or other benefits; and/or
- (ii) generally fail to deal fairly and honestly with your employees or customers; and/or
- (iii) knowingly permit or having discovered the facts fail to take any action against or to discharge any agent or employee who has embezzled any funds or property of any of your other employees and/or customers;

(iv) employ any member of staff without making proper deductions for income tax and National Insurance contributions as required by law or employ any member of staff who is not permitted legally to work in the United Kingdom;

(q) *Purchase of foodstuffs and other drinks*

Due to the importance of providing only premium quality food and drink at competitive prices in the Buster Burger Restaurants and in order to protect our intellectual property rights, maintain the common identity and reputation of the network and to enable you and other franchisees to enjoy the benefits of bulk purchase, prior to commencing Your Buster Burger Restaurant and for the Term of this Agreement and any Renewal thereof to purchase any food and drink, deemed necessary for you by us from us, our other franchisees, or channels of distribution or other third parties approved by us. You will in particular purchase and display on each table in Your Buster Burger Restaurant, the Buster Bazooka Sauce.

Any products purchased by you from us shall be purchased on our standard terms and conditions of business as notified to you from time to time;

(r) *Quality Control*

to fully co-operate with and comply with and use your best endeavours to ensure that any third party co-operates with us and complies with all our requests for information, documentation or other matters in the course of the quality control activities carried on by us and to comply with and carry out and to use your best endeavours to ensure that any third party complies with and carries out all of our instructions and requests aimed at ensuring quality control;

(s) *Stationery*

to ensure that all letter paper invoices and other stationery used by you in connection with Your Buster Burger Restaurant shall be in the form designated by us and have our prior approval;

(t) *Suppliers*

we may from time to time review the quality of food and drink purchased by you from suppliers to ascertain if they comply with our objective quality standards. If we feel that an item of food or drink does not meet with our objective quality standards we will notify you of that fact and ask you to purchase that item from an alternative supplier;

(u) *Telephone Lines*

to subscribe for three (3) or more telephone lines, as directed by us, to support a telephone line specifically for the restaurant the EPOS System and the credit/debit card machines used in Your Buster Burger Restaurant. You must only use these lines in connection with Your Buster Burger Restaurant;

(v) *Till System*

to (at our request) install and operate at your own expense an electronic point of sale till linked to our central computer so that we have daily access from our head office to the till receipts which shall include all takings of Your Buster Burger Restaurant for the period in question. You will at all times comply with the provisions and obligations imposed by the Data Protection Act 1984 (or any legislation that replaces it) and the Data Protection Principles set out therein in storing and processing personal data;

(w) *VAT*

To at all times during the Term of this Agreement and any Renewal thereof maintain your registration with HM Customs & Excise for VAT.

### 8.3 General

(a) *Admissions and Statements*

not to make any admission of liability and/or pay any damages without our consent. You will also make no statement or otherwise directly or indirectly pass any information to the Press or any other third party regarding any dispute or potential dispute between you and us or between us and any other of our franchisees. If you do so this will be a material breach of the terms of this Agreement.

(b) *Branding*

to conform with our reasonable requirements regarding the branding of Your Buster Burger Restaurant. You will prominently display the Marks in Your Buster Burger Restaurant both internally and externally;

(c) *Disclosure*

on entering into this or any other agreement or transaction with us during the continuance of this Agreement to make full disclosure of all material facts or circumstances and of everything known to you respecting the subject matter of

such contract or transaction which would be likely to influence our conduct including any material fact concerning your or if you are a company your officers' ability to hold a liquor licence of any type for operating a restaurant or your or their fitness for running a restaurant business;

(d) *Employees*

to ensure that you retain at all times to our satisfaction personnel sufficient in number and ability adequately to service Your Buster Burger Restaurant and to ensure that the terms and conditions of employment or engagement of such personnel are acceptable to us. You shall ensure that an experienced chef or chefs either trained by us or by you or as we deem necessary and conversant with the System and in particular the recipes and cooking requirements thereof shall prepare and cook the food on the Premises. In particular you shall ensure that a head chef is appointed capable of managing the kitchen and in particular organising purchases, portion control, cleanliness and the attaining of projected gross margins. You shall be responsible for the cost of all your employees (including the chef or chefs) including wages, national insurance contributions, sick and holiday pay.

You shall ensure that all your employees conduct themselves in such manner as not to discredit or adversely affect the reputation of the Buster Burger Concept or the Marks. Such employees shall at all times be clean and tidily clothed in such clothing as we shall at our discretion designate. You will comply with all instructions given to you by us with regard to the cleanliness, clothing, appearance or demeanour of your employees which in our reasonable opinion are desirable in order to maintain the uniform high standards associated with the Marks. You will immediately notify us of any of your directors, shareholders, employees or agents being arrested or questioned by the police in connection with an offence committed on the Premises or otherwise connected with the Buster Burger Restaurants;

(e) *Goodwill*

that all goodwill in the System, the Marks and the Buster Burger Restaurants belongs to us and that any additional goodwill generated from the use or exploitation of the System, the Marks and the Buster Burger Concept in Your Buster Burger Restaurant belongs to us and is held by you solely as our trustee. Further, all of the customers of Your Buster Burger Restaurants are, for the purposes of this Agreement (but not as regards any liability of defective products or otherwise), our customers and not yours;

(f) *Indemnity*

to indemnify and keep us indemnified against all loss, damage or liability suffered by us as a result of your conduct of Your Buster Burger Restaurant including but not limited to all costs, claims, damages, losses, penalties, fines, liabilities and expenses of investigation and defence of any claim (including legal fees and disbursements, consultants' fees and disbursement) and in particular those incurred as a result of:

- (i) failure to comply with or in contravention of any laws, applicable present and future authorisations, registrations, duties of care, codes of conduct, regulations, notices, permits, consents, approvals and licences issued, imposed or directed by any relevant body (including without limitation any matter relating to the protection of the environment, damage to or use of any property or harm to human health);
- (ii) use the Marks by you or the System;
- (iii) failure by you or your employees to comply with any provision of this Agreement or the Manual;
- (iv) any deliberate or negligent act, error or omission of yours or of your employees or agents;

*(g) Information to be provided to us*

to provide us with and allow us to otherwise obtain all information and reports specific to Your Buster Burger Restaurant as specified in the Manual and this Agreement, the preparation and accuracy of all information which you submit pursuant to this Agreement and the Manual shall be your responsibility;

*(h) Insurance*

to insure with a major reputable insurance company with cover at a prudent level appropriate for the Territory (or such other minimum sum as we advise from time to time) against all normal and reasonably foreseeable risks relating to the conduct of Your Buster Burger Restaurant and the provision of the Services and use of the Equipment as specified in the Manual including without prejudice to the generality of the foregoing:

- (i) public and employers liability;
- (ii) product liability, howsoever arising;
- (iii) all risks insurance for the full replacement value of all Equipment, fittings and stock and other items used in Your Buster Burger

Restaurant in the Territory damaged as a result of fire, flood, explosion impact, vandalism and burglary and loss of profits of Your Buster Burger Restaurant;

- (iv) buildings insurance in respect of the Premises;
- (v) keyperson insurance to cover the death or incapacity of the Keyperson for the Term of the Agreement (or any Renewal thereof) and we shall be named as beneficiaries on the keyperson insurance policy;
- (vi) any other insurance necessary in the Territory; and
- (vii) in addition you will pay the premiums on our business interruption insurance and we will advise you of the current levels of these premiums when you enter into this Agreement.

Certified copies of all cover notes and insurance policies are to be sent to us. Our interest in Your Buster Burger Restaurant shall be noted on all policies. We may require proof that premiums have been paid. We will not be liable for any losses you may suffer or claims you may have as regards the adequacy of the insurance cover taken by you;

(i) *Internet and Electronic Rights*

You may during the Term have your own website on the Internet to advertise and promote Your Buster Burger Restaurant which may feature the Marks;

(j) *Leaflets*

ensure uniformity in the design and quality of all publicity leaflets used in Your Buster Burger Restaurant by ensuring that they are supplied by us or have our approval;

(k) *Manual*

operate the Buster Burger System properly and strictly in accordance with the Manual;

(l) *Maximum Charges*

not charge excessive prices which might bring the Buster Burger Restaurant or the Marks into disrepute [and to consider keeping charges in line with those charged for services similar to the Services in the Territory];

(m) *Know-How*

to refrain from using the Know-How or exploiting the Buster Burger Concept except in the operation of Your Buster Burger Restaurant;

(n) *Name*

not to use the name “**Buster Burger**” or any name resembling it as part of your or your Company's name, either during or after termination of the term of this Agreement and comply with the Business Names Act 1985. You may however use the Marks as your trading name during the Term provided that you use them only in accordance with the terms of this Agreement;

(o) *Notice of Status*

not to hold yourself out as nor describe yourself as our agent or in any way pledge our credit and to clearly indicate on all literature and correspondence and by way of a prominently displayed notice board at the Premises a sign stating “An independent Business owned and operated by [ ] under the Buster Burger name as a franchisee of [ ] Limited”. You will also take all other reasonable steps to publicise the fact that you are our independent franchisee and are in no other way connected with us including the above notice on all menus and other literature used in the Buster Burger Restaurant. Nevertheless as regards goodwill all customers serviced by you will be our customers not yours;

(p) *Other Interests*

not carry on any other business or be involved in any other business for the Term of this Agreement and any Renewal thereof save as approved by us. Prior to the signing of this Agreement you will disclose to us by way of a schedule attached to this Agreement, (Schedule 6) a list disclosing your full business interests and those of your directors and shareholders, which list must be kept regularly updated;

(q) *Software*

if we license you to use any software you agree to be bound by the terms of such software licence as we require;

(r) *Our Requirements*

comply with all reasonable requirements consistent with the terms of this Agreement as are from time to time notified by us for the efficient conduct of



the Buster Burger Restaurant including but not restricted to providing our prospective franchisees with reasonable information and implementing any changes to the System and the decor/layout of the Premises;

(s) *Use of Know-How*

not use the Know-How for any purpose other than exploitation of the Buster Burger Restaurant, and not to disclose the Know-How to third parties;

(t) *Updates*

you will immediately provide us with copies of any amendments made to your Memorandum and Articles of Association and provide us with any shareholders' agreement between your shareholders. If you are a partnership franchisee you will immediately provide us with copies of your partnership agreement and any changes to it.

## **9. Your Financial Obligations**

9.1 You will shall pay to us without deduction or set-off the following sums:

- (a) immediately upon signing this Agreement the Franchise Fee;
- (b) immediately on signing this Agreement the fee for the Initial Package set out at Schedule 2;
- (c) the Service Fee which shall become due and payable within three (3) working days of the end of each calendar month by direct debit;
- (d) the Advertising and Promotion Fee which shall become due and payable within three (3) working days of the end of each calendar month by direct debit [save that for the first six (6) months of this Agreement no Advertising and Promotion Fee shall be payable (this concession shall only be applicable to the first franchise agreement you enter into with us and not to any Renewal Agreement)];
- (e) within thirty (30) days of the date of an invoice presented to you by us the cost of any products or services from time to time provided to you including but not limited to advertising, promotional aids such as leaflets and other goods or services supplied to you by us during the invoice period;
- (f) our legal costs in respect of the signing of this Agreement;

- (g) the reasonable administrative costs incurred by us in vetting any insurance policy;
  - (h) in respect of us providing you with additional support above a reasonable sum to be determined at our sole discretion;
  - (i) interest shall be payable on all sums due in accordance with this Agreement at four percent (4%) above the base rate of The National Westminster Bank plc or if no such base rate is published at a reasonable rate determined by us at our sole discretion until payment is received as well as before any judgment therefor.
- 9.2 All monies paid to us under this Agreement shall become our sole property upon payment of the same to us and shall be deemed to be fully earned at the time of payment and shall not be refunded to you under any circumstances.
- 9.3 You will meet the cost of wages incurred by your staff during training.
- 9.4 You must pay all of your debts including but not limited to, the costs of shopfitting, any supplies or equipment supplied by third parties in a prompt manner so as not to bring the Marks into disrepute.
- 9.5 We will not charge you for the Initial Training provided at our training premises but you will meet the cost of any travel, board and lodging incurred by you or your staff and the wage costs of your staff.
- 9.6 We will be entitled to make a reasonable mark-up on any products and Equipment sold to you.
- 9.7 You will record all sales and other financial information we require on point of sale and other equipment/software approved by us. You will, in a manner and form satisfactory to us, maintain an accounting system and prepare on a current basis (and preserve for no less than three (3) years) complete and accurate records concerning sales and other aspects of the Buster Burger Restaurants. Such records shall include but not be limited to the following business records: books of account, tax returns, daily reports, statements of revenue (to be prepared at least annually).
- 9.8 We may attribute any monies received by us from you to any monies owed to us by you whether under this Agreement or otherwise, regardless of what you purport to designate the payment to be an account of.

## **10. Advertising and Promotion**

10.1 In consideration of you paying to us upon our request the Advertising and Promotion Fee, we shall:

- (a) establish and maintain a “**National/Regional Advertising and Promotion Fund**” to promote the Buster Burger Restaurants;
- (b) pay the Advertising and Promotion Fee received by us pursuant to Clause 10.1(b) below into a separate bank account to be used only in accordance with the provisions of this Clause 10;
- (c) expend the amounts so received upon such national and regional advertising and/or promotional activities as we shall in our sole discretion think fit. We will not, however, be under any obligation to expend on advertising and promotion in each year any greater sum than the aggregate of the Advertising and Promotion Fees received from all our franchisees;
- (d) at the end of each of our financial years ending arrange for an audited account to be prepared by our auditors of the sums received from all our franchisees and expended by us pursuant to the provisions of this Clause. We will forward to you an auditor's certificate showing the total of such receipts and payments. If that account shall show that we have overspent the monies available in the National/Regional Advertising and Promotion Fund the amount overspent (including cost of money borrowed or advanced) may be recovered by us from the next year's contributions (but not so as to increase the sum payable by you in any year beyond [                                    ] [(     )]% of annual gross turnover, excluding VAT as hereinbefore provided) and the proportion of the amount underspent attributable to you shall be deducted from your monthly Promotion and Advertising Fee during the next financial year, so as to reduce your monthly Promotion and Advertising Fee;
- (e) advise you as regards any further local advertising which you may carry on. Such further local advertising shall be carried on only in accordance with Clause 10.2 below;
- (f) we do not guarantee that you and our other franchisees will benefit equally as a result of our use of the funds;
- (g) we will meet with you each year to discuss our proposals for the use of the National/Regional Advertising Fund in the forthcoming year.

#### 10.2 Local Advertising and Promotions

In order to properly market the Buster Burger Restaurants in your locality, you shall:

- (a) regularly undertake at your own cost the local advertising and promotion described in the Manual from time to time;
- (b) follow our directions as regards advertising and promotions without delay, and use only advertising and promotional material previously approved by us in writing.

## **11. Your Accounts**

You will maintain proper books of account relating to Your Buster Burger Restaurant as required by us from time to time and keep them on the Premises or other place required by us from time to time and will employ a Chartered Accountant to prepare annual accounts for Your Buster Burger Restaurant and you will supply us:

- 11.1 within thirty (30) days after the end of each financial year of Your Buster Burger Restaurant (the “**Financial Year**”) with a copy of the management accounts of Your Buster Burger Restaurant and such other accounting and financial information relating to it as we may reasonably require;
- 11.2 within four (4) months after the end of each Financial Year with a copy of the audited accounts of Your Buster Burger Restaurant and such other accounting and financial information relating to it as we may reasonably require;
- 11.3 with any certificates and other documents referred to in Clauses 11.1 and 11.2 above which shall be prepared after the termination of this Agreement but which shall relate to any financial periods of Your Buster Burger Restaurant which falls in whole or in part within the period of this Agreement.

## **12. Audit**

- 12.1 We or our Auditor or authorised representative shall be entitled to inspect and audit your books of account and all supporting documentation relating to Your Buster Burger Restaurant at any time in respect of the whole or any part of the period of this Agreement and within six (6) months after the receipt by us of the management accounts for the year or other period of this Agreement up to the termination or surrender of this Agreement or sale or transmission of Your Buster Burger Restaurant to a new franchisee by us giving reasonable notice to you such inspection or audit to be during reasonable business hours.
- 12.2 If the audit (or any other periodic inspection not being a full audit) shows that your accounting as to the calculation of the payments due under this Agreement, and/or any other financial matter is incorrect, you undertake to promptly rectify the defect in the amount accounted for and/or the accounting system defect as the case may be.

### 13. Sale of Your Buster Burger Restaurant

13.1 You will not have the right to assign or delegate the performance of your franchise granted by this Agreement or any right or obligation under this Agreement. However, subject to obtaining our prior written consent and subject to the conditions listed in Clauses 13.2 and 13.3 below, have the right to sell Your Buster Burger Restaurant and upon the date of completion of such sale of Your Buster Burger Restaurant this Agreement shall subject to Clauses 14.3, 14.4 and 15 below forthwith terminate. Subject to Clauses 13.2 and 13.3 and subject to the terms of the Lease or Underlease of the Premises, we undertake to grant to a purchaser of Your Buster Burger Restaurant who is acceptable to us (the “**Purchaser**”), an agreement for the period of not less than five (5) years commencing on the date of the sale of Your Buster Burger Restaurant such agreement to be in the form of the standard agreement offered by us to our franchisees current at that time (the “**Replacement Agreement**”).

13.2 The conditions to be complied with if you sell Your Buster Burger Restaurant

The conditions required to obtain our written consent to the sale of Your Buster Burger Restaurant shall include:

- (a) any proposed Purchaser shall be bona fide and at arm’s length and shall meet our standards with respect to business experience, financial status and ability and shall successfully complete a programme of initial training by us;
- (b) the Lease or the Underlease (as the case may be) is to be transferred or assigned to any proposed Purchaser (but provided such transfer or assignment has the consent in writing of all requisite landlords);
- (c) you shall pay to us the sum of twenty percent (20%) of the purchase price of Your Buster Burger Restaurant on completion of the sale of Your Buster Burger Restaurant if we introduced the Purchaser and five percent (5%) of the purchase price otherwise to cover our costs of dealing with the application for consent including without limitation all external costs incurred by us such as surveyors, estate agent or legal fees and the legal and administrative costs of any Superior Landlord incurred in the negotiation and grant of any licence to assign or underlet plus disbursements together in each case with VAT thereon at the then current rate;
- (d) you must not be in breach or during the Term have been in persistent breach of any obligations to us under the terms of this Agreement;
- (e) you shall execute a release or discharge in our favour of all claims against us and indemnify us against any claim arising from the period of operation of the franchise by you;

- (f) you will provide us with a financial statement of affairs and a business history of the proposed Purchaser and any other information we may reasonably require;
- (g) at our request you will have Your Buster Burger Restaurant independently valued taking into account the net market value of the assets to be sold and any additional value arising from a sale of Your Buster Burger Restaurant as a going concern (but also taking into account your obligations under this Agreement and the nature of the licence hereunder of the Marks and other intellectual property). The valuer shall be a chartered accountant chosen by the parties or (in the event of a failure within fourteen (14) days to agree on the choice of a chartered accountant) one appointed by the President for the time being of the Institute of Chartered Accountants of England and Wales and such chartered accountant shall act as an expert and not as an arbiter and his decision as to the purchase price of Your Buster Burger Restaurant shall be conclusive and binding and shall be the purchase price at which you sell Your Buster Burger Restaurant to the proposed Purchaser or us if we exercise our Option as set out in Clause 13.3 below. The costs of such chartered accountant in certifying the purchase price shall be your responsibility;
- (h) the sale must be completed in time to enable us to enter into the replacement agreement with the Purchaser before the expiry of this Agreement;
- (i) in respect of each and every proposed Purchaser's offer made to purchase Your Buster Burger Restaurant the proposed Purchaser who is making the offer shall submit to us a complete copy of the written purchase or sale offer (the "**Franchise Offer**") within seven (7) working days together with a financial statement of affairs and a business history of the proposed franchisee and any further information which we may reasonably require. It is a condition of our consent that the terms of the Franchise Offer are the terms of the sale and purchase of Your Buster Burger Restaurant and if the sale price or any other significant term of the Franchise Offer is changed the amended terms shall constitute a new Franchise Offer which shall in accordance with this Clause 13.2(j) be submitted to us to be processed under and subject to this Clause 13.2(j) in place of the original or previous Franchise Offer;
- (j) the period within which we may exercise our Option (as defined below) must have expired or we must have confirmed in writing that we do not intend to exercise our Option.

### 13.3 Our right of first refusal

- (a) In addition to our other rights hereunder, we will have an option to purchase Your Buster Burger Restaurant for the same amount and on the same terms as

those set out in the Franchise Offer (the “**Option**”) such Option to be exercised by written notice given to you within twenty-eight (28) days after the receipt by us of the copy of the Franchise Offer accompanied by such items as required by us under Clause 13.2(g) above during which period the terms of the Franchise Offer cannot be altered without our consent;

- (b) if we do not exercise the Option and consent to the sale to the Purchaser a condition thereof is that the Purchaser shall deposit twenty-five per cent (25%) of the Purchase Price with our solicitor upon exchange of contracts. Upon completion of the sale the Purchaser shall pay the balance of the Purchase Price to our solicitor (as your agent) subject to a lien for any monies owed to us by you, and we shall deduct from the said Purchase Price the amount of any of your unpaid obligations to us together with the amount due in accordance with this Agreement and shall remit any outstanding balance of the Purchase Price to you within thirty (30) days after the date of receipt of the final amount of the Purchase Price by us;
- (c) if the exercise of the Option is a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 or any amendment thereof apply, you hereby irrevocably agree to indemnify us against any claims for wrongful and/or unfair dismissal and/or redundancy payments or any other claim arising from the exercise of the Option by any person employed by you immediately prior to the exercise of such Option. Such indemnity shall include legal costs and disbursements incurred by us on a full indemnity basis.

13.4 If we exercise our Option then the Lease shall be assigned or the Underlease shall be surrendered to us on the basis of the Standard Conditions of Sale current at the date of completion of such assignment or surrender or (if the Standard Conditions are no longer published) the 20th Edition of the National Conditions except in so far as the said conditions are inconsistent with the terms of this Agreement and in any event:

- (a) no deposit shall be payable;
- (b) title shall be deduced in accordance with section 110 of the Land Registration Act 1925 (in the case of a sale of registered land) or shall commence with the lease under which the Premises are held (in the case of a sale of leasehold unregistered land);
- (c) the sale shall be with vacant possession of the Premises on completion;
- (d) you shall sell with full title guarantee; and
- (e) you shall join with us in any necessary application for and co-operate fully to obtain any necessary order pursuant to Section 38(4) of the Landlord and

Tenant Act 1954 or otherwise to render fully enforceable the foregoing provisions of this Clause and shall take such other steps as shall be reasonably necessary to give effect to the foregoing provisions of this Clause.

### 13.5 Our right to assign etc

We may assign or transfer this Agreement and all rights under it to any other party at any time and shall inform you thereof in writing within a reasonable time thereafter. In the event of any such assignment or transfer, in consideration of us procuring for you and other franchisees an undertaking from the assignee/transferee to be bound by our obligations under this Agreement you will re-execute this Agreement with the assignee/transferee if we (or the assignee/transferee) require you to do so [and we are hereby irrevocably appointed as your attorney by way of security for your obligations to re-execute this Agreement with the assignee/transferee]

## 14. Termination

### 14.1 Remediable breach

We may terminate this Agreement forthwith by notice in writing to you if you have failed to remedy any remediable breach within a period of twenty-eight (28) days of the receipt of a notice in writing from us requiring you to do so;

### 14.2 Irremediable breach

We may terminate this Agreement forthwith by notice in writing to you if;

- (a) you have committed any material breach of your obligations hereunder;
- (b) you have been in persistent breach of this agreement;
- (c) you shall be wound-up or become insolvent or shall be deemed unable to pay your debts or shall be subject to any application or any procedure for winding up or corporate reorganisation (except for the purpose of and followed by a reconstruction, or amalgamation without insolvency where the resultant company is or agrees to be bound by the terms hereof and is a company whose shares are owned by persons not in competition with us or you except to an amount not exceeding five per cent (5%)) or shall enter into negotiations for arrangement or composition with or for the benefit of creditors or if a liquidator or receiver or manager shall be appointed in relation to Your Buster Burger Restaurant or property or any part thereof or if an administration order shall be made against you or if any part of your assets or Your Buster Burger Restaurant is lawfully seized as payment or security for payment or any



procedure of similar effect to any of the foregoing is commenced or if any other event occurs which shall cause your dissolution; or

- (d) any sum required under the terms of this Agreement is not paid or submitted at the latest within fourteen (14) days following its due date;
- (e) any document is not submitted at the latest within fourteen (14) days following its due date; or
- (f) you fail to commence or you cease or you take any steps to cease Your Buster Burger Restaurant;
- (g) you challenge our intellectual property rights;
- (h) you are convicted of an indictable criminal offence or one involving dishonesty;
- (i) you behave in an immoral manner or other way that may damage our reputation or yours;
- (j) you take, withhold, misdirect or appropriate for your own use any funds withheld from your employee's wages for any employee's taxes, insurance or benefits, generally fail to deal fairly and honestly with your employees or customers or knowingly permit or having discovered the facts, fail to take any action against or to discharge any agent or employee who has misappropriated any funds or property of any customers or ourselves;
- (k) the liquor licence for the Premises is removed;
- (l) you divulge Confidential Information to unauthorised third parties;

#### 14.3 Other rights

The termination or expiry of this Agreement shall be without prejudice to any rights and obligations in respect of any period after such termination and shall also be without prejudice to the rights and obligations of either of us against the other in respect of any antecedent breach of any of the terms and conditions hereof.

#### 14.4 Set-off etc

Notwithstanding anything herein contained or implied we may set off against any money which would otherwise be payable or owing by us to you under or pursuant to this Agreement unless and until you have paid, satisfied or discharged all moneys,

debts or liabilities due or owing to us and have satisfied all of your other obligations to us.

## **15. Post Termination Provisions**

### **15.1 Your duties on termination**

In the event of the termination of this Agreement howsoever arising (subject to Clause 15.2), in order to protect our intellectual property rights and reputation:

- (a) you will immediately cease operation of Your Buster Burger Restaurant;
- (b) you will forthwith deliver to us the Manual, all copies thereof and all stationery and signs bearing the Marks (and other items loaned to you by us) then in your possession whether or not supplied by us. You will cease using the telephone lines [and any electronic point of sale equipment. You will remove the trade dress and also take whatever steps that we require in order to cancel your right to use the Marks or any of our other property;
- (c) you will not at anytime thereafter:
  - (i) disclose or use any confidential information or Know-How related to the System or the Buster Burger Restaurant and the Products acquired by you during or as a result of this Agreement (save that you shall be allowed to use such Know-How that has come into the public domain by means other than your breach);
  - (ii) make any use of the Marks;
  - (iii) purport to be a franchisee of or otherwise associated with us;
  - (iv) use any recommendation or reference provided as a result of your work as a franchisee;
- (d) you will forthwith pay all sums and amounts due to us under the terms of this Agreement or otherwise;

### **15.2 Post termination restrictions on you**

You agree that:-

- (a) you will not for a period of one (1) year following the termination of this Agreement directly or indirectly be engaged, concerned or interested in a business similar to the Buster Burger Restaurant from the Premises;

- (b) you will not for a period of one year following the termination of this Agreement directly or indirectly be engaged concerned or interested in a business similar to the Buster Burger Restaurant within the Territory (save for a financial interest which does not allow you to influence the economic conduct of such a business).
- (c) you will not for a period of one (1) year following the termination of this Agreement directly or indirectly be engaged concerned or interested in a business similar to the Buster Burger Restaurant which operates within a radius of four (4) miles from any Premises in the United Kingdom from which the Buster Burger Restaurant is being carried on by us or any of our franchisees (save for a financial interest which does not allow you to influence the economic conduct of such a business).
- (d) you will not for the period of one (1) year following the termination of this Agreement, either on your own behalf or on behalf of any other person, firm or company seek to sell or obtain orders in respect of the Products provided by us for any person firm or company who at the date of such termination is one of our customers or in the habit of dealing with us or represent yourself as being in any way connected or having been formerly connected with or interested in the Buster Burger Restaurant, the Marks or our franchise.
- (e) you will not without our consent in writing during the period of six (6) months after termination either on your own account or in connection with or on behalf of any other person, firm or company solicit or entice away from us or our other franchisees any person who shall at the date of such termination be employed by us or our other franchisees whether or not any such person would commit a breach of his contract of employment by reason of leaving such employment.

### 15.3 Restrictions Reasonable

While these restrictions above are considered by both of us to be reasonable in all the circumstances it is agreed that if such restrictions will taken together be judged to go beyond what is reasonable in all the circumstances for our protection but would be judged reasonable if part or parts of the wording thereof were deleted the said restrictions shall apply with such words deleted.

## 16. Copyright

- 16.1 The copyright and all other rights in the text of the Manual, and any designs, software, photographs or documents supplied to you by us and all secret or confidential information contained therein are our property and you undertake not to copy any of the above (save as permitted by this Agreement), or to disclose any of their contents or

concepts to any other party and you undertake to not make any direct or indirect use thereof otherwise than in accordance with the terms of this Agreement.

16.2 For the purpose of this Clause:

- (a) The Manual shall be deemed to include the Manual as originally provided to you together with all additions and amendments thereto from time to time;
- (b) Secret or confidential information shall include all confidential information provided to you from time to time either by memorandum or correspondence or howsoever otherwise appertaining to the provision of the Buster Burger Concept and the Buster Burger Restaurants save for that which has come into the public domain other than through your own breach.

## **17. Entire Agreement**

17.1 This Agreement and the Manual expresses the entire agreement between you and us and supersedes any negotiations or prior agreements on the subject matter hereof and:

- (a) both of us confirm that the whole of our negotiations and intentions have been included herein within the context of this Agreement and express clearly our requirements;
- (b) there are no warranties representations or other matters relied upon by you causing your signature hereto which have not been satisfied herein;
- (c) this Agreement shall not be modified in any way except by a written instrument signed by both of us.

17.2 All or any financial information relating to the operation of Your Buster Burger Restaurant and the operation of a Buster Burger Restaurant including but without prejudice to the generality of the foregoing forecasts, budgets, performance ratios and cash flow projections provided to you by or on our behalf or any of our employees or agents, whether before the signing hereof or during the continuation of this Agreement is provided on the basis that such information is for your guidance only and in no way shall be treated by you as a warranty representation or guarantee and you hereby acknowledge that you have not and will not rely upon such financial information.

17.3 Except in the case of fraudulent misrepresentation, the only remedy available in respect of any misrepresentation or untrue statement made to either you or us shall be a claim for breach of contract.

## **18. Waiver**

Neither our failure to exercise any power given to us hereunder or to insist upon strict compliance by you with any obligation hereunder nor any custom or practice of you or us shall constitute any waiver of any of our rights under this Agreement. Waiver by us of any particular default by you must be in writing and shall not affect or impair our rights in respect of any subsequent default of any kind by you nor shall any delay by or omission of us to exercise any rights arising from any of your defaults affect or impair our rights in respect of the said default or any default of any kind.

## **19. Severability**

If any item or provision contained in this Agreement or any part thereof (in this Clause called the “**Offending Provision**”) is declared or becomes unenforceable invalid or illegal for any reason whatsoever including but not detracting from the generality of the foregoing a decision by the competent domestic or European courts, an Act of Parliament, European Union legislation or any statutory or other bye-laws or regulations or any other requirements having the force of law the other terms and provisions of this Agreement shall remain in full force and effect as if this Agreement had been executed without the Offending Provision appearing herein. In the event that the exclusion of any Offending Provision shall in our opinion adversely affect either our right to receive payment of all or any fees or remuneration by whatever means payable to us or our Marks or Know-How or methods of the Buster Burger Restaurants then we shall have the right to terminate this Agreement on ninety (90) days notice given in writing to you.

## **20. Warranties Undertakings and Disclosure**

- 20.1 You shall make no statements representations or claims and shall give no warranties to any customer or potential customers in respect of the Buster Burger Restaurants or Your Buster Burger Restaurant, save such as may have been specifically authorised by us, such authority to be given either in writing or in the Manual in force at the relevant time. You hereby undertake with us to keep us fully and effectively indemnified against all claims demands losses expenses and costs which we may incur as a result of any breach by you of this provision or of any other provision contained in this Agreement.
- 20.2 You warrant that you alone will carry the risk of carrying on Your Buster Burger Restaurant, and that you have no previous knowledge of the Buster Burger Restaurants.
- 20.3 You warrant that you have taken full legal advice on this Agreement prior to its execution.

- 20.4 You acknowledge that we have supplied to you all information concerning us and the Buster Burger Restaurants which you deem necessary to enable you to make a decision whether or not to enter into this Agreement.

**21. Improvements and Atypical Modifications to the System**

You acknowledge that because complete and detailed uniformity under many varying conditions may not be possible or practical, we specifically reserve the right and privilege at our sole discretion and as we deem to be in the best interests of all concerned in any specific instance, to vary certain standards for any outlet based upon the peculiarities of any outlet's customer base, location, density of population, business potential, population of locality, existing business practices or any other condition which we deem to be of importance to the successful operation of any specific outlet. You will not be entitled to require us to disclose or grant to you any like or similar variation.

**22. Force Majeure**

- 22.1 This Agreement shall be suspended during the period and to the extent of such period that we reasonably believe either of us are prevented or hindered from complying with its obligations under any part of this Agreement, by any cause beyond your or our reasonable control (as the case may be) including but not restricted to strikes, war, fuel shortage, civil disorder, and natural disasters.

- 22.2 If such period of suspension exceeds one hundred and eighty (180) days, then we shall upon giving written notice to you, be able to require that:

- (a) all money due to us shall be paid immediately; and
- (b) you shall immediately cease trading, until further notice from us.

**23. Approvals**

Any approval or consent given under this Agreement will only be valid if given in writing by one of our directors. You will not be entitled to claim nor will you claim any money or other damages or remedy by way of set off, counterclaim, defence or in any other way based upon any claim or assertion or other that we have unreasonably withheld or unreasonably delayed any consent or approval required under this Agreement.

**24. Third Party Rights**

The parties to this Agreement do not intend that any term hereof shall be enforceable by a third party (as defined in the Contracts (Rights of Third Parties) Act 1999 (the “Act”)) under the provisions of the Act.

## **25. Notices**

Any notice (the “Notice”) required to be given for the purposes of this Agreement shall be given by sending the same by pre-paid first class post, facsimile to, or by delivering the same by hand at, the relevant address shown in this Agreement or such other address as shall have been notified (in accordance with this Clause) by the party hereto concerned as being its address for the purposes of this Clause. Any Notice so sent by post shall be deemed to have been served two (2) days after posting and in proving this service it shall be sufficient proof that the Notice was properly addressed and stamped and put into the post. Any Notice sent by facsimile shall be deemed to have been served on the next business day following the date of despatch thereof. Any Notice delivered by hand shall be deemed to have been served when physically delivered at the relevant address.

## **26. Choice of Law and Jurisdiction**

This Agreement shall be governed by and construed according to English law by the English courts.

## **27. Corporate Issues**

### **27.1 Directors**

You shall not change your directors without our prior written consent such consent to be given at our sole discretion.

### **27.2 Change of Your Owners**

You shall not have the right to allow any change in Your Owners, including but not limited to the transfer or charging of your existing shares or the issue or charging of new shares either to your existing shareholders or to third parties without obtaining our prior written consent. If we consent to a change in Your Owners we may at our sole discretion treat this as a sale of Your Buster Burger Restaurant and the provisions of Clause 12 of the Franchise Agreement will apply, including for the avoidance of doubt Clause 13.3.

### **27.3 Appointment of Executive**

(a) You will appoint and at all times during the Term of this Agreement have in position, a full time executive to run Your Buster Burger Restaurant on a day

to day basis (the “**Executive**”). The Executive must be previously approved by and at all times after his/her appointment be acceptable to us, such approval and acceptance not to be unreasonably withheld.

- (b) We may at any time in the event of the Executive no longer being employed by you, or on his/her becoming Incapacitated or on his/her death at our sole discretion if we consider it appropriate, manage Your Buster Burger Restaurant on your behalf until such time as a new executive, acceptable to us is appointed. During such management period we shall be entitled to the Management Fee together with the cost of travel accommodation and subsistence of our employee or other representative engaged in such management and shall be entitled to fifty per cent (50%) of the pre-tax profits of Your Buster Burger Restaurant (such profits to be calculated in accordance with generally accepted accounting policies applied on a consistent basis).
- (c) If a new Executive approved by us is not appointed within ninety (90) days of the earlier Executives' ceasing to be employed by you we shall be entitled to terminate this Agreement on thirty (30) days' notice without liability.

**IN WITNESS** whereof the hands of the parties or their duly authorised attorneys or representatives the day and year first above written.



## **Schedule 1**

### **The Equipment**

**Schedule 2**

**The Initial Package**

## **Schedule 3**

### **The Lease**

## Schedule 4

### The Marks

Trade Mark	Application Number	Classes	Date
[            ]	[            ]	[    ]	[    ]

**Signatories**

Franchisor

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Franchisee

[ \_\_\_\_\_ ]

By: \_\_\_\_\_