

DATED

201[]

(1) PUNCH TAVERNS (JUBILEE) LIMITED

- and -

(2) [INSERT PUB OPERATOR]

**PUB OPERATOR
AGREEMENT**

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BETWEEN:

- (1) **PUNCH TAVERNS (JUBILEE) LIMITED**, a company incorporated in England with registered number 04821157 and whose registered office is at Elsley Court, 20-22 Great Titchfield Street, London W1W 8BE ("**Pub Owner**"); and
- (2) **[INSERT PUB OPERATOR]**, a company incorporated in [] with registered number [] and whose registered office is at [] ("**Operator**").
- (3) **[INSERT GUARANTOR]** []

(each a "**party**"; and together the "**parties**")

BACKGROUND

A. Pub Owner wishes to engage the Operator, and the Operator agrees, to operate the Pub on behalf of Pub Owner in accordance with the terms set out in this agreement.

B. [The Guarantor is a party to this agreement for the purposes of guaranteeing the obligations of the Operator as set out in clause 8 and schedule 2 of this agreement.]

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

In this agreement, the following terms have the following meanings:

"**Base Fee**" has the meaning given to it in clause 11.1.1;

"**Brand**" means the name " [] " and associated logo;

"**Business Day**" means a day (other than a Saturday or Sunday) on which clearing banks are ordinarily open for business in the City of London;

"**Capital Expenditure**" means:

- (a) expenditure relating to the Pub which, in accordance with IFRS, is to be capitalised and amortised; and
- (b) lease payments for equipment and materials, the purchase of which would constitute capital expenditure in accordance with such generally accepted accounting practices;

"**Commencement Date**" means []; *[Drafting Note: when determining the appropriate date, the licence to occupy will start from this date.]*

"**Confidential Information**" has the meaning given to it in clause 19.12.1;

"**Data Protection Laws**" means in relation to any personal data which is processed under this agreement, the EU Data Protection Directive 95/46/EC until 25 May 2018 and the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") on and from 25 May 2018;

"Deposit" has the meaning given to it in clause 5.4;

"Designated Premises Supervisor" means the individual specified as such in the Premises Licence in accordance with the Licensing Act 2003;

"Employee Costs" has the meaning given to it in clause 6.4.7;

"Effective Date" means the date on which this agreement is executed by the parties;

"FF&E" means all chattels, furniture and durable property used or stored for the Pub's operation, including, without limitation, office materials and furniture (including, without limitation, safes, cash-registers, cash boxes and communication equipment), public furniture, carpeting and other floor coverings, draperies, paintings, television sets, pianos, specific leisure equipment (including, without limitation, equipment required for the operation of any restaurant, bars and lounges), special lighting and other equipment, vehicles of any description, computers, sound systems, material handling equipment and engineering equipment and any other items of equipment required to operate the Pub, other than the Operating Implements, the Operating Supplies and any other fixtures attached to and forming an integral part of the Pub;

"Force Majeure" has the meaning given to it in clause 15.1;

"Group" means in respect of a party, that party and each body corporate which is from time to time its subsidiary or its holding company or a subsidiary of its holding company or ultimate holding company, and references to **"Pub Owner's Group"** and the **"Operator's Group"** shall be construed accordingly;

"IFRS" means International Financial Reporting Standards;

"Improvement Works" has the meaning given to it in clause 4.1.3.1;

"Incentive Fee" has the meaning given to it in clause 11.1.1;

"Insured Risks" has the meaning given to it in clause 13.1.1;

"Liability Period" has the meaning given to it in paragraph 1.2 of schedule 2;

"Management Fee" has the meaning given to it in clause 11.1;

"Manual" the operations manual containing details of how to manage the business, which Pub Owner will supply (on loan) to the Operator and which Pub Owner may update from time to time;

"Named Individual" means  or such other person as notified by the Operator in writing to Pub Owner and approved by Pub Owner from time to time;

"Net Operating Profit" means Revenue and income derived from gaming and entertainment machines located at the Pub, less the Base Fee and less Operating Expenses (other than any council tax payable in respect of a service occupancy granted pursuant to clause 9) payable in connection with the Pub or any part of it;

"Operating Expenses" means the proper and reasonable vouched costs and expenses incurred in relation to the operation, management and maintenance of the Pub including, without limitation, the following:

- (a) the cost of locally-generated advertising, marketing and business promotion incurred by the Pub;
- (b) the cost of utilities, including, without limitation, heat, light, power, air conditioning, water, and sewage treatment and disposal;
- (c) the cost of Operating Implements and Operating Supplies used and consumed in the operation of the Pub;
- (d) the costs as provided for in clause 5.3;
- (e) a reasonable reserve for uncollectible accounts receivable as determined by Pub Owner;
- (f) the costs and fees of independent professionals or other third parties who are retained to perform services relating to fire safety, water treatment testing and stocktaking or others as agreed in advance by Pub Owner;
- (g) any IT costs and expenses relevant to the operation of the Pub;
- (h) the costs of maintenance, repairs and minor alterations of and to the Pub, excluding Capital Expenditure or improvements to the Pub contemplated under clause 4.1.3;
- (i) the costs and expenses of the insurance which is required to be put in place by this agreement in connection with the Pub, but excluding the cost of buildings insurance in relation to the Pub;
- (j) the costs and expenses incurred in complying with applicable legal requirements pertaining to the operation of the Pub;
- (k) such other expenses incurred (either at the Pub or elsewhere) as are specifically provided for elsewhere in this agreement or, as agreed between the parties, are otherwise reasonably necessary for the proper and efficient operation of the Pub (including, without limitation, disbursements and travelling expenses incurred in connection with marketing and public relations services);
- (l) the costs of training required under clause 6.4.9;

"Operating Implements" means all cooking utensils, dishware, glasses, cutlery, tableware, silverware, uniforms, linen, tools, kitchen utensils and other items of a similar nature required for the Pub's operation;

"Operating Supplies" means all immediately consumable items required for the operation of the Pub including, without limitation, beverages, food, hospitality products, cleaning products, stationery, brochures and other printed items used for the Pub's operation;

"Personal Licence" means a personal licence to sell alcohol under the Licensing Act 2003 which related to the Pub;

"Premises Licence" means a premises licence under the Licensing Act 2003 which relates to the Pub;

"Pub" means that part of Pub Owner's Property used for the purpose of running a pub, [operating under the name of "◆",] at the date of this agreement (including the residential part of Pub Owner's Property used for service occupancy but excluding the areas used for commercial properties or let under assured shorthold tenancies);

"Pub Employees" means those persons whom the Operator (acting reasonably) deems necessary to engage for the efficient and profitable operation of the Pub, such persons to be recruited and employed by the Operator from time to time exclusively for the operation of the Pub and whose jobs are located at the Pub including, without limitation, the Transferring Employees;

"Pub Owner's Property" means the property owned by Pub Owner and situated at [◆];

"Pub Sale" means the disposal or sale of the Pub by Pub Owner (whether by virtue of the sale of the majority of shares in Pub Owner or by way of asset disposal of all or part of Pub Owner Property);

"Quarter" means each successive period of three months from and including each Quarter Day;

"Quarter Days" means 1 January, 1 April, 1 July and 1 October in each calendar year;

"Regulations" means all laws, orders, decrees, rules, permits, licences, authorisations, directives and conditions required by the government or any administrative authorities, and all police and magistrates' measures that may apply to the Pub or its operation;

"Replacement Operator" means any third party appointed by Pub Owner to carry out the Services, or services which are substantially similar to the Services, following the termination of this agreement;

"Retail Standards Audit" means an audit carried out by or on behalf of Pub Owner relating to the operation of the Pub;

"Requisite Consents" means all permits, certificates, licences, government or other authorisations required from time to time for the use, operation and management, opening to the public and legal occupancy of the Pub by the Operator and other users/occupiers of any part of the Pub;

"Revenue" means all receipts of any kind produced by a payment in cash or by credit as a result of the Pub's operation and all of its subsidiary services, but excluding:

- (a) any capital grants or other subsidies awarded in respect of the Pub;
- (b) VAT on all sales, turnover and other Taxes and duties;
- (c) gratuities or service charges paid to the Pub Employees;
- (d) any receipt which is subsequently credited or refunded to customers or other users/occupiers of any part of the Pub;
- (e) any receipt which is subsequently deemed to be a bad debt;
- (f) proceeds of insurance, other than business interruption insurance;

- (g) loans and other indebtedness and any refinancing of the same;
- (h) rents or other sums received by Pub Owner or any other member of Pub Owner's Group in respect of any premises or areas within the Pub which are not managed by the Operator pursuant to this agreement (including, without limitation, any income derived from mobile phone masts); and
- (i) any income derived from gaming or entertainment machines located at the Pub;

"**Services**" means the operation and management of the Pub as set out in, and in accordance with, the terms of this agreement;

"**Staff Information**" means Employee Liability Information as defined in Regulation 11 of TUPE together with pay slip data for the most recent month, cumulative pay for tax and pension purposes, cumulative tax paid, tax code, voluntary deductions from pay, and bank or building society account details in relation to the Pub Employees;

"**Taxes**" means all taxes of any kind and all rents or charges, fees for licences or permits, inspection fees and all other fees required for authorisations and expenses, applicable to the Pub or its operation, which may at any time be implemented, levied or decided;

"**Term**" means the term of this agreement as defined in clause 3;

"**Transfer Time**" has the meaning given to it in clause 6.4.2;

"**Transferring Employees**" means those individuals [set out in schedule 1 to this agreement] OR [those employees **[of [◆]]** whose contract of employment will be transferred to the Operator pursuant to TUPE on the Commencement Date;

"**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time; and

"**VAT**" means value added tax or any similar or replacement sales tax or duty.

- 1.1 For the purposes of this agreement, "**subsidiary**" and "**holding company**" shall have the meanings ascribed thereto in section 1159 of the Companies Act 2006, save that references to a "**company**" within that section shall include any company wheresoever incorporated or registered.
- 1.2 Unless the context otherwise requires, any reference in this agreement to:
 - 1.2.1 a "**person**" shall be construed as a reference to any individual, firm, company (including, without limitation, a limited liability company), corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
 - 1.2.2 a "**company**" shall include a reference to any body corporate;
 - 1.2.3 a "**clause**" is (unless otherwise stated) to a clause of this agreement;
 - 1.2.4 any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision (including, without limitation, all instruments, orders or regulations made thereunder or deriving validity therefrom) as in force at the date of this agreement and as subsequently

re-enacted or consolidated except to the extent that any such re-enactment or consolidation made after the date of this agreement would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, each party under this agreement;

1.2.5 any of the masculine, feminine and neuter genders shall include other genders;

1.2.6 the singular shall include the plural and vice versa; and

1.2.7 any time or date shall be construed as a reference to the time or date prevailing in England.

1.3 The clause headings in this agreement are for ease of reference only and shall not affect its interpretation.

2. APPOINTMENT AND SCOPE

2.1 Pub Owner appoints the Operator to manage the operation of the Pub and to provide the Services to Pub Owner pursuant to the terms and conditions of this agreement.

2.2 Pub Owner grants the following to the Operator:

2.2.1 authority to manage the Pub; and

2.2.2 a licence (on a non-exclusive basis) to occupy the Pub subject to, and in accordance with, the terms and conditions of this agreement from the Commencement Date. The Operator's right to occupy the Pub shall be further subject to any rights and easements that Pub Owner may grant from time to time over certain parts of the Pub for the benefit of other units in Pub Owner's Property (including, but without prejudice to the generality of the foregoing, rights of access to and from such units across entrance ways, lobbies and staircases in the Pub and all rights, easements, privileges, restrictions, covenants, stipulations and matters of whatsoever nature affecting Pub Owner's Property).

3. DURATION/TERM

This agreement shall become effective on the Effective Date and shall continue until terminated in accordance with the provisions of clause 17 of this agreement.

4. GENERAL UNDERTAKINGS OF PUB OWNER

4.1 Pub Owner undertakes as follows:

4.1.1 it shall allow the Operator to maintain normal and peaceful operation of the Pub, subject to and in accordance with the provisions of this agreement throughout the Term and shall take any appropriate action, judicial or otherwise, which may be reasonably appropriate to secure such normal and peaceful operation for the Operator;

4.1.2 subject to clauses 6.4.7.2 and 19.11, to pay all Taxes (excluding council tax and any other similar taxes payable in respect of any service occupancy entered into pursuant to clause 9, which for the avoidance of doubt, will be the responsibility of the Operator) and duties relating directly to the Pub's operation;

4.1.3 with such cooperation and assistance of the Operator as reasonably requested by Pub Owner (which shall extend, where required, to the temporary closure of the Pub or any part of it by the Operator):

4.1.3.1 carry out or implement all maintenance and small repair operations, additions, improvements and embellishing works (including, without limitation, all structural repairs, additions and improvements) and replace all FF&E required, to keep the Pub in a good state of repair and safety and to comply with the standards in place at the date of this agreement (including, without limitation, any Regulations or security requirements in force from time to time) ("**Improvement Works**"); and

4.1.3.2 rectify any defect in the Improvement Works and enforce any guarantees relating to the Improvement Works,

provided that where such Improvement Works or rectification of Improvement Works is required as a result of the act, omission, negligence or default of the Operator, Pub Owner shall be entitled to recover any expenses it has incurred as a result of, or in connection with such Improvement Works or rectification work from the Operator.

5. OTHER PROVISIONS

5.1 Name of the Pub

Throughout the Term, the name of the Pub shall be ["◆"] or such other name as shall be proposed by Pub Owner from time to time in its sole and absolute discretion. For the avoidance of doubt, the Operator shall not be entitled to change the name of the Pub unless advised of a change of Pub name by Pub Owner in accordance with this clause 5.1.

5.2 Licences and Permits

5.2.1 The Operator shall, throughout the Term, ensure that:

5.2.1.1 at all times one of the Pub Employees or the Named Individual is appointed as the Designated Premises Supervisor;

5.2.1.2 the Premises Licence is not prejudiced in any way by the Operator's provision of the Services;

5.2.1.3 a sufficient number of the Pub Employees hold Personal Licences in order to enable the proper operation of the business;

5.2.1.4 if any alcoholic drinks are sold or offered for sale at the Pub, this is done or authorised by Pub Employees who holds a Personal Licence; and

5.2.1.5 shall display at all times any price lists, licences or approvals as requested by the Pub Owner or as required by any Premises Licence, personal licence or by applicable laws.

5.2.2 Pub Owner shall, throughout the Term:

- 5.2.2.1 be responsible for holding and maintaining the Premises Licence and, other than as set out in clause 5.2.1, maintain and secure the renewal of any existing Requisite Consents and obtain any further Requisite Consents, all insofar as required for the efficient and lawful operation and management of the Pub; and
 - 5.2.2.2 ensure it is registered with HM Revenue and Customs at all times for the purposes of machines games duty (or equivalent tax relating to gaming and entertainment machines) and shall duly and properly account to HM Revenue and Customs for all machine games duty within all applicable time limits as outlined in any relevant legislation.
- 5.2.3 Without prejudice to the foregoing where, as a matter of law, any Requisite Consent may only be applied for or held by Pub Owner for the time being, the Pub Owner shall apply for and hold such Requisite Consent for the benefit of the operation and management of the Pub by the Operator. For the avoidance of doubt, the Premises Licence for the Pub shall be in the name of Pub Owner with the Named Individual as the Designated Premises Supervisor.

5.3 **FF&E, Operating Implements and Operating Supplies**

- 5.3.1 Pub Owner shall provide all FF&E, including, without limitation, hardware and software equipment, to the Operator for the operation of the Pub and shall install the same, and shall permit the Operator to use such FF&E for the sole purpose of the operation of the business of the Pub. The Operator shall inform Pub Owner immediately if any FF&E is lost or damaged and requires to be repaired, replaced or disposed of and such repair, replacement or disposal shall be arranged and, subject to clause 5.4, paid for directly by Pub Owner, unless otherwise agreed between the parties.
- 5.3.2 In respect of FF&E, the Operator will:
 - 5.3.2.1 not do or allow anything which affects Pub Owner's ownership of any FF&E, and shall not remove, deface or cover up any nameplate or mark on any of the FF&E which indicates they are Pub Owner's property;
 - 5.3.2.2 be responsible for the use and safekeeping of all FF&E;
 - 5.3.2.3 use, and will ensure that any other person's use, all FF&E only for their proper purposes and with all care;
 - 5.3.2.4 immediately on termination of this agreement return to Pub Owner all FF&E in the condition they were at the Effective Date; and
 - 5.3.2.5 immediately notify Pub Owner if any FF&E is involved in an accident resulting in injury to persons or other property.
- 5.3.3 Pub Owner shall, in accordance with good pub management, acting reasonably and in good faith, enter into all contracts required to operate the Pub (save for any contracts relating to the Pub Employees including those relating to a service occupancy), including, without limitation, contracts for purchasing FF&E, Operating Implements and Operating Supplies, energy and telecommunications

subscription and supply contracts, cleaning contracts, pest control contracts, contracts for the maintenance of lifts, heating, air-conditioning systems and all other plant and equipment installed in the Pub from time to time, advertising and promotion contracts, and contracts relating to the use of rooms and all other services provided by the Pub.

- 5.3.4 The Operator shall be required to maintain such Operating Supplies as are necessary for the proper and efficient operation of the Pub. The Operator shall regularly determine and/or review estimates of Operating Supplies required for the operation of the Pub. The Operator shall have responsibility for replenishing and re-ordering any Operating Supplies from the relevant suppliers. The cost of such orders shall be borne by Pub Owner and Pub Owner grants the Operator authority to purchase such Operating Supplies on credit on Pub Owner's account with the relevant supplier up to such pre-approved limit as provided by Pub Owner to the Operator from time to time. If, following an audit, it transpires that the Operator has ordered an excessive amount of Operating Supplies in a particular period which has resulted in Pub Owner suffering unrecoverable losses and expenses, the Operator shall be required to reimburse Pub Owner such losses and expenses out of the Management Fee.
- 5.3.5 The Operator will ensure that no food or drink, other than the Operating Supplies are advertised, offered for sale, sold or consumed at the Pub and all items offered for sale in the business are advertised and sold at the prices specified by Pub Owner.
- 5.3.6 The Operator will ensure that all goods and monies used in the business are fully accounted for, and shall compensate the Pub Owner for any losses or cash shortfalls in accordance with the process set out in the Manual.
- 5.3.7 The Operator will:
- 5.3.7.1 ensure that the Pub is run in accordance with all reasonable standards of safety and hygiene, and complies with any health and food safety and hygiene requirements notified by Pub Owner from time to time;
 - 5.3.7.2 ensure all Pub Employees are adequately trained in such health and food safety and hygiene requirements at all times; and
 - 5.3.7.3 immediately notify Pub Owner if it becomes aware of any aspect of the business which does not comply with any applicable health and food safety and hygiene requirements.
- 5.3.8 Pub Owner shall provide all necessary details to the Operator to enable it to re-order Operating Supplies when required, on Pub Owner's behalf and at Pub Owner's cost.
- 5.3.9 Pub Owner shall decorate the Pub according to its own requirements.
- 5.3.10 The Operator will at all times clean and keep in good order the interior of the Pub and will take all reasonable precautions against frost.
- 5.3.11 All Operating Implements, Operating Supplies and FF&E at the Pub, whether acquired before or after the date of this agreement, shall be the property of Pub Owner.

5.3.12 All Operating Expenses shall be paid in accordance with the terms of clause 5.5.

5.4 **Deposit and Damage to the Pub**

5.4.1 On the Effective Date, the Operator shall pay Pub Owner or to such member of Pub Owner's Group as Pub Owner shall direct, a deposit of [£3,000] [£◆] ("Deposit").

5.4.2 The Pub Owner shall be entitled to use the Deposit to offset any costs incurred by the Pub Owner as a result of:

5.4.2.1 any repair or rectification costs relating to the Pub (plus Taxes thereon);

5.4.2.2 any losses or cash shortfalls identified by the Pub Owner in accordance with clause 5.3.6 of this agreement;

5.4.2.3 any losses and expenses incurred by the Pub Owner as a result of:

(a) the Operator ordering an excessive amount of Operating Supplies as referred to in clause 5.3.4 of this agreement; and / or

(b) any loss of the Operating Implements, Operating Supplies or FF&E at the Pub that are the property of the Pub Owner pursuant to clause 5.3.11 of this agreement; and / or

5.4.2.4 any breach by the Operator of its obligations in this agreement.

5.4.3 In the event of any damage to the Pub in excess of the Deposit, Pub Owner shall invoice the Operator stating the costs of repairing or rectifying the damage to the Pub which shall be paid by the Operator within thirty (30) days of receipt of the invoice, together with any Taxes thereon.

5.4.4 Within thirty (30) days after termination of this agreement, Pub Owner shall refund any remainder of the Deposit to the Operator following deduction of any costs that the Pub Owner is entitled to deduct pursuant to clause 5.4.2 of this agreement.

5.4.5 The Pub Owner may review the amount of the Deposit on a periodic basis, and may require Operator to pay either to itself or to such member of Pub Owner's Group as Pub Owner shall direct an additional Deposit based on the volume of property damage affecting the Pub.

5.5 **Operating Expenses**

5.5.1 The payment of Operating Expenses shall be governed by the terms of this clause 5.5.1:

5.5.1.1 Regular recurring suppliers costs for pre-agreed suppliers shall be paid directly by Pub Owner (as an Operating Expense) on receipt of an invoice by Pub Owner. For the avoidance of doubt, the parties will arrange for all such invoices to be sent directly by the supplier to Pub Owner at the address set out in clause 19.10. However, if any

invoices are erroneously sent to the Operator, the Operator shall provide such invoices to Pub Owner without delay, and in any event within two (2) Business Days.

5.5.1.2 All other site expenses incurred by Operator in operating the Pub, must be settled by the Operator and logged in the Pub operating system in accordance with the Manual.

5.5.1.3 The Operator is entitled to pay certain local suppliers who provide ancillary services or goods to the Operator (including, without limitation, suppliers of light bulbs, window cleaners and local entertainers) from the petty cash, subject to a maximum sum advised in writing in advance from time to time by Pub Owner. Such expenses shall be recorded as having been paid from petty cash in the supporting materials supplied to Pub Owner by the Operator pursuant to clause 10. The Operator shall be entitled to enter into contracts with such local suppliers up to a maximum contract value advised in writing in advance from time to time by Pub Owner.

5.6 Works to the Pub

5.6.1 Notwithstanding the provisions of clause 4.1.3, the Pub Owner shall on reasonable prior notice to the Operator (save in the case of emergency) be entitled at its own discretion to carry out such material works to the Pub as it deems desirable ("**Material Works**").

5.6.2 In the event that the Pub Owner carries out Material Works pursuant to clause 5.6.1:

5.6.2.1 the Pub Owner shall use its reasonable endeavours to carry out the Material Works as soon as reasonably practicable; and

5.6.2.2 the Pub Owner shall without being liable to the Operator for compensation be entitled (at its absolute discretion) to require that the Pub or any part of it is closed by the Operator to enable the Material Works to be undertaken.

6. OPERATOR'S GENERAL OBLIGATIONS

6.1 The Operator shall provide the Services in accordance with the terms set out in this agreement.

6.2 General

6.2.1 The Operator shall carry out all acts and things necessary for the efficient and proper operation of the Pub, including (without limitation):

6.2.1.1 using all reasonable endeavours to maximise patronage and profitability of the Pub and all facilities available within the Pub and to minimise variable and fixed expenditure;

6.2.1.2 causing all such other things to be done in and about the Pub as are necessary or desirable to comply with all Regulations and Requisite

- Consents relating to the use or manner of use, operation and management of the Pub;
- 6.2.1.3 performing all acts and, to the extent approved in advance by Pub Owner, entering into all agreements necessary in connection with the operation and management of the Pub in an efficient, profitable and proper manner;
 - 6.2.1.4 perform the Services and promote the Pub with the best care, skill and diligence, in accordance with best practice in the pub management industry, and in accordance with the procedures, requirements and operational standards set out in the Manual;
 - 6.2.1.5 ensure it and Pub Employees attend any workshops and complete any necessary online modules as required by Pub Owner from time to time;
 - 6.2.1.6 ensure that the Pub operates on the days and during the hours specified by Pub Owner;
 - 6.2.1.7 complying with all covenants or other obligations affecting Pub Owner's Property from time to time (including, without limitation, all repair and maintenance obligations of Pub Owner in any lease under which the Pub is held as advised and directed by Pub Owner from time to time);
 - 6.2.1.8 providing such cooperation and assistance as reasonably required by Pub Owner under clauses 4.1.3 and 6.2.2;
 - 6.2.1.9 complying with such requirements of the insurers of the Pub as may be notified by Pub Owner to the Operator from time to time and not knowingly doing or omitting to do any act or thing which could make void or voidable any insurance policy taken out in respect of the Pub or otherwise reduce the sums which could be claimed under such policy or increase any premium payable in connection therewith; and
 - 6.2.1.10 notifying the Pub Owner immediately upon receipt of any complaints or other communication received by the Operator relating to the operation of the Pub from the police, or the fire, safety or licensing authorities.
- 6.2.2 The Operator acknowledges that the Pub may be regularly inspected by certified organisations to check its compliance with the requirements of any Requisite Consents, in particular with respect to the following:
- 6.2.2.1 fire safety;
 - 6.2.2.2 lifts;
 - 6.2.2.3 electrical system;
 - 6.2.2.4 gas system;
 - 6.2.2.5 pressure system; and

6.2.2.6 health & safety,

and, to the extent that Pub Owner agrees to undertake any upgrading work recommended by such organisations, the Operator shall cooperate and assist Pub Owner as reasonably necessary in order for such work to be completed.

6.2.3 The Operator shall be responsible for the monitoring of all structural additions or improvements which are required pursuant to any Regulations or security requirements in force from time to time provided that actual works shall be paid for by Pub Owner.

6.3 Other Activities

6.3.1 The Operator is and will remain an independent contractor who is responsible for the operation and management of the Pub under this agreement. The Operator is not an agent, employee or partner of Pub Owner or Pub Owner Group and nothing under this agreement shall require the personal services of the Operator or any Pub Employee. Accordingly, Operator is not authorised, and shall not purport to be authorised, to create obligations binding on Pub Owner or any member of Pub Owner's Group and shall not hold itself out as an employee of Pub Owner, or any member of the Pub Owner's Group.

6.3.2 Nothing in this agreement shall prevent the Operator from being engaged, concerned or having any financial interest in any capacity in any other business during the Term, provided that:

6.3.2.1 such activity does not cause a breach of any of the Operator's obligations under this agreement; and;

6.3.2.2 the Operator shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of the Pub or the Pub Owner without the prior written consent of the Pub Owner.

6.4 Staff

6.4.1 The Operator shall be the employer of the Pub Employees. Pub Owner's contractual relationship will be with the Operator only and not the employees of the Operator. Nothing in this agreement or these arrangements will make the Operator or Pub Employees or any other employee of the Operator an employee of Pub Owner.

6.4.2 The Operator acknowledges that, pursuant to TUPE, as at one minute past midnight on the Effective Date ("**Transfer Time**") it will become the employer of the Transferring Employees. All liabilities in relation to the Transferring Employees shall be the responsibility of the Operator with effect from the Transfer Time and the Operator acknowledges that Pub Owner has not at any point directly employed or engaged any of the Transferring Employees in the provision of the Services.

6.4.3 Subject to clause 7, the Operator shall:

6.4.3.1 use suitable, appropriately qualified, experienced and competent personnel in the provision of the Services;

- 6.4.3.2 be fully responsible for the management of, and the acts and omissions of, all Pub Employees in the provision of the Services;
 - 6.4.3.3 select, employ, manage and supervise the Pub Employees, including without limitation supervising the recruitment, career management, work performance (including, without limitation, disciplinary and capability issues) and, when appropriate, the termination of employment of the Pub Employees;
 - 6.4.3.4 on request provide written details to Pub Owner of all the Pub Employees (including, without limitation, levels of experience, training record and other relevant information) who, at the time of such request, are wholly or mainly assigned to all or any of the Services;
 - 6.4.3.5 use all reasonable endeavours to ensure the continuity of the Pub Employees;
 - 6.4.3.6 comply with all applicable employment legislation (including, but not limited to, discrimination legislation) during the provision of the Services at all times, in relation to, without limitation, employment, promotion, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation, and selection for training;
 - 6.4.3.7 determine the employment policies such as personal incentives, the work force and, subject to clause 6.4.8, the required levels of qualification and the continuing training policy in accordance with that which is commonly applied in pubs of an equivalent status and standing as the Pub; and
 - 6.4.3.8 conduct negotiations with any trade union empowered to represent the Pub Employees or any of them.
- 6.4.4 Pub Owner may, on reasonable notice to the Operator, require the immediate removal from the Pub and/or the provision of the Services, of any member of the Pub Employees who, in the reasonable opinion of Pub Owner, represents a threat to Pub Owner's security or confidentiality or is otherwise disruptive to Pub Owner's business or reputation. The exercise of this right shall not relieve the Operator of its obligations under this agreement.
- 6.4.5 Any costs associated with the removal or replacement of any of the Pub Employees pursuant to clause 6.4.4 shall be borne by the Operator and the Operator shall indemnify Pub Owner, and their respective officers, employees and/or agents against all liabilities that may arise as a result of such removal or replacement.
- 6.4.6 In the event that the Operator removes any of the Pub Employees from the Services because of suspected or actual dishonesty or criminal behaviour, the Operator shall inform Pub Owner in writing of such concerns.
- 6.4.7 The Operator shall be responsible for administering and paying for the following items out of the Management Fee ("**Employee Costs**"):

- 6.4.7.1 remuneration and benefits of the Pub Employees, including, without limitation, employer's pension contributions;
 - 6.4.7.2 all of the national insurance, tax and related obligations (for example, monthly declaration of wages, declaration of national insurance payments, VAT declarations) relating to Pub Employees; and/or
 - 6.4.7.3 any other reasonable costs incurred in relation to the Pub Employees, including, without limitation, those costs or expenses (including, without limitation, legal costs and expenses), actions, proceedings, claims or demands (including, without limitation, sums paid in settlement of any of the same) or losses arising out of, or in connection with, a failure by the Operator to comply with its obligations under clause 6.4.9.
- 6.4.8 The Operator shall ensure that Pub Employees undertake and complete such compulsory training as set out in the Manual and is required by Pub Owner from time to time.
- 6.4.9 The Operator undertakes to Pub Owner to comply with all of its obligations in respect of its dealings with the Pub Employees, any former Pub Employees and any person applying for any role as a Pub Employee arising out of or in connection with:
- 6.4.9.1 their terms and conditions of employment and/or customs or practices related thereto;
 - 6.4.9.2 the termination of the employment of any such Pub Employees;
 - 6.4.9.3 any relevant requirement whether under UK or European legislation or otherwise including, without limitation, those relating to redundancy (whether pursuant to statutory requirements or otherwise), breach of contract, wrongful dismissal, unfair dismissal, discrimination by reason of sex, sexual orientation, race, religion, age or disability, TUPE and/or any duties to inform and consult employees and/or their representatives;
 - 6.4.9.4 any health and safety obligations; and
 - 6.4.9.5 any judgments, decisions, orders and awards made in relation to any of them.
- 6.4.10 The Operator undertakes to Pub Owner to maintain adequate, relevant and accurate records, and comply with all legal obligations of employers with respect to the maintenance of such records, relating to the Pub Employees, former Pub Employees and any person applying for any role as a Pub Employee (including, without limitation, details of training modules and standards, records relating to data protection, working time legislation, national minimum wage, parental leave, maternity leave, paternity leave, adoption leave, sickness absence and evidence of entitlement to work in the United Kingdom).
- 6.4.11 The Operator shall indemnify and keep indemnified Pub Owner (and Pub Owner's Group), their respective officers, employees and/or agents against all costs and expenses (including, without limitation, legal costs and expenses),

actions, proceedings, claims, fines, awards or demands (including, without limitation, sums paid in settlement of any of the same) or losses, arising out of, or in connection with:

- 6.4.11.1 the acts and omissions of the Operator (including any negligent acts and omissions), of any sub-contractor engaged by the Operator and/or any and all Pub Employees in the provision of the Services;
 - 6.4.11.2 the employment of the Pub Employees (including, without limitation, the Transferring Employees) or the termination of the same during the Term, and any payments owed to them or in relation to them (including without limitation all wages, bonuses, commissions, PAYE, National Insurance contributions, pension contributions and otherwise) which are payable up to the termination of this agreement;
 - 6.4.11.3 the employment or the termination of employment during the Term of any individual who claims to be a Transferring Employee or a Pub Employee;
 - 6.4.11.4 any failure by the Operator to comply with its obligations under clause 6.4.7 or 6.4.9;
 - 6.4.11.5 any act or omission of the Operator in relation to its employees, workers, agents or officers (including but not limited to any Pub Employee) at any time; and/or
 - 6.4.11.6 any breach of regulations 13 or 14 of TUPE, save to the extent that such losses arise as a result of a breach by Pub Owner and/or Replacement Operator of its or their obligations under Regulation 13(4) of TUPE.
- 6.4.12 If any contract of employment of any person employed by the Operator (including but not limited to the Pub Employees) or any person other than Pub Owner during the Term has effect as if originally made between Pub Owner (or any new owner of the Pub following a sale of Pub Owner itself or Pub Owner's Property ("**New Owner**")) or any Replacement Operator, and such person, as a result of the application of TUPE whether during or on the termination of this agreement, the Operator shall indemnify and keep indemnified Pub Owner and/or New Owner and/or the Replacement Operator, their respective officers, employees and/or agents against any costs or expenses (including, without limitation, legal costs and expenses), claims, awards or liabilities (including, without limitation, sums paid in settlement of any of the same) or losses incurred by Pub Owner and/or New Owner and/or Replacement Operator, its officers, employees and/or agents against any sums payable to or in relation to such person under, or in connection with, such contract in respect of the period up to the point of transfer to Pub Owner and/or New Owner and/or Replacement Operator.

6.5 **Marketing and Advertising Actions Specific to the Pub**

The Operator shall, on a local basis, and acting in accordance with Pub Owner's instructions and marketing budget, and the Operator's obligations under this agreement, implement such marketing and promotional activities as are determined by Pub Owner and advised to the Operator. The costs of such marketing, promotional and advertising actions shall be approved, and paid for directly, by Pub Owner.

6.6 **Litigation**

- 6.6.1 If the Operator becomes aware that any other person, firm or company has threatened or intends to bring a claim relating to the Pub, the Operator shall immediately provide Pub Owner with full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.
- 6.6.2 Subject to clauses 6.6.3 and 6.6.4, Pub Owner shall have the conduct of all proceedings relating to the Pub and shall, in its sole discretion, decide what action (if any) to take in respect of any claim brought or threatened in respect of the Pub. Pub Owner shall not be obliged to bring or defend any proceedings in relation to the Pub if it decides, in its sole discretion, not to do so. Any award of damages made pursuant to such action, claim or proceedings shall be retained by Pub Owner.
- 6.6.3 The Operator shall, at the request of Pub Owner, give full co-operation to Pub Owner in any action, claim or proceedings brought or threatened in respect of the Pub. At the request of Pub Owner and subject to agreement from the Operator, the Operator may conduct proceedings relating to the Pub and where so requested and approved, the cost of such conduct shall be paid for by Pub Owner and the Operator shall conduct such proceedings in the best interests of the Pub. Notwithstanding the foregoing, the Operator shall keep Pub Owner fully informed of the progress of such proceedings and take Pub Owner's views into account in the conduct of the proceedings.
- 6.6.4 The Operator may, with the prior written approval of Pub Owner, and in the name and for the account of Pub Owner, initiate any legal actions and proceedings relating to the operation of the Pub which seem reasonably necessary to collect charges, rents and other revenues of the Pub. In such circumstances, the Operator shall keep Pub Owner fully informed of the progress of any such actions and proceedings and shall take account of any views expressed by Pub Owner as to their conduct.

6.7 **Intellectual Property**

- 6.7.1 It is intended that the Pub will be operated under the Brand during the Term and therefore the Pub Owner hereby grants to the Operator a licence to use the trade marks, trade names and all intellectual property associated with the Brand during the Term solely in connection with the operation of the Pub. All intellectual property in the Manual is and will remain the property of Pub Owner at all times.
- 6.7.2 The Operator shall indemnify Pub Owner, and their respective officers, employees and/or agents from and against all claims, demands, costs, expenses, liabilities and damages or losses (including without limitation consequential losses, loss of profit, business and/or reputation, and all interest, penalties and legal and other professional costs and expenses) incurred or suffered by Pub Owner and any damages awarded against Pub Owner arising directly or indirectly as a result of or in connection with the use by the Operator of the intellectual property associated with the Brand in relation to the Pub during the Term other than as permitted by clause 6.7.1.

6.8 **Management Meetings**

Meetings between the Operator and Pub Owner or the parties' appointed representatives shall be held at the frequency determined by Pub Owner at the Pub or such alternative venue as the Operator and the Pub Owner may agree.

7. RESTRICTIONS ON THE OPERATOR

7.1 Notwithstanding any other provisions of this agreement, in performing its obligations hereunder, the Operator shall not do any of the following in relation to the operation of the Pub without the express prior written approval of Pub Owner:

7.1.1 transact, or permit to be conducted in the Pub, any activity or business otherwise than in the ordinary course of conduct of the business of the Pub, or reasonably incidental thereto;

7.1.2 request the borrowing of, or borrow, any money or obtain any advance or credit in the name of Pub Owner in any form (which shall include any transaction having the same commercial effect as the borrowing of any money or the obtaining of an advance or credit) from any person other than as expressly permitted under clause 5.3.4;

7.1.3 make any change to the Pub name and/or Brand;

7.1.4 (other than as permitted by clause 9) sell, mortgage, encumber, charge, dispose of, or grant any leases, licences, concessions, occupation rights, easements or other occupation or security interests of whatsoever nature over any part or all of the Pub, the FF&E and/or the Operating Implements, other than (i) liens arising in the ordinary course of business of the Pub; or (ii) sales of any FF&E where such items are deemed by Pub Owner to be no longer necessary or desirable for the operation of the Pub or sold in the ordinary course of business of the Pub;

7.1.5 enter into any operating or finance lease, rental or hire purchase agreement in respect of the Pub or any of the capital assets used in the operation of the Pub;

7.1.6 enter into, modify or terminate any contract or other legally binding arrangement relating to the operation of the Pub (other than contracts relating to Pub Employees and those contracts permitted under clause 5.5.1.3);

7.1.7 enter into any transaction, arrangement or agreement in relation to the Pub with, or for the benefit of, or make any payment or transfer to, any person connected with the Operator or any other member of the Operator's Group;

7.1.8 enter into any agreement or arrangement in relation to which the Operator or a member of the Operator's Group has a direct or indirect conflict of interest;

7.1.9 engage any professional advisors in respect of either the operation of the Pub or the Pub Owner's Property (other than an accountant and payroll provider) where their terms of engagement have not been previously approved by Pub Owner (in its sole discretion);

7.1.10 participate in any joint programmes relating to the Pub and any other pub or pubs for the purchasing, promotion, sales, advertising or provision of other services;

7.1.11 enter into any partnership, joint venture or any other profit sharing agreement with any other person where such agreement relates to the Pub;

- 7.1.12 pledge the credit of, or lend money (other in the ordinary course of business, including, without limitation, under clause 5.3.4) in the name of, Pub Owner;
- 7.1.13 vary or amend any provision or term of any agreement between Pub Owner and any other party relating to the provision of debt or other finance facilities for the benefit of Pub Owner and/or the Pub;
- 7.1.14 give any guarantees or indemnities in the name of Pub Owner;
- 7.1.15 brand any of the Operating Implements and/or FF&E during any notice period prior to termination of this agreement;
- 7.1.16 make any alterations to the Pub or Pub Owner's Property (including, without limitation, structural repairs, additions, Improvement Works or other improvements or effect or incur any Capital Expenditure);
- 7.1.17 use the Pub or Pub Owner's Property for any illegal or immoral purposes;
- 7.1.18 enter into or vary the terms of any bank mandate of any bank account relating to the Pub;
- 7.1.19 acquire or make any investment in another company or business or incorporate or set up any subsidiary or branch in the name of Pub Owner;
- 7.1.20 save where required by law (and then only where the Operator has notified Pub Owner in writing of the same), change the accounting policies used to generate accounts relating to the Pub or change the financial year end; or
- 7.1.21 acquire, dispose of or license any intellectual property rights relating to the Pub.

8. GUARANTOR OBLIGATIONS

[The Guarantor agrees with the Pub Owner to meet all of its obligations set out in schedule 2.]

9. SERVICE OCCUPANCY

- 9.1 Notwithstanding the provisions of clause 7.1.4, the Operator may with the prior consent of Pub Owner, such consent not to be unreasonably withheld or delayed, use any residential areas of the Pub for bed and breakfast accommodation and/or grant service occupancies in respect of any residential areas of the Pub to its Pub Employees provided that such service occupancies shall end immediately if:
 - 9.1.1 the Pub Employee's employment contract with the Operator ends;
 - 9.1.2 the Pub Employee ceases to reside at the Pub;
 - 9.1.3 the provisions in clause 6.4.4 apply; or
 - 9.1.4 at the end or earlier termination of this agreement.

10. FINANCIAL AND ACCOUNTING

- 10.1 Whenever requested, Operator will meet with Pub Owner representative to review any financial records and accounts or invoices provided by the Operator, and the Operator will provide such information as the representative may require in respect of that review.
- 10.2 Pub Owner may engage an auditor of its choice to verify the accuracy of any financial record and accounts or invoices provided by the Operator. Any inaccuracies (whether positive or negative) must be accounted for by the Operator in the next applicable invoice raised by the Operator.
- 10.3 Within forty eight (48) hours of a request from Pub Owner, the Operator shall provide to Pub Owner such financial information relating to the Operator and any other information Pub Owner may require to enable Pub Owner to verify the credit status of the Operator, including quarterly VAT returns and evidence of payment of these to HM Revenue and Customs.

11. FEES

Management Fee

- 11.1 In consideration of the Operator performing its obligations under this agreement, Pub Owner shall pay the Operator as follows:

11.1.1 [twenty two point five per cent (22.5%)] [twenty five per cent (25%)] [twenty seven and a half per cent (27.5%)] [thirty per cent (30%)] of the weekly Revenue ("**Base Fee**"); and

11.1.2 an incentive fee, calculated on the basis of twenty per cent (20%) of the Net Operating Profit for each Quarter ("**Incentive Fee**"),

(together the "**Management Fee**").

- 11.2 Subject to the Operator complying with its obligations under this agreement, the Base Fee shall be deducted following the end of each day from the Revenue and the Operator shall, following the end of each month, issue a valid VAT invoice clearly stating the Base Fees which have been deducted from the Revenue for the specified day in that month. The balance of all receipts of any kind produced by payment in cash or by credit as a result of the Pub's operation and all of its subsidiary services will be paid to Pub Owner via the Pub Owner's collection service within three (3) days of the end of each week.

- 11.3 Subject to the Operator complying with its obligations under this agreement, the Incentive Fee shall be payable quarterly in arrears either during the calendar month after the relevant Quarter Day falls or, if later, within thirty (30) days following receipt of a valid VAT invoice addressed to the Pub Owner from the Operator clearly stating the Incentive Fee payable for the relevant Quarter, subject always to the Pub Owner being satisfied with the Retail Standards Audit scores obtained in respect of the Pub.

12. TERMS OF PAYMENT

All payments relating to this agreement shall be made on or before their due dates in pounds sterling to each party's nominated bank account as notified to the other party.

13. INSURANCE

13.1 Pub Owner Insurances

13.1.1 Pub Owner shall ensure that an insurance policy is taken out and maintained in effect throughout the Term against the risks of fire, storm, explosion, electrical damage, flood, theft by breaking and entering, earthquake and hurricane which may damage the Pub and any equipment which is the subject of this agreement ("**Insured Risks**") all to the extent that cover for such risks is generally available in the commercial insurance market at commercially acceptable rates.

13.1.2 Pub Owner commits to provide upon the Operator's written request, but not more than once in any year, evidence of the then current insurance policies effected in accordance with this clause 13.1.

13.2 Operator Insurances

The Operator shall be required to obtain and maintain employers' liability insurance in an amount not less than £5,000,000 and shall have Pub Owner's interest noted on such insurance policy. The Operator commits to provide upon Pub Owner's written request, a copy of the then current insurance policies effected in accordance with this clause 13.2, together with evidence of payment of the premiums for such insurance policies.

13.3 Pub Damage

If the Pub is damaged and/or any event occurs that may give rise to a claim under any insurance policy referred to in this clause 13, the Operator shall promptly inform Pub Owner of the same.

14. DAMAGE

Damage

In the event of damage to the Pub caused by fire or any other incident, Pub Owner, if it wishes to do so, shall use all of the sums collected from the insurance companies or paid by any third party for compensation of said damage, for the repair of the Pub or of the damaged part thereof, in order that the Pub or the part thereof involved shall be returned, insofar as possible, to the state it was in prior to the damage. This agreement and the respective obligations of the parties under it shall be suspended during any period of closure of the Pub necessary to effect such repairs.

15. FORCE MAJEURE AND EXCEPTIONAL CIRCUMSTANCES

15.1 For the purposes of this agreement, "**Force Majeure**" shall mean events of an extraordinary nature that could not have been foreseen by the parties or avoided by reasonable means and shall include, without limitation, the following events:- flood, fire, earthquake and other natural disasters, as well as war, civil war, military acts, terrorism, acts or actions of the Government, and other circumstances which are beyond the control of the parties such as strikes, social conflicts and riots.

15.2 The party which asserts that an event of Force Majeure has occurred shall immediately send a notice to the other parties to this agreement providing all of the details, including, without limitation, the cause or event which provoked said Force Majeure.

- 15.3 No party shall be considered to be in default, or responsible for any delay or failure in the performance of its contractual obligations by virtue of this agreement, when said performance was impeded by Force Majeure.
- 15.4 Such delay or failure shall not constitute an event of non-performance of this agreement and the times established therein for the performance of such obligations shall thus be extended by a period equal to that during which the event of Force Majeure existed and the performance was impeded thereby.
- 15.5 In the event of Force Majeure, the parties shall make every possible effort to reduce the effect of Force Majeure on the performance of this agreement.

16. SUCCESSORS AND ASSIGNS

- 16.1 The Operator shall not be entitled to assign, novate, subcontract or otherwise transfer any of its rights and/or obligations to any third party without the prior written consent of Pub Owner, such consent not to be unreasonably withheld or delayed.
- 16.2 Pub Owner shall be entitled to assign or transfer any of its rights or obligations under this agreement to any third party at any time, including to a third party who purchases the Pub pursuant to a Pub Sale.

17. TERMINATION

17.1 Rights of Termination

- 17.1.1 This agreement may be immediately terminated by the Pub Owner by providing written notice to the Operator.
- 17.1.2 This agreement may be terminated by the Operator by providing at least three (3) months' prior written notice to the Pub Owner and at the expiry of such notice this agreement shall come to an end.
- 17.1.3 Pub Owner may, without prejudice to any other rights which it may have, forthwith upon giving notice in writing immediately terminate this agreement in any of the following events:
- 17.1.3.1 the Operator ceases or threatens to cease to carry on its business or a substantial part of such business or disposes or threatens to dispose of the whole or a substantial part of its undertaking, property or assets or stops or threatens to stop payment of its debts;
 - 17.1.3.2 the Operator makes a proposal for a composition in satisfaction of its debts or a scheme of arrangement of its affairs or is unable to pay its debts as they fall due, or a petition is presented or a resolution is passed for the winding-up of the Operator (other than a voluntary winding-up for the purposes of reconstruction, the terms of which have previously been approved in writing by Pub Owner) or a petition is presented for an administration order to be made or an administration order is made in relation to the Operator or a receiver or administrative receiver or like person is appointed of the whole or any part of the assets or undertaking of the Operator;

- 17.1.3.3 in relation to the Operator, on the occurrence of any event in a jurisdiction outside England and Wales of any form of insolvency proceedings or the occurrence of any event similar or analogous to any of the events referred to in clauses 17.1.3.1 and 17.1.3.2;
 - 17.1.3.4 [if the Guarantor is in breach of its obligations set out in this agreement or if the Guarantor suffers an event as specified in clauses 17.1.3.1 to 17.1.3.3.];
 - 17.1.3.5 the Operator, whether acting by itself or through any Pub Employee, steals or attempts to steal from Pub Owner any of its property or does anything to assist a third party to do so, or commits any violent act against or is otherwise abusive to any customer of the Pub, or in Pub Owner's reasonable opinion brings the Pub Owner (or members of the Pub Owner Group) into disrepute; or
 - 17.1.3.6 the Operator fails to repay any losses or shortfall due to the Pub Owner in accordance with the process set out in the Manual.
- 17.1.4 On termination of this agreement (however caused) the Operator shall:
- 17.1.4.1 vacate the Pub and the Pub Owner's Property leaving all Operating Implements, Operating Supplies and FF&E at the Pub;
 - 17.1.4.2 pass to Pub Owner all documents and records pertaining to the Pub including, without limitation, documents required for VAT purposes and, if applicable, transfers of accounts (including, without limitation, account contact details and reference numbers); and
 - 17.1.4.3 make all other reasonable steps required by Pub Owner to transfer the management of the Pub to Pub Owner or its nominee.

17.2 Employees at Termination

- 17.2.1 The Operator agrees that, subject to compliance with the Data Protection Laws, it will provide Pub Owner, or at Pub Owner's request provide the Replacement Operator, with the Staff Information on receipt of a written request from Pub Owner at any time, or
 - 17.2.1.1 in circumstances where the Operator has provided notice of termination in accordance with clause 3 or 17.1, at the same time as the notice of termination is served on Pub Owner; and
 - 17.2.1.2 in circumstances where Pub Owner has provided notice of termination in accordance with clause 3 or 17.1 within five (5) Business Days of the notice of termination being served on the Operator.
- 17.2.2 Pub Owner may supply a copy of the Staff Information to any person who has been invited to tender for the provision of all or any part of the Services (or similar services), and to any Replacement Operator, subject to compliance with the Data Protection Laws.

- 17.2.3 Where notice has been given by either the Pub Owner or the Operator of the termination of this agreement, the Operator is under an on-going obligation to notify Pub Owner of any changes to the Staff Information up to and including the final day of the Term.
- 17.2.4 The Operator warrants to the Pub Owner and/or any Replacement Operator that to the best of its knowledge and belief all Staff Information shall be complete and accurate in all respects and shall be kept complete and accurate.
- 17.2.5 Where either the Pub Owner or the Operator has given notice of termination of this agreement, the Operator shall not, without the prior written consent of Pub Owner make any changes to the number of employees engaged in the provision of the Services and/or their terms and conditions.

18. DATA PROTECTION

- 18.1 Within this clause "**Process/Processing/Processed**", "**Data Controller**", "**Data Processor**", "**Data Subject**" and "**Personal Data Breach**" shall have the same meaning as in the Data Protection Laws.
- 18.2 Where Personal Data is Processed by the Operator under or in connection with this agreement, the Operator, as Data Processor, shall:
 - 18.2.1 not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than:
 - 18.2.1.1 as required to meet Pub Owner (as Data Controller) lawful, documented and reasonable instructions (which shall unless otherwise agreed be to process Personal Data as necessary to enable the Services to be provided pursuant to the terms of this agreement), provide that no Personal Data will be transferred outside the EEA by the Operator without the prior written consent of the Pub Owner; or
 - 18.2.1.2 as required to comply with an EU or Member State law to which the Data Processor is subject, in which case the Data Processor shall (to the extent permitted by law) inform the Data Controller of that legal requirement before Processing that Personal Data;
 - 18.2.2 upon becoming aware of a Personal Data Breach:
 - 18.2.2.1 notify the Data Controller without undue delay; and
 - 18.2.2.2 co-operate with the Data Controller and take such reasonable commercial steps as are directed by the Data Controller to assist in the investigation, mitigation and remediation of that Personal Data Breach;
 - 18.2.3 upon receiving any request, complaint or communication relating to the Data Controller's obligations under the Data Protection Laws:
 - 18.2.3.1 notify the Data Controller as soon as reasonably practicable;
 - 18.2.3.2 co-operate with the Data Controller and take such reasonable commercial steps as are directed by the Data Controller to enable the

Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws in respect of Personal Data processed by the Data Processor under this agreement or comply with any assessment, enquiry, notice or investigation under any Data Protection Laws;

- 18.2.4 implement appropriate technical and organisational measures as appropriate in conjunction with the Data Controller, which measures the Data Controller confirms it has reviewed and approved as providing an appropriate level of security with respect to the Personal Data to be Processed by the Data Processor on its behalf;
- 18.2.5 ensure that its employees who may have access to the Personal Data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
- 18.2.6 not authorise any sub-contractor to process the Personal Data ("**sub-processor**") other than with the prior written consent of the Data Controller provided that the Data Controller consents to the appointment of sub-processors who may from time to time be engaged by the Data Processor who in each case are subject to terms between the Data Processor and the sub-processor which are no less protective than those set out in this clause 18.2.6;
- 18.2.7 cease Processing the Personal Data [within 90 days] upon termination of this agreement and as soon as possible thereafter, either return, or securely wipe from its systems, the Personal Data and any copies of it or of the information it contains, other than to the extent the Operator is required to retain the Personal Data (or copy of such Personal Data) due to a legal requirement, in which case the Data Processor will notify the Pub Owner of such legal requirement as soon as practicable; and
- 18.2.8 inform the Date Controller immediately, if in its opinion an instruction of Pub Owner infringes any Data Protection Laws.
- 18.3 The Data Processor shall make available to the Data Controller such further information and (as applicable) co-operate in the conduct of any audit or review exercise, as the Data Controller may reasonably require to provide assurance that the Data Processor is in compliance with the obligations set out in this clause 18.3, provided always that this requirement shall not oblige the Data Processor to provide or permit access to information concerning i) the Data Processor's internal pricing information; (ii) information relating to other clients of the Data Processor; (iii) any Data Processor non-public external reports; or (iv) any internal reports prepared by the Data Processor's internal audit function. Further a maximum of one audit or review may be activated under this clause in any twelve (12) month period.
- 18.4 The Data Controller warrants that all Personal Data Processed by the Data Processor as envisaged under this clause 18.4 has been and shall be collected and processed by the Data Controller in accordance with Data Protection Laws including without limitation: (a) ensuring that all notifications to and approvals from regulators which are required by Data Protection Laws are made and maintained by the Data Controller; and (b) ensuring that all Personal Data is collected and processed fairly and lawfully, is accurate and up to date and that a fair collection notice is provided to data subjects which describes the Processing to be undertaken by the Data Processor pursuant to this agreement.

19. GENERAL

19.1 Waiver

Except where otherwise expressed in this agreement, no failure of any party to this agreement to exercise, and no delay by it in exercising, any right, power, or remedy in connection with this agreement ("**Right**") shall operate as a waiver thereof, nor shall any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of this agreement shall not be deemed to be a waiver of any subsequent breach.

19.2 Entire Agreement

This agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this agreement and contains the whole agreement between the parties relating to the subject matter of this agreement to the exclusion of any terms implied by law which may be excluded by contract. Each of the parties acknowledges that:

19.2.1 it does not enter into this agreement on the basis of, and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this agreement or not) except those expressly contained in this agreement; and

19.2.2 this clause 19.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this agreement.

19.3 Variation

19.3.1 No variation of this agreement shall be effective unless in writing, signed by or on behalf of each of the parties and expressed to be such a variation.

19.3.2 The Contracts (Rights of Third Parties) Act 1999 does not apply in relation to this agreement or any agreement, arrangement, understanding, liability or obligation under, or in connection with, this agreement.

19.4 Disputes

19.4.1 If a controversy, claim, disagreement, or dispute arises between the parties out of or relating to this agreement ("**Dispute**"), any party seeking to resolve the Dispute shall do so in accordance with the provisions of this clause 19.4.

19.4.2 During any Dispute between the parties, including, without limitation, a dispute as to the validity of this agreement, it is mutually agreed between the parties that the Operator shall continue to manage the Pub and Pub Owner, the Operator [and the Guarantor] shall continue to comply with the provisions of this agreement.

19.4.3 A party seeking to resolve the Dispute must first notify the existence and nature of the Dispute to the other party ("**Dispute Notice**"). Upon receipt of the Dispute Notice the parties shall attempt in good faith, to negotiate to resolve the Dispute by discussions between the nominated representatives of each party

19.4.4 If the Dispute has not been resolved within [ten (10)] Business Days of the Dispute being referred to nominated representatives of each of the parties then the Dispute shall be referred to non-binding mediation at the [Centre for Effective Dispute Resolution ("CEDR")] in the United Kingdom subject to CEDR's then rules of mediation, unless otherwise agreed by the parties.]

19.4.5 If the mediation referred to in clause 19.4.4 above is unable or fails to resolve the Dispute within [twenty (20)] Business Days, the parties may commence or continue court proceedings in respect of such Dispute.

19.4.6 Nothing in this clause 19.4. shall prevent the parties from commencing legal proceedings where an order for an injunction or other interim relief is required.

19.5 **Invalidity**

If any provision in this agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall, to that extent, be deemed not to form part of this agreement but the legality, validity and enforceability of the remainder of this agreement shall not in any way be impaired. This clause 19.5 shall have no effect if the severance alters the fundamental nature of this agreement or is contrary to public policy.

19.6 **Counterparts**

This agreement may be executed two counterparts, each of which taken together shall constitute one and the same instrument. Each party may enter into this agreement by signing at least one of such counterparts, but this agreement shall not be effective until the same has occurred.

19.7 **Costs**

Each party shall each pay their own costs, charges and expenses in relation to the negotiation, preparation, execution and implementation of this agreement, save as otherwise expressly provided in this agreement.

19.8 **No Partnership**

Nothing in this agreement (or any of the arrangements contemplated thereby) shall constitute or be deemed to constitute a partnership or joint venture or the relationship of landlord or tenant between the parties. The Operator shall be the bare licensee and not the tenant of Pub Owner. Such licence is personal to the Operator and the Operator shall not assign, mortgage, charge, share or part with occupation of the whole or any part of Pub Owner's Property (save in the ordinary course of operating the Pub and as expressly permitted under this agreement). Pub Owner shall at all times retain the legal possession and control of Pub Owner's Property and shall have the right of entry at all times and for all purposes, including, without limitation, the exercise of management and control.

19.9 **Notices**

Any notice, consent, request, demand, approval or other communication to be given or made under, or in connection with, this agreement (each a "**Notice**" for the purposes of this clause 19.9.4.2):

19.9.1 must be in English, in writing and signed by, or on behalf of, the person giving it;

19.9.2 must be left at the address of the addressee, or sent by prepaid ordinary post (or airmail post if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by email to the email addressee which is specified in clause 19.10 or, if the addressee notifies another address in England and Wales or another email address, then to that address or email address;

19.9.3 shall take effect from the time it is received (or, if earlier, the time it is deemed to be received in accordance with clause 19.9.4) unless a later time is specified in it, and

19.9.4 is deemed to be received:

19.9.4.1 in the case of a posted letter, unless actually received earlier, on the third (seventh, if posted to or from a place outside the United Kingdom) day after posting; and

19.9.4.2 in the case of email, on the first Business Day after the day of sending.

19.10 Addresses for Notices

The address and email of each party is (unless another address or email is notified in writing by a party to the other parties):

Pub Owner:

Address: c/o Star Pubs and Bars Limited, 3-4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ

FAO: Head of Business Support

Email: Stephen.Rooney@starpubs.co.uk

Operator:

Address: [◆]

FAO: [◆]

Email: [◆]

Guarantor:

Address: [◆]

Email: [◆]

19.11 Taxes

19.11.1 Each party shall be solely responsible for any taxes, levies or duties imposed with respect to any income or profits received or recognised within such party's financial records or accounts for its own benefit in connection with the transactions contemplated by this agreement and on which any such liability to tax is calculated.

- 19.11.2 Where appropriate, VAT at the applicable rate shall be added to amounts payable under this agreement, which shall be paid by the relevant party on the receipt of a valid VAT invoice.

19.12 Confidentiality and Disclosure

- 19.12.1 Subject to clause 19.12.3, each party shall treat as strictly confidential all information which is by its nature or is marked as being "**confidential**" which has been or may be received or obtained as a result of negotiating, entering into or performing this agreement which relates to:

19.12.1.1 the negotiations relating to this agreement or any document referred to in this agreement;

19.12.1.2 this agreement or the provisions or subject matter of this agreement or of any document referred to in this agreement; and

19.12.1.3 in the case of each party, the other parties and the other members of the other parties' Group and the business carried on by them,

(collectively the "**Confidential Information**").

- 19.12.2 Subject to clause 19.12.3, each party shall:

19.12.2.1 not make use of or disclose to any person any Confidential Information; and

19.12.2.2 take all reasonable steps to prevent the use or disclosure of the Confidential Information.

- 19.12.3 A party may disclose information which would otherwise be Confidential Information if and to the extent:

19.12.3.1 required by the law of any relevant jurisdiction or for the purposes of any judicial proceedings;

19.12.3.2 required by any recognised securities exchange or by any regulatory or governmental body to which a party to this agreement is subject or submits;

19.12.3.3 the information is disclosed on a strictly confidential basis to the disclosing party's professional advisers, auditors or bankers for the purpose of advising the disclosing party in connection with this agreement or for the purposes of any audit or valuation;

19.12.3.4 the information is disclosed to the disclosing party's directors, officers or employees or members of that disclosing party's Group whose function requires that such information be disclosed to him;

19.12.3.5 the information has come into the public domain otherwise than through a fault of the disclosing party;

19.12.3.6 the non-disclosing party has given prior written consent to the disclosure;

19.12.3.7 prior to disclosure by or on behalf of the disclosing party, such information was lawfully in the disclosing party's possession, as evidenced by its or its adviser's written records; or

19.12.3.8 the information is required to enable the disclosing party to enforce its rights or remedies under this agreement, provided that any information proposed to be disclosed by a party pursuant to clauses 19.12.3.1 or 19.12.3.2 shall only be disclosed:

(a) after giving, where practicable, at least ten (10) Business Days' prior written notice to the relevant non-disclosing party of such proposed disclosure;

(b) after consultation with the relevant non-disclosing party;

(c) after the incorporation of such amendments as the relevant non-disclosing party may require to be made to the contents of such proposed disclosure; and

(d) having agreed with the relevant non-disclosing party the form and content of the disclosure,

provided that at no time shall the relevant non-disclosing party have the right to request amendments under this clause or otherwise limit disclosure under this clause in a manner which would prevent the party required to disclose any information pursuant to clauses 19.12.3.1 or 19.12.3.2 from complying with such requirements.

19.12.4 For the avoidance of doubt, all financial and other operating information relating to the Pub shall belong to Pub Owner, and Pub Owner shall be free to disclose the same to any person as it sees fit.

19.12.5 Upon, or within ten (10) days of, the termination or expiry of this agreement:

19.12.5.1 each party shall return to the relevant non-disclosing party all originals and copies of any documents supplied by the relevant non-disclosing party which contain Confidential Information; and

19.12.5.2 the Operator shall supply to Pub Owner in a format compatible with Pub Owner's own system(s) a copy of all relevant data relating to the business of the Pub, including, without limitation, a database of all other users/occupiers of any part of the Pub during the Term.

19.12.6 The provisions of this clause 19.12 shall survive the termination or expiry of this agreement.

19.13 **Public Announcements**

Without prejudice to clause 19.12, neither party shall make or issue at any time any announcement, circular or other publicity relating to this agreement or any matter or document referred to in this agreement without the other party's prior written approval to the form and content of such announcement.

19.14 **Set Off**

- 19.14.1 All amounts payable under this agreement are exclusive of any applicable VAT or taxes, which shall be paid by the paying party in addition to, and at the same time as, the relevant amount.
- 19.14.2 Pub Owner shall be entitled to set off or deduct from any fees, incentives or other sums due to the Operator any sums the Operator (or any other Operator Group Company) may owe to Pub Owner (or any other Pub Owner Group Company)..
- 19.14.3 Each party agrees to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this agreement and the intent hereof.

19.15 Governing Law and Jurisdiction

- 19.15.1 This agreement shall be governed by and construed in accordance with English law.
- 19.15.2 The parties hereby irrevocably agree that any dispute arising out of or in connection with this agreement, including, without limitation, any question as to its existence, validity or termination, shall be referred to and finally resolved by the courts of England and Wales.

20. DELIVERY

This agreement is executed as a deed and the parties intend that it is delivered today.

IN WITNESS whereof this deed has been duly executed on the date first stated above.

SCHEDULE 1: [TRANSFERRING EMPLOYEES]

SCHEDULE 2: GUARANTOR OBLIGATIONS

The purpose of this schedule 2 is to set out the obligations of the Guarantor.

1. Background

- 1.1 The Guarantor's covenants with the Pub Owner in this agreement are given as sole or principal debtor or covenantor for the time being. They also extend to the Pub Owner's successors in title without the need for any express assignment.
- 1.2 The Guarantor's obligations under this agreement will last throughout the period during which the Operator is bound by the Operator's obligations in this agreement ("**Liability Period**").

2. Guarantor obligations

- 2.1 The Guarantor agrees with the Pub Owner that:
 - 2.1.1 The Operator will observe and perform the covenants, obligations and other terms of this agreement.
 - 2.1.2 If at any time during the Liability Period while the Operator is bound by the Operator's covenants and obligations of this agreement and the Operator defaults in observing or performing any of the covenants or other terms of this agreement then the Guarantor will pay the payments under this agreement and VAT charged on them and will observe and perform the covenants or terms in respect of which the Operator is in default.
- 2.2 The Guarantor will make good to the Pub Owner on demand and indemnify the Pub Owner against all losses resulting from the Operator's non-payment, non-performance or non-observance of the matters detailed in this agreement notwithstanding:
 - 2.2.1 that the terms of this agreement may have been varied by agreement between the Pub Owner and the Operator; or
 - 2.2.2 anything else by which, but for this paragraph 2, the Guarantor would be released.

Signed as a deed by **PUNCH TAVERNS**)
(JUBILEE) LIMITED by its attorney in the)
presence of a witness)

Signature

Name (block capitals)

**as attorney for
PUNCH TAVERNS
(JUBILEE) LIMITED**

Witness signature

Witness name
(block capitals)

Witness address
.....
.....
.....

Executed as a deed by **◆** by a)
director in the presence of a witness:)
)

Signature

Name (block capitals)

Director

Witness signature

Witness name
(block capitals)

Witness address
.....
.....
.....

