

## AGREEMENT PARTICULARS

<b>Date</b>	<b>2011</b>
<b>Landlord</b>	<b>WADWORTH AND COMPANY LIMITED</b> the registered office of which is at Northgate Brewery Devizes SN10 1JW company registration no 30177
<b>Tenant</b>	
<b>Premises</b>	
<b>Initial Rent</b>	£
<b>Rent start date</b>	
<b>Payment dates</b>	The 10 <sup>th</sup> and 25 <sup>th</sup> days of each month or, if either is a week-end or Bank Holiday, on the next working day.
<b>Term</b>	From and including                      to and including
<b>Security Deposit</b>	£
<b>Landlord's Part</b>	The parts of the Premises that are the Landlord's Part for repair purposes are defined in the Code of Practice.
<b>Tenant's Part</b>	The parts of the Premises that are the Tenant's Part for repair purposes are defined in the Code of Practice.
<b>Premises licence number</b>	
<b>Designated premises supervisor</b>	

## 1. THE MEANING OF WORDS AND PHRASES USED IN THIS AGREEMENT

In this Agreement the following words and phrases have the following meanings:

- 1.1 **‘The Agreed Rate’** means the rate of 4% per year above the base lending rate of Lloyds TSB Bank plc or such other bank as the Landlord may from time to time nominate in writing.
- 1.2 **‘The Amusement Machines’** means any amusement machine including, but not limited to, mechanical, electrical or electronic amusement with prizes machines, betting machines including machines allowing access to off-site betting or gaming, amusement without prizes machines, skill with prizes machines or gaming machines, or devices for sound and/or visual reproduction, or projection and other machines of a similar nature and pool tables, snooker tables, billiard tables and equipment for use with similar types of games, except where for purely domestic use.
- 1.3 **‘Code of Practice’** means the Landlord’s Code of Practice for Tenants as amended from time to time.
- 1.4 **‘Conduits’** means the pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, channels, flues and all other conducting media—including any fixings, louvres, cowls, covers and any other ancillary apparatus—that are in, on, over or under the Premises.
- 1.5 **‘DPS’** means the designated premises supervisor (as defined in Section 15 of the Licensing Act 2003) under the Premises Licence.
- 1.6 **‘ECAM’** means all electronic printed paper or other communication media connected or associated with the marketing promotion or advertising of the business at the premises incorporating including associating with or referring to the name of the Landlord or any product marketed by or belonging to the Landlord or the premises whether it is the name of the premises or the location of the premises. The expression ECAM includes website addresses, domain names, email addresses, IP addresses. ECAM also includes all the intellectual property of the Landlord associated with its names and products.
- 1.7 **‘The Insured Risks’** means the risks of loss or damage by fire, storm, tempest, earthquake, lightning, explosion, riot, civil commotion, malicious damage, impact by vehicles and by aircraft and articles dropped from aircraft—other than war risks—flood damage and bursting and overflowing of water pipes and tanks and such other risks, whether or not in the nature of the foregoing, as the Landlord from time to time decides to insure against.
- 1.8 **‘The Inventory’** means the following:
- 1.8.1 the Tenant’s trade fixtures and fittings and trade equipment at the Premises;
  - 1.8.2 any other goods and effects used in connection with the business at the Premises; and
  - 1.8.3 any other tenant’s trade fixtures and fittings and/or other such goods and effects replacing or added to them during or at the end of the Term.

- 1.9 **‘Landlord's current price list’** means the price list for the time being of the Landlord and (where applicable) their nominees for the drinks which they offer to supply to the purchasers at the Tenant's level of distribution.
- 1.10 **‘Licences’** means the Premises Licence and Personal Licence or any:
- 1.10.1 permits granted under the Gaming Act 1968;
  - 1.10.2 excise licences relating to the Premises;
  - 1.10.3 licences granted under the Cinemas Act 1985;
  - 1.10.4 licences granted by the Performing Rights Society and Phonographic Performance Limited under the Copyright, Designs and Patents Act 1988.
- 1.11 **‘Licensing Authorities’** means all or any of the persons and bodies and authorities competent to grant all or any of the Necessary Licences.
- 1.12 **‘Licence Holder’** means the person holding the Personal Licence.
- 1.13 **‘Necessary Licences’** means any licences, permits, certificates and consents in connection with, or ancillary to, the Permitted Use carried out at the Premises for the maximum hours allowed by law.
- 1.14 **‘Open Land’** means any part of the Premises that is not built on.
- 1.15 **‘The 1954 Act’** means the Landlord and Tenant Act 1954.
- 1.16 **‘The Personal Licence’** means the personal licence as defined in section 111 of the Licensing Act 2003 of the DPS.
- 1.17 **‘The Plan’** means the plan attached to the Premises Licence.
- 1.18 **‘The Planning Acts’** means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991.
- 1.19 **‘The Permitted Use’** means a public house licensed for the sale by retail of alcoholic drinks and the ancillary provision of accommodation, food and other refreshment and recreation to the public.
- 1.20 **‘The Premises Licence’** means the premises licence as defined in Section 11 of the Licensing Act 2003 for the Premises.
- 1.21 **‘The Rent’** means the Initial Rent as reviewed from time to time.
- 1.22 **‘The Surveyor’** means any person or firm appointed by the Landlord in his place. The Surveyor may be an employee of the Landlord or a company that is a member of the same group as the Landlord within the meaning of the 1954 Act section 42. The expression ‘the Surveyor’ includes the person or firm appointed by the Landlord to collect the Rent and other sums payable by the Tenant under this Agreement.

- 1.23 **‘Trade Fixtures’** means:
- central heating boilers and the heating system
  - cellar refrigeration equipment
  - bar counter and back fittings
  - fixed bath and sanitary ware
  - any other fixtures and fittings used in connection with the business carried on at the Premises.
- 1.24 **‘Trading Account’** means the account payable by the Tenant to the Landlord for goods and services provided by the Landlord to the Tenant.
- 1.25 **‘Valuer’** means the person appointed to determine the open market rent under Schedule 2 of this Agreement.
- 1.26 **‘VAT’** means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT.

## **2. HOW TO READ THIS AGREEMENT**

In this Agreement:

- 2.1 If the Tenant agrees not to do something this means they will not allow anyone else to do it.
- 2.2 If this Agreement refers to the Tenant needing the consent or approval of the Landlord or anything similar this means prior written consent or approval signed by or on behalf of the Landlord.
- 2.3 If this Agreement refers to a law or anything similar this includes any extension or modification, amendment or re-enactment of it and any regulations or orders made under it.
- 2.4 If the Landlord has a right of access to the Premises that right can be used by anyone authorised by the Landlord.
- 2.5 Where this Agreement refers to ‘the Landlord’ this means the person from time to time entitled to possession of the Premises when this Agreement comes to an end.
- 2.6 Where this Agreement refers to ‘the Tenant’ this means any person who is responsible for paying the Rents.
- 2.7 Where this Agreement refers to “the Term” it means the term specified in the particulars and any extension of that term
- 2.8 Where this Agreement refers to ‘the last year of the Term’ or ‘the end of the Term’ this means the end of the Term howsoever it ends.
- 2.9 References to ‘this Agreement’ include any document supplemental or collateral to this document or entered into in accordance with this document.
- 2.10 Where this Agreement refers to ‘interest’ this means interest from the date on which any sum is due to the date of payment at the Agreed Rate .

2.11 Where this Agreement refers to ‘loss’ this means any liabilities, damages or losses, awards of damages or compensation, penalties, costs, disbursements and expenses arising from any claim, demand, action or proceedings.

2.12 Where this Agreement refers to “the Rent” this means the Initial Rent as reviewed from time to time and where it refers to “the Rents” this means the Initial Rent and all other sums payable by the Tenant to the Landlord under this Agreement.

### **3. LETTING TERMS**

The Landlord lets to the Tenant the Premises for the Term retaining for the Landlord and anyone authorised by them the rights set out in Schedule 1 and provided the Tenant pays the Rents and complies with their obligations under this Agreement.

### **4. THE TENANT’S OBLIGATIONS**

The Tenant agrees with the Landlord:

#### **PAYMENTS**

4.1.1 To pay to the Landlord:

4.1.1.1 the Rent;

4.1.1.2 the Security Deposit;

4.1.1.3 all VAT due on sums payable by the Tenant under this Agreement;

4.1.1.4 the Trading Account;

4.1.1.5 all other sums due from time to time for any goods or services supplied by the Landlord to the Tenant.

4.1.2 To pay the Rent and sums due under this Agreement as follows:

4.1.2.1 The Rent is calculated monthly in advance for the period from the 26<sup>th</sup> day of each month to the 25<sup>th</sup> day of the following month and, together with the relevant VAT thereon, is charged to the Tenant’s Trading Account on the day preceding the start of the period.

4.1.2.2 On each Payment date (the 10<sup>th</sup> and 25<sup>th</sup> days of each month, or, if either is a week-end or a Bank Holiday, the next working day) the Tenant shall pay the amount owing on his Trading Account on the preceding Payment date.

4.1.2.3 Payment for other goods and services supplied by the Landlord to the Tenant and VAT due on such payments shall be paid within 7 days of service of an invoice for such goods and services.

4.1.2.4 As required by the Landlord, the Tenant shall pay all amounts owing by direct debit or credit transfer to any bank account nominated by the Landlord or by cheque or in cash.

4.1.3 To pay the Security Deposit in full no later than the date of this Agreement.

- 4.1.4 If required by the Landlord to pay the Rent and amount owing under the Trading Account by banker's order or credit transfer or direct debit to any bank account the Landlord nominates from time to time.
- 4.1.5 All other sums due under this Agreement must be paid within 7 days of written demand.
- 4.1.6 If the Tenant fails to pay the Rent or any other sum which they agree to pay under this Agreement within 14 days of the due date they must pay interest at the Agreed Rate on the overdue sum.
- 4.1.7 The Landlord may by written notice vary the Payment dates.
- 4.1.8 The Tenant will not make any deduction from the Rents or other sums due to the Landlord.
- 4.1.9 The acceptance of Rents or other sums due from the Tenant by the Landlord does not mean the Tenant has complied with his obligations under this Agreement or waive any rights the Landlord has to take action in respect of any breach of those obligations.
- 4.1.10 The Landlord is entitled to refuse to accept payment of Rents or other sums due from the Tenant where the Tenant is in breach of any obligation under this Agreement and if the Landlord does the Tenant will pay interest at the Agreed Rate on the Rents or other sum from the due date to the date on which it is accepted by the Landlord.
- 4.1.11 Any sums the Tenant has to pay the Landlord under this Agreement will be recoverable as rent.
- 4.1.12 The Landlord shall at all times have an absolute right to appropriate or treat as appropriated or to re-appropriate all or any monies which may from time to time be paid by the Tenant to the Landlord on whatever account including the Security Deposit in or towards satisfaction either of the amount owing as Rents or for any losses arising from any breach by the Tenant of their obligations under this Agreement or for any amount owing under the Trading Account or for any amount owing under any loan account of the Tenant without any right on the part of the Tenant to interfere with or object to such appropriation under any circumstances whatever.

#### **SECURITY DEPOSIT**

- 4.2 To acknowledge that the Security Deposit will be held by the Landlord on the following terms:
  - 4.2.1 if the Tenant breaches their obligations under this Agreement then the Landlord has the right (without prejudice to any other right) to use the Security Deposit to reduce or settle any amount owing by the Tenant to the Landlord or to make good any loss or damage the Landlord may have suffered as a result of any such breach and the Tenant hereby irrevocably authorises the Landlord to do all that and things necessary to so use the Security Deposit or any part of it;
  - 4.2.2 in the event that the Landlord shall use any part of the Security Deposit as provided for in clause 4.2.1 then the Tenant shall forthwith on demand from the Landlord pay to the Landlord such sum as may be required to restore the Security Deposit to its original amount;
  - 4.2.3 the Security Deposit or the balance of the same after payment of all sums due to the Landlord under clause 4.2.1 shall be repaid to the Tenant one month following the end of

the Term subject to the Tenant having returned the Premises to the Landlord with vacant possession.

### **OUTGOINGS/SERVICES**

- 4.3.1 To pay and indemnify the Landlord against:
- 4.3.1.1 all rates, taxes, charges, and outgoings relating to the Premises and their occupier including any arising or set after the date of this Agreement provided that the Tenant will not have to pay any tax occasioned by receipt of the Rents or as a result of the Landlord disposing of their interest in the Premises;
  - 4.3.1.2 all charges for electricity, water, gas, sewerage, telecommunications and other services consumed or used at or in relation to the Premises;
- 4.3.2 To provide the Landlord on each anniversary of the date of this Agreement with a list of all service suppliers used by the Tenant and the account numbers for those suppliers.

### **THE CONDITION OF THE PREMISES**

- 4.4.1 To:
- 4.4.1.1 keep the Tenant's Part of the Premises in good and substantial condition and repair;
  - 4.4.1.2 keep the Premises in good decorative order and in particular to redecorate all parts of the Premises previously or usually decorated in the last year of the Term the colours tints and materials to be used in that decoration to be approved by the Landlord who will not unreasonably withhold that approval;
  - 4.4.1.3 keep the Premises clean and tidy and clear of all rubbish;
  - 4.4.1.4 keep the Open Land adequately surfaced in good condition and free from weeds and to keep all pub garden or landscaped areas properly cultivated and maintained;
  - 4.4.1.5 keep the Inventory clean, hygienic and in good repair;
  - 4.4.1.6 keep the Trade Fixtures and dispensing, cellar cooling and ancillary equipment and pipes in proper working order and in a high standard of cleanliness at all times;
  - 4.4.1.7 clean maintain service and keep fully operational any extraction canopy, extraction fan and their filters within the Premises in accordance with the recommendations of the manufacturers and the Landlord's insurers, keep a record documenting the maintenance and cleaning of all such items and make such record available to the Landlord upon demand;
  - 4.4.1.8 unless the Landlord undertakes these works to have all gas and electrical equipment at the Premises inspected and maintained by a recognised body or person qualified and insured to inspect and repair such equipment as frequently as required by the Landlord and to obtain a certificate from any such person on each such check that the equipment complies with all relevant legislation.

- 4.4.2 Not to:
- 4.4.2.1 store or deposit anything on the Open Land or bring anything onto it that is or might become untidy, unsightly or detrimental to the Premises or the area generally;
  - 4.4.2.2 keep or store any vehicle, caravan or movable dwelling on the Open Land provided that this shall not prevent the parking of private cars of the Tenant, their staff, customers and suppliers in the parking areas at the Premises;
  - 4.4.2.3 permit any oil or grease or any deleterious, objectionable, dangerous, poisonous or explosive matter or substance to be discharged into any of the Conduits and to take all reasonable measures to ensure that any effluent discharged into the Conduits does not harm the environment, or corrode or otherwise harm the Conduits or cause obstruction or deposit in them.

#### **WORKS TO THE PREMISES**

- 4.5.1 To permit the Landlord on reasonable notice during normal business hours except in emergency:
- 4.5.1.1 to enter the Premises to check if the Tenant is complying with its obligations under this Agreement;
  - 4.5.1.2 to view the condition of the Premises and to open up floors and other parts of the Premises where that is necessary in order to do so; and
  - 4.5.1.3 to give to the Tenant or leave on the Premises a notice specifying the works required to remedy any breach of the Tenant's obligations ('a notice to repair'),

PROVIDED THAT any opening-up must be made good by and at the cost of the Landlord if it reveals no breach of the terms of this Agreement.

- 4.5.2 To carry out the works specified in a notice to repair immediately including making good any opening up that revealed a breach of the terms of this Agreement.
- 4.5.3 If within 1 month of the service of a notice to repair the Tenant has not started the work referred to in that notice or is not proceeding diligently with it or if the Tenant fails to finish the work within 3 months or if in the Landlord's reasonable opinion the Tenant is unlikely to do so to permit the Landlord to enter the Premises to execute the outstanding work and to pay to the Landlord the cost of so doing and all expenses incurred by the Landlord, including legal costs and surveyor's fees.
- 4.5.4 To give immediate notice to the Landlord of any defect in the Premises that might give rise to an obligation on the Landlord to do or refrain from doing anything to comply with the provisions of this Agreement or the duty of care imposed on the Landlord whether under the Defective Premises Act 1972 or otherwise and to display any notices the Landlord from time to time reasonably requires him to display at the Premises.

## **ALTERATIONS TO THE PREMISES**

- 4.6 Not to make any alterations to the Premises without the Landlord's written consent which shall not be unreasonably withheld where these alterations are improvements to the Premises.

## **PLANNING**

- 4.6.1 To observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use and to indemnify the Landlord against all losses in respect of any contravention of those Acts.
- 4.6.2 Not to make any application for planning permission without the consent of the Landlord.
- 4.6.3 Not to carry out any development at the Premises until the Landlord has approved the terms of any planning permission authorising that development.
- 4.6.4 To pay and satisfy any charge or levy that may be imposed under the Planning Acts in respect of the carrying out or maintenance of any development on or at the Premises.

## **USE OF THE PREMISES**

- 4.7.1 To:
- 4.7.1.1 only use the Premises for the Permitted Use;
  - 4.7.1.2 comply with the requirements of any statutes applicable to the Premises or the business carried on there, and any other obligations applicable to it imposed by law or by any byelaws;
  - 4.7.1.3 ensure the Landlord and the local police force have written notice of the name, home address and home telephone number of at least 2 keyholders of the Premises;
  - 4.7.1.4 permit the Landlord to exercise any of their rights under this Agreement at all times without interruption or interference.
- 4.7.2 Not to:
- 4.7.2.1 do anything on the Premises which is illegal or offensive;
  - 4.7.2.2 cause a nuisance or annoyance, disturbance, inconvenience, injury or damage to the Landlord or the owners or occupiers of adjacent or neighbouring premises but this shall not prevent the use of the Premises as a public house;
  - 4.7.2.3 use the Premises as sleeping accommodation or for residential purposes except as accommodation for the Tenant and his family and/or as accommodation for the Tenant's staff under service occupancies which do not confer on any staff any rights to remain in occupation of the Premises when the Tenant vacates and/or for over-night bed and breakfast accommodation for paying guests;
  - 4.7.2.4 keep any animal on the Premises except domestic pets with the Landlord's consent which may be revoked where any pets cause any nuisance or annoyance to the occupiers of any other property ;

- 4.7.2.5 display anywhere on the Premises any placard, sign, notice, fascia board or advertisement unless approved by the Landlord.

## **TRANSFER**

- 4.8.1 Not to assign, sublet, share or part with possession of the whole or any part of the Premises (except in accordance with clause 4.7.2.3) provided that where the Tenant dies during the Term and has a surviving spouse or co-habitee residing at the Premises who wishes to carry on the business of the Tenant then the Tenant's personal representatives may assign this Agreement to the said spouse or co-habitee subject to the following conditions:
- 4.8.1.1 the tenants' personal representatives must make written application for the Landlord's consent for such assignment which will not be unreasonably withheld where they are satisfied the spouse or co-habitee has the necessary qualifications (including a Personal Licence) and experience to run the business at the Premises the Landlord's consent must be in writing;
  - 4.8.1.2 the Landlord had not prior to the Tenant's death served on him notice to quit;
  - 4.8.1.3 all Rents and sums due under the Agreement have been paid in full by the date of assignment;
  - 4.8.1.4 the spouse or co-habitee has consented (if so required by the Landlord) to being appointed as DPS of the Premises.
  - 4.8.1.5 the Tenants' personal representatives must submit with their application for the Landlord's consent a deed of covenant with the Landlord by the spouse or cohabitee containing provisions binding the spouse or cohabitee to observe and perform all the Tenants' obligations and agreements contained in this agreement as if the spouse or cohabitee had been an original party to this agreement
- 4.8.2 The restrictions on dealing with the Premises shall not prevent the use of any residential accommodation within them for residential purposes by:
- 4.8.2.1 the Tenant and their family or a manager and his family on a rent-free basis;
  - 4.8.2.2 by paying guests for overnight bed and breakfast.

## **LICENSING**

- 4.9.1 To trade from the Premises efficiently and lawfully so as to maintain and extend the business and safeguard the Premises Licence.
- 4.9.2 To consent to any application made by the Landlord to appoint the Tenant as DPS and not to resign as DPS without the Landlord's consent which shall not be unreasonably withheld or delayed where another suitably qualified person is available and willing to be appointed as DPS in place of the Tenant.
- 4.9.3 Not to do or omit to do any act or thing whereby the Tenant's Personal Licence or the Personal Licence of the DPS (if the Tenant is not the DPS) may be surrendered, suspended, forfeited or revoked or its renewal be refused or endangered.

- 4.9.4 Where the Tenant is not the DPS to notify the Landlord immediately of any proposal of the DPS to surrender their Personal Licence.
- 4.9.5 Not to do or permit any person at or in the vicinity of the Premises to do any act whereby the Premises Licence may be suspended, revoked, forfeited or its renewal be refused or endangered.
- 4.9.6 To comply with all conditions upon the Premises Licence from time to time.
- 4.9.7 To provide all assistance reasonably required by the Landlord in connection with any application to transfer or vary the Premises Licence.
- 4.9.8 Not to do or permit any person at or in the vicinity of the Premises to do any act whereby a closure order under section 160 or 161 of the Licensing Act 2003 maybe made in respect of the Premises.
- 4.9.9 Not to do or omit on the Premises or elsewhere any act whereby the Tenant shall render himself, the DPS or Landlord liable to conviction of any offence within Part 7 of the Licensing Act 2003 or against any provision relating to taxation.
- 4.9.10 To give the Landlord immediate notice by registered or recorded delivery post of:
- 4.9.10.1 any complaint or warning formal or informal given by the Police or HM Revenue and Customs or by or on behalf of the licensing authority in respect of the conduct of the business at the Premises and of any summons issued against the Tenant or the DPS for the time being in respect of any offence charged against the Tenant or the DPS for the time being in respect of the conduct of the Tenant or the DPS for the time being or in relation to VAT; or
  - 4.9.10.2 any notice received by the Tenant or the DPS of an intention to exercise the power to revoke the Premises Licence or to make an application to revoke the Premises Licence; or
  - 4.9.10.3 any notice received by the Tenant or the DPS of an intention to exercise the power to suspend, revoke or forfeit the Personal Licence or to make an application to suspend, revoke or forfeit the Premises Licence or
  - 4.9.10.4 any person having been to the Tenant's knowledge convicted of any offence committed upon the Premises or having been apprehended on the charge of committing any such offence or having been served with any summons in respect of any such offence.
- 4.9.11 At the end of the Term where the Tenant is the DPS and is not entering into a further Agreement of the Premises to consent to the appointment of any third party nominated by the Landlord to be DPS.
- 4.9.12 At all times to display at the Premises a summary of the Premises Licence and to keep at the Premises a certified copy of the Premises Licence and a notice from the Landlord authorising the Tenant to be responsible for the full Premises Licence.
- 4.9.13 To pay to the Landlord on demand the annual fee due to the Licensing Authority for the Premises Licence.

## **AMUSEMENT MACHINES**

4.10.1 Not without the consent of the Landlord to install any Amusement Machine in the Premises.

4.10.2 To install and keep on the Premises such Amusement Machines as the Landlord shall require.

## **TRADING OBLIGATIONS**

4.11.1 Not to:

4.11.1.1 change the name of the Premises without the Landlord's consent;

4.11.1.2 sell or expose for sale in the Premises or bring on to or store or deposit on the Premises any beer or non-beer drink which is not supplied by the Landlord or their nominees and not to display at the Premises any advertising material for any beer or non-beer drink which is not supplied by the Landlord;

4.11.1.3 alter the quality of goods received from the Landlord (or their nominees);

4.11.1.4 use any recycled beer or overspill or residue from beer sold to the public;

4.11.1.5 damage any beer dispensing equipment;

4.11.1.6 advertise goods supplied by persons or firms other than the Landlord's within or outside the Premises.

4.11.2. To:

4.11.2.1 store all goods in accordance with the manufacturer's recommendations;

4.11.2.2 present and supply such goods to the public in good condition and in accordance with the reasonable requirements of the Landlord (or their nominees);

4.11.2.3 comply with all cleaning and maintenance requirements for beer dispensing equipment;

4.11.2.4 let the Landlord (or their nominees) and others authorised by them;

4.11.2.4.1 inspect the Tenant's stock and take samples (on payment of a pro rata part of the price which the Tenant paid for the bulk from which samples are taken);

4.11.2.4.2 remove dispensing equipment which is no longer in use;

4.11.2.4.3 inspect and take copies from the Tenant's books of account and VAT records;

4.11.2.5 display notices and advertisements (including price lists) as reasonably required by the Landlord or as required by law;

4.11.2.6 attend such public house training courses as the Landlord shall reasonably require;

- 4.11.2.7 keep the Premises open for business during the hours permitted under the Premises Licence unless otherwise agreed with the Landlord;
- 4.11.2.8 stock and expose for sale within the Premises and use his best endeavours to sell beer and other drinks supplied by the Landlord or their nominees;
- 4.11.2.9 comply with the Code of Practice in the operation of the Premises;
- 4.11.2.10.1 use only a financial advisor or accountant from the recommended panel of financial advisors to assist in the financial control of the Tenant's business;
- 4.11.2.10.2 instruct such advisor to carry out monthly (or if the Landlords shall direct in writing quarterly) stock-checks and profit and loss accounts, to provide copies of those stock-checks and accounts to the Landlord within 7 days of request and to consult with the Landlords in case of difficulties revealed by their results;
- 4.11.2.11 pay to the Landlord on demand:
  - 4.11.2.11.1 all charges incurred by the Landlord in connection with any inspection, report, certificate or other similar matter the Landlord is required to obtain in connection with the Premises Licence;
  - 4.11.2.11.2 all charges for the inspection maintenance repair and renewal of any Conduits or Trade Fixtures where the Landlord or any person appointed by the Landlord to do so provides these services provided that the Landlord is under no obligation to carry out these works unless they agree to do so in this lease;
- 4.11.2.12 recognise the rights reserved, as set out in Schedule 1;
- 4.11.2.13 comply with the Tenant's insurance obligations contained in Clauses 6.5 to 6.8.

#### **PURCHASING OBLIGATIONS**

- 4.12.1 The Landlord shall during the Term to the best of their ability supply or procure the supply to the Tenant of such quantities of beers and non-beer drinks at the prices shown in the Landlord's current price list as he may require and be ready and able to pay for and if the Landlord or their nominees at any time fail to supply any such drink for a period which in all the circumstances is excessive the Landlord shall on the application of the Tenant release the Tenant from any of his obligations under this Clause to the extent and for so long as is necessary having regard to such failure to supply.
- 4.12.2 The Tenant shall:
  - 4.12.2.1 buy from the Landlord or their nominees and from no other person or firm all drinks he shall require for sale stocking/display or advertising;
  - 4.12.2.2 pay for all the goods supplied by the Landlord or their nominees on the Payment days in accordance with the Landlord's then current terms of trading and by a method specified by the Landlord provided that if the Tenant shall fail to do so the Landlord may require that all the goods supplied by the Landlord or their nominees are purchased by the Tenant on a cash with order basis.

- 4.12.3 The exclusive purchase obligations which are contained in this Agreement are intended to obtain the benefit of the block exemption from the provisions of Article 81 (3) of the Treaty of Rome granted by Commission Regulation (EC) No 2790/1999.
- 4.12.4 In the event that the exclusive purchase obligations contained in this Agreement are varied or removed whether by agreement of the parties or by statute or by any other means the date of such variation or removal shall be a Review Date and the Initial Rent shall be reviewed in accordance with the terms set out in Schedule 2 and any such review shall take into account the change to the exclusive purchase obligations.
- 4.12.5 If credit facilities for payment of the Tenant's trading account are withdrawn by the Landlord and alternative payment arrangements put in place which remain in place for over six months then the Tenant must supply to the Landlord within one month of written demand a business plan supported by full profit and loss and trading accounts for the Tenant's business showing the Tenant's proposals for the development of that business over the following twelve months.
- 4.12.6 If in the Landlord's reasonable opinion the plan provided by the Tenant is inadequate the Tenant must at the Tenant's cost consult with business advisors recommended by the Landlord to produce a further business plan to be supplied to the Landlord within a period of one month from the date the Landlord notifies the Tenant their initial plan is inadequate.

#### **EMPLOYEES**

- 4.13 The Tenant is sole employer of all staff at the Premises and agrees:
- 4.13.1 to comply with his obligations, if any, under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to employ such of the employees who were employed in relation to the Premises before the commencement of the Term;
- 4.13.2 at all times during or after the end of the Term to disclose full and accurate details of the terms and conditions of any employee at the Premises to any person to whom the Landlord may propose from time to time to let, or agree to let, the Premises for any period after the end of the Term or otherwise;
- 4.13.3 to ensure the Landlord does not become responsible for the employment (or anything related to it) of any employee of the Tenant (unless the Landlord consents) at the end of the Term;
- 4.13.4 to provide the Landlord on demand with written terms and conditions for all staff employed at the Premises;
- 4.13.5 to comply adequately with the requirements of employer liability insurance legislation.

#### **INFORMATION**

- 4.14 If so requested to produce to the Landlord or the Surveyor:
- 4.14.1 any plans, documents and other evidence the Landlord reasonably requires to satisfy himself that the provisions of this Agreement have been complied with;

- 4.14.2 any information reasonably requested in writing in relation to any pending or intended step under the 1954 Act;
- 4.14.3 (where credit facilities for payment of the Tenant's trading account are withdrawn) the most recent profit and loss accounts for the Tenant's business together with full trading accounts for the period since the date of those profit and loss accounts.

#### **SALE OF FREEHOLD/RELETTING**

- 4.15 To permit prospective purchasers of the Landlord's interest in the Premises or agents instructed in connection with the sale of that interest or prospective new tenants of the Premises to view them without interruption provided they have the prior written authority of the Landlord or his agents.

#### **INDEMNITY**

- 4.16 To fully indemnify the Landlord against all losses arising directly or indirectly out of any act, omission or negligence of the Tenant, or any persons at the Premises expressly or impliedly with his authority or any breach or non-observance by the Tenant of the obligations, conditions or other provisions of this Agreement or any of the matters to which this letting is subject.

#### **THE END OF THE TERM**

- 4.17.1 At the end of the Term:
- 4.17.1.1 to yield up the Premises with vacant possession, decorated and repaired in accordance with and in the condition required by the provisions of this Agreement;
- 4.17.1.2 if requested by the Landlord to remove any alterations or additions made to the Premises and all notices and signs erected on them during the Term and any tenant's fixtures and fittings and to make good any damage caused by their removal.
- 4.17.1.3 to assign surrender relinquish disclaim and transfer without payment as the Landlord shall direct all ECAM, lists of quests and customers, all lists of bookings for meals and accommodation including all emails, email addresses and telephone numbers connected with such matters.
- 4.17.2 This clause applies where and to the extent that the Tenant owns the Inventory at the end of the Term:
- 4.17.2.1 the Landlord shall have the right to buy free from all mortgages, charges and encumbrances whatsoever and pay for such parts of the Inventory as the Landlord shall select ('the Selected Items') at a valuation ('the Valuation') to be agreed between the Landlord and the Tenant or, if they are unable to agree, to be determined in accordance with clause 4.17.5;
- 4.17.2.2 ownership of the Selected Items shall pass to the Landlord immediately upon the Landlord giving notice to the Tenant of the exercise of its option to purchase them, whether a Valuation has been agreed or not, and the Tenant must not damage or remove them and they shall remain at the Tenant's risk

until such time as the Tenant delivers the same into the possession of the Landlord upon quitting the Premises.

- 4.17.3 The Tenant must not at any time dispose of any part of the Inventory without first offering to sell it to the Landlord at a valuation agreed between the parties or determined in accordance with clause 4.17.5 and if the Tenant does so they will indemnify the Landlord against all costs over and above the value of the Selected Items which the Landlord wished to buy incurred by them in purchasing or otherwise obtaining equivalent items and any additional losses caused by any disruption of the business carried on at the Premises by the fact the Landlord was unable to buy any Selected Items from the Tenant.
- 4.17.4 The Landlord shall have the right at the end of the Term to take free from all mortgages, charges, encumbrances and third party claims whatsoever and pay for the Tenant's sound and saleable stock-in-trade at a valuation to be agreed between the Landlord and the Tenant or, if they are unable to agree, to be determined in accordance with clause 4.17.5.
- 4.17.5 In the event of any disagreement between the parties over the value of any Inventory or stock ("the Valuation") the matter will be determined by an independent surveyor acting as an expert appointed by agreement between the parties or (in the absence of agreement) nominated by or on behalf of the then President of the Royal Institution of Chartered Surveyors.
- 4.17.6 On agreement or determination of the Valuation the Landlord shall be entitled to set-off against the Valuation any sums owing to it by the Tenant at that time, or any subsequent time, before the amount of the Valuation is paid to the Tenant.
- 4.17.7 The Landlord shall not be under any obligation to take and pay for any other property of the Tenant which may be on the Premises at the determination of this Agreement.

## **5. LANDLORD'S OBLIGATIONS**

The Landlord agrees with the Tenant:

### **QUIET ENJOYMENT**

- 5.1 To permit the Tenant to hold and enjoy the Premises without any interruption or disturbance from the Landlord or anyone under their control.

### **LANDLORD'S PART**

- 5.2 To keep the Landlord's Part of the Property in good and substantial repair provided that the Landlord shall not incur any liabilities to the Tenant in respect of its state and condition unless and until the Tenant has served on the Landlord notice of any disrepair in the same and that the Landlord will be entitled to take into account the urgency of any works required to the Landlord's Part of the Property when arranging for them to be carried out.

### **TRADE FIXTURES**

- 5.3 To replace the Trade Fixtures with items of equivalent quality and design when they are incapable of repair.

## **SECURITY DEPOSIT**

- 5.4 To repay the Security Deposit subject to the provisions of clause 4.2.

## **ANNUAL SERVICING**

- 5.5 To carry out, if the Landlord chooses to do so, an annual inspection and servicing of the boiler cellar cooling equipment fire alarm emergency lighting and electrical circuits and other Conduits in or on the Premises and to recharge to the Tenant the costs of doing so.

## **ADVICE AND ASSISTANCE**

- 5.6 To provide, if the Landlord chooses to do so, advice and assistance in connection with the following matters which are of mutual interest and concern to the parties:
- 5.6.1 the promotion and marketing of the business at the Premises and the presentation of the Landlord's products;
  - 5.6.2 the internal decoration and lighting and refurbishment (when necessary) of the Premises;
  - 5.6.3 the choice of wines and the preparation printing and presentation of wine lists;
  - 5.6.4 training and trade qualifications for personnel including introductions to appropriate seminars and courses;
  - 5.6.5 the financial control of the business including introductions to suitable recommended advisors;
  - 5.6.6 the conduct of all enquiries correspondence and appeals relating to the rateable value of the Premises.

## **FINANCIAL ASSISTANCE ARRANGEMENTS**

- 5.7 To provide loans for the purposes of developing the business at the Premises on terms to be agreed with the Tenant in circumstances the Landlord in their sole discretion consider appropriate.

## **PRODUCTS**

- 5.8 To allow the Tenant access to the entire range of products as set out in the Landlord's current Tenanted Trade price list.

## **6. INSURANCE**

### **LANDLORD TO INSURE**

- 6.1 The Landlord agrees with the Tenant to insure the Premises unless the insurance is vitiated by any act of the Tenant or by anyone at the Premises expressly or by implication with his authority against damage by the Insured Risk to the extent such insurance can be arranged at reasonable cost in the ordinary insurance market:
- 6.1.1 in such insurance office, or with such underwriters, and through such agency as the Landlord from time to time decides;

- 6.1.2 for the sum that the Landlord is from time to time advised is the full cost of rebuilding and reinstating the Premises, including VAT, professional and incidental costs;
- 6.1.3 plus loss of the Rent;
- 6.1.4 and the depreciation in value of the Premises resulting from the loss of the Licences;
- 6.1.5 subject to such excesses, exclusions or limitations as the insurer requires.

#### **SUSPENDING THE RENT**

- 6.2.1 If the Premises or any part of them are damaged or destroyed by an Insured Risk so that they or any part of them are unfit for occupation or use, and payment of the insurance money is not wholly or partly refused because of any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority, then the Rent or a fair proportion of it depending on the extent of the damage to the Premises shall be suspended until they are fit for occupation and use again.
- 6.2.2 Any dispute as to the proportion of the Rent suspended or the period of the suspension will be determined in accordance with the Arbitration Act 1996 by an arbitrator to be appointed by agreement between the Landlord and the Tenant or in default by the President or other proper officer for the time being of the Royal Institution of Chartered Surveyors on the application of either the Landlord or the Tenant.

#### **REBUILDING THE PREMISES**

- 6.3.1 If the Premises or any part of them are damaged or destroyed by one or more of the Insured Risks and payment of the insurance money is not wholly or partly refused because of any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority the Landlord will use their reasonable endeavours to obtain the planning permissions or other permits and consents ('permissions') that are required under the Planning Acts or otherwise to enable them to rebuild and reinstate the Premises.
- 6.3.2 Subject to the provisions of clause 6.3.3, and, if any permissions are required, after they have been obtained, the Landlord must as soon as reasonably practicable apply all money received in respect of the insurance, except sums in respect of loss of the Rent, in rebuilding or reinstating the Premises.
- 6.3.3 The Landlord need not rebuild or reinstate the Premises if and for so long as rebuilding or reinstatement is prevented because:
  - 6.3.3.1 the Landlord, despite using his best endeavours, cannot obtain any necessary permission;
  - 6.3.3.2 any permission is granted subject to a lawful condition with which it is impossible or in all the circumstances it is unreasonable to expect the Landlord to comply;
  - 6.3.3.3 there is some defect or deficiency in the site on which the rebuilding or reinstatement is to take place that renders it impossible or means it can only be undertaken at a cost that is unreasonable in all the circumstances;

- 6.3.3.4 the Landlord is unable to obtain access to the site to rebuild or reinstate;
- 6.3.3.5 the rebuilding or reinstating is prevented by war, act of God, government action, strike or lock-out;
- 6.3.3.6 because of the occurrence of any other circumstances beyond the Landlord's control.

#### **TERMINATION**

- 6.4 If, at the end of a period of 3 years commencing on the date of the damage or destruction, the Premises are still not fit for the Tenant's occupation and use, either party may by notice served at any time within 6 months of the end of that period terminate this Agreement and all money received in respect of the insurance effected by the Landlord pursuant to this Agreement will then belong to the Landlord absolutely and they will be under no obligation to proceed with the rebuilding of the Premises.

#### **TENANT'S INSURANCE OBLIGATIONS**

- 6.5 The Tenant agrees:
  - 6.5.1 to comply with all the requirements and recommendations of the insurers and fire authority;
  - 6.5.2 not to do or omit anything that could cause any insurance policy on the Premises to become wholly or partly void or voidable, or by which additional insurance premiums may become payable unless he has previously notified the Landlord and has agreed to pay the increased premium;
  - 6.5.3 to keep the Premises supplied with such fire-fighting equipment as the insurers and the fire authority require and must maintain the equipment to the reasonable satisfaction of the insurers and the fire authority and in efficient working order;
  - 6.5.4 not to store on the Premises or bring onto them anything of a specially combustible, inflammable or explosive nature;
  - 6.5.5 not to obstruct the access to any fire equipment or the means of escape from the Premises or lock any fire door while the Premises are occupied;
  - 6.5.6 to give immediate notice to the Landlord of any event that might affect any insurance policy on or relating to the Premises, and any event against which the Landlord may have insured under this Agreement;
  - 6.5.7 to give immediate notice to the Landlord of any conviction, judgment or finding of any court or tribunal relating to the Tenant, or any director, other officer or major shareholder of the Tenant, of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue any such insurance;
  - 6.5.8 to provide to the Landlord on each anniversary of its renewal a copy of each insurance policy taken out by the Tenant in respect of the business carried on at the Premises including public and employer's liability insurance together with evidence that the premiums for such policies have been paid.

## **OTHER INSURANCE**

- 6.6 If the Tenant is entitled to the benefit of any insurance of the Premises that is not effected or maintained in pursuance of any obligation contained in this Agreement, the Tenant must apply all money received by virtue of that insurance in making good the loss or damage in respect of which the money is received.

## **TENANT TO REINSTATE**

- 6.7 If the Premises or any part of them are damaged or destroyed by an Insured Risk and the insurance money under the policy of insurance effected by the Landlord is wholly or partly irrecoverable because of any act or default of the Tenant or of anyone at the Premises expressly or by implication with his authority the Tenant will immediately, at the option of the Landlord, either:

- 6.7.1 rebuild and reinstate the Premises or the part of them destroyed or damaged, to the reasonable satisfaction and under the supervision of the Surveyor in which case, on completion of the rebuilding and refurbishment, the Landlord must pay to the Tenant the amount that the Landlord has actually received under the insurance policy in respect of the destruction or damage; or
- 6.7.2 pay to the Landlord on demand with interest the amount of the insurance money so irrecoverable in which case the provisions of clause 6.3 are to apply.

## **TENANT'S FURTHER INSURANCE OBLIGATIONS**

- 6.8 The Tenant must at the Tenant's own expense effect and maintain employer's (where required by law), third party and public liability insurance for a minimum sum of £5,000,000 per claim and also insurance in the full cost of reinstating, or where appropriate replacing:

- 6.8.1 all plate glass on the Premises,
- 6.8.2 all Tenant's stock,
- 6.8.3 all cash in any Amusement Machines or otherwise in or about the Premises,
- 6.8.4 all the Tenant's fixtures and fittings and anything else in the Inventory,

AND MUST PROMPTLY pay all premiums necessary in respect thereof within 7 days after they become due and payable, and produce to the Landlord on demand a copy of the policy or policies of such insurance and the last premium renewal receipt PROVIDED THAT if the Tenant shall at any time fail to insure in accordance with this clause 6.8 the Landlord may do all things necessary to effect and maintain such insurances and the Tenant must reimburse any monies expended by the Landlord for that purpose on demand.

## **7. TERMINATION OF THIS AGREEMENT**

### **FORFEITURE**

- 7.1 If and whenever during the Term:

- 7.1.1 the Rents or any VAT payable on them is outstanding for 14 days after becoming due, whether formally demanded or not; or
- 7.1.2 the Tenant breaches any covenant or other term of this Agreement, or
- 7.1.3 the Tenant being an individual becomes bankrupt, or
- 7.1.4 the Tenant enters into an arrangement for the benefit of his creditors, or
- 7.1.5 the Tenant fails to comply with the terms of repayment of any financial assistance arrangement which have been agreed between the Landlord and the Tenant, or
- 7.1.6 the Tenant or the DPS for the time being becomes disqualified from holding a Personal Licence or has their Personal Licence suspended revoked or forfeited or surrenders or fails to renew their Personal Licence;

AND, where the Tenant is more than one person, if and whenever any of the events referred to in this clause happens to any one or more of them, the Landlord may at any time re-enter the Premises or any part of them in the name of the whole even if any previous right of re-entry has been waived and thereupon the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Agreement including the breach in respect of which the re-entry is made.

**BREAK CLAUSE**

- 7.2.1 In this clause "anniversary" means an anniversary of the start date of the Term. Either party may give to the other not more than twelve nor less than six calendar months' notice in writing to determine this Agreement expiring on or within 14 days after the next anniversary which will occur after the giving of such notice and immediately on the expiration of such notice, but subject to the Tenant vacating the Premises and yielding the Premises up to the Landlord in accordance with its obligations in this respect contained in this Agreement, the tenancy shall end but leaving intact the rights of either party against the other in respect of any previous claim or breach.
- 7.2.2 If the Tenant dies during the Term:
  - 7.2.2.1 their personal representatives are entitled to serve not less than four weeks' written notice on the Landlord determining this Agreement at any time within four weeks of the Tenant's death;
  - 7.2.2.2 the Landlord is entitled to serve not less than four weeks' prior written notice on the Tenant's personal representatives determining this Agreement at any time within four weeks of his death.
- 7.2.3 In the event the Landlord intends to redevelop the whole or any part of the Premises he may terminate this Agreement on not less than 6 months' prior written notice provided that if the Landlord exercises this right he shall either:
  - 7.2.4.1 offer the Tenant suitable alternative premises to the Tenant (which it is agreed may comprise part of the current Premises); or
  - 7.2.4.2 pay to the Tenant compensation under Section 37 of the 1954 Act if he is unable to offer the Tenant suitable alternative premises.

- 7.2.4 In the event the exclusive purchasing obligations in this Agreement are varied or removed for any reason other than the agreement of the Landlord and Tenant then the Landlord shall be entitled to determine this Agreement by service of not less than 6 months' prior written notice provided that such notice can be served before these obligations are varied or removed so long as the date for termination is after their variation or removal takes effect.

#### **TENANT'S PROPERTY**

- 7.3.1 If after the Tenant has vacated the Premises at the end of the Term any property of his remains in it and he fails to remove it within 7 days after a written request from the Landlord to do so or if the Landlord is unable to make such a request to the Tenant within 14 days from the first attempt to do so then the Landlord may, as the agent of the Tenant, sell that property.
- 7.3.2 The Tenant must indemnify the Landlord against any liability incurred by the Landlord to any third party whose property is sold by him in the mistaken belief held in good faith—which is to be presumed unless the contrary is proved—that the property belonged to the Tenant.
- 7.3.3 If having made reasonable efforts to do so the Landlord is unable to locate the Tenant then the Landlord may retain the proceeds of sale absolutely unless the Tenant claims them within 6 months of the date upon which he vacated the Premises. The Tenant must indemnify the Landlord against any damage occasioned to the Premises and any losses caused by or related to the presence of the property in or on the Premises.
- 7.3.4 The Tenant acknowledges that where it carries out any works to the Premises without the Landlord's consent these works are carried out at the Tenant's sole expense and the Landlord will in no circumstances at any time be required to compensate the Tenant for the cost of those works or any increase in the value of the Premises attributable to them.

#### **8. MISCELLANEOUS**

The parties agree that:

##### **NOTICES**

- 8.1.1 Any notice under this Agreement must be in writing.
- 8.1.2 Where a notice has to be served on the Landlord it must be sent by registered post or recorded delivery to the Landlord's registered office unless the Landlord has given the Tenant written notice of another address for service.
- 8.1.3 Where a notice has to be served on the Tenant it must be sent by registered post or recorded delivery to the Premises.
- 8.1.4 Unless it is returned undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the 2nd working day after posting whether or not it is received.
- 8.1.5 References to 'a working day' are references to a day when the United Kingdom clearing banks are open for business in the City of London.
- 8.1.6 If the receiving party consists of more than one person, a notice to one of them is notice to all.

### **THIRD PARTIES**

- 8.2 Nothing in this Agreement shall confer any benefit on any person who is not a party to it.

### **REPRESENTATIONS**

- 8.3 The Tenant has not entered into this Agreement as a result of any statement or representation made by or on behalf of the Landlord or on their behalf unless any such statement or representation is set out in this Agreement.

### **SIGNING DOCUMENTS**

- 8.4 While the Landlord is a limited company, any licence, consent, approval or notice required to be given by them may be given under the hand of a director, the secretary or other duly authorised officer of the Landlord or by the Surveyor on behalf of the Landlord.

### **COMPENSATION**

- 8.5 Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows.

### **ECAM**

- 8.6 All ECAM and goodwill of the business at the premises belongs to and is the exclusive property of the Landlord

## **SCHEDULE 1**

### **THE RIGHTS RESERVED**

#### **1. Right of Entry to Inspect**

The right to enter, or in emergency to break into and enter, the Premises at any time during the Term at reasonable times and upon reasonable notice except in emergency to inspect them, to take schedules or inventories of fixtures and other items to be yielded up at the end of the Term, and to exercise any of the rights granted to the Landlord elsewhere in this Agreement.

#### **2. Access on Renewal or Rent Review**

The right to enter the Premises with the Surveyor and the third party determining the Rent under any provisions for rent review contained in this Agreement at any time to inspect and measure the Premises for all purposes connected with any pending or intended step under the 1954 Act or the implementation of the provisions for rent review.

#### **3. Right to Install etc Beer Dispensing Equipment**

The right to install, operate, repair, replace, renew, inspect and maintain such beer and cider (or other drinks) dispensing equipment including (without limitation) lines, pumps, cooling apparatus, flow regulating or monitoring systems and such other ancillary equipment as the Landlord may from time to time consider appropriate or desirable and

the right to install equipment to measure the amount to beer and other drinks dispensed through the dispensing equipment at the Premises.

**4. Right to Connect into Services**

The right to connect to use, replace, renew, inspect and maintain such Conduits and utility services (including but without limitation electricity, water and telecommunications) at or serving the Premises from time to time or if no appropriate services are situate at the Premises to install such conducting media as may be necessary for the proper operation of any dispensing equipment from time to time at the Premises.

**SCHEDULE 2**

**THE RENT AND RENT REVIEW**

**1. Review**

In the event that the exclusive purchase obligations contained in this Agreement are varied or removed whether by agreement of the parties or by statute or by any other means the date of such variation or removal shall be a Review Date and the Rent shall be reviewed with effect from the Review Date to the greater of:

- 1.1 the Rent payable immediately before the Review Date (or which would then be payable but for any abatement or suspension of the Rent or restriction on the right to collect it), and
- 1.2 the open market rent agreed or determined pursuant to this clause.

**2. Agreement of Open Market Rent**

The open market rent may be agreed at any time by the parties before it is determined by the Valuer.

**3. Determination by Valuer**

If the parties cannot agree the open market rent it will be determined by the Valuer and shall be the amount that he determines is the best annual rent (exclusive of any VAT) at which the Premises could reasonably be expected to be let:

- 3.1 in the open market;
- 3.2 at the relevant Review Date;
- 3.3 on the assumptions listed in paragraph 4;
- 3.4 disregarding the matters listed in paragraph 5;
- 3.5 taking into account any removal or variation of the exclusive purchasing obligations under this Agreement.

#### **4. Assumptions**

The assumptions are:

- 4.1 the Premises are available to let in the open market;
- 4.1.1 by a willing lessor to a willing lessee;
- 4.1.2 as a whole;
- 4.1.3 with vacant possession;
- 4.1.4 without a fine or a premium;
- 4.1.5 for a term equal to the unexpired residue of the Term at the relevant Review Date or three years if longer;
- 4.1.6 otherwise on the terms of this Agreement other than as to the amount of the Rent but including the provisions for review of the Rent;
- 4.2 the willing lessee has had the benefit of any rent-free or other concession or contribution which would be offered in the open market at the relevant Review Date to reflect the need to fit out the Premises;
- 4.3 the Premises may lawfully be used, and is in a physical state to enable it to be lawfully used, by the willing lessee (or any potential undertenant or assignee of the willing lessee) for any purpose permitted by this Agreement;
- 4.4 the Landlord and Tenant have fully complied with their obligations in this Agreement;
- 4.5 if the Premises, or any means of access to it or any Conduits serving the Premises, has been destroyed or damaged, it has been fully restored,
- 4.6 no work has been carried out on the Property that has diminished its rental value;
- 4.7 the willing lessee and its potential assignees and undertenants shall not be disadvantaged by any actual or potential election to waive exemption from VAT in relation to the Premises;
- 4.8 the Necessary Licences are in existence in respect of the Premises.

#### **5. Disregards**

The matters to be disregarded are:

- 5.1 any effect on rent or the fact that the Tenant or any authorised undertenant has been in occupation of the Premises;
- 5.2 any goodwill attached to the Premises by reason of any business carried out there by the Tenant;
- 5.3 any effect on rent attributable to any physical improvement to the Premises carried out before or after the date of this Agreement by or at the expense of the Tenant or any authorised undertenant with all necessary consents, approvals and authorisations and not

pursuant to an obligation to the Landlord (other than an obligation to comply with any law);

5.4 any effect on rent of any obligation on the Tenant to fit out the Property or to reinstate the Property to the condition or design it was in before any alterations or improvements were carried out;

5.5 any statutory restriction on rents or the right to recover them.

## **6. Appointment of Valuer**

The parties may agree on the Valuer at any time. If they are unable to do so either of them may apply to the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy for an independent Valuer to be appointed.

## **7. Capacity**

The Valuer shall act as an expert and not as an arbitrator.

## **8. Representations**

The Valuer shall give the parties an opportunity to make written representations to him and to make written counter-representations commenting on the representations of the other party to the Valuer.

## **9. New Valuer**

If the Valuer dies, delays or becomes unwilling or incapable of acting, then either party may apply to the President to discharge the Valuer and paragraph 6 shall then apply in relation to the appointment of a replacement.

## **10. Fees**

The fees and expenses of the Valuer and the cost of his appointment and any counsel's fees incurred by him shall be payable by the parties in the proportions that he directs (or if the Valuer makes no direction, then equally). If the Tenant does not pay its part of the Valuer's fees and expenses within ten working days after service of the demand by the Valuer, the Landlord may pay that part and the amount it pays shall be a debt due and payable on demand to them. The parties shall otherwise each bear their own costs in connection with the rent review.

## **11. Balancing Payment**

If the revised Rent has not been agreed or determined by the Valuer on or before the Review Date, the Rent payable from that Review Date shall continue at the rate payable immediately before that Review Date. No later than five working days after the revised Rent is agreed or the Valuer's determination is notified to the Tenant he shall pay the shortfall (if any) arising.

## **12. Time not of the essence**

Time shall not be of the essence for the purposes of this clause.

**13. Memorandum**

As soon as practicable after the amount of the revised Rent has been agreed or determined, a memorandum recording the amount shall be signed by or on behalf of both parties and endorsed on or attached to this Agreement and its counterpart. Each party shall bear their own costs in connection with the memorandum.

Signatures:

Agreement

Signed by and on behalf of  
Wadworth and Company Limited

.....

Counterpart Agreement

Signed by.....(Tenant)  
in the presence of: