

DATED ??????? 2014

PREMIER PERFORMING ARTS LIMITED

and

(COMPANY NAME)

LICENCE AGREEMENT



Draft 4 - 21.12.12

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LICENCE AGREEMENT

DATED: 1st January 2014

- (1) **PREMIER PERFORMING ARTS LIMITED** (No 07918378) whose registered office is at Stonebridge House, Chelmsford Road, Hatfield Heath, Essex, United Kingdom, CM22 7BD ("We")
- (2) **(COMPANY NAME)** (Reg No) whose principal place of business is at (Insert Address) ("You")

1. INTRODUCTION

- A. We have developed methods of operating businesses providing performing arts teaching. We may, at a later date, develop methods for teaching drama and music training for which we will, if you have performed your obligations under this Agreement to our reasonable satisfaction, offer you licences;
- B. To make this Agreement easier to understand, we have defined certain terms used in this Agreement in clause 21. When you see a word beginning with a capital letter refer to clause 21 to see whether the term has been defined. Some terms are defined in the clause where they first appear;
- C. You have applied for a licence from us to enable you to own and operate your Licensed Business and we have agreed to grant you a licence in reliance on the information you gave us;
- D. You accept that it is essential that you comply fully with this Agreement and the Manual;
- E. You agree that it is critical to your success and the success of other licensees that the System is as flexible as possible so that it can respond to commercial opportunities and challenges. As a result the Manual and the System will be changed by us, from time to time. You agree to comply with the Manual and the System as they are changed by us.

2. GRANT

2.1 Your Commitment.

- A. You have been granted a licence to operate the Licensed Business only from Locations and to use the Brand and the System in the operation of the Licensed Business and you accept that the grant to you is subject to each and every one of the terms in this Agreement. The licence is awarded for the period set out, starting on the date of this Agreement.
- B. You must not use the Brand and/or the System for any purpose other than as set out in this Agreement.

2.2 Exclusive Territory.

- A. For so long as you comply with the provisions of this Agreement and perform to our reasonable satisfaction we will not save in relation to National Accounts ourselves operate or make use of or license any person other than you to provide the Services or Products from locations in the Territory. You acknowledge that marketing activities (especially advertising in newspapers, magazines, radio and television) by us and our

- other licensees may be received by persons within the Territory even though they are aimed principally outside the Territory.
- B. We reserve all territories outside the Territory exclusively to ourselves and to our other licensees.
 - C. Nothing in this Agreement shall prevent us from establishing our own website and other marketing or advertising channels for the purposes of procuring and/or supplying customers.
 - D. You will not, and if you are a Business Entity you will procure that the Principal will not, seek customers in connection with your Licensed Business outside the Territory.
 - E. You recognise that we cannot prevent other licensees from responding to unsolicited enquiries from customers in the Territory or from undertaking passive sales in the Territory.
 - F. We may acquire or be acquired by a competitive or similar business which has franchisees, licensees, agents, company owned outlets or other commercial activities in the Territory notwithstanding that following such acquisition the rights granted to you (including without limitation the rights granted pursuant to this clause 2.2) are or may be infringed but, if we are the acquirer, we shall use our reasonable commercial endeavours to reduce the detrimental impact on you of such competing or similar commercial activities in the Territory.

3. **OPENING OBLIGATIONS**

3.1 **Opening.**

You will start operating the Licensed Business within three Months from the date of this Agreement.

3.2 **Pre-Opening Requirements.** You will comply with all our pre-opening requirements which have been provided to you before entering into this Agreement.

3.3 **Starting to Trade.** You will start to operate the Licensed Business as soon as reasonably practicable and in any event no later than seven days from the date of our notice to you that:

- A. All of our pre-opening requirements have been fulfilled;
- B. Initial training has been completed to our satisfaction;
- C. All amounts due to us and/or to any Affiliate have been paid and we are satisfied on the basis of information that you have provided that you have sufficient finance to enable you fully to develop the Licensed Business.

3.4 **Our Obligations.** We will provide you with the Opening Items if any.

3.5 **Initial Launch.** We will provide you with such advertising, promotional and PR materials as we customarily provide to our licensees to launch their licensed business. We will give you advice and guidance with respect to such launch programme which you agree you will follow.

- 3.6 Vehicle.** Any vehicle that you use for your Licensed Business must reflect positively on you, us and your Licensed Business and must not contain any unapproved signage.

4. HARDWARE AND SOFTWARE

You must purchase a licence, use, maintain update, replace at your sole expense, such business management system software, hardware and related items as are specified by us or if no software, hardware and related items are so specified then such software and/or hardware related items must meet our requirements from time to time. You agree to do all such things as we may require to allow us access to your data and information electronically and in real time.

5. TRAINING AND GUIDANCE

5.1 Training.

- A. You or, if you are a Licensed Business Entity, the Principal must successfully complete our initial training programme before operating your Business. The Initial Fee covers an initial training programme (but not any travel, accommodation or living expenses) for one person, who must be the Principal if you are a Business Entity and if an employee is to be trained our prior approval to train that employee must be obtained.
- B. If we determine that you, the Principal or your employee have not successfully completed (or are not making satisfactory progress in) your initial training, we can require such person at your own expense to undertake further training and if such person does not undertake such further training or fail to achieve our required standard during such further training then we can Terminate this Agreement and you will do all such things as we may require to bring this Agreement to an end. On performance of all of your obligations required by us to terminate this Agreement we will refund all sums you have paid to us in connection with this Agreement less our costs and expenses not to exceed £2,000.
- C. You will ensure that you and all your personnel who we may specify successfully complete such training course as we may specify and if they do not they will cease any involvement in the Licensed Business.
- D. We may offer additional training at our standard rates. If we specify any such training as mandatory you or your employees must successfully complete the training within such reasonable period that we may specify.

5.2 **Guidance and Assistance.** We will provide such levels of guidance in the operation of your Licensed Business as we consider appropriate. This guidance can be provided in whatever manner we consider appropriate, including electronically.

5.3 **Manual.** For so long as you are not in breach of your obligations to us during the term of this Agreement, we will lend to you (or allow you electronic or other access to) one copy of the Manual. You will continuously comply, at your sole expense, with all provisions of, and additions, deletions or changes to, the Manual. Any such additions, deletions or changes will take precedence over all prior communications. Mandatory specifications, standards and operating procedures prescribed from time to time by us in the Manual, or otherwise communicated to you electronically or otherwise, are as enforceable by us as if they were set out in this Agreement. In the event of a dispute, the Manual maintained at our office will take precedence. The Manual and the information and data that it contains will at all times remain our sole and exclusive property and copyright in the Manual as amended from time to time shall be retained by us. It is your sole responsibility to establish appropriate security procedures and comply with all policies and procedures

which we may specify and you will establish other appropriate policies and procedures to maintain the confidentiality of the Manual. You acknowledge that we attach very great importance to maintaining the confidentiality of the information in the Manual. If there is any conflict between the provisions of the Manual and the provisions of this Agreement, this Agreement will prevail.

- 5.4 Meeting Attendance.** You, and if you are a Business Entity, the Principal are required to attend all meetings designated by us as mandatory unless unable to do so for reasons beyond your control.

6. **GOODWILL**

- 6.1 Goodwill and Ownership of the Brand.** You are granted a non-exclusive right to use the Brand subject to the provisions of this Agreement. We retain all rights in the Brand and all goodwill generated therefrom.
- 6.2 Use of Brand.** You will use the Brand as specified by us and you will not use any other trade names, trade marks or identification. You will display such trade mark and other notices (including notices of independent ownership) as we direct. You will not use the Brand in connection with the performance or sale of any unauthorised services or products or at any location or from any vehicle or in any other manner not expressly authorised in writing by us. You will not make any alteration to the Brand and you will comply strictly with all our requirements as to how the Brand is to be used or displayed.
- 6.3 Changes to the Brand.** We both agree that circumstances may arise whereby it may be necessary to discontinue, modify, substitute or add to the Brand and if such circumstances were to arise you agree to comply, at your sole expense, with our directions to change the Brand.
- 6.4 System Changes.** You shall make such changes, additions or modifications in the System as we may require provided that you shall not be required to implement or conform to any such changes, additions or modifications during the first year of the term of this Agreement.

7. **RELATIONSHIP OF THE PARTIES**

- 7.1 Independent Contractor.**
- A. You will always identify yourself as an independent owner of the Licensed Business, using such wording as we specify from time to time. You will include notices of independent ownership on such forms, business cards, stationery, advertising, signs and other materials as we require from time to time.
- B. You will not, unless expressly authorised, permit any person connected with you in any way to represent himself or you in such a way that others dealing with him or you might regard him or you as a director, officer, employee or agent of ours or otherwise authorised to act on our behalf. No part of the Trade Name or the Brand (or any word or words similar thereto) shall form part of your corporate name.
- 7.2 No Liability for Acts of Other Party.** Neither you nor we will have any liability for any acts, omissions, agreements or representations made by the other that are not expressly authorised in writing.

7.3 Indemnity.

- A. You will indemnify us and all of our Affiliates from all fines, proceedings, claims, demands, actions, losses, damages, costs, fees (including Legal Fees and related expenses) and/or any other liability of any kind or nature, however arising, arising out of or otherwise connected with and/or related to any act, error and/or omission of yours provided that such act, error or omission is a breach of this Agreement or arises from your negligence.
 - B. Any services and/or products provided by us, or by our Affiliates and/or any approved supplier are, so far as legally permissible, provided without any warranties, express or implied.
- 7.4 Disclosure.** We can disclose any information relating to your Licensed Business, including your name, any address and/or phone number(s), revenues, expenses, results of operations and/or other information. Any disclosure by us will be for reasonable business purposes and will include disclosure to the British Franchise Association.
- 7.5 Agency.** You have no authority to make any offer on our behalf, to act as our agent (save as referred to in clause 8.3.6) or to enter into any contract on our behalf.

8. CONFIDENTIAL INFORMATION, NON COMPETE AND DATA PROTECTION

8.1 Protection of Confidential Information.

- A. "Confidential Information" includes the Manual referred to in clause 5.3 and the customer list referred to in clause 8.3.6 and all information relating to or obtained by you in relation to the operation of a Business, or your Licensed Business or the System.

"Confidential Information" is not intended to include any information that:

- 1) is or subsequently becomes publicly available other than by breach of any legal obligation, or
- 2) was known by you prior to you entering into a licence agreement with us.

Your only interest in any of our proprietary and/or Confidential Information is the right to use it pursuant to this Agreement.

- B. Both during the term of this Agreement and thereafter, you agree:

- 1) to use the Confidential Information only for the operation of your Licensed Business in accordance with a Licence agreement with us;
- 2) to maintain the confidentiality of the Confidential Information;
- 3) not to make or distribute, or permit to be made or distributed, any unauthorised copies of any portion of the Confidential Information;
- 4) to implement all prescribed procedures for prevention of unauthorised use or disclosure of the Confidential Information.

- C. You agree to disclose to us all ideas, techniques, methods and processes relating to your Licensed Business which are conceived or developed by you, your Owners and/or your personnel. We will have the perpetual right to use, and to authorise others to use, such ideas, techniques, methods and processes without payment to you.

- D. You will cause each of your partners, shareholders, directors and senior employees as we may from time to time specify to sign a confidentiality agreement in a form approved by us from time to time. You will provide us with copies of the same within seven days of their execution.

8.2 Non Compete.

- A. In-Term Restrictions: During the term of this Agreement neither you, nor any Affiliate of yours, nor any Owner of yours nor any Associate of any of the foregoing, will:

- 1) have any direct or indirect interest anywhere in any Similar Business or in a Competing Business; or
- 2) perform any services anywhere as an employee, agent, representative or in any capacity of any kind, including but not limited to providing financial support, for any Similar Business or Competing Business; or
- 3) employ or try to employ any licensee or employee of ours or of any other of our licensees.

- B. Post-Term Restrictions:

- 1) On Termination (if no Renewal Licence is entered into) of this Agreement, otherwise than by virtue of our repudiatory breach of contract, you and the other persons and entities listed in clause 8.2.A above shall not, save as the holders of not more than 5% of the issued share capital of a company whose shares are publicly quoted on a recognised stock exchange:-
 - for a period of six Months after the Termination engage in, be employed by or be concerned or interested, directly or indirectly, in any business which is a Competing Business within the United Kingdom;
 - for a period of twelve Months after the Termination be concerned or interested, directly or indirectly, in any business which is a Similar Business or a Competing Business within the Territory;
 - for a period of twelve Months after the Termination be engaged on a self-employed basis or be employed by a business whose principal business activity is a Similar Business or a Competing Business within the Territory;
 - for a period of twelve Months after the Termination engage in, be employed by or be concerned or interested, directly or indirectly, in any business from the Premises or any Location which is a Similar Business or a Competing Business;
 - for a period of nine Months after the Termination engage in, be employed by or be concerned or interested, directly or indirectly, in any business which is a Similar Business or a Competing Business within the territory of another of our licensees provided always that you have been notified of such territory;
 - for a period of twelve Months after the Termination for the purposes of a Similar Business or a Competing Business have any commercial dealings with or solicit the custom of any person, firm or company that has been your customer or has been a National Account for whom you have provided Services or Products at any time in the twelve Months period prior to Termination;

- for a period of twelve Months after the Termination solicit, interfere with or endeavour to entice away any of our employees or any employee of any of our Affiliates or any of our other licensees;
 - for a period of twelve Months after the Termination sell any of its business assets that would enable a third party to carry on business activities which, if carried on by a person referred to in the opening sentence of clause 8.2B, would be a breach of clause 8.2.B.
- 2) We shall unless we inform you otherwise prior to seeking to enforce clause 8.2.B and unless you are able to prove to our reasonable satisfaction that you have no influence over the activities of the individuals concerned require you to ensure that your Affiliates, Owners and Associates, or such of them as we may specify, comply with the provisions of clause 8.2.B.

C. Meaning.

- 1) References in clause 8.2.B to "business" mean references to providing Services or Products or any similar services or products to customers in locations within such area as is specified in the relevant sub clause 8.2.B.
- 2) References in clause 8.2.B to "Termination" shall if this Agreement has expired but the parties continue to trade as if it was still in existence, be to the date on which notice by either party terminating the Agreement takes effect.

D. Whole time and Attention: You, or if you are a Business Entity you shall procure that the Principal shall, unless we have otherwise previously agreed in writing, devote the whole of your or his time and attention to the operation of the Licensed Business. If you or any Associate of yours or any of your Owners are involved whether as an employee, self employed person, partner, shareholder, director or investor or otherwise in any Similar Business you will immediately notify us of such involvement.

E. General

- 1) You agree that each of the restrictions contained in clauses 8.2 A and B above is reasonable.
- 2) Notwithstanding the extent of the temporal and geographical restrictions contained in clause 8.2 B we may at any time whether during or after the term of this Agreement by written notice to you reduce the temporal or geographic extent of all or any such restriction.
- 3) Each undertaking contained in clause 8.2 A and B shall be construed as a separate undertaking and if any one or more of such undertakings is held to be against the public interest or in any way an unreasonable restraint of trade, the remaining undertakings shall continue in full force and effect and shall bind you and the other persons referred to in clause 8.2 A and B.
- 4) You and we have expressly agreed that it is your obligation under this Agreement to ensure the compliance of each of the persons identified in clause 8.2 A, with the restrictions described in this clause 8.2.
- 5) You agree that you and we share a mutual interest in ensuring compliance with the limitations on competition described in this clause 8.2 and your or any of our licensee's non-compliance with these restrictions could damage you, us and our other licensees.

- 6) If you breach any of the foregoing restrictions, our remedies may include (but not be limited to) the right to seek equitable relief and to receive all profits generated in connection with the operation of any Similar or Competing Business until the date you cease to breach such restrictions.

8.3 Data Protection.

- 1) In this clause "process" and/or "processing" in relation to any data means obtaining, recording or holding such data or carrying out any operation or set of operations on the data, including:
 - organisation, adaptation or alteration;
 - retrieval, consultation or use;
 - disclosure by transmission, dissemination or otherwise making available; or
 - alignment, combination, blocking, erasure or destruction.
- 2) In relation to any personal data which may be processed by you in connection with this Agreement - which data shall include, but not be limited to, customer lists, customer details and any information concerning or relating to any former, current or potential customer of yours ("Licence Data") - you agree that you will process the Licence Data in accordance with any data protection legislation which may apply from time to time during the course of this agreement.
- 3) Without prejudice to any of your other obligations under this clause we may notify you from time to time of any consent ("the Consents") which we require you to obtain from a customer or prospective customer (or other data subject) in relation to any processing of Licence Data to be undertaken either by us or by you and the manner in which such Consents shall be obtained.
- 4) Save where the express consent of a customer (or other data subject) has been obtained to the processing of personal data you will process only such personal data as may lawfully be processed under the data protection legislation in the Territory in the absence of such consent.
- 5) You shall do all such things as we may require and shall use (and demonstrate to us that you have used) your best endeavours to obtain the necessary consents to enable us to process data relating to you and/or your business activities and/or your customers including but not limited to Licence Data and you hereby agree that we may use and process such data for our own business purposes.
- 6) Acting as our agent, on our behalf and in accordance with the Manual you shall prepare a customer list (containing such information as we may specify) so that ownership of the customer list and the information in it belongs to us on the basis that we shall permit you to use the customer list for the purposes of this Agreement and to include the customer list in any Transfer by you pursuant to clause 14 but for no other reason and you will at all times keep the customer list confidential and you will provide to us, not more frequently than Monthly, in such format and by such means as we may from time to time specify the said customer list and any changes to it.

9. FEES

- 9.1 **Initial Fee.** You will pay the initial fee in accordance with Schedule 2 which initial fee is fully earned by us. Save as set out in clause 5.1.C the fee is entirely non-refundable.
- 9.2 **Management Service Fee.** You must pay us without set off, credit or deduction of any nature, the Management Service Fee on the date of this Agreement and on each anniversary or at your option one twelfth of 120% of the Management Service Fee set out in Schedule 2 if you wish to pay the Management Service Fee Monthly. The Management Service Fee will be paid, if paid Monthly, on or before the first day in each Month in respect of that Month. We may deduct the Management Service Fee from sums which we receive from customers to whom you have provided Services or Products.
- 9.3 **Payments.** You will require that all sums receivable by your Licensed Business are paid to us and if you receive any payment you will immediately forward it to us.
- 9.4 **Money Transfers.** We will make payment of all sums due to you by direct debit, standing order or other payment method which we may, from time to time, specify.
- 9.5 **Late Payments.** All amounts which we owe you or you owe us and/or our Affiliates, bear interest at the rate of 4% above the Bank of England's base rate per annum which will be calculated on a daily basis.
- 9.6 **Application of Payments.** We can:
- Apply any payments received to any current indebtedness of any kind, no matter how payment is designated, by you;
 - Set off, from any amounts that may be owed by us, any amount owed to us; and
 - Retain any amounts received for your account (and/or that of any Affiliate of yours), whether rebates owing to you from suppliers or otherwise, as a payment against any amounts owed to us.
- We can exercise any of the foregoing rights in connection with amounts owed to or from us and/or any of our Affiliates to or from you and/or any of your Affiliates.
- 9.7 **Third Party Payment.** If we accept payment from any third party, company or individual who is not you in respect of payments due hereunder from you such acceptance shall not in any way imply that we have accepted a transfer of this Agreement to such third party nor that we shall accept payments from such source in the future.
- 9.8 **RPI Increase.** All payments set out in this Agreement shall be increased on the 1st of January of each year by our reasonable estimate of the increase in the Retail Prices Index in the previous twelve Months.

10. OPERATING YOUR LICENSED BUSINESS

- 10.1 **System Compliance.**
- You agree to operate your Licensed Business in full compliance with every aspect of the System and the Manual as the same may be changed and you will not make any changes to the System which have not been authorised in writing by us.
 - You must operate the Licensed Business at your expense according to all our standards and promptly undertake all changes as are required by us from time to time.

10.2 Equipment, Services and Products.

- A. We may specify equipment, services and products for use in the Business. We can, to the fullest extent permitted by law, designate one or more suppliers for any given item or service. Such suppliers may include, and may be limited to, us and/or our Affiliates. You will not purchase or use in the Licensed Business any equipment, services or products not approved by us.
- B. We and/or our Affiliates may derive additional revenues or receive benefits as a result of your purchase of equipment, services and products that we have specified.
- C. You will pay all persons who supply equipment, services or products to the Business in accordance with their payment terms and will enter into such additional agreements (such as maintenance agreements) as we may reasonably require.
- D. You will provide the Services and the Products at prices which you will set but you will not exceed the maximum prices which we may set from time to time. We may recommend prices.

10.3 Best Practice.

- A. You will operate your Licensed Business in full compliance with all applicable laws. You will maintain high standards of honesty, integrity, fair dealing and ethical conduct in your business activities. You will notify us in writing within five days of the commencement of any proceeding and/or of the taking of any official action having an impact on you and/or your Licensed Business and you will not do anything which may damage the Brand, the System or our business.
- B. You will notify us immediately you receive notice of a complaint and/or threatened proceedings against you. As specified in the Manual, or where otherwise required by us, you will give those customers who have made complaints appropriate refunds or otherwise deal with such complaints as we direct. You and we agree that such responses to customer complaints are a vital element in maintaining and enhancing the goodwill associated with the Brand.
- C. In the marketing and operation of your Licensed Business you must only use the contracts, and/or other forms and/or materials as are designated by us from time to time. We may provide you with templates or samples but it is your responsibility to have them reviewed at regular intervals, at your expense, by a solicitor, for compliance with all applicable legal requirements. We make no warranty or representation that any contracts and/or other forms and/or materials, whether supplied by us or otherwise, comply with applicable laws. Any changes you wish to make to the contracts, other forms and materials must be approved by us in writing before they are made.
- D. You will use your best endeavours to develop and extend the market for the Services and the Products in the Territory and you will not actively market outside your Territory unless you receive our previous written consent. You will forthwith inform us of all relevant details of any enquiry from a potential customer outside the Territory or any potential customer which could be a National Account.
- E. You will operate the Licensed Business from such minimum number of Locations as we may specify in the Manual to enable you to develop new revenue streams as specified in the Manual.

10.4 Management.

- A. You must keep us advised, in writing, of all personnel involved in your Licensed Business. Your Licensed Business must be personally managed on a full-time basis by you or, if you a Business Entity, the Principal who has successfully completed mandatory training and has met the standards specified by us.
- B. You will ensure that you have sufficient suitably trained and/or skilled personnel to enable the Licensed Business to operate efficiently and to meet the demand for the Services and Products.
- C. You will not make use of self employed persons in the Licensed Business without our prior written consent.
- D. You will ensure that all personnel involved in the Licensed Business:-
 - wear such uniform as we may specify;
 - have a neat and clean appearance;
 - are courteous and helpful to customers and prospective customers;
 - enter into such contracts as we may specify so as to protect our goodwill and confidential information, ensure that copies are forwarded to us immediately after their execution and their terms are enforced unless you obtain specialist legal advice to the effect that such action is very unlikely to be successful;
 - have been checked as set out in the Manual to enable them to work in people's homes or with the elderly or disabled. You will supply us promptly with any central criminal records check information and will comply with our instructions relating to retaining that person's services.

10.5 Insurance. You will maintain in force all policies of insurance to cover the risks that we may specify from time to time and you will insure such risks for the minimum sums that we may specify from time to time.

10.6 Closure. You must immediately notify us prior to any period during which you will not operate the Licensed Business for any reason and submit a plan for re-starting your Licensed Business. All your financial obligations to us or to any Affiliate (including the payment of Management Service Fees) will remain in effect during such closure period. Any period of non trading which is not authorised by us will be a breach of this Agreement.

10.7 Customer Satisfaction, Quality Controls. We can institute various programmes for auditing customer satisfaction and/or other quality control measures. You agree to request your customers to participate in any surveys performed by or on behalf of us, using forms prescribed by us from time to time.

10.8 National Accounts. We may enter into contracts with National Accounts for the supply of Services or Products if we believe that it is in the commercial interests of our licensees to do so. If we do so we will provide you with details and you will:-

- comply with our requirements in relation to each agreement with a National Account notified by us to you;

- not do anything which may put at risk the continued trading relationship between us or our licensees and National Accounts;
- provide the Services and the Products you have agreed to provide and discharge such of our obligations as we may specify in accordance with the terms of the agreement which has been notified to you by us;
- indemnify us against any and all claims brought against us by any National Account arising from or in connection with your failure to comply with the terms of the agreement with the National Account;
- desist from supplying the Services or the Products to a National Account if to desist would, in our opinion, be in the interests of the relationship with the National Account;
- charge us or the National Account (as specified by us) for the Services or the Products to be provided under the agreement with the National Account in accordance with our billing instruction and at the rates specified by us from time to time.

10.9 Security. You may not enter into any arrangement or agreement to factor any sums due to your Licensed Business or charge or otherwise dispose of any assets or debts of the Licensed Business without first obtaining our consent in writing (such consent not to be unreasonably withheld or delayed).

10.10 E-Commerce.

- A. You will participate in our web-site on the terms specified by us for the benefit of the Brand.
- B. We may impose conditions and standards requirements on your use of the internet, worldwide web or other electronic distribution channels to ensure that you maintain the goodwill in our business and the business of our other licensees when doing so. You will not use the Brand in any website domain name which you establish.
- C. We, our Affiliates and anyone we designate may offer or provide any Services, Products and/or other services, products through the internet, world wide web, direct mail and/or other similar methods (wherever a customer is located).
- D. You will not participate in or register with any internet group, web-site or similar medium which has as its aim (whether stated or not) or its effect the denigration of the Brand or the System.
- E. You will not open an account or profile on a social networking site in relation to your Licensed Business without our prior written consent which may be given subject to conditions which may include the grant to us of administrator rights and you will comply with the provisions of the Manual in respect of such social networking sites.
- F. If you use the internet for your Licensed Business we may specify the minimum value of your off-line sales.
- G. We may specify the third party platform that you must use for your on line sales and conditions for use of such third party platform.
- H. We shall specify or approve all email addresses which you use for the purposes of your Licensed Business and may require to be registered as the licensee/owner of such email addresses.

11. MARKETING

- 11.1 **Participation in Marketing Programmes.** You agree to participate in all marketing programmes which in our business judgment will benefit our licensees. We will furnish you with marketing, advertising and promotional materials and we can require that you pay the cost of producing and distributing such materials.
- 11.2 **Local Marketing.** You must actively promote and advertise your Licensed Business in your Territory. Your marketing and advertising must be in good taste and conform to ethical and legal standards and our requirements. Samples of all advertising and promotional materials for any media, including the internet, world wide web or otherwise, must be submitted to us for our review and approval prior to use, which approval we can give subject to conditions or withhold, in our discretion. You agree not to use any materials or programmes of which we disapprove at any time and you must use all materials and programmes designated by us as mandatory. You will ensure that all advertising and all activities aimed at actively seeking customers for your Licensed Business that you undertake is aimed principally at potential customers in your Territory.

12. RECORDS AND REPORTING

- 12.1 **Accounting Systems.** You must obtain and maintain, at your sole expense, our specified accounting and finance systems which we specify or if we do not specify such systems which conform to any requirements prescribed by us from time to time, including electronic systems with online access for us. We reserve the right to use, and to have full access to, all systems, and the information and data they contain. We also reserve the right to amend, on the giving of reasonable notice, our requirements and you must comply with our amended requirements.

12.2 **Reports, Financial Statements and Tax Returns.**

You will provide us with:

- A. Your turnover figures and such information regarding the sales and operation of your Licensed Business, as we may specify;
- B. All VAT returns and assessments that you may be required to make as and when due or received;
- C. A copy of your annual accounts within four Months of your year end prepared by an independent accountant;
- D. Copies of your last six Month's bank statements when requested by us; in such form, by such methods and by such time as we specify from time to time.

- 12.3 **Record Retention.** You will maintain all records relating to the Licensed Business for not less than seven years and will make all such records available to us.

13. INSPECTIONS AND AUDITS

- 13.1 **Inspections.** We and/or our agents will have the right, at any time during business hours, and without prior notice to you, to inspect the Premises provided that they are not residential premises and the Locations, remove and/or take copies of documents and interview personnel and customers. You will cooperate fully in connection with such matters.

13.2 Audit. We and/or our agents will have the right at any time during business hours, and without prior notice to you, to inspect and/or audit business records relating in any way to your Licensed Business and you shall require any person, corporation or partnership which hold such records to make them available to us. Such business records may include, but are not limited to, bookkeeping and accounting records, sales and income tax records and returns, tapes and invoices. Our right to audit includes the right to access all computers and other equipment by electronic means and to take copies of any business records. You will cooperate fully with such an audit. Notwithstanding any provision to the contrary in this Agreement or otherwise, our audit rights will continue in effect for three years after Termination of this Agreement and/or any Renewal Licence.

14. TRANSFER

14.1 Transfers by Us.

- A. This Agreement, and any or all of our rights and/or obligations under it, are fully transferable by us, in whole or in part, without your consent.
- B. We may, on a permanent or temporary basis, delegate any or all of our duties to another business entity to perform.

14.2 Transfers by You.

- A. The rights and duties created by this Agreement are personal to you and if you are a Business Entity the Principal. We have entered into this Agreement relying upon the integrity, ability, experience and financial resources of you and/or such Principal. Therefore, neither this Agreement, nor any interest in, or the assets of, your Licensed Business can be transferred without our prior written approval which will be given subject to your compliance with our then applicable transfer conditions which will include payment of transfer fees which will not exceed £5,000.
- B. The term “transfer” includes (but is not limited to) any voluntary or involuntary assignment, sale, gift or any grant of any security or other interest by you (or your Owners, if you are a Business Entity).

A transfer also includes the following events:

- 1) Any transfer of ownership of voting shares or any partnership shares or similar interest;
- 2) Any allotment of additional voting shares;

A transfer of ownership, possession or control of your Licensed Business, or of its assets, can only be made with a transfer of this Agreement. Any transfer in the event of death or disability will be subject to clause 14.3.

14.3 Death or Disability. If you die, or if you are a Business Entity the Principal (whom we at any time specify as being integral to the success of the Licensed Business or is the last remaining Principal) dies, or you or he is permanently disabled, then this Agreement shall Terminate and you or your estate will be paid the initial fee you have paid reduced by the percentage that the number of full years remaining of this Agreement bears to the term of this Agreement.

15. RENEWAL LICENCE

15.1 Your Rights.

- A. This Agreement Terminates at the expiry of its term. At that time, subject to the provisions of this clause 15, you will be eligible to be awarded a Renewal Licence. The Renewal Licence agreement may (and probably will) differ materially from this Agreement in financial and other ways and the terms of any Renewal Licence will be a matter for our judgment as described in clause 18.6. The Renewal Licence term will be for a five year period.
- B. If we cease to grant licences in the United Kingdom, then we will not be required to offer you any Renewal Licence or similar rights and will have no liability or obligation to you with respect thereto. In such circumstances you may continue to operate your business without having to comply with the terms of this Agreement provided that you cease to use the Brands or any of them for such purposes.
- C. We will not be obliged to offer more than two Renewal Licences.

- 15.2 **Renewal Notice.** You must give us written notice of your wish to renew not more than nine Months, but not less than six Months, before the expiry of the term of this Agreement. Within ninety days after our receipt of the notice, we will give to you in writing any reasons which could cause us not to award the Renewal Licence, by virtue of a failure to meet any of the conditions set out in clause 15.3 below.

- 15.3 **Conditions.** Any grant of a Renewal Licence must meet the following conditions:-

- A. No breach of this Agreement, which would have entitled us to terminate this Agreement, has occurred and no breach of any provision of this Agreement shall be unremedied at the time of your notice or the agreement date of the Renewal Licence;
- B. Your Licensed Business and its operations must fully comply with all specifications and standards then applicable for new Businesses and with the Manual by the expiry of this Agreement;
- C. You (and each Affiliate of yours) must have paid all amounts owed to us and/or any of our Affiliates;
- D. You have performed your obligations under this Agreement to our reasonable satisfaction;
- E. You must have executed our then-current form of Licence agreement and related documents then customarily used by us (with appropriate modifications to reflect the fact that the Licence agreement to be awarded relates to a Renewal as contemplated by this Agreement). Our then current form of licence agreement will contain different terms to those in this agreement but the changes will not be such that it would be commercially impossible for you to operate your Licensed Business. You will not be required to pay the then-current initial fee, and we will not be required to provide you any site location, initial training or other "start-up" services in connection with the award of any Renewal Licence;
- F. You or if you are a Business Entity the Principal and your personnel must have complied with our then-current training requirements; and
- G. You must have paid our Legal Fees and administrative costs relating to the Renewal agreement. Such costs will not exceed £500.

Failure by you and/or your Owners to complete such requirements in accordance with the timescales specified will be deemed a decision by you not to obtain the Renewal Licence. If you continue to operate your Licensed Business after the expiry of the term of this Agreement and have not entered into a Renewal Licence you will be bound by the terms of this Agreement subject to either party being entitled to give the other one Month's notice of termination at any time and, for the avoidance of doubt, the post termination non compete covenants will apply from the date of expiry of the one Month's notice or such earlier date as we may specify.

16. TERMINATION

- 16.1 Automatic Termination.** This Agreement will Terminate upon delivery of our written notice of Termination to you in accordance with clause 19 (without further action by us and without opportunity to remedy any breach) and such Termination will entitle us to "loss of bargain" damages if you or if you are a Business Entity the Principal:
- A. Fail to comply with the opening obligations set out in clause 3 of this Agreement;
 - B. Abandon or fail, without our previous consent, to operate your Licensed Business for more than seven consecutive calendar days or give us reasonable grounds for believing that you will cease to operate your Licensed Business;
 - C. Make any material misrepresentation or omission in your application for this Agreement including (but not limited to) failure to disclose any prior litigation or criminal convictions (other than minor traffic offences) or during the term of this Agreement;
 - D. You are the subject of any insolvency proceedings or action or you are unable to pay your debts as they fall due.
 - E. Are convicted of a breach of the Bribery Act 2010 or any crime involving a prison sentence or a crime involving dishonesty, or any crime or offence that is likely adversely to affect our reputation or the reputation of the Licensed Business;
 - F. Engage in any misconduct which in our reasonable opinion unfavourably affects your or our reputation or the reputation of any Principal;
 - G. Make, or attempt to make, an unauthorised transfer of the Licensed Business or this Agreement, or surrender control of any of the aforementioned without our prior written approval;
 - H. Make any use of the Brand which is not expressly authorised by this Agreement, dispute our right to the Brand or use or disclose any Confidential Information;
 - I. Breach any of the in-term restrictions against competition provided in clause 8.2 A, (or any other person identified therein commits such a breach) or any obligation to devote your or the Principal's whole time and attention to the Licensed Business;
 - J. Fail to permit or cooperate with us or our nominee in any audit or inspection or fail to retain (or to produce on request) any records required to be maintained by you;
 - K. Have another licence agreement with us Terminated for any reason other than on a transfer or an expiry;
 - L. Fail to maintain required insurance;

- M. Disclose or allow the disclosure of any part of the Manual or any other Confidential Information or fail to comply with clause 8.1.B unless expressly permitted by this Agreement; or
- N. Fail to obtain any prior written approval or consent which, in our opinion, is material to the efficient and effective operation of the Licensed Business expressly required by this Agreement.

16.2 Remedial Breaches. This Agreement will Terminate upon delivery of our written notice of Termination to you in compliance with clause 19 without further action by us and without further opportunity to remedy beyond that set out in this clause and such Termination will entitle us to "loss of bargain" damages:

- A. **Ten Day Remedy.** If within ten days after delivery of our written notice to you, you do not remedy any:
 - 1) Retain any payment in respect of the supply of the Services or the Products in breach of clause 9.3 submit any other report due under this Agreement in accurate and complete form and when required;
 - 2) Failure to make payments of any amounts due to us, any of our Affiliates, any nominee of ours and/or any supplier/creditor of yours;
- B. **Thirty Day Remedy.** If within thirty calendar days after delivery of our written notice to you, you (or any of your Owners) do not remedy any failure to comply with any provision of this Agreement other than those set out in clause 16.1 and 16.2.A, any other agreement with us and/or any Affiliate of ours, or any specification, standard or operating procedure or requirement in the Manual or otherwise prescribed by us in writing which does not provide for a shorter notice period;
- C. If you can demonstrate to our reasonable satisfaction that a default under this clause 16.2 cannot reasonably be corrected within ten days, then you must undertake to use your best endeavours to comply as soon as possible. On our request, you must furnish proof acceptable to us of such efforts and the date full compliance will be achieved. In any event, all such defaults must be fully remedied within sixty days after delivery to you of our notice under this clause.

16.3 Repeated Defaults. This Agreement will Terminate upon delivery of our written notice of Termination to you in compliance with clause 19 (without further action by us and without opportunity to remedy) if you or any Affiliate of yours has committed two or more applicable defaults within any twelve consecutive Months, or three or more applicable defaults within any twenty four consecutive Months. Termination will entitle us to "loss of bargain" damages. An "applicable default" is a breach of the same obligation under this Agreement and/or the Manual, or any other Licence agreement with us and/or any agreement with any of our Affiliates.

16.4 Discontinuance of Obligations. If you are in arrears in any payment to us or our Affiliates or in material breach of any provision of this Agreement and we deliver a notice of default to you, we and/or each Affiliate have the right to require that you pay, cash on delivery or by bankers draft for goods or services which we provide to you and/or cease providing the support services and performing the obligations set out in this Agreement, until you have remedied all defaults. No such action by us and/or any Affiliate shall be a constructive termination of this Agreement, and you agree that you will not be relieved of any obligations under this Agreement because of any such action.

16.5 Your Termination. You may terminate this Agreement for any default committed by us which default would entitle you to Terminate by common law.

16.6 **Immediate Termination.** This Agreement shall (unless we have indicated otherwise prior to the effective date of termination) automatically Terminate if you take any steps to breach clause 10.4C such Termination being effective immediately before the said breach occurs. In the event of the Termination of this Agreement by virtue of this clause 16.6 we shall be entitled to claim damages as if Termination has occurred by virtue of your repudiatory breach of this Agreement.

16.7 **Suspension.**

- A. Without prejudice to our right to terminate this Agreement under clauses 16.1, 16.2, 16.3 or 16.4 we may give you notice requiring you immediately to suspend all or any activities in connection with this Agreement for such period as may be notified to you if we have a reasonable belief that there has been, or may about to be, a breach by you of the terms of this Agreement, the Manual or our other requirements.
- B. Following the giving of a notice under sub clause A above we shall, within a reasonable period, inform you of the remedial action that must be taken before you shall be permitted to resume your activities pursuant to this Agreement together with details of the timescale in which such remedial actions must be carried out.
- C. In the event that the remedial actions are not carried out to our reasonable satisfaction either at all or within the required timescale we, at your expense:-
 - (1) may perform all or just some parts of your Licensed Business ourselves or arrange for them to be performed or provided by a third party; and/or
 - (2) we may Terminate this Agreement with immediate effect.

17. OBLIGATIONS ON TRANSFER OR TERMINATION

17.1 **Payments of All Amounts Owed.** You must pay all Management Service Fees and all amounts of any kind owed to us and/or any of our Affiliates and/or any creditors of the Licensed Business, within ten days after the Termination of this Agreement, or from such later date as the amounts due can be determined.

17.2 **Intellectual Property and Confidential Information.** After any Transfer or Terminations of your Licensed Business unless otherwise agreed by us in relation to any Transfer;

- A. You agree immediately and permanently to discontinue the business activities of your Licensed Business and any use of the Intellectual Property and/or the Confidential Information, and will not use any similar brand to the Brand, or colourable imitations of any of the Intellectual Property in any medium or manner or for any purpose;
- B. You must, unless transferred pursuant to an authorised transfer, immediately return to us or (at our option) destroy the Manual, all software or hardware which we have authorised you to use or provided to you as well as any documents, forms, materials, signage, stationery and any other items containing any Intellectual Property or Brand and not retain any copies. You will, in respect of any software that we authorise you to retain, remove all customer data;
- C. You agree not to identify yourself, or any business you may operate or in which you may become involved, or to advertise or promote yourself in any manner, as a present or former licensee of ours;
- D. You must provide to us within thirty days satisfactory evidence of your compliance with the obligations described in this clause 17.2 and in clause 17.3, below. If you operate

any business using any of the Intellectual Property, Brand, Confidential Information, the telephone numbers referred to in clause 17.3.A or any aspect of the System, our remedies will include (but not be limited to) recovery of the greater of all profits earned by you in the operation of such business, or all Management Service Fees and other amounts which would have been due if this Agreement remained in full force and effect.

17.3 Telephone and Other Directory Listings, Internet Sites.

- A. You understand and agree that we own all rights to be the subscriber of the Numbers, and any related directory listings/advertising, used in connection with the operation of your Licensed Business. We can require you to sign a transfer to us or to our nominee of such Numbers at any time. After any Termination you must promptly transfer, divert, discontinue or otherwise deal with the Numbers and any related directory listings/advertising as we direct. You agree to sign any documents and/or pay any amounts required by a telephone/communication services provider as a condition to our exercising any rights under this clause. By signing this Agreement, you irrevocably appoint us as your attorney to take any such actions regarding the Numbers and any related directory listings/advertising if you do not do so yourself within ten days after the Termination or Repurchase of this Agreement. You irrevocably acknowledge our exclusive rights in such Numbers and related directory listings, web pages and advertising/marketing.
- B. If we choose at any time to be directly invoiced by a supplier for any account for the Numbers and/or directory listings/advertising, you agree to pay us all amounts due to such suppliers within ten days of our written notice to you. If you fail on two or more occasions to pay any such amounts to us when due, then we can require you to maintain a deposit with us of an amount reasonably determined by us based upon previous use history and other relevant factors.
- C. You will not permit to appear on any marketing, advertising or promotional material or in any business correspondence any telephone or fax numbers, email addresses or URLs other than the Numbers. The Numbers may only be used for the purposes of the Licensed Business and for no other purpose.

17.4 Other Obligations. On Termination you must:-

- A. Cease forthwith to trade under the Trade Name and if required by us take the necessary steps to change your corporate or trading name so that the name is not likely to be associated with us;
- B. Transfer telephone calls, faxes or emails in connection with the Licensed Business;
- C. Pass to us the names and contact details of all persons enquiring about and/or requesting the Services;
- D. If so required by us, use your best endeavours to transfer all (or such contracts as we may specify) outstanding contracts with customers to us or our nominee for £1;
- E. Reimburse or irrevocably permit us to deduct from all sums payable by us to you all sums which we pay (whether legally obliged to or not) to ensure that all persons referred to in clause 17.1 and all customers are paid;
- F. Meet with our representatives at a time specified by us having made reasonable efforts to accommodate you within fourteen days prior to or after Termination of this Agreement at the Premises in order to ensure full compliance with the provisions set out above.

The provisions of clause 17.4A, E and F may, at our option, apply on a Transfer.

17.5 Continuing Obligations.

All obligations and rights which expressly or by their nature survive the Transfer or Termination of this Agreement will continue in full force and effect until they are satisfied or by their nature expire (including but not limited to indemnity, non-competition and confidentiality rights and obligations; obligations to pay and the provisions of clauses 18 and 20).

18. DISPUTE RESOLUTION

For the purposes of this clause 18, “you” includes all of your Owners, Affiliates and their respective employees, and “we” includes all of our Affiliates.

18.1 Mediation.

- A. It is your and our desire not to engage in court proceedings, except in the rare instances specified in this Agreement, but rather to have disputes resolved through face-to-face meetings, mediation and, if necessary, binding arbitration.
- B. You and we view mediation as often being the most cost effective way of resolving disputes.

18.2 Procedure. You and we believe that it is important to resolve all disputes efficiently and professionally and to return to business as soon as possible. You and we agree that the provisions of this clause 18 support these business objectives and, therefore, agree as follows:

- A. Any litigation, claim, dispute, suit, action, controversy, or proceedings of any type whatsoever between or involving you and us (and/or any Affiliate of either), and whether or not arising out of this Agreement or any ancillary agreement between you and us (“Claim”), will be exclusively dealt with in the following manner, except as expressly provided in clause 18.2 B.
 - 1) First, discussed in a face-to-face meeting held at our head office within thirty days after either you or we give written notice to the other proposing such a meeting;
 - 2) Second, if unresolved, submitted to non-binding mediation for a minimum of eight hours before a mediator appointed by an independent dispute resolution organisation we may nominate. The mediator shall be a neutral person. We will each pay 50% of the costs of any mediation (though each of us will, of course, be solely responsible for any Legal Fees of our own lawyers). We jointly agree that no mediation will be required to extend beyond eight hours. Any party may be represented by lawyers and may, with permission of the mediator, bring persons appropriate to resolving the claim;
 - 3) Third, if unresolved, commence proceedings through the Courts.
- B. Any party to this Agreement may forego face-to-face meeting or mediation if they seek injunctive relief.

18.3 Periods In Which to Make Claims. No issue may be raised by you in any dispute (whether being resolved by litigation or otherwise) and whether by way of claim, counter claim, set off or otherwise unless you have raised the issue in writing before the expiry of the earlier of:

- A. One year after the date on which the facts giving rise to the issue comes to your attention, or should reasonably have come to your attention; or
 - B. Two years after the initial occurrence of any act or omission giving rise to the issue whenever discovered.
 - C. In the case of alleged misrepresentation inducing a party to this Agreement to enter into this Agreement within two years of entering into the Agreement.
- 18.4 Legal Fees and Costs.** The parties will each bear their own costs of enforcement and/or defence (including but not limited to Legal Fees and costs), including those matters resolved pursuant to a settlement agreement between the parties save that if a court or arbitrator awards the “winning” party some or all of its Legal Fees then such party will be entitled to all of its reasonable Legal Fees notwithstanding the percentage awarded by the court or arbitrator. If we apply for an injunction against you (whether or not successful) you will reimburse all of our Legal Fees relating thereto.
- 18.5 Construction.**
- A. This Agreement is binding upon the parties and their respective executors, administrators, heirs and assigns and will not be modified or supplemented except by means of a written agreement signed by both you and our Managing Director. Changes to the Manual do not require to be agreed by you. No other person has the right or authority to modify this Agreement, or to make any representations or agreements on our behalf during the term of this Agreement, and any such modifications, representations and/or agreements if purported to be made shall not be binding.
 - B. This Agreement shall be construed and enforced according to the laws of England & Wales and shall, subject to the provisions of this clause 18, be subject to the non exclusive jurisdiction of the English Courts (subject to any written addendum to this Agreement entered into between the parties if the Premises are in Scotland).
 - C. If we shall receive advice confirmed in writing by a solicitor specialising in franchising or licensing or by a barrister specialising in competition law (“the Expert”) that this Agreement does not comply with the European Commission’s block exemption for vertical restraints or any replacement block exemption (“the Exemption”), that a failure to so comply could constitute a breach of Article 101 of the Treaty on the Functioning of the European Union and that it is in our commercial interests for the agreement to so comply, we shall submit a revised Licence agreement in the same form as this Agreement but incorporating those amendments (and only those amendments) which are in the Expert’s opinion required to enable this Agreement to be exempted from Article 101 along with an explanatory memorandum setting out the reasons for the amendments. You shall execute the revised agreement within fourteen days of its receipt.
 - D. No waiver shall be effective unless in writing and signed by an authorised representative of the signing party and a waiver shall not prevent subsequent enforcement of the waived breach.
 - E. If you consist of two or more persons all of your obligations and liabilities under this or any other agreement with us and/or any of our Affiliates will be joint and several.
 - F. We have the right in our sole discretion not to enforce (or to selectively enforce) any provision of this or any agreement, standard or policy, whether with respect to you and/or any other Licensee or other person without liability to you.
 - G. We may not enforce the provisions of licence agreements that we have entered into with our Licensees consistently or on the same basis and will be at liberty if we consider it

advantageous to do so, to treat each of our licensees differently. You acknowledge that we owe you no duty to enforce the provisions of our licence agreement entered into by our Licensees.

- H. The implied terms set out in Sections 13 and 14 of the Supply of Goods and Services Act 1982 shall not apply to any of the services (which includes guidance, advice and training) to be provided by us pursuant to this Agreement.
- I. Unless otherwise expressly provided the obligations that you and/or the Principal accept pursuant to this Agreement and which are capable of applying following Termination, shall continue to apply.

18.6 Our Judgment. Whenever we are required to use our judgment in making a decision under this Agreement we shall use our judgment based upon our assessment of the interests we consider appropriate and will not be required to consider your individual interests or the interests of any other particular Licensee. We have this right even if a particular decision/action may have negative consequences for you, a particular Licensee or group of Licensees.

18.7 Miscellaneous.

- A. Headings are for convenience only and do not affect the interpretation of, or construction of, such provisions.
- B. You and we have carefully reviewed and thought about each provision of this Agreement. Provisions shall be construed simply according to their fair meaning, without presumptions or inferences concerning terms or interpretation and not strictly against you or us.
- C. All sums to be paid to us pursuant to this Agreement are, unless otherwise expressly provided, Value Added Tax exclusive and accordingly Value Added Tax (if payable) at the appropriate rate should be added to such payment.
- D. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. Save as expressly provided in clause 14.1, no person who is not a party to this Agreement shall have the right (whether under the Contracts (Right of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior written agreement of the parties which agreement must refer to this clause.
- E. We will both be released from obligations in the event of "force majeure" as such term is customarily used for so long as such event of "force majeure" continues.

18.8 Set Off. Neither party has the right to set off or withhold payments of sums owed or to be owed to the other against amounts purportedly due as a result of a dispute or otherwise, except as expressly provided in this Agreement. You shall not make payments due to us into an escrow account.

19. NOTICES

- A. All written notices and reports to be delivered by the provisions of this Agreement or of the Manual will be deemed so delivered when delivered by hand, immediately upon transmission by facsimile transmission or other electronic system, including email or any similar means, one business day after being placed in the hands of a commercial courier service for overnight delivery, or two business days after posting the notice to our address set out at the beginning of

this Agreement or at such alternative address as we have provided to you for the attention of our managing director, and to you, at your Premises. Until you have opened for business, we can serve you notice at any address appearing in your application for a licence or in our records. Notice to any one person being a partner or Owner will be deemed effective as to all of your partners and Owners. Any party may change its address for receipt of notices by providing prior written notice of such change to the other party.

- B. You and we will notify the other of any changes to the address and contact details for the purposes of this clause and you will provide us with the Principal's full contact details (which will include the Principal's home address) if appropriate, and any changes as soon as they arise.

20. ACKNOWLEDGEMENTS AND REPRESENTATIONS, ENTIRE AGREEMENT, NO FIDUCIARY RELATIONSHIP

- A. You and we agree that our relationship is not a fiduciary or similar special relationship, but rather is an ordinary commercial relationship between independent business people dealing on an arms length basis and that as a result we do not either before entering into this Agreement or during its term owe you a duty of care in relation to any advice or information which we provide whether orally or in writing. In other words it will be your responsibility to verify any advice or information which we provide and to form your own view on it.
- B. You acknowledge that you (and each of your Owners, if you are a Business Entity) have had the opportunity and been advised by us to have this Agreement and all other documents reviewed by a solicitor experienced in licensing/franchising, and that you have read, understood, had an opportunity to discuss and have agreed to each provision of this Agreement. You further acknowledge that you have been provided with a list of our licensees and we have recommended that you contact such licensees in order to establish their level of satisfaction with their licensed businesses. You agree that you have been under no compulsion to sign this Agreement.
- C. You and we agree that this Agreement and the documents referred to in it contains the final, complete and exclusive expression of the terms of your and our agreement and supersedes all other agreements and/or representations of any kind or nature. Any understandings, agreements, representations, or otherwise (whether oral or written) which are not fully set out in this Agreement and the documents referred to in it are expressly disclaimed by you and us except any written representations made by you in connection with your application for this licence. Neither you nor we believe it to be fair or reasonable for the other party to have to deal with allegations about understandings, representations or obligations not fully expressed in writing in this Agreement or the documents referred to in it.
- D. You and we also agree that the express terms of this Agreement constitute a fully effective agreement and that no further terms may or should be implied into it and that this clause is intended to exclude, so far as statute permits, all and any implied terms or conditions that might otherwise be implied by statute or otherwise.
- E. You acknowledge that you have not received or relied on (nor have we or anyone else provided) any statements, guarantees or promises that you will succeed in your Licensed Business or at any location; incur a certain level of costs (whether in relation to the commencement of your Licensed Business or to trading during the term of this Agreement) achieve any particular sales, income or other levels of performance; earn any particular amount or receive any rights, goods, or services not expressly set forth in this Agreement.

F. You represent, warrant and agree that no condition precedent (including but not limited to obtaining financing) exists with respect to you fully performing any or all of your obligations under this Agreement. You further represent to us, as an inducement to our entering into this licence relationship, that you have made no misrepresentations or material omissions in obtaining the rights granted by this Agreement.

G. You acknowledge that you have not received or relied on nor have we or anyone else provided:

- 1) Any sales, income or other projections of any kind or nature; or
- 2) Any statements, representations, charts, calculations or other materials which stated or suggested any level or range of sales, income, profits or cash flow; or
- 3) Any representations as to any profits you may realise in the operation of the Licensed Business or any working capital or other funds necessary to reach any 'break-even' or any other financial level;
- 4) Any information as to your start up costs or any element of them;

which have been prepared specifically for your Licensed Business and any information relating to the above, if provided, will be of a generic nature and will need to be adapted by you specifically to your Licensed Business after taking all appropriate independent advice. You further acknowledge that you take full responsibility for any business plan or projections you have prepared for your Licensed Business notwithstanding that the template for such business plan or elements of the forecasts for the business plan may have been provided by us.

H. If any information, promises, representations and/or warranties relating to the matters referred to in clause 20.G above have been provided to you, they are unauthorised and inherently unreliable. You agree to advise us of the delivery of any such information. You must not rely and you acknowledge that you have not relied upon any such information, nor will we be bound by it. We do not, nor do we attempt to, predict, forecast or project future performance, revenues or profits of you or any licensee. We are unable reliably to predict the performance of a Business even operated by us, and certainly cannot predict results for your Licensed Business. You understand and agree that licensees are separate and distinct from us and are independently owned and operated, and that while we strongly encourage you to speak with all of our licensees in connection with your evaluation of this Licence opportunity, they do not act as our agents or representatives in providing any information to you and we will have no obligations or liabilities with respect to (and you should not rely on) any information, opinions or otherwise they may provide to you.

I. You acknowledge and agree that the success of the business venture contemplated to be undertaken by you is speculative and will be dependent upon your personal efforts, and success is not guaranteed. You acknowledge and represent that you have entered into this Agreement and made an investment only after making an independent investigation of the opportunity.

J. You understand, acknowledge and agree that: (1) we may have offered licences in the past, may currently be offering licences and/or may offer licences in the future, on economic and/or other terms, conditions and provisions which may significantly differ from those offered by this Agreement; and (2) we can, from time to time, deal with our licensees on differing economic and/or other terms (including making special arrangements for payments of amounts due, waiving defaults and/or otherwise) to suit individual business circumstances, in each case in our business judgment and without

being required to offer similar terms to other licensees, such flexibility being a practical necessity to respond to distinct business situations.

- K. You understand that we are relying upon you to bring forward in writing at this time any matters inconsistent with the provisions of this clause 20. You agree that if any element of this clause 20 are not true, correct and complete that you will make a written statement regarding the same before entering into this Agreement which will be annexed to this Agreement unless before you enter into this Agreement we have resolved any such issues.
- L. You acknowledge and agree that our officers, directors, employees, and agents act only in a representative capacity and not in an individual capacity so that they accept no personal liability will attach to them, and that no other entities other than us has or will have any duties or obligations to you.
- M. Nothing in this clause 20 shall seek to limit or exclude our or your liability for any statement or representation made fraudulently.
- N. We acknowledge that we have access to information about the Business and our business to which you do not have access and which may be difficult for you to verify. Similarly you acknowledge that during negotiations and discussions it is difficult to establish precisely what information has been provided and accordingly if any such information has been provided to you and you believe that such information has had a material impact on your willingness to enter into this Agreement and you have been unable to verify the information you must inform us of such information so that we can confirm whether we agree that such information is correct and if it is such information will constitute a representation in respect of which we accept liability.

21. DEFINITIONS

The following definitions apply to terms used this Agreement:

“Affiliate” - Any person or entity which controls, is controlled by or is under common control of another person or entity; in addition, in relation to you, any employee or agent of yours, and/or any independent contractor performing functions for, or on your behalf and any entity controlled by any of the foregoing.

“Agreement” - This licence agreement.

“Associate” – Any person who is defined as an associate in Section 435 Insolvency Act 1986.

“Brand” – The brand set out in Schedule 2 as amended, changed or replaced by us from time to time and the reputation and image of our business and the businesses of our Licensees, as are applied to various services and products as authorised by us from time to time.

“Business” – A business operated or licensed by us which is similar to the Licensed Business and which uses the Trade Name.

“Business Entity” - A limited liability company or limited partnership.

“Competing Business” – Any business similar to our business or which operates as a licensor or franchisor, licensing or franchising a Similar Business.

“Intellectual Property” - Includes, regardless of the form or medium involved:

- 1) the Manual and all other directives, policies or information we issue from time to time;
- 2) all customer relationships and information;
- 3) all Confidential Information and our trade secrets; and
- 4) all other proprietary, copyright, copyrightable and/or trade secret information and materials developed, acquired, licensed or used by us in our operation of the System.

“Legal Fees” - Includes, without limitation, legal fees, whether incurred in preparation of the issue of any written demand or claim, action, hearing, arbitration, or other proceeding to enforce the obligations of this Agreement, or during any such proceeding, plus all costs incurred in connection therewith.

“Licensed Business” - The business operations conducted by you in accordance with terms of this Agreement.

“Locations” – Temporary locations in your Territory, such as schools which we have previously approved in writing.

“Management Service Fee” – The continuing fee calculated in accordance with Schedule 2.

“Manual” - Specifications, standards, policies and procedures prescribed by us and published to you in any media (including electronic) and which are to be followed in the operation of the Licensed Business as they may be changed, deleted or added to by us in our business judgment.

“Month” – A calendar month.

“Monthly Minimum” – As defined in clause 9.2B.

“National Account” – A customer with whom we have entered into a contract in relation to the supply of Services and/or Products either because of the high contract value or the Services and/or Products are to be provided by more than one licensee.

“Numbers” - Telephone numbers, domain names, internet addresses/sites and/or other communications services links.

“Opening Items” – The items and services listed in Schedule 2 which we will provide to you to enable you to start your Licensed Business.

“Owners” – A partner if you are a partnership or a director or shareholder if you are a limited company. The Owners of the Licensee as at the date of this Agreement are set out in Schedule 2 with their ownership interest.

“Premises” - The premises from which you will operate your Licensed Business and which are set out at the beginning of this Agreement or such alternative premises which we have subsequently approved in writing.

“Principal” – One or more of the Owners who we require to enter into the guarantee set out in Schedule 1 of this Agreement.

“Products” – Products which we may from time to time specify relating to the Services to be offered by the Licensed Business.

“Renewal Licence” - A licence granted to an existing licensee on expiry of the term of an agreement.

“Services” – Services which we may from time to time specify relating to the teaching of children in the performing arts and such ancillary or related services to be offered by the Licensed Business.

“Similar Business” - Any business which produces, offers, sells, distributes or is otherwise involved in, the sale of services or products similar to or which are competitive with those which are or were at the date of Termination provided by the Licensed Business or which are similar to or competitive with the services and/or products offered by our licensees at the date of Termination.

“System” - The distinctive format and method of doing business developed and used for the operation of the Licensed Business, which is subject to change by us at any time.

“Terminate” or “Termination” - The termination or expiry of your rights and our obligations under this Agreement for any reason.

“Territory” – The territory set out in Schedule 2.

“Trade Name” – The trade name set out in Schedule 2.

“Transfer” – As defined in clause 14.2.

“us,” “we,” “our” or “Licensor” – Premier Performing Arts Limited.

“you,” “your,” or “Licensee” - The parties signing this Agreement as Licensee. (If there is more than one Licensee, each is jointly and severally obligated under this Agreement and all other agreements with us and/or Affiliates). The term “you” is applicable to one or more persons or a Business Entity, as the case may be.

SCHEDULE 1

PRINCIPAL'S GUARANTEE

In consideration of, and as an inducement to, the execution by Premier Performing Arts Limited, a company registered in England & Wales, ("Licensor") of a licence agreement of even date herewith (the "Agreement") between Licensor and SCL-PPA Ltd, a Limited Company (the "Business Entity Licensee"), the undersigned hereby personally and unconditionally:

- 1) guarantees to the Licensor and its Affiliates (as such terms are defined in the Agreement) and each of their successors and assigns, for the duration of the Agreement, and for any renewal/successor licence term, and thereafter as provided in the Agreement, that the Business Entity Licensee will punctually pay and perform, each and every undertaking, agreement and covenant set forth in the Agreement and any contracts (including Product orders) with any of our Affiliates as currently set forth and as amended and/or otherwise changed in the future, including any successor licence agreement;
- 2) agrees to be personally bound by, and personally liable (as if references to the Licensee were to each of the undersigned) for, the breach of each and every provision in the Agreement (including all confidentiality, non-competition, indemnity and post Termination provisions), as currently set forth and as amended or otherwise changed in the future, including any successor licence agreement;
- 3) agrees to be personally bound by, and personally liable (as if references to the Licensee were to each of the undersigned) for, each past, current and/or future obligation of the Business Entity Licensee to Licensor and/or its Affiliates and each of their successors and assigns; and
- 4) acknowledges that he has read and understood clauses 8.2, 18.5 and 20 of the Agreement and agrees to be bound by the provisions of clauses 8.2, 18.5 and 20 as if the references to "you" in these clauses were to the undersigned.

The undersigned intends that the guarantees and other obligations herein be unqualified, general and without limitation in scope, nature and/or effect. The undersigned acknowledges that his liability will be joint and several with all other persons who have entered into a guarantee relating to the Business Entity Licensee. The Licensor and/or its Affiliates and each of their successors and assigns, need not take action first against the Business Entity Licensee in order to enforce this guarantee and may enforce this guarantee against any or all of the undersigned as it chooses in its/their sole and absolute discretion.

The undersigned consents and agrees that:

- 1) he will render any payment or performance required under the Agreement on demand if the Business Entity Licensee fails or refuses to do so punctually;
- 2) such liability will not be contingent or conditional on pursuit by Licensor or otherwise of any remedies against the Business Entity Licensee or any other person;
- 3) such liability will not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which the Licensor or otherwise may from time to time grant to the Business Entity Licensee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which will in any way modify or amend this guarantee, which will be continuing and irrevocable during the term of the Agreement and any renewal/successor licence term;

- 4) the liabilities and obligations of the undersigned, whether under this document or otherwise, will not be diminished or otherwise affected by the Termination, rescission, expiration, renewal, award of a successor licence, modification or otherwise of the Agreement;
- 5) terms not defined in this document will have the meanings assigned in the Agreement; and
- 6) the provisions of the Agreement are incorporated in and will apply to this document as if fully set forth herein and will apply to any dispute involving the Licensor, its Affiliates and each of their successors and assigns and any of the undersigned.

Each of the Principals shall maintain the ownership of the Business Entity Licensee set out below unless the Licensor's prior written consent in writing has been obtained to any such change.

PRINCIPAL(S)	PERCENTAGE OF OWNERSHIP OF BUSINESS ENTITY LICENSEE
(Insert Licensee Name)	(Insert Shareholding) %
_____	_____ %
_____	_____ %
_____	_____ %

DATED: (Insert Date)

EXECUTED AS A DEED by)

In the presence of:-)

SCHEDULE 2
SPECIFIC ELEMENTS

Premises: (Insert Licensed Premises address)

Term (clause 2.1): (Number of Months) months ending on term of franchise agreement end date on (Insert end date).

Principal(s): (Insert name of licensee and home address)

Brand: Premier Performing Arts – Dance
Reg under No: UK00003003353 

Initial Fee: £0.00

Owners: (Insert name of owner of company)

Management Service Fee: £2k in Year 1
£3k in Year 2
£4k in Year 3
£5k in Year 4 increased thereafter in accordance with clause 9.8

Opening Items:

- 30 x resource booklets (reception – year 6)
- 1 x dance resource pack
- 1 x drama resource pack
- 1 x PA supplex black leggings (if male swap for black jog pants)
- 1 x PA supplex black vest top (if male swap for black polo shirt)
- 1 x PA supplex black sports bra (female only)
- 1 x PA black slash sweatshirt (female only)
- 1 x PA black zip front sweatshirt
- 1 x PA messenger bag

Territory: (Insert Territory)

Trade Name: (Insert Licensee's Company Name)

SIGNED for and on behalf of)
PREMIER PERFORMING ARTS LIMITED) _____

Having read and understood this)
Agreement and, in particular Clauses 18.5 and 20)
SIGNED for and on behalf of)
(INSERT COMPANY NAME)) _____

Having read and understood this)
Agreement and, in particular Clauses 18.5 and 20)
SIGNED by)
(INSERT DIRECTOR NAME) "Individual") _____

In the presence of "Witness":-)
Signature: _____)

Print Name:

Address: