

Sleepy's THE Mattress Outlet

ACN 104 154 627

FILE No.

DOC:

MARS/PRISM:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

10 June 2003

Dear Sir

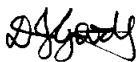
EXCLUSIVE DEALING NOTIFICATION

Please find enclosed a completed Form G: Exclusive Dealing Notification on behalf of Sleepy's Pty Ltd.

Sleepy's Pty Ltd commenced business as a franchisor under the Franchising Code of Conduct on 1 April 2003, and currently has 8 franchisees, with an expectation of around 40 franchisees by the end of the 2004 financial year.

If there is any further information required in relation to the notification, please contact me on (07) 3222-3911.

Yours Sincerely
SLEEPY'S PTY LTD



David Goode
Secretary

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA
16 JUN 2003

National Office

Sleepy's Pty Ltd, 97 School Street Spring Hill QLD 4000
Telephone: 3222 3444 Facsimile: 3222 3434
www.sleepys.com.au

Form G

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 93(1)
**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice..... SLEEPY'S PTY LTD ACN 104 154 627

(See Direction 2 on the back of this form)

(b) Short description of business carried on by that person
FRANCHISOR TO RETAIL BEDDING OUTLETS TRADING AS
"SLEEPY'S THE MATTRESS OUTLET"

(c) Address in Australia for service of documents on that person
97 SCHOOL STREET
SPRING HILL QLD 4000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
REFER ANNEXURE 'A'

(b) Description of the conduct or proposed conduct
REFER ANNEXURE 'A'

(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates
RETAILERS WHO HAVE BEEN GRANTED A LICENCE TO CONDUCT BUSINESS
TRADING AS "SLEEPY'S THE MATTRESS OUTLET"

(b) Number of those persons--
(i) At present time 8
(ii) Estimated within the next year 40

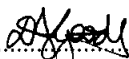
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
REFER ANNEXURE 'B'

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice.....

DAVID JOHN GOODE - COMPANY SECRETARY
97 SCHOOL STREET, SPRING HILL QLD 4000

Dated 10 JUNE 2003

Signed by/on behalf of the applicant giving notice



(Signature)

DAVID JOHN GOODE

(Full Name)

COMPANY SECRETARY

(Description)

ANNEXURE B

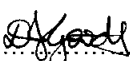
(Form G – Exclusive Dealing Notification)

Question 3(c)

Franchisee / Entity	Contact Name	Address
Mark & Yolande Huntingdon (Partnership)	Mr Mark Huntingdon	Shop 9, Bundall Circle Centre Upton St & Ashmore Rd BUNDALL QLD 4217
Anthony Coccia, Sari Ralph, & Peter Baggott (Partnership)	Mr Anthony Coccia	Shop 8, City Gate Homemaker Centre 1074 Ann Street FORTITUDE VALLEY QLD 4006
Barry John Atkins & Kim Maree Atkins as Trustees for the B&K Jelljacks Family Trust	Mr Barry Atkins	453 Main Road North ENFIELD SA 5085
SG & AH Smyth (Partnership)	Mr Steve Smyth	Unit D, 224 Nicklin Way KAWANA QLD 4575
Jemford Pty Ltd	Mr Scott Hooley	Shop 1, Cnr Stafford Rd & Shand St STAFFORD QLD 4053
MA Management Services Pty Ltd	Mr Brian Chandler	Shop 4, Christies Homemaker Centre Cnr Logan Rd & Lexington Rd UNDERWOOD QLD 4119
Malcolm & Geraldine Adams (Partnership)	Mr Malcolm Adams	Shop 20, Christies Homemaker Centre 34 Goggs Rd JINDALEE QLD 4074
Jaime & Allison Cramp (Partnership)	Mr Jaime Cramp	28 Greenway Drive TWEED HEADS NSW 2486

Dated: 10 JUNE 2003

Signed on behalf of the person giving this notice


.....
Signature

DAVID JOHN COODE
.....
Full Name

COMPANY SECRETARY
.....
Description

ANNEXURE A

(Form G – Exclusive Dealing Notification)

Question 2(a)

Retailers/franchisees who are members of the "Sleepy's the Mattress Outlet" Group sell bedding and related products such as pillows and manchester.

This notice refers to certain conditions which are attached to the grant of a licence by Sleepy's Pty Ltd ACN 104 154 627 to each franchisee.

A copy of the standard Franchise Agreement is *attached* to this Annexure A.

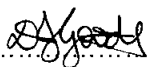
Question 2(b)

There are certain conditions attached to the grant of a licence, which may potentially constitute either Exclusive Dealing or Third Line Forcing under the Trade Practices Act 1974. Those conditions are:

- That retailers only sell stock which is approved by the Licensor, and which is purchased only from suppliers who the Licensor nominates as Approved or Preferred suppliers (refer Clause 18 of the *attached* standard Franchise Agreement);
- That retailers acquire, install and operate B.rms/BGlobal, which is a retail management software system which has been developed by Betta Stores Ltd, a related company of Sleepy's Pty Ltd. (refer Clause 21 of the *attached* standard Franchise Agreement).

Dated: 10 JUNE 2003

Signed on behalf of the person giving this notice

..... 

Signature

..... DAVID JOHN GOODE

Full Name

..... COMPANY SECRETARY

Description

Sleepy's THE Mattress Outlet

SLEEPY'S PTY LTD

ACN 104 154 627

FRANCHISE AGREEMENT

With

[REDACTED] ('RETAILER')

And

[REDACTED] ('GUARANTOR')

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SLEEPY'S PTY LTD FRANCHISE AGREEMENT

Made on

BETWEEN **SLEEPY'S PTY LTD ACN 104 154 627** of 97 School Street, Spring Hill in the State of Queensland

(**'SPL'**)

AND [REDACTED] [ABN [REDACTED]]
of [REDACTED] in the State of [REDACTED].

(**'retailer'**)

AND [REDACTED] of [REDACTED]
in the State of [REDACTED].

(**'Guarantor'**)

BACKGROUND

- A. SPL is a company established under Australian Law, which is authorised to grant Licences to interested persons who meet the Selection Criteria.
- B. The retailer has satisfied the Selection Criteria and SPL has agreed to grant the retailer a Licence on the terms set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

- 1.1 In this Agreement, including the Background (unless the context otherwise requires) some words, which begin with a capital letter, have a special meaning. Those words and their meaning are set out below.

'Act of Insolvency':

- (a) where the retailer is a natural person or partnership means the retailer, or any one or more of the members of the partnership, commits an act of bankruptcy; becomes bankrupt; or unable to pay its debts; or suspends payment of its debts, within the meaning of the Bankruptcy Act (C'wlth) 1966 or similar legislation or something having a substantially similar effect happens to it under the law of any jurisdiction; and
- (b) where the retailer is a corporation, the retailer by act or omission:
 - (i) enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the retailer pursuant to a mortgage or other security;
 - (ii) enables a controller to be appointed within meaning of Corporations Act;
 - (iii) is subject to any arrangement, assignment, or composition protected from creditors under any statute;

- (iv) any application or order has made resolution passed, proposal put forward, or any other action taken, in each case in connection with that person which is preparatory or could result in (i), (ii) and (iii); or
- (v) is unable to pay its debts as they fall due;

'Advertising Levy' means as set out in Item 6 of the schedule;

'Agreement' means this 'Franchise Agreement' including any variations made in writing by the parties and the Schedule and the Annexures;

'Additional Term' means the period set out in item 3 of the Schedule;

'Additional Training' means any training which SPL in its reasonable opinion, considers necessary to ensure that the retailer is able to provide consistent quality service to its customers;

'Approved Services' means the services that SPL from time to time nominates as Approved Services;

'Approved Stock' means the products that SPL from time to time nominates as Approved Stock;

'Approved Supplier' means any supplier that from time to time SPL nominates as an Approved Supplier;

'Annual Review' means a review of the retailer's performance in the Licensed Business carried out in accordance with clause 30 of this Agreement;

'Australian Standards' means standards published by Standards Australia International Limited;

'Brand Marks' means the marks and names set out in Item 8 of Schedule 1;

'B.rms' & 'BGlobal' means the retail management system including computer hardware and software, data and help desk support developed by or for SPL, which the retailer is required to use in connection with the operation of the Licensed Business including all updates;

'Business Name' means any brand registered or owned by SPL or a related body corporate including but not limited to those brands set out in clause 15.1 the use of which has been approved by SPL;

'Business Day' means Monday to Friday, excluding public holidays as observed in Queensland;

'Code' means the Franchising Code of Conduct prescribed as a mandatory industry code for the franchising industry for the purpose of the Trade Practices Act 1974, as amended;

'Commencement Date' means the date specified in Item 1 of the Schedule;

'Confidential Information' means in relation to SPL, any information or know-how which is not available to the general public including (without limitation):

- (a) information concerning B.rms/BGlobal;
- (b) the manner in which B.rms/BGlobal functions;
- (c) business methods;
- (d) rebates which have been negotiated with Approved Suppliers or Preferred Suppliers;
- (e) price lists;
- (f) know how and trade secrets; and
- (g) financial information;

'Disclosure Document' means a disclosure statement as referred to in the Code;

‘Expiry Date’ means the date specified in Item 2 of the Schedule;

‘Financial Year’ means each period of twelve months which begins on 1 July and ends on the following 30 June;

‘Gross Sales’ means the gross amount the retailer is entitled to receive for all goods and services sold by the retailer whether by cash, credit or otherwise, inclusive of GST;

‘GST’ has the same meaning as in the GST Act;

‘GST Act’ means *A New Tax System (Goods and Services Tax) Act 1999* as amended;

‘Initial Training’ means a training program designed to provide Licensees with an understanding of the System including basic training in connection with B.rms/BGlobal or any other retail management system introduced to replace B.rms/BGlobal;

‘Lease’ means the lease of, or any other right to occupy, the Premises;

‘Licence’ means a right to carry on a business of selling, amongst other things, goods, to members of the public, where the business is:

- (a) conducted in accordance with the System; and
- (b) substantially associated with the Brand Marks;

‘Licensed Business’ means the business conducted by the retailer in accordance with this Agreement;

‘Licensee’ means any person holding a Licence;

‘Minimum Gross Sales’ means the minimum amount of Gross Sales, which the retailer must obtain in a 12 month period as set out in Item 7 of the schedule;

‘Operating Manuals’ means the manuals developed and owned by SPL, which embody the System, including the Operations Manual, Standards Manual and Training Manual as prepared and revised from time to time by or on behalf of SPL;

‘Preferred Supplier’ means any supplier, which from time to time, SPL nominates as a Preferred Supplier;

‘Premises’ means the premises set out in Item 9 of Schedule 1;

‘Promotional Area’ means the area defined by the plan attached to or the postcodes set out in Annexure E to this Agreement marked ‘Promotional Area’ or any other area substituted for that area after an Annual Review;

‘Purchases’ means purchases of stock for the Licensed Business made by the retailer from Approved Suppliers, or other sources approved by SPL on all accounts, including any stock purchased in accordance with clause 18;

‘Quarter’ means one of the following 3 month periods during a Financial Year;

- (a) 1 July — 30 September;
- (b) 1 October — 31 December;
- (c) 1 January — 31 March; and
- (d) 1 April — 30 June;

‘Recipient Created Tax Invoice’ has the same meaning as in the GST Act;

‘Registered’ has the same meaning as in the GST Act;

‘Related Corporation’ has the same meaning as in the *Corporations Act (C’wlth) 2001*;

'Selection Criteria' means the criteria which SPL sets from time to time to determine whether or not a person is suitable to operate a Licence;

'Serious Offence' has the same meaning as it does in the Code;

'Services' means the services identified in Schedule 2 marked 'Services';

'Service Fee' means the amount specified in Item 4 of the Schedule;

'SPL' means Sleepy's Pty Ltd ACN 104 154 627;

'Standards Manual' means the Retail Standards Manual developed by or for SPL;

'Start Up Fee' means the amount stipulated in Item 5 of the Schedule;

'State' means the state where the Premises are located;

'System' means the combination of standards, procedures and know-how, provided by SPL for the operation of a retail store, which amongst other things sells goods to members of the public;

'Tax invoice' has the same meaning as in the GST Act;

'TCS' means SPL's terms and conditions of sale, as varied from time to time;

'Term' means the term of this Agreement as specified in clause 4.

2. GRANT

In exchange for the retailer and the Guarantor complying with their respective obligations under this Agreement, SPL grants a Licence to the retailer on the terms set out in this Agreement.

3. COOLING OFF

3.1 The retailer may, by notice in writing delivered to SPL, terminate this Agreement within 7 days of the retailer signing this Agreement.

3.2 The right to terminate set out in clause 3.1 does not apply to the renewal, extension or transfer of this Agreement.

3.3 If the retailer terminates this Agreement under clause 3.1, SPL will, within 14 days from the date of receipt of the notice terminating this Agreement, repay all moneys paid by the retailer to SPL under this Agreement less SPL's reasonable expenses. The retailer agrees for the purpose of this Agreement SPL's reasonable expenses will be equal to 25% of the Start Up Fee paid by the retailer.

4. TERM

The Licence granted to the retailer under clause 2 starts on the Commencement Date and ends on the Expiry Date unless it is terminated before then.

5. PAYMENTS BY THE RETAILER

5.1 The retailer agrees to pay the following fees to SPL under this Agreement:

- (a) the Start Up Fee;
- (b) the Service Fee; and
- (c) the Advertising Levy.

- 5.2 The Start Up Fee is payable by the retailer at the same time the retailer signs this Agreement or any renewal of this Agreement and each time the retailer opens or commences trading from new premises.
- 5.3 The Service Fee is payable by the retailer monthly in advance on or before the last day of each month.
- 5.4 The Advertising Levy is payable monthly within seven 7 days of the end of the month, calculated on the Gross Sales of the retailer from the preceding month.
- 5.5 SPL will spend an amount equal to the aggregate amount of the advertising levy received from Licensees on corporate, regional and local advertising and training for the benefit of all Licensees. The development of the style, type, frequency and format of such advertising shall be determined by SPL in its sole and absolute discretion.

6. LIMITED LICENCE

- 6.1 The Licence is limited to the Premises,
- 6.2 The retailer may promote or advertise the Licensed Business in the Promotional Area. Except in the manner described in clause 6.3 and 6.4 , the retailer agrees not to promote or advertise the Licensed Business outside the Promotional Area.
- 6.3 The retailer may only promote or advertise the availability of goods or services from the Licensed Business in a form which SPL has given prior approval of, including without limitation, in any one of the following:
 - (a) in newspapers which have a local, state wide or nation wide circulation;
 - (b) in other mass media such as television or radio; or
 - (c) on an internet web page.
- 6.4 The retailer agrees that it will not place or arrange to place promotional catalogues leaflets or brochures in households outside the Promotional Area unless the retailer has first obtained SPL's consent in writing.
- 6.5 If SPL has consented to the retailer placing or arranging to place promotional catalogues, leaflets or brochures in households outside the Promotional Area, SPL may withdraw that consent at any time or impose any conditions on that consent.
- 6.6 In approving any advertising submitted by the retailer to SPL in compliance with clause 6.3 and 6.4, SPL is not approving or checking compliance of the advertisement with the law, including without limitation compliance with the Trade Practices Act (C'wlth) 1974 or the fair trading laws of each state or territory. SPL accepts no liability for providing incomplete or inaccurate advice or assistance. The retailer is responsible for ensuring any advertising undertaken by the retailer complies with all laws, including the Trade Practices Act (C'wlth) 1974 or the fair trading laws of each state or territory.
- 6.7 The retailer must indemnify and keep indemnified SPL against all losses, claims, costs, demands and expenses arising or which may be sustained or incurred by SPL as a consequence of the retailer advertising the Licensed Business, Brand Marks or the brands of SPL or any Business Name other than in accordance with this Agreement.
- 6.8 If any claim or demand is made by any person against SPL which, if satisfied or paid by SPL, would result in a claim by SPL under clause 6.7;
 - (a) SPL must give written notice of the claim or demand to the retailer;

- (b) the retailer must, within 21 days of receipt of that notice, cause SPL to be put in sufficient funds to satisfy or pay the claim or demand.
- 6.9 Despite clauses 6.1 to 6.4 inclusive the retailer may:
 - (a) sell goods or provide services to customers, who live outside the Promotional Area if those customers willingly choose to buy those goods or services from the Retailer; or
 - (b) send personally addressed mail to customers who live outside the Promotional Area if those customers are drawn from the retailer's own customer data base generated by B.rms/BGlobal or any other retail management system introduced to replace B.rms/BGlobal.
- 6.10 If the retailer and the Guarantor comply with their respective obligations under this Agreement, SPL will not, while this Agreement is current, reduce the Promotional Area.
- 6.11 SPL in its sole discretion may licence third parties to operate and provide services to retail outlets which are similar to the Licensed Business within and outside the Promotional Area.
- 7. OPTION TO RENEW
 - 7.1 Subject to clause 7.2, SPL may on the Expiry Date, in its discretion, renew this Agreement for the Additional Term.
 - 7.2 SPL cannot impose upon the retailer, a renewal of this Agreement for the Additional Term, unless the retailer has first given SPL a notice in writing at least three months before the Expiry Date indicating that the retailer would accept a renewal.
- 8. TRAINING
 - 8.1 Before the retailer commences the Licensed Business, the retailer and the key employees of the retailer, nominated by SPL, must attend Initial Training.
 - 8.2 SPL will provide the Initial Training at its cost, however, the retailer is responsible for any travel or accommodation related expenses.
 - 8.3 Clause 8.1 will not apply if the retailer is making the transition to this Agreement from a previous licence agreement with SPL or is entering into this Agreement in addition to an existing licence agreement with SPL.
 - 8.4 From time to time during this Agreement, SPL may require the retailer and certain key employees of the retailer to attend Additional Training.
 - 8.5 The retailer and each of the key employees nominated by SPL must attend Additional Training at the retailer's costs. SPL may charge a fee for Additional Training to the extent that such Additional Training is not funded out of or from the Advertising Levy.
- 9. PREMISES
 - 9.1 The retailer agrees to use the Premises only for the conduct of the Licensed Business. If any additional uses are proposed to be undertaken on the Licensed Premises, the retailer must first obtain the written approval of SPL prior to commencing those uses. SPL retains the right to grant that approval at its absolute discretion.
 - 9.2 If the retailer does not own the Premises, the retailer must be the tenant under the Lease and the following provisions will apply:

- (a) the retailer agrees that it will provide a copy of the Lease to SPL as soon as possible after the retailer signs it;
 - (b) the retailer must include a right in the Lease for SPL to enter onto the premises in event of default by the retailer under this Agreement for purposes of exercising the rights of SPL under clause 34;
 - (c) if requested by SPL, the Lease must include a provision granting SPL, or its nominee, a first right of refusal to accept any assignment of the Lease or a lease of the Premises in the event the Lease is terminated or expires;
 - (d) SPL will not be responsible for any costs connected with the Lease; and
 - (e) the retailer agrees that it will comply with the terms of the Lease at all times.
- 9.3 The Premises must at all times and in all respects, comply with the standards set by SPL in respect of the operation of the Licensed Business as set out in the Standards Manual and such other procedures, manuals or systems developed by SPL from time to time and provided to the retailer.

10. DEFAULT INTEREST

Should the retailer fail to pay the full amount of any Service Fees or other fees, charges and costs invoiced by SPL or an associate when due, SPL may, in addition to any rights it may have under this Agreement or at law or in equity, charge interest on the total overdue amount at 2% above the rate which would be charged by an Australian trading bank nominated by SPL on an unsecured facility of \$100,000 or more from time to time, from the due date of payment to the actual date of payment. Interest will accrue daily and will compound monthly.

11. COSTS

11.1 The retailer must pay all SPL's reasonable costs (including legal fees on a solicitor and own client time basis and stamp duty) incurred in relation to:

- (a) the negotiation and signing of this Agreement;
- (b) any change to this Agreement or any other agreement relating to the Licence (eg. variation, renewal, termination or expiration); and
- (c) the retailer's breach of this Agreement and any steps taken by SPL against the retailer for that breach.

12. PAYMENTS

12.1 All payments which the retailer is required to make under this Agreement must be made in the manner directed by SPL from time to time.

12.2 All payments due by the retailer to SPL must be paid without any deduction, or set off.

12.3 If for any reason, the retailer is owed any money by SPL or a Related Corporation, SPL may set off and deduct from money owed by SPL or a Related Corporation, any amounts payable by the retailer to SPL.

13. BRAND MARKS AND OPERATING MANUALS

13.1 SPL licences the retailer to use the Brand Marks in connection with the operation of the Licensed Business and in the manner prescribed by SPL from time to time.

- 13.2 Except for the licence referred to in clause 13.1, the retailer does not acquire any right to, title or interest in the Brand Marks.
- 13.3 The retailer agrees:
- (a) to use the Brand Marks only in the manner authorised by the SPL;
 - (b) not to alter the Brand Marks without the SPL's prior written consent;
 - (c) not to do anything which may prejudice SPL's rights in the Brand Marks; or
 - (d) not to do anything that may damage or adversely affect the goodwill associated with the Brand Marks.
- 13.4 Any unauthorised use of the Brand Marks by the retailer will constitute an infringement of SPL's rights in the Brand Marks.
- 13.5 The retailer agrees that it will promptly notify SPL of any:
- (a) person suspected of infringing SPL's rights in any of the Brand Marks; or
 - (b) claim by any person that any of the Brand Marks are invalid or infringes the rights of any other person.
- 13.6 SPL will, at its discretion, conduct all legal actions relating to the Brand Marks.
- 13.7 SPL may conduct legal actions relating to the Brand Marks in the name of the retailer if SPL elects to do so.
- 13.8 The retailer agrees that it will co-operate fully with SPL in relation to any actions conducted under clause 13.6 or clause 13.7.
- 13.9 SPL will pay all costs and receive all proceeds of any legal action conducted under clause 13.6 or 13.7.
- 13.10 If the retailer develops and, with the SPL's prior consent, uses any trade marks (in addition to the Brand Marks) in the Licensed Business, the retailer transfers and assigns all its right title and interest, including without limitation any moral rights, in those Brand Marks (including the world wide copyright) to SPL.
- 13.11 SPL will allow the retailer access to one copy of the Operating Manuals, either in hard copy or electronically.
- 13.12 The retailer does not acquire any title interest or rights in the Operating Manuals other than the right to use them for the purpose of conducting the Licensed Business.
- 13.13 The retailer agrees to comply with the methodology, processes and standards set out in the Operating Manuals at all times.
- 13.14 The retailer agrees that it will not copy the Operating Manuals. The retailer will return any copies of the Operations Manuals to SPL immediately a request is made by SPL or upon the termination or expiry of this Agreement.
- 13.15 SPL may update, vary or modify the Operating Manuals from time to time and the retailer agrees to comply with the updates, variations or modification upon receiving notice of such updates, variations or modifications.

14. GOODWILL

The retailer acknowledges that neither during, nor at the end of this Agreement, will the retailer be entitled to any payment from SPL for goodwill, which may exist in relation to the Licensed Business.

- (b) conduct the Licensed Business in accordance with the System and standards set out in the Operating Manuals and any other manual, procedures or system provided by SPL to the Retailer from time to time;
 - (c) ensure that all employees and agents engaged in the Licensed Business are aware of the standards set by the SPL and that they comply with those standards at all times;
 - (d) maintain at least three separate telephone lines each one being dedicated solely for the use of :
 - (i) a telephone,
 - (ii) a facsimile machine/Eftpos; and
 - (iii) B.rms/BGlobal or any other retail management system introduced to replace B.rms/BGlobal;
 - (e) deal with customer complaints promptly and courteously in accordance with procedures prescribed in the Operating Manuals;
 - (f) deal with Approved Suppliers and suppliers generally in accordance with all applicable terms and conditions of supply including without limitation terms of payment and return of goods;
 - (g) ensure all persons working in the Licensed Business wear uniforms and name tags that comply with the standards prescribed in the Operating Manuals;
 - (h) comply with, and ensure all persons working in the Licensed Business comply with the Operating Manuals;
 - (i) at SPL's direction, cease using any stationery that does not comply with the form and standards prescribed in the Operating Manuals;
 - (j) operate a bank account for the Licensed Business;
 - (k) obtain and maintain all registrations, licences or permits required to operate the Licensed Business;
 - (l) punctually pay all fees and other payments required to conduct the Licensed Business and occupy the Premises;
 - (m) not do anything which may damage or reflect badly on SPL, or a Licensee;
 - (n) not enter into contracts on behalf of SPL;
 - (o) notify SPL of any encumbrance over the Licensed Business;
 - (p) not make any unauthorised representations, statements or warranties on behalf of SPL;
 - (q) co-operate and participate in any market research programs conducted by SPL; and
 - (r) operate the Licensed Business in accordance with all laws.
- 17.3 The retailer agrees to abide by the National Privacy Principles and the Privacy Act (C'wlth) 1988 (as amended) in all respects in the conduct of the Licensed Business. The retailer releases and indemnifies SPL, its servants and agents against all complaints, actions or claims which may be instituted against SPL arising out of a breach of this clause by the retailer. SPL may seek compensation from the retailer if it or anyone under its direct is found to have contravened this clause in relation to the conduct of the Licensed Business.
- 17.4 Without limiting the generality of clause 17.3, the retailer must not access or transfer information about its customers' residence in Australia or Australian residents generally in overseas locations, that do not have a privacy regime similar to the National Privacy Principles unless the retailer has obtained the prior consent of the customer or Australian resident.

17.5 SPL may provide assistance to the retailer in complying with the National Privacy Principles and the Privacy Act, however, SPL accepts no liability for providing incomplete or inaccurate advice or assistance, and the retailer acknowledges that it is free to obtain independent advice to determine its obligations under the National Privacy Principles and the Privacy Act if it chooses to do so.

18. PRODUCTS AND SERVICES

18.1 The retailer agrees that at all times 100% of its retail stock will be Approved Stock purchased from Approved Suppliers.

18.2 The retailer will not, without the SPL's prior approval, provide any services other than Approved Services (including services not related to the retail sale of bedding products and goods) in the Licensed Business.

18.3 The retailer will purchase Approved Stock only from Approved Suppliers.

18.4 SPL may, in its absolute discretion nominate itself as an Approved Supplier.

18.5 SPL may from time to time, in its absolute discretion, change Approved Stock, Approved Services or Approved Suppliers.

18.6 The retailer must pay for Approved Stock in accordance with the relevant supplier's terms except where items are ordered through the consolidated ordering system established by SPL in which case the retailer agrees to pay for all products ordered in accordance with terms stipulated by SPL or the nominated Related Company as the case may be.

18.7 The retailer or its Related Corporations or associates will not, without SPL's prior written consent buy or sell Approved Stock for or to other Licensees or any other person, corporation or entity for re-sale.

18.8 The retailer will only sell or deal with Approved Stock as a Retailer.

18.9 The retailer acknowledges and accepts that not all Approved Suppliers will necessarily grant the retailer a trading account. If the retailer has been refused an account from an Approved Supplier or a Preferred Supplier, SPL, if requested to do so by the retailer, will use reasonable endeavours to assist the retailer to obtain an account with that Approved Supplier or Preferred Supplier.

18.10 The retailer agrees that at all times:

(a) the Licensed Business will be conducted in compliance with all applicable laws; and

(b) all of the retail stock and services provided in the Licensed Business will comply with all applicable laws and standards, including, without limitation, any applicable Australian Standards.

19. PAYMENTS FROM SUPPLIERS

19.1 The retailer acknowledges and accepts that SPL will receive payments from some Approved Suppliers, that are calculated by reference to the amount of Approved Stock purchased by the retailer from Approved Suppliers. SPL is not obliged to account to the retailer for any payments it receives from Approved Suppliers.

20. COMPUTER SYSTEM

20.1 The retailer agrees that in connection with the Licensed Business it will, at its cost:

- (a) properly install and operate at its own cost any computer system prescribed by SPL from time to time; and
 - (b) use, maintain and upgrade the computer system in accordance with directions given by SPL.
- 20.2 The retailer agrees to give SPL:
- (a) remote access to B.rms/BGlobal and records kept on the computer system; and
 - (b) physical access to the computer system at all reasonable times requested by SPL.
- 20.3 The retailer agrees that it will not:
- (a) tamper with or allow any interference with any software used to operate B.rms/BGlobal; and
 - (b) down load files or software from the internet or any other source on to the computer system which operates B.rms/BGlobal other than files or software that has been expressly approved by SPL in writing.
21. B.RMS/BGLOBAL
- 21.1 The retailer agrees to:
- (a) install B.rms/BGlobal in accordance with its specifications, including without limitation providing a dedicated phone line; and
 - (b) in connection with the conduct of the Licensed Business, operate B.rms/BGlobal as directed by SPL to the function level agreed with the retailer.
- 21.2 SPL grants the retailer a licence to, and the retailer agrees that it will, operate B.rms/BGlobal in the manner and on the terms prescribed by the SPL from time to time.
- 21.3 The retailer acknowledges that it does not have any right, title, ownership or interest in B.rms/BGlobal other than the licence to use B.rms/BGlobal in accordance with this Agreement and on termination or expiry of this Agreement, the retailer must deliver to SPL all information systems, data and computer hardware and software related to B.rms/BGlobal.
22. INSURANCE
- 22.1 While this Agreement is current, the retailer agrees that it will take out and maintain adequate insurance, to cover the following risks:
- (a) public liability to a minimum amount of 10 million dollars for a single incident or as otherwise prescribed by the SPL from time to time;
 - (b) flood fire and theft;
 - (c) loss or damage to stock, fixtures and fittings;
 - (d) loss of profits;
 - (e) injury to workers; and
 - (f) any other risks deemed necessary, from time to time, by the SPL.
- 22.2 The retailer will ensure all insurance policies taken out in accordance with clause 22.1 have SPL's interest noted on the relevant policies.
- 22.3 The retailer will give SPL copies of certificates of currency and policies of insurance taken out under clause 22.1 when asked to do so.

22.4 If the retailer does not take out and maintain the insurance cover specified in clause 22.1, SPL may take out the insurance on the retailer's behalf and recover the costs from the retailer as a debt owing to SPL.

23. MEETINGS

23.1 The retailer may at its own cost attend SPL's national conference.

23.2 Unless otherwise agreed, the retailer and any key employees nominated by SPL will, at the retailer's cost, attend SPL's State meetings.

23.3 From time to time, SPL may organise meetings of Licensees to discuss operational issues and other issues of relevance to Licensees. Unless otherwise agreed, the retailer will, at its own cost, attend those meetings if they are held in the State where the Premises are located.

23.4 SPL will give the retailer at least 2 weeks notice of any meeting or conference.

24. REPORTS AND ACCOUNTING

24.1 The retailer must, in connection with the Licensed Business, implement and maintain an appropriate accounting and record keeping system.

24.2 The retailer must keep true and accurate records of the Licensed Business in accordance with generally accepted accounting principles and keep the records for a period of at least 5 years or such longer period as required by law.

24.3 From the Commencement Date, the retailer will give SPL, in a form prescribed by SPL:

- (a) a daily report of its Gross Sales;
- (b) a daily report of its Purchases;
- (c) its latest financial statements (audited where possible) SPL reasonably prescribes; and
- (d) any other financial information reasonably requested by SPL.

24.4 All information and reports given to SPL under this Agreement will be kept confidential by SPL except that SPL may use the reports and information for the purpose of:

- (a) monitoring the extent of the retailer's compliance with the System;
- (b) enforcing its rights under this Agreement;
- (c) assisting the retailer to develop the Licensed Business; and
- (d) enabling SPL to develop and maintain its business.

24.5 The retailer acknowledges and accepts that the information set out in clause 24.3 is essential to enable SPL to effectively operate its business.

25. INSPECTION OF PREMISES

25.1 During normal trading hours, but after giving the retailer reasonable notice, SPL may inspect the Premises to assess the manner in which the retailer is conducting the Licensed Business and in particular review the extent to which the retailer is complying with the System.

25.2 The retailer must assist and co-operate with SPL when SPL is carrying out an inspection under clause 25.1.

25.3 The retailer must undertake any work or action SPL requests be undertaken to, in or at the Premises to ensure the Licensed Business is conducted in accordance with the System.

26. SERVICES

26.1 SPL will provide the Services to the retailer during this Agreement except during the times the Services have been suspended under clause 33.

26.2 SPL may reduce add to or otherwise change the Services from time to time.

26.3 The retailer acknowledges and accepts that:

- (a) the Service Fee represents the retailer's cost of acquiring the Services from SPL;
- (b) SPL may increase the Service Fee from time to time during this Agreement and an increase in the Service Fee will take effect in the month following notification of the increase;
- (c) although SPL will use the Service Fee received from Licensees (including the Service Fee payable by the retailer under this Agreement) to meet the cost of providing the Services, SPL does not hold the Service Fee on trust for Licensees;
- (d) the Service Fee payable by Licensees (including the Service Fee payable by the retailer under this Agreement) is not paid into a separate marketing fund;
- (e) SPL is not obliged to spend all the Service Fee or Advertising Levy in the Financial Year in which it is received; or
- (f) SPL is not obliged to spend the Service Fee or the Advertising Levy received from the Retailer specifically in the retailer's Promotional Area.

26.4 The Services may include, and the advertising levy may be used for, advertising, marketing and promotional campaigns for the benefit of Licensees generally.

26.5 For the retailer to maximise its benefit from any advertising, marketing or promotional campaigns developed by SPL, the retailer must follow SPL's directions in relation to those advertising, marketing or promotional campaigns.

26.6 The retailer will comply with all directions given by SPL with respect to advertising and marketing matters.

26.7 Although the primary responsibility for providing the Services to the retailer remains with SPL, SPL may sub-contract the provision of the Services to a third party including a Related Corporation or associate.

27. MODIFICATIONS TO THE SYSTEM

27.1 The retailer will comply with the System and will not modify the System without SPL's prior written consent.

27.2 If the retailer, with SPL's approval, develops modifications to the System, the retailer:

- (a) acknowledges that all rights and title to those modifications vests in SPL; and
- (b) will assign, and be deemed to have assigned, any intellectual property rights in those modifications to SPL.

27.3 SPL may change the System.

27.4 If a change to the System is made, the retailer agrees:

- (a) to implement the change as soon as possible after the retailer has been notified of it; and
 - (b) ensure that all of the retailer's employees receive proper training in relation to the change.
- 27.5 The retailer acknowledges that a change to the System may require SPL to review the fee structure and introduce a new fee. The retailer will pay any new fees introduced by SPL in the manner prescribed by SPL.

28. RESTRICTIVE COVENANTS DURING THE TERM

- 28.1 During the Term, neither the retailer nor the Guarantors must not without SPL's prior written consent be involved, directly or indirectly in any capacity (including, without limitation as a sole proprietor, in partnership, as a manager, employee, clerk or assistant of any person or as a director shareholder, officer, financier, consultant, adviser, beneficiary or unit holder in any corporation business or trust) in a business or activity (except the Franchised Business) or any other retail business conducted pursuant to an agreement with SPL, which:
- (a) includes the retail or wholesale sale of goods or services that are similar to or perform the same function as the goods or services sold or provided by the retailer in the Licensed Business; or
 - (b) involves the retailer or the Guarantor buying goods that are similar to or perform the same function as the goods sold by the retailer in the Licensed Business as agent for another person.

29. MINIMUM GROSS SALES

- 29.1 The Minimum Gross Sales, until reviewed by SPL in accordance with clause 30, is the amount set out in Item 6 of Schedule 1.
- 29.2 If the retailer does not achieve the Minimum Gross Sales in any year, SPL may, at the retailer's cost:
- (a) require the retailer to attend a meeting with SPL, at a place nominated by SPL, to analyse the Licensed Business and discuss ways of improving the performance of the Licensed Business;
 - (b) require the retailer and any of its employees nominated by SPL, to attend Additional Training at a place nominated by SPL;
 - (c) provide any assistance to the retailer, that SPL considers reasonably necessary;
 - (d) grant a Licence to another person within the Promotional Area; or
 - (e) reduce the Promotional Area;
- 29.3 The retailer acknowledges that the Minimum Gross Sales set by SPL do not constitute a representation by SPL that the retailer will achieve a particular market share or level of sales.

30. ANNUAL REVIEW

- 30.1 SPL may conduct an Annual Review, including a review of the Minimum Gross Sales.
- 30.2 In conducting an Annual Review, SPL will have regard to:
- (a) the extent of the retailer's compliance with the System and in particular the standards set for the conduct of the Licensed Business;

- (b) the extent to which the retailer has in the previous year achieved the Minimum Gross Sales set by SPL for that year;
 - (c) the level of income generated by the retailer for SPL from Approved Suppliers or Preferred Suppliers;
 - (d) the level of fees paid;
 - (e) the extent of the retailer's market penetration; and
 - (f) any other matters, which SPL, considers relevant in properly assessing the retailer's performance in the Licensed Business.
- 30.3 After conducting an Annual Review, SPL may set a new Minimum Gross Sales and if SPL is not satisfied with the retailer's performance in the Licensed Business, SPL may in its absolute discretion do any one or more of the following:
- (a) require the retailer to attend a meeting with SPL, at a place nominated by SPL, to analyse the Licensed Business and discuss ways of improving the performance of the Licensed Business;
 - (b) require the retailer and any of its employees nominated by SPL, to attend Additional Training at a place nominated by SPL;
 - (c) provide any assistance to the retailer, that SPL considers reasonably necessary;
 - (d) grant a Licence to another person within the Promotional Area; or
 - (e) reduce the Promotional Area.
- 30.4 Clause 30.3 does not limit any other rights which SPL may have at law or in equity for failing to comply with the terms of this Agreement.

31. TRANSFER BY RETAILER

31.1 The retailer can not:

- (a) transfer the legal or beneficial ownership, or the assets, of the Licensed Business; or
- (b) where the retailer is a corporation, change the effective control of the retailer, without first complying with clause 31.4 and obtaining SPL's prior written consent, which may not be unreasonably withheld.

31.2 For the purpose of clause 31.1, circumstances in which it will be reasonable for SPL to withhold its consent include, but are not limited to:

- (a) the proposed transferee is in SPL's reasonable opinion, unlikely to be able to meet the financial obligations under this Agreement;
- (b) the proposed transferee does not meet a reasonable requirement of SPL for the transfer of the rights or obligations under this Agreement;
- (c) the proposed transferee does not meet the Selection Criteria;
- (d) consent to the transfer would have a significant adverse impact on SPL or a Licensee;
- (e) the retailer has not paid or made provision to pay all amounts owing to SPL;
- (f) the retailer has breached this Agreement and has not remedied the breach; and
- (g) the proposed transferee is not, in SPL's reasonable opinion, a responsible and solvent person.

- 31.3 A request to transfer the Licensed Business is subject to the conditions set out in clause 31.4 and any other conditions reasonably required by SPL.
- 31.4 The matters set out below are the conditions that must be satisfied before the retailer can transfer the Licensed Business:
- (a) the retailer must:
 - (i) not be in breach of this Agreement, or any other agreement or arrangement between SPL or an associate and the retailer or an associate;
 - (ii) have paid all amounts due or accrued to SPL or an associate in relation to the Licensed Business being transferred;
 - (iii) at the time the request for a transfer is made and on the date of the proposed transfer comply with the transfer provisions contained in the Code including the provision of a disclosure document to the proposed transferee in accordance with the Code;
 - (iv) sign an agreement terminating this Agreement and any other documents reasonably required by SPL (in a form approved and prepared by SPL at the retailer's expense);
 - (v) cancel or transfer to the proposed transferee, the Business Name; and
 - (vi) transfer the Lease to the proposed transferee.
 - (b) the proposed transferee must:
 - (i) complete SPL's then current application form and supply the information that a normal applicant for a Licence would be required to provide SPL;
 - (ii) give SPL a complete statement of its assets and liabilities and if requested to do so, a statement of the assets and liabilities of the proposed transferee's associates (in a form satisfactory to SPL);
 - (iii) attend an interview with SPL, at a place nominated by SPL;
 - (iv) enter into a new Licence agreement and any other related documentation required by SPL containing SPL's then current terms and conditions;
 - (v) pay to SPL the costs associated with the preparation of the new documentation;
 - (vi) pay to SPL an amount equal to the then current Start Up Fee;
 - (vii) do all things necessary to accept a transfer of the Lease from the Retailer;
 - (viii) register the Business Name but at the same time provide SPL with a signed but undated cancellation form for that Business Name; and
 - (ix) attend Initial Training.
- 31.5 A transfer of the Licensed Business does not release the retailer or the Guarantor from obligations under this Agreement which are expressly or by their nature intended to apply after the transfer including any guarantee or indemnity given by the retailer or the Guarantor.
- 31.6 If the retailer is a partnership, the retailer must not change any of its partners without SPL's prior consent, which must not be unreasonably withheld.
- 31.7 If the retailer is a corporation (other than a corporation whose shares are listed on the Australian Stock Exchange), the retailer must notify SPL of all changes to the composition of its board of directors and shareholders, within 7 days of the change occurring.
- 31.8 If the retailer is a corporation (other than a corporation whose shares are listed on the Australian Stock Exchange) and:

- (a) transfers any shares or securities in the retailer; or
- (b) issues further shares in the retailer; or
- (c) performs any other transaction,

which has the effect of transferring the controlling interest in or the operational control of the retailer will be deemed to be a transfer of the Licensed Business, which requires SPL prior written consent, in accordance with clause 31.1.

32. TRANSFER BY SPL

- 32.1 SPL may transfer or charge its interest in this Agreement.
- 32.2 If SPL transfers its interest in this Agreement, SPL will remain liable for any of its breaches up to the transfer date but will not be responsible for any breaches of this Agreement after the transfer date.
- 32.3 The retailer must at SPL's cost, sign any documents required by SPL to give effect to a transfer or charge under clause 32.1.

33. SUSPENSION OF SERVICES

- 33.1 If the retailer or any of its directors, employees, servants, agents or associates breaches this Agreement, SPL may suspend the provision of the Services until the breach is remedied, and any other services provided by SPL or an associate to the retailer.
- 33.2 SPL's right to suspend the Services does not limit any other rights it has at law, in equity or under this Agreement.
- 33.3 If SPL suspends the Services under clause 33.1 the retailer agrees that it will continue to pay the Service Fee.

34. TERMINATION

- 34.1 The retailer is in default under this Agreement if the retailer:
 - (a) fails to pay any money payable under this Agreement within 7 days after written demand for payment has been made by SPL following the due date for payment;
 - (b) the retailer fails to remedy any breach of its obligations under this Agreement, including without limitation the obligation to comply with the Operating Manuals or the TCS, within 14 days of written demand for remedy has been made by SPL;
 - (c) commits an Act of Insolvency; or
 - (d) commits a breach of or has any other contract or agreement with SPL or any associate of SPL terminated, including the TCS.
- 34.2 Upon default by the retailer under clause 34.1, SPL may without further notice to the retailer and without prejudice to any other rights SPL or any associate of SPL may have at law or in equity or under this Agreement, do any or all of:
 - (a) recover all moneys accrued or owing under this Agreement or any other agreement between the retailer and SPL or any associate of SPL or the retailer;
 - (b) take possession and control of B.rms/BGlobal and any stock or property which SPL holds title to without any court order or other process of law;

- (c) withhold any Service or further delivery of goods or services required under any contract with the retailer or its associates;
- (d) withdraw any credit facilities which may have been extended to the retailer and require immediate payment of all moneys accrued or owing to SPL or any associate of SPL;
- (e) terminate this Agreement;
- (f) suspend or terminate performance of any other contract which SPL or any associate of SPL has with the retailer;
- (g) cancel all rebates which would normally be allowed to the retailer in respect of the 12 months preceding such default;
- (h) enter the Premises to remove all signage incorporating the Brand Marks and any stock, equipment or materials SPL or any associate of SPL holds title to; or
- (i) pursue any other remedy at law or in equity.

34.3 The retailer authorises SPL upon default by the retailer under this clause to enter any premises where any documents, stock, information or property which SPL holds title to are located and to take possession and control and remove those documents, stock, information and property from those premises. The retailer indemnifies and will continue to indemnify SPL or any associates against all losses, claims, costs, demands and expenses however arising which SPL or its associates may sustain or incur during the course of or in any attempt to, exercise its rights under this clause.

35. RIGHTS ON TERMINATION

35.1 On the termination or expiry of this Agreement all rights granted under this Agreement cease.

35.2 On termination or expiry of this Agreement, in addition to clauses 15.3 and 21.3, the retailer must immediately:

- (a) stop using the Services being provided by SPL;
- (b) deliver to SPL all stationery, samples, promotional and advertising material, signs and other items in the Franchisees possession or under its control owned by or related to SPL, the System of Brand Marks whether or not they have been supplied by SPL;
- (c) pay all money accrued or due by the retailer under this Agreement or any other contract which the retailer has with SPL;
- (d) promptly disclose and deliver to, or do all things necessary to procure the disclosure and delivery to SPL of all Confidential Information which is in physical form (including all copies);
- (e) deliver any part of the Confidential Information which is stored by any means by which no original copies were kept at the relevant time but by use of any method, device or process, an original copy may be re-created, by creating and delivering to printed copy of such Confidential Information to SPL or as SPL may direct, and then destroying the method, device or process so as to prevent the future re-creation of such Confidential Information;
- (f) execute and deliver to SPL any document necessary or convenient to complete the termination of this Agreement;
- (g) stop using the Brand Marks;
- (h) stop using any name incorporating the Brand Marks;

- (i) take all steps to cancel the records of the Franchisees interest in the Brand Marks made under clause 15;
 - (j) take all steps to terminate or cease arrangements with Approved Suppliers under terms negotiated by SPL;
 - (k) remove all branding devices which incorporate the Brand Marks from the Premises;
 - (l) take all steps to change its company name to a name that does not include the Brand Marks or any confusingly similar name; and
 - (m) transfer the phone number used in relation to the Licensed Business to SPL.
- 35.3 If the retailer fails to perform any of its obligations in this Agreement, including without limitation the obligations in clause 35.2, SPL may take such action to fulfil those obligations including without limitation entering the Premises to remove stock and items incorporating the Brand Marks, and recover all costs incurred by SPL in performing those obligations from the retailer.
- 35.4 The retailer agrees to indemnify and hold SPL harmless against all loss, damages, costs or liabilities, which SPL may incur as a result of or arising in any way from the retailer's negligent or fraudulent conduct of the Licensed Business or any breach of this Agreement.

36. NON-MERGER

All obligations of the parties, which expressly or by their nature are intended to survive the termination or expiry of this Agreement, will continue in full force despite such termination or expiry.

37. RELATIONSHIP OF THE PARTIES

37.1 The retailer:

- (a) acknowledges that the success of the Licensed Business depends on the retailer's efforts and the efforts of its employees;
- (b) assumes responsibility for the success or failure of the Licensed Business;
- (c) acknowledges that it owns the Licensed Business and conducts the Licensed Business as an independent franchisee (and will represent itself as such) and not as a partner, joint venturer, agent, representative or employee of SPL; and
- (d) acknowledges that it does not have and will not hold itself out as having the power to obligate or bind SPL to any contract or other arrangement.

38. TRUSTEE PROVISIONS

- 38.1 If the retailer carries on the Licensed Business as trustee of a trust, then the retailer agrees that it will be bound to this Agreement both on its own behalf and in its capacity as trustee of the trust.
- 38.2 The retailer in its capacity as trustee, agrees that it will, upon demand by SPL, exercise all rights of indemnity which it (as trustee) may have against the trust assets.
- 38.3 The retailer warrants to SPL that:
- (a) the copy of the trust Agreement that has been made available to SPL is a true and up to date copy;
 - (b) the trust will continue for the term of this Agreement and any renewed term;

- (c) the retailer is presently a trustee of the trust;
- (d) the retailer as trustee is not in default under the terms of the trust Agreement;
- (e) the retailer has full power and authority under the trust Agreement to execute this Agreement and to do all things required by this Agreement;
- (f) all necessary resolutions have been passed and all necessary consents have been obtained as required by the trust Agreement or any other requirement prior to executing this Agreement to make it fully binding;
- (g) except as have been expressly disclosed in writing to SPL prior to the execution of this Agreement:
 - (i) there are no claims either legal or equitable against the assets of the trust or against the beneficial assets of the retailer;
 - (ii) no trust assets held under the trust Agreement have been encumbered or are in any way subject to other trusts;
 - (iii) there are no material facts relating to the trust or the trust assets which have not been disclosed to SPL which might, if disclosed, be reasonably expected to affect SPL's decision to enter this Agreement.

38.4 Where the retailer carries on the Licensed Business as trustee of a trust, the Retailer agrees to ensure that the following do not occur except with the prior written consent of SPL:

- (a) any alteration amendment variation or revocation of any of the terms of the trust Agreement governing the trust;
- (b) removal or retirement of the retailer as trustee of the trust;
- (c) appointment of any new or additional trustee;
- (d) termination of the trust; and
- (e) re-settlement, vesting application transfer or distribution of any assets of the trust.

39. POWER OF ATTORNEY

39.1 The retailer appoints:

- (a) SPL; and
- (b) SPL's directors;

jointly and severally as the lawful attorneys for the retailer.

39.2 An attorney appointed under clause 39.1 may in the name of the retailer do all things that SPL deems necessary to ensure full compliance of the retailer's obligations upon termination or expiry of this Agreement.

39.3 An attorney may only exercise the powers under clause 39.2 if SPL is reasonably satisfied that the retailer has refused or neglected to carry out one or more of its obligations on termination or expiry of this Agreement.

40. COMPLAINTS HANDLING PROCEDURE

40.1 If a dispute arises between SPL and the retailer in relation to any matter concerning this Agreement either party ('Complainant') may give written notice to the other ('Respondent') specifying:

- (a) the nature of the dispute (eg. background and the issues in dispute);
 - (b) what outcome the Complainant wants; and
 - (c) what action the Complainant thinks will settle the dispute.
- 40.2 When a notice is issued in accordance with clause 40.1 'Complaint Notice' SPL and the retailer will make every effort to resolve the dispute by negotiation.
- 40.3 If SPL and the retailer are not able to resolve their dispute within 21 days of the Respondent receiving a Complaint Notice, either party may refer the matter to mediation under the Australian Commercial Disputes Centre Mediation Guidelines.
- 40.4 If the parties do not agree on a mediator within 7 days of the dispute being referred to the Australian Commercial Disputes Centre, either party may ask the mediation adviser appointed under the Code to appoint a mediator.
- 40.5 The parties agree that they will comply with the Australian Commercial Disputes Centre Mediation Guidelines or the mediation procedures established by the mediator appointed by the mediation adviser, as the case may be.
- 40.6 The mediator may decide the time and place for mediation.
- 40.7 The parties agree that they will attend the mediation and try to resolve the dispute.
- 40.8 Unless the parties agree otherwise, the parties will be equally responsible for the costs of mediation and the Parties agree to pay for their own costs of attending the mediation.
- 40.9 A Complainant may use the procedure under this clause at any time.
- 40.10 A party to this Agreement must not commence legal proceedings or arbitration in relation to a dispute arising from this Agreement unless that party has complied with the procedure set out in this clause.
- 40.11 Despite clause 40.10 a party to this Agreement may seek immediate injunctive relief where a failure to do so could cause irreparable damage to that party.
- 40.12 The complaint handling procedure in this clause will not apply to events giving rise to the right to terminate this Agreement in the circumstances set out in clause 34.

41. COMPLIANCE WITH CODE

- 41.1 SPL and the retailer agree to do all things necessary to comply with the Code including entering into any further agreements required to ensure compliance with the Code.
- 41.2 Provisions contained in the Code will prevail over provisions contained in this Agreement, to the extent of any inconsistency.

42. INDEPENDENT ADVICE

- 42.1 The retailer and the Guarantors acknowledges and warrants that SPL has represented and recommended to each of them that they obtain independent legal and financial advice with respect to this Agreement including the financial risks of entering into this Agreement or executing any guarantee in favour of SPL, SPL or a related body corporate.
- 42.2 The retailer will complete the certificate attached to this Agreement marked 'Annexure A'.
- 42.3 If the retailer and the Guarantors obtain independent legal and or financial advice, part A or part B of the certificates attached to this Agreement marked 'Annexure B' and 'Annexure C' must be completed and signed by the relevant parties.

- 42.4 If the retailer and the Guarantor elect not to obtain independent legal and or financial advice, the retailer and the Guarantors agree to complete and sign part C of the certificates attached to this Agreement marked 'Annexure B' and 'Annexure C'.

43. ACKNOWLEDGMENTS AND WARRANTIES

- 43.1 The retailer and, where applicable, the Guarantor represent and warrant to SPL that before signing this Agreement, the retailer and Guarantor:
- (a) carefully read the provisions of this Agreement and understood them;
 - (b) have not received and/or are not relying on any statement, representation or warranty (financial or otherwise) made by SPL, its officers, servants or agents, or any other person other than those set (if any) out in a prior representations Agreement dated on or about the same date as this Agreement;
 - (c) have obtained or have been given the opportunity to obtain independent legal advice in relation to this Agreement;
 - (d) have obtained or have been given the opportunity to obtain independent financial advice in relation to this Agreement;
 - (e) at least 14 days before hand received from SPL, a copy of SPL's Disclosure Document and a copy of the Code;
 - (f) read and had a reasonable opportunity to understand SPL's Disclosure Document and the Code; and
 - (g) are able to comply and abide by the terms of this Agreement, and upon execution this Agreement will be binding on the retailer and Guarantor.
- 43.2 The retailer and the Guarantor understand, acknowledge and accept that SPL does not:
- (a) guarantee the Licensed Business will provide a minimum rate of return on investment or profit to the retailer; and
 - (b) the amount of any profit or return on investment to the Retailer depends on factors beyond the control of SPL.

44. GOVERNING LAW

This Agreement is deemed to have been made in Brisbane and the laws of Queensland and the Commonwealth of Australia govern this Agreement. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland.

45. SEVERABILITY

If any provision of this Agreement is unenforceable illegal or void, the offending provision will be removed without effecting the remaining provisions, which will remain in full force.

46. NOTICES

- 46.1 A notice under this Agreement must be in writing and duly signed by an authorised officer of the party giving the notice and be:
- (a) delivered personally;
 - (b) sent by ordinary mail to the receiver's last known address or the Premises;

- (c) sent by facsimile transmission to the receiver's facsimile number; or
 - (d) sent by email to the receiver's email address.
- 46.2 A notice is deemed to be properly given:
- (a) if delivered personally, on the day that it is delivered;
 - (b) if mailed, on the second Business Day after posting;
 - (c) if sent by facsimile before 4:00 pm on a Business Day, at the place of receipt, on the date it is sent, otherwise on the next Business Day; or
 - (d) if sent by email, on receipt of a successful delivery report by the machine from which the email was sent.
- 46.3 Any notice by a party under this Agreement may be given and may be signed by the solicitor for the party.
- 46.4 Any notice to a party under this Agreement may be given to the solicitor for the party by any means listed in clause 46.1 to the solicitor's business address, facsimile number or email address as the case may be.
47. NO WAIVER
- 47.1 A party's failure or delay to exercise a power right or remedy under this Agreement does not operate as a waiver of that power right or remedy.
- 47.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 47.3 No waiver is effective unless it is in writing.
- 47.4 The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
48. FURTHER ASSURANCES
- Each party agrees that it will at its cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement although not specifically provided for.
49. EXECUTION BY COUNTERPARTS
- This Agreement may consist of one or more counterpart copies and all counterparts will, when taken together, constitute the one document.
50. AMENDMENT
- Any change to or variation of this Agreement must be in writing and signed by SPL and the retailer.
51. ENTIRE AGREEMENT
- 51.1 This Agreement contains the entire understanding and agreement of the parties concerning its subject matter.
- 51.2 All previous agreements, arrangements or understandings dealing with the same matters as those in this Agreement are superseded.

51.3 The retailer has not entered into this Agreement in reliance upon any statements representations warranties promises or inducements whether oral or written made by SPL or any officer, agent or representative of SPL.

51.4 The retailer has made its own inquiries and formed its own view on the legal and commercial implications of entering into this Agreement.

52. AUTHORITY TO DATE

The retailer authorises SPL or its solicitors to date and complete any particulars in this Agreement or any documents annexed to this Agreement which are not already completed.

53. CLAUSES FOR THE BENEFIT OF THIRD PARTIES

53.1 The retailer acknowledges and accepts that:

- (a) there are provisions in this Agreement that require the retailer to do or refrain from doing an act or acts for the benefit of SPL;
- (b) the retailer has received valuable consideration from SPL for the promise to do or refrain from doing that act or those acts; and
- (c) SPL may enforce the retailer's promise to do or refrain from doing that act or those acts, despite the fact that it is not a party to this Agreement.

54. GST

54.1 Unless expressly stated otherwise, the price for any supply made under or in connection with this Agreement will be exclusive of GST and any other tax, fee, levy or duty.

54.2 Should any sales tax, GST and any other tax, fee, levy or duty imposed by any competent authority be payable on any of the goods or services supplied by SPL, such tax, fee, levy or duty will be recovered from the retailer, added to the retailer's account and shall be calculated in accordance with the relevant legislation imposing that tax, fee, levy or duty. The retailer is liable for any other applicable tax, including without limitation withholding tax.

54.3 SPL appoints the retailer as its agent, and the retailer appoints SPL as its agent, to accept any invoices, including any Tax for goods and services supplied under this Agreement.

54.4 The retailer and SPL agree that:

- (a) SPL will issue Recipient Created Tax Invoices (as that term is defined in the GST Act);
- (b) the retailer will not issue Tax Invoices to SPL;
- (c) both parties are Registered for GST; and
- (d) in the event that a party's GST registration ceases they will notify the other party within 14 days.

55. GUARANTEE AND INDEMNITY

55.1 In consideration of SPL, at the Guarantor's request, granting a Licence to the retailer, the Guarantor in addition to its other obligations under this Agreement:

- (a) guarantees to SPL and its associated entities, as a continuing guarantee to SPL and SPL's associated entities;

- (i) payment of all moneys due to SPL by the retailer under this Agreement or any other agreement or arrangement between the retailer or any associated entities of the retailer and SPL or Related Corporation or associated entities of SPL;
 - (ii) the due and prompt observance and performance of all the retailer's obligations under this Agreement or any other agreement or arrangement between the retailer and SPL or SPL's associated entities; and
- (b) indemnifies SPL in respect of any failure by the retailer to make any payment or perform any of its obligations under this Agreement or any other agreement or arrangement between the retailer and SPL.
- 55.2 The guarantee and indemnity given under this clause is not affected by:
- (a) any part payment of money or performance of an obligation;
 - (b) SPL granting any time, credit or indulgence to the retailer or Guarantor;
 - (c) the liability of the retailer to SPL being affected for any reason;
 - (d) any composition, deed of company arrangement, compromise or arrangement made with the retailer or Guarantor;
 - (e) the release of the retailer or Guarantor;
 - (f) the variation, renewal, termination or expiration of this Agreement;
 - (g) the retailer or Guarantor becoming permanently incapacitated or Insolvent;
 - (h) if the Guarantor is a trustee, any breach of the trust by the Guarantor;
 - (i) the transfer of the Licence; and
 - (j) anything which, but for this clause, might determine, discharge or impair the guarantee and indemnity contained in this clause.
- 55.3 Once this Agreement ends, the guarantee and indemnity in this clause will remain in force only for the time and the extent necessary to secure the interest of SPL in respect of any of the retailer's outstanding obligations to SPL.
- 55.4 SPL and its associated entities may exercise its rights against the Guarantor at any time, without first having to take any action to enforce any of its rights against the retailer or give any notice of the Retailer's default to the Guarantor.
- 55.5 Until the retailer has paid all money and performed all its obligations under this Agreement and any other agreement between SPL or its associated entities and the retailer, the Guarantor will not:
- (a) lodge any proof of debt in respect of the retailer, or enforce any security held by the Guarantor against the retailer's assets in competition with SPL or its associated entities; or
 - (b) deprive SPL or its associated entities of any dividend or money it may receive or be entitled to receive as a creditor of the retailer.

56. INTERPRETATION

- 56.1 In this Agreement unless the context otherwise requires the following rules will apply:
- (a) reference to a person includes any other entity recognised by law and vice versa;

- (b) words importing the singular include the plural and vice versa; words importing one gender include every gender;
- (c) any reference to any parties by their defined terms includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (d) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit binds or lasts for the benefit of those persons jointly and each of them severally;
- (e) 'Including' means including without limitation;
- (f) clause headings are for reference purposes only;
- (g) reference to an Item is a reference to an Item in the Schedule to this Agreement;
- (h) reference to Attachment or Schedule is a reference to the corresponding Attachment or Schedule to this Agreement; and
- (i) reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

56.2 If there is any inconsistency between the terms of this Agreement and the special conditions, if any, set out in Schedule 3, the terms of the special conditions will prevail to the extent of any inconsistency.

SCHEDULE 1

Item 1

Commencement Date:

Item 2

Expiry Date:

Item 3

Extended Term:

5 Years

Item 4

Service Fees:

Item 5

Start Up Fee:

Item 6

Advertising Levy:

5% of Gross Sales

Item 7

Minimum Gross Sales for year 1:

Item 8

Brand Marks:

- Sleepy's – the Mattress Outlet
- Sleepy's

Item 9

Premises:

- 1.
- 2.
- 3.

SCHEDULE 2

Services - Categories 1A & 1B

Information Services

- Installation and Maintenance, of the minimum B.rms/BGlobal System
- Training in the use of B.rms/BGlobal

Merchandise Services

- Access to Market Analysis data

Retail Services

- Assistance with Internal and External designs and plans including lighting and fixturation
- Provision of Retail Standards Manual
- Provision of Retail Services Directory with access to group's negotiated special prices for most Support Services
- Access to Training Programs
- Advice on In-Store Merchandising

Financial Services

- Access to assistance with Business Planning, Budgeting, Financial Analysis
- Benchmarking — this will be a fee for service basis

General

- Participation with fellow Franchisees at Regional Meetings
- Access to Supplier Product Training and New Product Releases
- Opportunity to participate in Conferences
- Access to Personnel for assistance with any aspect of the business
- Industry updates through SPL Newsletters

SCHEDULE 3
Special Conditions

[insert nil if there are no special conditions or variations to the agreement]

EXECUTED as an Agreement in Queensland

EXECUTED for and on behalf of)
SLEEPY'S PTY LTD ACN 104 154 627 by an)
authorised officer in the presence of:)
)

^ _____
Signature of witness

^ _____
Signature of Authorised Officer

^ _____
Full name of witness (Print)

^ _____
Full name of Authorised Officer (Print)

Execution clause for individual or partnership retailer:

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

^ _____
Signature of Witness

^ _____
Name of Witness (Print)

Execution clause for company retailer:

SIGNED SEALED & DELIVERED)
for and on behalf of [])
ABN [] by authority of the directors in the)
presence of:)

^ _____
Director

^ _____
Director/Secretary

^ _____
Full Name of Director

^ _____
Full Name of Director/Secretary

Execution clause for sole director company retailer:

SIGNED SEALED & DELIVERED)
for and on behalf of)
[])
ABN [] by authority of the director:)

^ _____
Signature of Sole Director/Secretary who
signs in the capacity of sole secretary &
sole director of the Company

Execution clause for guarantor

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

^ _____
Signature of Witness

^ _____
Name of Witness (Print)

ANNEXURE D
Confidentiality Agreement

ANNEXURE E
Promotional Area
