



Franchise Agreement

Version 1.1

BETWEEN

**SUCCESS TUTORING NEW ZEALAND LIMITED
(CN 9295789)**

AND

**XXXXXXXXXX
(CN XXXXXX)**

AND

XXXXXXXX

AND

XXXXXXXX

TABLE OF CONTENTS

1	Definitions and Interpretation	2
1.1	Definitions	2
1.2	Rules for interpreting this document	8
2	Cooling Off Period	9
2.1	Right of Termination	9
2.2	Retention Amount	9
2.3	Franchisee to Remain Bound	9
2.4	Guarantors to Remain Bound	9
2.5	Application of this clause	9
3	Grant of Franchise	9
3.1	Grant	9
3.2	Exclusive territory	10
3.3	Franchisee Must Not Conduct Business Outside Territory	10
4	Use and Improvements to the System	10
5	Term	10
5.1	Initial Term	10
5.2	Grant of Renewal(s)	10
5.3	Notice	10
5.4	Conditions of Renewal Term	11
5.5	Holding Over	12
6	Success Tutoring's Obligations	12
7	Franchisee's Obligations	12
7.1	General Obligations	12
7.2	Approved Products and Approved Services	13
7.3	Approved Equipment, Approved Products and Procured Services	13
7.4	Marketing	13
7.5	Opening Promotion	14
7.6	Image	14
7.7	IT Requirements	14
7.8	Directions by Success Tutoring	14
7.9	Documentation and Stationery	15
7.10	Hours of Business	15
7.11	Supervision of the Business	15
7.12	Dealings with Customers	15
7.13	Occupational Health and Safety	15
7.14	Customer Surveys	15
7.15	Complaints Handling	15
7.16	Inspection	16

	7.17	No other business	16
	7.18	Compliance with Laws	16
8		Minimum Performance Criteria	16
	8.1	Minimum Performance Criteria	16
	8.2	Persistent failure to meet the Minimum Performance Criteria	16
9		Operations Manual	17
	9.1	The Operations Manual	17
	9.2	Compliance with the Operations Manual	17
10		Training	18
	10.1	Initial Training	18
	10.2	Additional Training	18
	10.3	Seminars and workshops	18
11		Products and Services	18
	11.1	Products and services	18
	11.2	Stock levels and Service levels	19
	11.3	Representations Regarding the Approved Products and Services	19
	11.4	Withdrawal of Products and Services	19
	11.5	Alternative Suppliers, Alternative Products and Alternative Procurement Services	19
	11.6	Quality Control	20
	11.7	Rebates	21
12		Equipment	21
	12.1	Install, Use and Maintain Approved Equipment	21
	12.2	Success Pack	21
	12.3	Purchase of Approved Equipment	21
	12.4	Alternative equipment and alternative suppliers	21
13		Payments by Franchisee	22
	13.1	Upfront Payment	22
	13.2	Recurring Payments	22
	13.3	Minimum Spends	22
	13.4	Isolated Payments	23
	13.5	Terms of Payment	23
	13.6	Excessive Royalty Payments	23
14		Premises	24
	14.1	Premises Selection	24
	14.2	Lease from the Lessor	24
	14.3	Premises Location Period	24
	14.4	Breach of Lease Agreement	25
	14.5	Relocation, Extension or Contraction of the Premises	25
	14.6	Success Tutoring May Enter the Premises	25

15	Fit Out of the Premises	26
15.1	Fit Out by Franchisee	26
15.2	Maintenance, Refurbishment or Rebuild of the Fit Out During the Term	26
15.3	Inspection and Access to Fit Out	27
15.4	Approvals	27
16	Intellectual Property	27
16.1	Ownership of the Intellectual Property	27
16.2	Business Name	27
16.3	Goodwill	28
16.4	Use of the Intellectual Property	28
16.5	Notification of Threats to the Intellectual Property	28
16.6	Actions to Protect the Intellectual Property	28
17	General Marketing and Marketing Fund	29
17.1	Success Tutoring Marketing Activities	29
18	Meetings and Conferences	30
19	Centre Manager	30
19.1	Appointment and Approval of Centre Manager	30
19.2	Full Time and Attention of the Centre Manager and Guarantor	30
19.3	Revocation of approval	31
19.4	Temporary Incapacity of the Centre Manager	31
19.5	Permanent Incapacity of the Centre Manager	31
19.6	Franchisor may step-in	31
19.7	Success Tutoring Recruitment	32
19.8	Intellectual Property Protection	32
20	Staff	32
20.1	General	32
20.2	Compliance	32
20.3	Employee Costs not recoverable by the Franchisee	33
20.4	Approved Supplier of Human Resources Procured Services	33
20.5	Training employees	33
20.6	Uniforms	33
20.7	Employee Performance	34
20.8	Success Tutoring Recruitment	34
21	Customer Information	34
21.1	Customer and Employee Information	34
21.2	Creation of Customer Information Database	34
21.3	Success Tutoring Owns the Customer Information Database	34

22	National Rewards and Marketing Programs	35
23	Reporting, Records, Audit Obligations and Solvency Statements	36
23.1	Reporting	36
23.2	Records	36
23.3	Verification of Records	36
23.4	Inspection of Records	36
23.5	Solvency Statement	36
23.6	Audit	37
24	Insurance	37
24.1	Required Insurance	37
24.2	Certificates of Currency	38
24.3	Insurance Coverage	38
24.4	Cancellation and alteration of the insurance policies	38
24.5	Increases to Coverage	38
24.6	Reporting Claims	38
24.7	Success Tutoring may affect insurance	38
24.8	Business interruption pay-out	38
24.9	Indemnity	39
25	Confidential Information	39
25.1	Obligations of Confidentiality	39
25.2	Exceptions of Confidentiality	39
26	Conduct of Business on the Internet	39
26.1	Internet	39
27	Restraint of Trade	39
27.1	Definitions	39
27.2	Restraints	40
27.3	Associates	41
27.4	Restraints are Reasonable	41
27.5	Injunctive Relief	41
27.6	Independent and Severable Restraints	41
28	Transfer by Franchisee	41
28.1	Transfer by Franchisee	41
28.2	Conditions of Transfer	42
28.3	Success Tutoring' Right of First Refusal	43
28.4	Transfer Retention Amount	43
28.5	Cooling Off on Transfer	43
29	Transfer by Success Tutoring	44
30	Breach and Termination	44
30.1	Breach	44

30.2	Termination for Franchisee Breach	44
30.3	Success Tutoring may Remedy Franchisee Breach	44
30.4	Termination by Success Tutoring – Special Circumstances	44
30.5	Success Tutoring to Operate Franchisee’s Franchised Business	45
31	Effect of Termination or Expiry of Agreement	46
31.1	General Obligations	46
31.2	Confidential Information Obligations	46
31.3	No Release	46
31.4	Goodwill	47
31.5	Tripartite Deed Indemnity	47
31.6	Clauses to Survive Termination, End or Expiry	47
31.7	Success Tutoring’s Option to Purchase the Remaining Items From the Franchisee	47
32	Interest	48
32.1	Entitlement to Interest	48
32.2	Calculation of Interest	48
33	Warranties	48
33.1	General Warranties	48
33.2	Capacity as Trustee	48
33.3	Restrictions	48
33.4	Trustee Warranties	48
34	Franchisee Independent of Success Tutoring	49
35	Indemnity by Franchisee	49
36	Security	49
36.1	Circulating Security Interest	49
36.2	Additional Documents	49
36.3	Information	50
36.4	Release	50
36.5	Waiver of rights	50
36.6	Credit reports	50
37	Dispute Resolution	50
37.1	Dispute Notice	50
37.2	Resolution of Dispute	51
38	GST	51
38.1	Taxable Supply	51
38.2	Tax Invoice	51
38.3	Penalties and Interest	52
38.4	Definitions	52
39	Notice	52
39.1	Valid Notice	52

39.2	Address for Service	52
40	Guarantee and Indemnity	52
40.1	Guarantee	52
40.2	Indemnity	53
40.3	Failure to Make Payment of Money	53
40.4	Failure to Perform or Comply with Obligations	53
40.5	Guarantee as a Continuing Obligation	53
40.6	Events that will not affect the Guarantee	53
40.7	Indemnity on disclaimer	53
40.8	Guarantors not to prove in liquidation or bankruptcy	53
40.9	Guarantee to continue on assignment of rights	54
40.10	Security	54
41	General Conditions	54
41.1	Further Assurances	54
41.2	Severability	54
41.3	Non-Merger	54
41.4	Relationship	54
41.5	Waiver	54
41.6	Joint and Several Liability	54
41.7	Entire Agreement	54
41.8	No Amendments without Agreement	55
41.9	Survival of Indemnities	55
41.10	Counterparts	55
41.11	Jurisdiction and Governing Law	55
41.12	Announcements	55
41.13	Right of Set-Off	55
41.14	Power of Attorney	55
41.15	Approvals and Consents	55
41.16	Costs	56
41.17	Special Conditions	56
41.18	Privacy	56
Schedule	Details	57
Annexure A	Territory Map	60
Annexure B	Success Pack	61
Execution Page		62

NOTICE TO FRANCHISEE

This agreement will be legally binding on you if you sign it. You should therefore read it carefully and obtain legal, accounting and business advice before you sign it.

The only way you can receive the right to operate a Franchise is to sign this agreement.

Parties

SUCCESS TUTORING NEW ZEALAND LIMITED (CN 9295789)

c/- Lock & Partners Limited, Level 3, 16 College Hill, Freemans Bay, Auckland, 1011, New Zealand

(Success Tutoring / Franchisor)

THE PARTY DESCRIBED IN ITEM 1 OF THE SCHEDULE

(Franchisee)

AND

THE PARTY DESCRIBED IN ITEM 2 OF THE SCHEDULE

(Guarantor)

Background

- A. Success Tutoring has invested time, effort, money and skill to develop the System, Image and Intellectual Property for operating Success Tutoring studios under the Trade Marks.
- B. The Franchisee seeks to operate a Franchised Business using the System from the Premises during the Term.
- C. The Franchisee is granted an exclusive right to operate the Franchised Business in the Territory.
- D. The Franchisee acknowledges that it is essential to the maintenance of the goodwill of the System that it strictly adheres to the standards, procedures and policies detailed in this Agreement and the Operations Manual.
- E. The Guarantor(s) has agreed to give a guarantee and indemnity to Success Tutoring for the performance of the Franchisee's obligations under this Agreement.
- F. In consideration of the representations and warranties made to Success Tutoring by the Franchisee, Success Tutoring intends to grant to the Franchisee the right to operate the Franchised Business from the Premises in accordance with the terms of this Agreement.

Terms and Conditions

1 Definitions and Interpretation

1.1 Definitions

In this document:

Accounting Standards means accounting standards relating to the preparation and contents of accounts including the generally accepted accounting principles that are consistently applied in New Zealand.

Additional Training has the meaning specified in clause 10.2.

Additional Training Fees has the meaning specified in clause 13.4(a).

Agreement means this document including any schedules and annexures as varied by any instrument of variation properly made from time to time.

Approvals means mandatory approvals and permits issued by all relevant Authorities in connection with the Franchised Business.

Approved Equipment means the equipment (including where the context permits, the Core Equipment) approved by Success Tutoring for use in the operation of the Franchised Business under the System as varied by Success Tutoring from time to time in its sole and absolute direction and as specified in the Operations Manual or otherwise in writing from time to time.

Approved Products means the products (including where the context permits, the Core Products) approved by Success Tutoring for sale or use in the Franchised Business under the System as varied by Success Tutoring from time to time in its sole and absolute direction and as specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time.

Approved Services means the services approved by Success Tutoring for sale in the Franchised Business under the System as varied by Success Tutoring from time to time in its sole and absolute direction and as specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time.

Approved Supplier means a supplier (including where the context permits, a Core Supplier) of particular Approved Equipment, Approved Products or Procured Services specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time.

Associates means:

- (a) in relation to a corporation (including a trustee of a trust, where the trustee is a corporation):
 - (i) a related body corporate of that corporation;
 - (ii) a related entity of that corporation;
 - (iii) a person or entity who has a substantial holding in that corporation;
 - (iv) a director, secretary or officer of that corporation; or
 - (v) any Relative of any person referred to in (a)(iii) and (a)(iv); and
- (b) in relation to a natural person:
 - (i) any Relative of that person; or
 - (ii) any corporation in respect of which the person is an Associate by virtue of clauses (a)(i) to (a)(iv) of this definition; and
- (c) in relation to a trust:

- (i) any person who is a trustee or a beneficiary under that trust; and
- (ii) any person who is an Associate of any of the persons referred to in (c)(i) by virtue of clauses (a) or (b).

Authority means any government or any governmental, municipal, statutory or public department, agency or body or any similar entity which has legal authority in relation to the use or occupation of, or a service provided to, the Premises.

Breach Notice means a notice that:

- (a) gives the Franchisee reasonable notice that Success Tutoring proposes to terminate this Agreement as a result of the breach;
- (b) tells the Franchisee what Success Tutoring requires the Franchisee do in order to remedy the breach (where possible); and
- (c) allows the Franchisee a reasonable period of time (no more than 30 days) to remedy the breach.

Business Day means a day on which banks are open for business in New Zealand, excluding a Saturday or a Sunday or a public holiday.

Business Name means the name specified in item 9 of the Schedule.

Change in Control means:

- (a) any alteration in the legal or beneficial ownership of, or any issue of shares in, the Franchisee, or any other fact, matter or circumstance, the effect of which is to alter the Control of the Franchisee, from the Control which exists as at the date of this document. It may be direct or indirect and may be as a result of or by means of any trust, agreement, arrangement or understanding whether legally enforceable or not; or
- (b) where the Franchisee has entered into this document in the capacity of trustee of a trust, the Franchisee ceasing to be the trustee of that trust.

Customer means a prospective or existing customer of the Franchised Business.

Customer Information means details including lists of past, present and prospective customers collected by the Franchisee in accordance with clause 21 and the Operations Manual.

Certificate for Public Use means the certificate, permit, document or letter issued by the appropriate Authority which is required by law before premises may be lawfully occupied.

Centre Manager means the Franchisee (where the Franchisee is an individual), a Guarantor, a director of the Franchisee (where the Franchisee is a company) or any other person nominated by the Franchisee and approved by Success Tutoring to act as Centre Manager of the Franchised Business.

Commencement Date means the date specified in item 3 of the Schedule.

Companies Act means *Companies Act 1993* and any amendments to that act.

Confidential Information means:

- (a) the Operations Manual;
- (b) the System;
- (c) methods, specifications and procedures used in the operation of the Franchised Business;
- (d) the Customer Information;

- (e) all audio-visual recordings, designs, trade secrets, know how, processes, procedures, stationery, brochures, systems, publications, advertising and promotional material, marketing strategies, market research, business or financial information concerning members, the Franchisees or potential franchisees, know how systems, computer software (including the software that collates all the data relating to the Customers of the Network), databases, programs, models, and any modifications to such things and all other information which, by its nature places or potentially places Success Tutoring or any Success Tutoring Associate at an advantage over its present or future business competitors;
- (f) any information provided by Success Tutoring that is marked as confidential;
- (g) all other information regarding Success Tutoring, the Franchised Business or the System that would be considered confidential information at law, but does not include information which:
 - (h) at the time of first disclosure by Success Tutoring to the Franchisee is already in the public domain; or
 - (i) after disclosure by Success Tutoring to the Franchisee becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement.

Control means:

- (a) in relation to any body corporate (including without limitation, a body corporate in the capacity as trustee of any trust property), the ability of any person to exercise control over the body corporate by virtue of the holding of voting shares in that body corporate or by any other means including, without limitation, the ability to directly or indirectly remove or appoint all or a majority of the directors of the body corporate; and
- (b) in relation to an individual, the ability of any person to direct that person to act in accordance with their instructions whether by operation of any law, agreement, arrangement or understanding, custom or any other means.

Core Equipment means the equipment approved by Success Tutoring for acquisition solely from specified Core Suppliers for use in the operation of the Franchised Business under the System as varied by Success Tutoring from time to time in its sole and absolute direction and as specified in the Operations Manual or otherwise in writing from time to time.

Core Products means the products approved by Success Tutoring for acquisition solely from specified Core Suppliers for sale or use in the Franchised Business under the System as varied by Success Tutoring from time to time in its sole and absolute direction and as specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time.

Core Services means the services approved by Success Tutoring for acquisition solely from specified Core Suppliers for use in the operation of the Franchised Business under the System as varied by Success Tutoring from time to time in its sole and absolute direction and as specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time.

Core Supplier means a supplier of particular Core Equipment, Core Products or Core Services specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time, including but not limited to the Franchisor.

Cost means any expense, outgoing, payment, disbursements or other charge of any nature including legal costs on a full indemnity basis and other payments to third parties.

Default Interest Rate means 10% per annum.

Design and Documentation Fee means the amount specified in item 14 of the Schedule.

Development Approvals means any approvals required by an Authority for the conducting of the Fit Out works to the Premises and operation of the Franchised Business from the Premises.

Documentation Fee means the amount payable by the Franchisee to Success Tutoring as set out in item 11 of the Schedule.

Financial Year utilised by Success Tutoring for accounting purposes and if no other period is specified, means the period 1 July to June 30 each year.

First Renewal Term means the period specified in part (a) of item 8 of the Schedule.

Fit Out includes:

- (a) the plans, specifications and standards for the Fit Out of the Premises set out in Operations Manual or otherwise advised or directed by Success Tutoring and including the Approved Equipment, the standards and requirements for internal and external colour schemes, signage, centre layout, floor coverings, furnishings, image, décor, equipment, lighting, hubs and internal boards and materials; and
- (b) Success Tutoring requirements for modifications or changes to the Fit Out from time to time.

Fit Out Period means, the period specified in item 4 of the Schedule.

Franchised Business means the operation of a Success Tutoring studio providing the Approved Services and selling the Approved Products using the System in accordance with the terms of this Agreement.

Franchisee Group means the Franchisee, the Guarantors and each of their Associates.

Gross Revenue means the total of all income whatsoever earned in relation to the Franchised Business being the aggregate of all sales and other income or remuneration (whether cash or credit) received or receivable by the Franchisee including insurance proceeds but excluding:

- (a) refunds made to Customers in good faith in accordance with Success Tutoring's specified policies; and
- (b) GST.

GST means any tax, levy, charge or impost implemented under the GST Act or equivalent legislation.

GST Act means the *Goods and Services Tax Act 1985* and any amendments to that act.

Image means the standards and specifications for the distinctive design, colour scheme, logos, signs, layouts, fixtures and fittings, and other elements of the System, the Trade Marks and the Network set out in the Operations Manual and modified by Success Tutoring from time to time.

Initial Franchise Fee means the fee specified in item 10 of the Schedule.

Initial Term means the period specified in item 7 of the Schedule.

Intellectual Property means all the present and future Intellectual Property Rights in relation to the System, the Image, the Operations Manual, the Trade Marks, the Confidential Information including:

- (a) any application or right to register these rights; and
- (b) all renewals and extension of these rights.

Intellectual Property Rights means, in respect of intellectual property developed in connection with the Business:

- (a) all registered and unregistered copyright;
- (b) all trademarks, service marks, trade names, design rights, logos, patents, discoveries, inventions, innovations, improvements and electronic layout rights;
- (c) all rights subsisting in trade secrets, financial, marketing or technical information, ideas, concepts, know-how, technology, processes and knowledge which is confidential or of a commercially sensitive nature; and
- (a) all other rights or forms of protection of a similar nature to any of the rights referred to in paragraph (a), (b) or (c) of this definition as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967, in New Zealand or any other country of the world for the full period for which those rights subsist.

IT Requirements means the information technology requirements described in clause 7.7.

Law means any laws, rules, regulations and by-laws of New Zealand and any principles of law or equity established by the courts.

Lease means any right to lease the Premises.

Marketing Fund Fee means the fees payable by the Franchisee to Success Tutoring for contribution to the Marketing Fund (if applicable).

Marketing Fund means the marketing fund operated by Success Tutoring for the promotion of the Success Tutoring Business using funds provided by Success Tutoring Franchisees and/or contributions provided by the Franchisor (if applicable/established).

Local Marketing Spend the amount specified in item 19 of the Schedule.

Minimum Performance Criteria means the criteria specified in item 27 of the Schedule.

Month means a calendar month.

Network means collectively, Success Tutoring, the Franchisee, the Guarantors and all of the franchisees and franchisee's guarantors, representatives and other persons involved in the operation of the Franchised Business using the Intellectual property, including the Franchisor and its associates who operate businesses using the Intellectual Property.

Opening Promotion Spend means the amount specified in item 15 of the Schedule.

Operations Manual means the manual (including in electronic format where available) prepared, modified and published by Success Tutoring detailing the procedures and policies to be followed by the Franchisee in operating the Franchised Business including a detailed description of the System, the way the Franchisee must operate the Franchised Business in order to comply with the System including directions in relation to the fit out, equipment, dealing with Customers and suppliers, marketing, Approved Products, Approved Services, Intellectual Property, training, record keeping, use of the software that collates all the data relating to the Customers of the Network, use of security software, reporting requirements, insurance requirements, claims by third parties and other aspects of the operation of the Franchised Business and the interaction between Success Tutoring, its Related Entities, the Franchisee and the Network including any written policies, regulations, operational procedures, guidelines and bulletins.

PPSA means the *Personal Property Securities Act 1999* or any amendments to that act .

Premises mean the premises from which the Franchisee will operate the Franchised Business and located at the address specified in item 5 of the Schedule.

Premises Location Period has the meaning given to that term in clause 14.3.

Procured Services means the services (including where the context permits, the Core Services) approved by Success Tutoring for use in the Franchised Business by the Franchisee under the System as specified in the Operations Manual or otherwise in writing by Success Tutoring from time to time.

Property Licence means any right to occupy the Premises including as licensee, sub-tenant or as the holder of some other interest in the Premises conferring an enforceable right to use or occupy them.

Records means the books, accounting (in accordance with the Accounting Standards), inventory control and records all business and accounting records and Information, including records and Information stored electronically in accordance with the Operations Manual.

Related Agreement means any agreement, other than this Agreement, where the parties to which include the Franchisee, a director or shareholder of the Franchisee, a Guarantor and/or any of Success Tutoring and its Associates.

Related Entity means:

- (a) a related body corporate as defined by the Companies Act; and
- (b) in the case of the Franchisee, a corporation in which any of the Franchisee Shareholders is a shareholder.

Relative means, in relation to a person, any of the following:

- (d) Spouse;
- (e) blood or adoptive relative;
- (f) blood or adoptive relative of the person's Spouse; and
- (g) Spouse of any blood or adoptive relative of the person.

Relocation Fee means the amount specified in item 22 of the Schedule.

Renewal Fee means the amount specified in item 23 of the Schedule.

Royalty means the amount specified in item 16 of the Schedule.

Second Renewal Term means the period specified in part (b) of item 8 of the Schedule.

Spouse includes a person not legally married to a second person where that person is living with the second person as his or her spouse on a permanent and bona fide domestic basis.

Special Conditions means the special conditions, if any, set out in item 28 of the Schedule.

Step in Deed means Success Tutoring's standard form of agreement that obligates the Franchisee and the landlord of the Premises to assign to Success Tutoring, or to Success Tutoring's nominee, the lease held by the Franchisee.

Success Tutoring Business means operating Success Tutoring maths and English tutoring schools and providing associated services conducted in accordance with the Success Tutoring System.

Success Tutoring Site Report means the site report provided by Success Tutoring in accordance with clause 28.2(d) of this Agreement outlining the Transferee's maintenance, refurbishment or rebuild obligations.

Success Pack means the items set out in Annexure B.

Success Pack Fee means the fee specified in 13 of the Schedule.

System means the comprehensive business procedures and systems developed by Success Tutoring for the operation of the Franchised Business using the Operations Manual, the Intellectual Property and the Confidential Information.

Territory means the area specified in item 6 of the Schedule being the exclusive area in which the Franchisee Group may operate and market its Franchised Business, but if none are specified means the Premises only.

Term means the term commencing on the Commencement Date or the start of the Premises Location Period (as the context requires) and including the Initial Term, the First Renewal Term, the Second Renewal Term and any holding over periods (as the context requires).

Transfer Retention Amount means the amount that Success Tutoring may retain from the proceeds of the sale of the Franchised Business as described in clause 28.2(g) and specified in item 25 of Schedule.

Transferee has the meaning given to that term in clause 28.1(c).

Tripartite Deed means a deed between the Franchisee, its financier and Success Tutoring.

Trade Marks means the trade marks, logos, business names and trade names for use in the Success Tutoring Network including the trademarks set out in item 20 of the Schedule.

Transfer Fee means the fee described in clause 13.4(d) and specified at item 24 of the Schedule.

1.2 Rules for interpreting this document

In this Agreement unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) the singular includes the plural and vice versa;
- (c) words importing one gender include every gender;
- (d) any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (e) an agreement, representation, or warranty on the part of two or more persons binds them jointly and severally;
- (f) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) clause headings are for reference purposes only;
- (h) reference to an item is a reference to an item in the Schedule to this Agreement;
- (i) reference to an annexure or schedule is a reference to the corresponding Annexure or Schedule to this Agreement;
- (j) reference to an ordinance, or other law includes regulations and other instructions under it and consolidations, amendments, re-enactments, or replacements of it.
- (k) reference to a time is to that time in the Territory;

- (l) if the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and that day does not exist, the time is instead the next day; and
- (m) if the time for something to be done or to happen is a day that is not a business day, the time is extended to the next business day.

2 Cooling Off Period

2.1 Right of Termination

The Franchisee may terminate this Agreement on written notice to the Franchisor:

- (a) within seven (7) days of the earlier of:
 - (i) the date of entering into this Agreement; or
 - (ii) making any payment (whether of money or other valuable consideration) to the Franchisor under this Agreement.
- (b) The termination right under clause 2.1(a) does not apply where the agreement is a renewal, extension or transfer of an existing agreement.

2.2 Retention Amount

- (a) If the Franchisee terminates this Agreement pursuant to clause 2.1, Success Tutoring will refund to the Franchisee all payments made by the Franchisee to Success Tutoring pursuant to this Agreement less the fee specified in item 21 of the Schedule (**Retention Amount**) and the Documentation Fee.
- (b) The parties agree that the Retention Amount represents Success Tutoring's reasonable costs expenses as incurred in selecting, recruiting and training the Franchisee and the Documentation Fee represents Success Tutoring's reasonable legal costs in preparation of this Agreement and any Related Agreement.

2.3 Franchisee to Remain Bound

The Franchisee shall, in any event, remain bound by the provisions intended to survive the termination of this Agreement including but not limited to:

- (a) clause 16 (Intellectual Property);
- (b) clause 25 (Confidential Information);
- (c) clause 27 (Restraint of Trade); and
- (d) clause 31 (Effect of Termination).

2.4 Guarantors to Remain Bound

The Guarantors shall in any event remain bound by the provisions intended to survive the termination of this Agreement including but not limited to the guarantee and indemnity in clause 40 (Guarantee and Indemnity).

2.5 Application of this clause

This clause 2 does not apply upon any renewal, extension or transfer of this Agreement.

3 Grant of Franchise

3.1 Grant

Success Tutoring grants to the Franchisee and the Franchisee accepts for the Term the non-exclusive right to operate the Franchised Business using the System from the Premises on the terms and conditions of this Agreement. The Franchisee will be exclusively entitled to operate the Franchised Business in the Territory in accordance with the terms of this Agreement.

3.2 Exclusive territory

- (a) The parties acknowledge and agree that this Agreement confers an exclusive Territory upon the Franchisee, subject to Clause 3.2(b).
- (b) Success Tutoring may market and promote the Success Tutoring Business to Customers located within the Territory.

3.3 Franchisee Must Not Conduct Business Outside Territory

During the Term, the Franchisee must not actively solicit customers, promote or sell the Approved Products, provide the Approved Services or use the System outside the Territory without Success Tutoring's prior consent (which consent may be withdrawn at any time). The Franchisee must not advertise, market, promote or sell the Approved Products, Approved Services or the Franchised Business online, unless with the prior written consent of Success Tutoring.

4 Use and Improvements to the System

- 4.1** The Franchisor reserves all rights that they do not grant to the Franchisee. For example, the Franchisor reserves all rights to the use of the System, the Intellectual Property and to operate Franchised Businesses.
- 4.2** The Franchisee acknowledges and agrees that Success Tutoring may further develop or improve the System.
- 4.3** Success Tutoring reserves the right to make changes from time to time to the System and to make changes to or substitute the Trade Marks, the Image or the Intellectual Property to be used by the Franchisee.
- 4.4** Success Tutoring will provide notice of any of the changes set out in clause 4.3 with reasonable notice having regard to the degree of change required, including in respect of significant capital expenditure.
- 4.5** For the purposes of this Agreement, any changes made pursuant to clause 4.3 form part of this Agreement immediately after expiry of such notice period.
- 4.6** Despite anything to the contrary expressed or implied in this Agreement, the Franchisee will not be required to undertake any significant capital expenditure during the Term or any Renewal Term.

5 Term

5.1 Initial Term

This Agreement shall commence on the Commencement Date and shall continue for the Initial Term unless terminated earlier in accordance with this Agreement or at law generally.

5.2 Grant of Renewal(s)

Success Tutoring grants the Franchisee an option to renew this Agreement for the First Renewal Term, and subject to properly exercising that option, an option to renew this Agreement for the Second Renewal Term, on the terms and conditions set out in this clause 5.

5.3 Notice

- (a) Subject to clause 5.4, if the Franchisee wishes to exercise the option to renew this Agreement for the First Renewal Term, the Franchisee must exercise the option for the First Renewal Term by providing notice in writing to Success Tutoring at least six (6) months before the expiration of the Initial Term that it intends to renew or not to renew for the First Renewal Term.
- (b) If the Franchisee has successfully exercised the option to renew for the First Renewal Term, then, subject to clause 5.4, if the Franchisee wishes to exercise the option to renew this Agreement for the Second Renewal Term, the Franchisee must exercise the option for the Second Renewal Term by providing notice in writing to Success Tutoring at least six (6) months before the expiration of the First Renewal Term that it intends to renew for the Second Renewal Term.
- (c) If the Franchisee does not give notice within the timeframe specified in this clause 5.3 and does not satisfy the conditions in clause 5.4, the options to renew cease to apply.
- (d) Nothing in this clause 5.3 obliges Success Tutoring to renew this Agreement or to offer the Franchisee a new Agreement upon expiry where the conditions under clause 5.4 have not been satisfied.

5.4 Conditions of Renewal Term

The renewal of this agreement for the First Renewal Term (and where the context requires, the Second Renewal Term) is subject to and conditional upon satisfaction of each of the following conditions:

- (a) the notice in clause 5.3(a) (or in the case of the Second Renewal Term, 5.3(b)) has been given within the relevant time frame;
- (b) on the date of giving the notice and at the end of the Term, there is no outstanding breach of this Agreement or any Related Agreement by the Franchisee which has not been remedied;
- (c) the Franchisee has substantially performed and complied with the terms of this Agreement during the Term and has not been repeatedly in default under this Agreement or any Related Agreement during the Term;
- (d) the Franchisee must pay to the Franchisor and all suppliers all money owed by the Franchisee;
- (e) the Franchisee must pay to the Franchisor the Renewal Fee plus the documentation fee required under the renewal franchise agreement;
- (f) the Franchisee must have continued compliance with the equipment repair and replacement obligations set out in clause 15.2;
- (g) the Franchisee must ensure that it is in compliance with the IT Requirements and security system obligations set out in clause 7.7 and the then current standards set out in the Operations Manual;
- (h) the Franchisee must ensure that the Premises is in strict compliance with the Operations Manual;

- (i) the Franchisee must upgrade the signage and Fit Out so that all signage and Fit Out is compliant with the requirements current at the time of renewal. If all signage and Fit Out is compliant with the requirements current at the time of renewal, then no upgrade will be required;
- (j) the Franchisee signs and returns to Success Tutoring the then current Success Tutoring franchise agreement (which may contain different terms and conditions, including different financial obligations, to those in this Agreement) (**Renewal Agreement**) within 30 days of receiving execution copies of the Renewal Agreement (for the avoidance of doubt the Renewal Agreement will contain one less renewal period than the earlier agreement and will not include any concessions or special conditions contained within this Agreement that are not expressed as applying to any renewal term);
- (k) the Franchisee must obtain all necessary approvals from its financier under any Tripartite Deed;
- (l) the Franchisee must arrange for the Guarantor(s) to enter into the Renewal Agreement and guarantee the obligations of the Franchisee; and
- (m) the Centre Manager, the Franchisee and any employees of the Franchisee, must, if required by Success Tutoring complete any re-training program reasonably required by Success Tutoring, prior to the date of renewal.

5.5 Holding Over

- (a) In the event that the Franchisee continues to operate the Franchised Business at the expiration of the Initial Term, the First Renewal Term, the Second Renewal Term or the Premises Location Period, the Franchisee must operate the Franchised Business in accordance with this Agreement.
- (b) Success Tutoring may terminate the Franchisee's right to operate the Franchised Business under this clause 5.5 by giving the Franchisee 30 days' written notice to stop operating the Franchised Business.

6 Success Tutoring's Obligations

For as long as the Franchisee complies with the terms of this Agreement during the Term, Success Tutoring must provide to the Franchisee:

- (a) information regarding the Approved Products and the Approved Services which Success Tutoring considers necessary from time to time;
- (b) anything necessary for Success Tutoring and its Related Entities to comply with the Law;
- (c) such information and advice in relation to marketing the Franchised Business as Success Tutoring considers necessary including marketing for the opening of the Franchised Business in the Territory;
- (d) such advice and assistance as Success Tutoring believes is necessary to operate the Franchised Business from time to time;
- (e) access to the Operations Manual and such other information regarding the operation of the Franchised Business as Success Tutoring deems necessary from time to time;
- (f) conduct and administer any Marketing Fund (if established); and
- (g) updates and feedback on the performance of any mystery shopping program.

7 Franchisee's Obligations

7.1 General Obligations

The Franchisee must:

- (a) operate the Franchised Business using good business practice, reasonable care and skill, honesty, diligence and courtesy.
- (b) conduct the Franchised Business in accordance with the System, the Operations Manual and this Agreement;
- (c) use its best endeavours to maximise the sales of the Approved Products and the Approved Services to Customers and maximise the performance of the Franchised Business;
- (d) communicate with Success Tutoring and other members of the Network professionally, promptly and honestly; and
- (e) not do or omit to do any act that may be prejudicial to the Image, System or Success Tutoring's reputation.

7.2 Approved Products and Approved Services

In order to preserve continuity and consistency in the System and the Image throughout the Network:

- (a) the Franchisee must only offer to sell and provide the Approved Products and Approved Services from the Premises to Customers of the Franchised Business; and
- (b) the Franchisee is permitted to market, trade, promote, offer to sell or sell any Approved Products or Approved Services or provide any Approved Products or Approved Services using the internet provided it is done in accordance with the Operations Manual.

7.3 Approved Equipment, Approved Products and Procured Services

In order to preserve continuity and consistency in the System and the Image throughout the Network:

- (a) the Franchisee must only acquire equipment, products and services for the operation of the Franchised Business if they are Approved Equipment, Approved Products and Procured Services from Approved Suppliers; and
- (b) the Franchisee acknowledges that it must, in the operation of the Franchised Business, acquire all of the Core Equipment, Core Products and Core Services from a Core Supplier.

7.4 Marketing

- (a) The Franchisee must (at its own cost) within the boundaries of the Territory:
 - (i) actively and diligently advertise the Franchised Business in accordance with the Operations Manual;
 - (ii) participate in all sales and promotional activities, including newspaper, regional campaigns, television and radio as Success Tutoring may reasonably require from time to time;
 - (iii) use the marketing, sales and promotional materials produced, approved or supplied by Success Tutoring;

- (iv) ensure that any marketing materials used or prepared by the Franchisee comply with the Laws, this Agreement, and the highest standards of ethical marketing and to the policies prescribed by Success Tutoring; and
- (v) not use the Intellectual Property in any marketing materials which have not been prepared or provided by Success Tutoring unless the Franchisee first seeks and obtains prior written consent from Success Tutoring for those materials,

and where specified in the Operations Manual, Success Tutoring or its Associate may, but is not obliged to, assist in providing the above services.

- (b) The Franchisee must allocate and spend at least the Local Marketing Spend on the activities set out in 7.4(a) and must provide the Franchisor with evidence of the Local Marketing Spend at such times requested by the Franchisor in writing.
- (c) The Franchisee may market or promote the Franchised Business online via social media or otherwise in a manner provided for in the Operations Manual or by written notice from Success Tutoring.
- (d) The Franchisee may request and Success Tutoring may agree to prepare personalised marketing materials (as described in the Operations Manual) which may be amended from time to time in Success Tutoring's sole discretion.
- (e) Nothing in this clause 7.4 grants the Franchisee the exclusive right to market and promote in the Territory and the Franchisor and other members of the Network may conduct marketing in the Territory.

7.5 Opening Promotion

- (a) The Franchisee must promote the Franchised Business in the Territory prior to the planned opening of the Franchised Business in accordance with the Operations Manual.
- (b) The Franchisee must allocate and spend at least the Opening Promotion Spend on the activities set out in 7.5(a) and must provide the Franchisor with evidence of the Local Marketing Spend at such times requested by the Franchisor in writing.
- (c) The Franchisee acknowledges and agrees that it may start the opening promotions as soon as it receives written consent from the Franchisor.

7.6 Image

The Franchisee will ensure that the Premises comply with the Image and is kept safe, clean and tidy in accordance with the Operations Manual.

7.7 IT Requirements

- (a) Prior to the Commencement Date, the Franchisee must install and use:
 - (i) the computer software which meets Success Tutoring's specifications as set out in the Operations Manual; and
 - (ii) the internet connection and equipment which meets Success Tutoring's specifications as set out in the Operations Manual,
(the **IT Requirements**).

- (b) In so far as an item of the IT Requirements is a Success Tutoring Product or Success Tutoring Service, the Franchisee will purchase or lease that item from the relevant Core Supplier.
- (c) In so far as an item of IT Requirements is Approved Equipment or Procured Service, and clause 7.7(b) does not apply, the Franchisee will purchase or lease the item from an Approved Supplier.
- (d) The Franchisee must maintain and update the IT Requirements during the Term in accordance with the Operations Manual.

7.8 Directions by Success Tutoring

The Franchisee shall comply with all written directions and procedures given by Success Tutoring in respect of the development, operation and management of the Franchised Business including any directions in relation to:

- (a) compliance with or protection of the Operations Manual;
- (b) compliance with or protection of the Trade Marks, Image and any Intellectual Property;
- (c) adherence to standards, techniques and procedures for the operation of the Franchised Business;
- (d) sales, advertising and promotional techniques;
- (e) selection, training and management of employees;
- (f) maintenance and appearance of the Premises; or
- (g) procedures relating to trading terms, credit accounts and other financial matters.

7.9 Documentation and Stationery

The Franchisee must use only such documentation, stationery and forms as authorised by Success Tutoring for use in the Franchised Business including those provided in the Operations Manual. Unless otherwise authorised by Success Tutoring in writing, the Franchisee must acquire all documentation, stationery from an Approved Supplier specified in the Operations Manual from time to time.

7.10 Hours of Business

Subject to the terms of the Lease, the Franchisee must operate the Franchised Business everyday as specified in the Operations Manual.

7.11 Supervision of the Business

The Franchised Business must be under direct, on-premises supervision of the Centre Manager for the hours set out in the Operations Manual which may be amended by Success Tutoring from time to time.

7.12 Dealings with Customers

The Franchisee must comply with the following standards:

- (a) at all times provide the services in a prompt, courteous, efficient and competent manner;
- (b) in all dealings with members of the public be guided by the highest standards of honesty, integrity, fair dealing and ethical conduct; and

- (c) do nothing which would tend to dishonour, discredit, damage, injure or otherwise adversely reflect upon Success Tutoring's reputation or the reputation of the System or the Network.

7.13 Occupational Health and Safety

The Franchisee must meet all of its occupational health and safety obligations and in addition must comply with the occupational health and safety standards and obligations described in the Operations Manual or notified by Success Tutoring in writing.

7.14 Customer Surveys

- (a) The Franchisee acknowledges that Success Tutoring may arrange from time to time for Customers to participate in digital surveys.
- (b) The Franchisee agrees to fully comply with any survey program introduced by Success Tutoring.

7.15 Complaints Handling

- (a) The Franchisee must handle any and all complaints in accordance with the Operations Manual.
- (b) The Franchisee must immediately inform Success Tutoring of any complaint made to the Franchisee regarding the Franchised Business or the Approved Products and the Approved Services and resolve any such complaint in accordance with Success Tutoring's reasonable directions.

7.16 Inspection

The Franchisee must permit Success Tutoring, its representative or agents to inspect the Premises, the practices, the Approved Equipment, the IT Requirements, the Approved Products, the Approved Services and the Procured Services and such other items used by the Franchisee in the operation of the Franchised Business during normal business hours without notice to the Franchisee or at any other time after reasonable notice are given to the Franchisee.

7.17 No other business

The Franchisee, and the Guarantors, must not conduct any other business, other than the Franchised Business from the Premises during the Term, without the express written consent of the Franchisor.

7.18 Compliance with Laws

- (a) The Franchisee shall comply with all Laws and shall obtain and keep in effect all permits, Approvals, registrations, accreditations, permits, memberships and licences necessary for the operation of the Franchised Business and pay all taxes or levies associated with the operation of the Franchised Business.
- (b) The Franchisee will notify Success Tutoring within five (5) working days of receiving any notice, claim, proceeding or demand that the Franchisee considers may affect the Franchised Business, the Confidential Information, the Intellectual Property, the Premises, the System or the Network.

8 Minimum Performance Criteria

8.1 Minimum Performance Criteria

- (a) The Franchisee is obliged to meet the Minimum Performance Criteria for specified periods of the Term (as applicable).

- (b) If the Franchisee does not meet the Minimum Performance Criteria during any specified period of the Term, the Franchisor reserves the right to require the Franchisee (and the Centre Manager if necessary) to:
 - (i) on reasonable notice, attend a meeting with the Franchisor's key personnel to discuss the Franchisee's performance;
 - (ii) provide a written report to the Franchisor outlining the reasons why the Franchisee has not met the Minimum Performance Criteria and provide written details of the action that the Franchisee intends to take to ensure that the Minimum Performance Criteria will be met in the future (**Strategy**). The Franchisor must agree to the Strategy in writing; or
 - (iii) attend Additional Training if the Franchisee does not meet the Minimum Performance Criteria as required by this clause 8.
- (c) The Franchisee is responsible for all costs associated with the actions outlined in clause 8.1(b) of this Agreement.

8.2 Persistent failure to meet the Minimum Performance Criteria

If the Franchisee fails to:

- (a) implement the Strategy in accordance with clause 8.1(b)(ii) of this Agreement;
 - (b) attend or complete Additional Training as required by clause 8.1(b)(iii) of this Agreement; or
 - (c) meet the Minimum Performance Criteria within three (3) Months of the Franchisee meeting with the Franchisor's key personnel or performing the Ongoing Training in accordance with clause 8.1(b)(iii) of this Agreement,
- the Franchisor may, in its sole discretion:
- (d) operate, and receive the profits of, the Franchised Business for a maximum of six (6) months (**Transition Period**);
 - (e) during the Transition Period the Franchisee must transfer the Franchised Business in accordance with clause 28; and
 - (f) failure by the Franchisee to transfer the Franchised Business in accordance with clause 28 is a breach of this Agreement and the Franchisor may terminate this Agreement after giving thirty (30) days' notice in writing to the Franchisee.

9 Operations Manual

9.1 The Operations Manual

- (a) Success Tutoring will develop and provide copies of the Operations Manual (in the form nominated by Success Tutoring which may be electronic through access to a portal) on loan to the Franchisee for the Term.
- (b) The Operations Manual is the sole property of Success Tutoring (and its Related Entities) and no copyright in the Operations Manual will pass to the Franchisee under this Agreement.
- (c) The Franchisee must keep the Operations Manual in a safe and secure place (including both the electronic versions and hard copies) and must not make any copies of the Operations Manual.
- (d) The Franchisee may share the contents of the Operations Manual with its employees, agents or representatives on a need-to-know basis for the efficient

operation of the Franchised Business provided always that the Franchisee ensures that the employee, agent or representative is bound to keep the content of the Operations Manual confidential in the same manner as the Franchisee is bound to Success Tutoring.

- (e) The Franchisee must maintain a register of all the Operations Manuals issued to it (whether in written or electronic form) including the names of each recipient and the location of each Operations Manual.

9.2 Compliance with the Operations Manual

- (a) The Franchisee acknowledges and agrees that it must comply with the provisions of the Operations Manual to the extent that the Operations Manual is not inconsistent with this Agreement.
- (b) Success Tutoring may in its discretion update, improve, vary or modify the Operations Manual, as is reasonably required for the overall continuity and success of the System and the Network, and all supplemental instructions, notices, memorandum that prescribe standard methods or techniques of operation which Success Tutoring may publish from time to time. In making any changes Success Tutoring will act reasonably and in good faith.
- (c) Success Tutoring will provide notice, of at least fourteen (14) days, to the Franchisee of any of the changes set out in clause 9.2(b).
- (d) The Franchisee will comply with or implement any update, improvement, variation or modification to the Operations Manual upon receiving notice from Success Tutoring to do so EXCEPT that any such variation will not amount to a material variation of this Agreement.

10 Training

10.1 Initial Training

- (a) Success Tutoring shall provide training in the operation of the Franchised Business to the Franchisee, the Centre Manager plus any nominated representatives approved by Success Tutoring (**Nominated Representatives**) at a reasonable time and location nominated by Success Tutoring (**Initial Training**).
- (b) The Nominated Representatives, the Franchisee and the Centre Manager must attend and complete the Initial Training to Success Tutoring's satisfaction prior to commencement of the Franchised Business.
- (c) The Franchisee will pay all reasonable costs or expenses associated with the Franchisee or any of its employees participating in the Initial Training provided by Success Tutoring including travel, accommodation and meals.

10.2 Additional Training

- (a) Subject to payment of the Additional Training Fees, Success Tutoring will provide to the Franchisee and its Nominated Representatives and employees any additional training that Success Tutoring, in its sole and absolute discretion, considers necessary to enable the Franchisee to efficiently operate the Franchised Business at a reasonable location nominated by Success Tutoring for a duration nominated by Success Tutoring (**Additional Training**).
- (b) The Nominated Representatives, the Franchisee and the Centre Manager must attend and complete any Additional Training as required from time to time by Success Tutoring to Success Tutoring's satisfaction.

- (c) The Franchisee will pay all costs or expenses associated with the Franchisee or any of its employees participating in the Additional Training provided by Success Tutoring including travel, accommodation and meals.

10.3 Seminars and workshops

- (a) Success Tutoring may convene seminars or workshops for the Network as Success Tutoring considers it is necessary or appropriate. Success Tutoring will not require attendance at more than 2 seminars or workshops per year.
- (b) The location, agenda, duration and all procedures and formats of each seminar and workshop is determined by Success Tutoring.
- (c) Success Tutoring will give the Franchisee reasonable notice of any seminars or workshops.
- (d) At their sole cost, the Franchisee or the Centre Manager must attend any seminars and workshops held by Success Tutoring.

11 Products and Services

11.1 Products and services

- (a) The Franchisee must only offer for sale, in the Franchised Business, products that are Approved Products and services that are Approved Services.
- (b) The Franchisee must only purchase and use services that are Procured Services in the Franchised Business.
- (c) The Franchisee must purchase Approved Products and Procured Services (other than Core Products and Core Services, which must be purchased only from Core Suppliers) only from Approved Suppliers.
- (d) The Franchisee must purchase Core Products, Core Services and Core Equipment only from a Core Supplier.

11.2 Stock levels and Service levels

- (a) The Franchisee will at all times maintain the minimum stock levels (if any) as may be required by Success Tutoring from time to time in order to efficiently operate the Franchised Business and to fully participate in promotional campaigns.
- (b) The Franchisee must offer all Approved Services at all times unless Success Tutoring provides otherwise in the Operations Manual or in writing.

11.3 Representations Regarding the Approved Products and Services

- (a) The Franchisee will not represent that any Approved Products and any Approved Services have any feature or capacity beyond the manufacturer's directions (if applicable).
- (b) In addition to clause 11.3(a), the Franchisee will not make any representations about any Approved Products or any Approved Services other than those specified within the Operations Manual without the prior written consent of Success Tutoring.

11.4 Withdrawal of Products and Services

- (a) Success Tutoring may at any time require the Franchisee to withdraw from supply in the Franchised Business, any Approved Product or any Approved Service, which in Success Tutoring's reasonable opinion:

- (i) does not conform or no longer conforms with the standards, quality controls and specifications for products or services to be supplied in a Success Tutoring Business;
 - (ii) does not conform or no longer conforms with the range of products and services to be supplied in a Success Tutoring Business; or
 - (iii) is, or may be a health or safety risk.
- (b) The Franchisee must immediately withdraw any products or services from sale or supply when required to do so by Success Tutoring under clause 11.4(a).

11.5 Alternative Suppliers, Alternative Products and Alternative Procurement Services

- (a) If the Franchisee wishes to buy or offer for sale a product that is not an Approved Product, wishes to buy a service that is not a Procured Service or a product or service from a supplier who is not an Approved Supplier in respect of that product or service, the Franchisee must first obtain written approval from Success Tutoring. This approval will not be unreasonably withheld if the Franchisee:
 - (i) gives written notice of:
 - (A) the nature and quantity of the product or service that the Franchisee is seeking to purchase;
 - (B) the name and address of the proposed alternative supplier; and
 - (C) the price (per unit) that will be charged by the proposed alternative supplier for the product or service;
 - (ii) delivers to Success Tutoring a sample of the product that the proposed alternative supplier is to provide;
 - (iii) satisfies Success Tutoring that the proposed alternative supplier is able to maintain a continuity of supply of the product or service to at least 25% of the Network as Success Tutoring considers necessary from time to time;
 - (iv) satisfies Success Tutoring that the product or service meets the requirements set out in clause 11.6;
 - (v) satisfies Success Tutoring that the benefits to Success Tutoring and the franchise network of rebates and other financial contributions received by Success Tutoring from the Approved Suppliers will also be received from the proposed alternative suppliers; and
 - (vi) satisfies Success Tutoring that the product, service or supplier for which approval is sought is not intended to be a substitute for a Success Tutoring Product, Success Tutoring Service or Core Supplier (except in the circumstances set out in clause 11.5(f)).
- (b) Any alternative products approved by Success Tutoring in accordance with this clause 11.5 become Approved Products until Success Tutoring advises the Franchisee in writing that the approval has been withdrawn.
- (c) Any alternative services approved by Success Tutoring in accordance with this clause 11.5 become Procured Services until Success Tutoring advises the Franchisee in writing that the approval has been withdrawn.

- (d) Any alternative suppliers approved by Success Tutoring in accordance with this clause 11.5 become Approved Suppliers until Success Tutoring advises the Franchisee in writing that the approval has been withdrawn.
- (e) Subject to clause 11.5(f), the Franchisee acknowledges and agrees that this clause 11.5 does not apply to Core Products, Core Services or Core Suppliers and, that the Franchisee is not entitled to put forward alternative products that are intended to substitute for a Success Tutoring Product, the Franchisee is not entitled to put forward alternative services that substitute for a Success Tutoring Service and the Franchisee is not entitled to put forward alternative suppliers intended to substitute for a Core Supplier.
- (f) In the event that a Success Tutoring Product or a Success Tutoring Service is not available from a Core Supplier within a reasonable period of time (as determined by Success Tutoring in its sole discretion), other than as a result of a failure by the Franchisee to comply with the Core Supplier's terms of trade, the Franchisee may, but only for so long as the Success Tutoring Product or Success Tutoring Service is not available from the Core Supplier, after complying with the procedure contained in this clause 11.5, obtain an alternative product from an alternate supplier.

11.6 Quality Control

The product or service that the Franchisee is seeking approval for as an Approved Product or Approved Service must be:

- (a) at least equal in quality to the product or service it substitutes;
- (b) suitable for the purpose for which it is intended; and
- (c) consistent with, and not prejudicial to, the image or the standards of the Success Tutoring Image and brand.

11.7 Rebates

The Franchisee acknowledges that Success Tutoring may receive rebates or other financial incentives from suppliers and other third parties and the Franchisee agrees that Success Tutoring may retain for its own benefit all rebates or financial incentives received, whether or not they are received as a result of purchases or other actions by the Franchisee.

12 Equipment

12.1 Install, Use and Maintain Approved Equipment

- (a) The Franchisee must install and use the Approved Equipment specified in the Operations Manual and approved by Success Tutoring for use in the Franchised Business.
- (b) The Franchisee must at all times ensure that the Approved Equipment:
 - (i) complies with the Operations Manual and this Agreement;
 - (ii) is used in a manner consistent with the Franchisee's insurer;
 - (iii) is maintained in full working order;
 - (iv) is clean and safe for use; and
 - (v) complies with any manufacturer requirements, Laws and industry safety standards in respect of health and safety.

12.2 Success Pack

Subject to payment of the Success Pack Fee on or before the date of this Agreement, Success Tutoring will provide to the Franchisee the Success Pack. The timing of provision of the Success Pack will be subject to availability of stock and delivery times from third party suppliers.

12.3 Purchase of Approved Equipment

- (a) Subject to law, the Franchisee must purchase or lease all Core Equipment only from the specified Core Supplier.
- (b) The Franchisee must purchase or lease all Approved Equipment (other than Core Equipment which can only be purchased from Core Suppliers) from Approved Suppliers.
- (c) The Franchisee must procure the Core Supplier to carry out the service maintenance program in order to maintain the Core Equipment.
- (d) The Franchisee must procure the Approved Supplier to carry out the service maintenance program in order to maintain the Approved Equipment.

12.4 Alternative equipment and alternative suppliers

- (a) If the Franchisee wishes to purchase or lease equipment that is not an item of Approved Equipment or wishes to buy equipment from a supplier who is not an Approved Supplier in respect of that equipment, the Franchisee must first obtain written approval from Success Tutoring. The procedure set out in clause 11.5 applies to any request for approval (with such amendments as are necessary such that the procedure applies to equipment).
- (b) Subject to clause 12.4(c), the Franchisee acknowledges and agrees that this clause 12.4 does not apply to Core Equipment or Core Suppliers and, that the Franchisee is not entitled to put forward alternative equipment that is intended to substitute for any Core Equipment and the Franchisee is not entitled to put forward alternative suppliers intended to substitute for a Core Supplier of Core Equipment.
- (c) In the event that any Core Equipment is not available from a Core Supplier within a reasonable period of time (as determined by Success Tutoring in its sole discretion), other than as a result of a failure by the Franchisee to comply with the Core Supplier's terms of trade, the Franchisee may, but only for so long as the Core Equipment is not available from the Core Supplier, after complying with the procedure contained in clause 11.5 (amended as necessary to apply to equipment), obtain an alternative product from an alternate supplier.

13 Payments by Franchisee

13.1 Upfront Payment

(a) Documentation Fee

On or before the date of this Agreement, the Franchisee will pay to Success Tutoring the Documentation Fee.

(b) Initial Franchise Fee

On or before the date of this Agreement, the Franchisee will pay to Success Tutoring the Initial Franchise Fee.

(c) Design and Documentation Fee (if required)

On or before the commencement of the Fitout, if applicable, the Franchisee will pay to Success Tutoring the Design and Documentation Fee in consideration for Success Tutoring reviewing designs, development documentation, tenders and quotations and other documentation necessary to approve the Fit Out plans as complying with Success Tutoring Fit Out standards.

13.2 Recurring Payments

(a) Royalty

From the Commencement Date, each Month during the Term, the Franchisee will pay to Success Tutoring the Royalty.

(b) Marketing Fund Fee

From the Commencement Date, each Month during the Term, the Franchisee will pay to Success Tutoring the Marketing Fund Fee (if applicable).

(c) Legal Costs

Legal costs are payable by the Franchisee in accordance with this Agreement including costs pursuant to clause 41.16 and including the Documentation Fee.

13.3 Minimum Spends

In addition to the amounts the Franchisee must pay the Franchisor under this clause 13, the Franchisee must comply with its other ongoing expenditure and payment obligations under this Agreement, including:

(a) Opening Promotion Spend

The Opening Promotion Spend pursuant to clause 7.5

(b) Local Marketing Spend

The Monthly Local Marketing Spend pursuant to clause 7.4.

13.4 Isolated Payments

(a) Additional Training Fee

The Franchisee will pay to Success Tutoring the fee specified in the Operations Manual (**Additional Training Fee**) for its attendance at any additional training provided by Success Tutoring to the Franchisee, its Related Entities or its Associates. The Additional Training Fee will be due and payable within 7 days of the date of the invoice to be provided by Success Tutoring to the Franchisee. The Franchisee will pay all reasonable costs or expenses associated with the Franchisee or any of its employees participating in any Additional Training provided by Success Tutoring including travel, accommodation and meals.

(b) Relocation Fee

The Franchisee will pay to Success Tutoring the Relocation Fee, relating to Success Tutoring's assistance in the relocation, extension and or contraction process of the Premises, the Lease and or any licenses. The Relocation Fee will be due and payable within 7 days of the date of the invoice to be provided by Success Tutoring to the Franchisee.

(c) Renewal Fee

In the event that the Franchisee seeks to renew this Agreement, the Franchisee will pay to Success Tutoring the Renewal Fee on or before the date of renewal of this Agreement.

(d) Transfer Fee

In the event that the Franchisee seeks to transfer the Franchised Business to a third party in accordance with clause 28, the Franchisee will pay to Success Tutoring the Transfer Fee on or before the date of transfer of the Franchised Business to a third party.

13.5 Terms of Payment

- (a) The Franchisee must pay each of the payments as they fall due and payable to Success Tutoring in such a manner and on terms as Success Tutoring reasonably directs in writing from time to time and, if requested by Success Tutoring, will sign such forms and consents (including an irrevocable authority to the nominated payment provider) permitting the direct debit and deduction of monies payable under this Agreement or any agreement between Success Tutoring and the Franchisee.
- (b) The Franchisee must pay interest on any amount that is not paid in full by its due date. The interest must be paid upon written demand given by Success Tutoring to the Franchisee and such interest will accrue each day at the Default Interest Rate and is calculated from and including the day on which it falls due but excluding the day on which it is paid in full.

13.6 Excessive Royalty Payments

- (a) In the event that the Franchisee has paid to Success Tutoring an amount greater than the amount due and payable in relation to the Royalty for any Month, the Franchisee must notify Success Tutoring of the excess payment and provide to Success Tutoring documentation supporting the overpayment amount.
- (b) The Franchisee acknowledges and agrees that in dealing with the overpayment of the Royalty described in clause 13.6(a) Success Tutoring may exercise its right to set off any payment owed to Success Tutoring by the Franchisee.

14 Premises

14.1 Premises Selection

- (a) Success Tutoring will use reasonable endeavours to help the Franchisee locate suitable premises for the Franchised Business.
- (b) Where Success Tutoring assists the Franchisee to locate suitable premises for the Franchised Business it does not do so as an expert in premises selection or assessment and the Franchisee must undertake and rely upon its own due diligence and determination in entering into a Lease for the premises.

14.2 Lease from the Lessor

If the premises are not already identified in the Schedule to this Agreement:

- (a) the Franchisee will use its best endeavours to select suitable premises within the Territory from which it reasonably believes the Franchised Business can be operated successfully which complies with the requirements set out in the Operations Manual;

- (b) the Franchisee warrants that it has undertaken and relied upon its own due diligence and determination in finding that the proposed premises is appropriate for the operation of the Franchised Business and has not relied on any information or assessment provided by Success Tutoring;
- (c) prior to the Commencement Date, the Franchisee must obtain Success Tutoring's prior written approval of the proposed premises selected by the Franchisee for the Franchised Business (such approval may be withheld by Success Tutoring in its sole discretion);
- (d) the Franchisee will occupy the Premises under a Lease directly with the landlord and the Franchisee must comply with the terms of the Lease.

14.3 Premises Location Period

- (a) In the event that a suitable premises has not been identified prior to the date of this Agreement, then this Agreement commences on the date of this Agreement and continues for a period of up to six (6) months (**Premises Location Period**), to enable the Franchisee an opportunity to identify suitable premises in the Territory for the operation of the Franchised Business during that period.
- (b) The fees and payments in clauses 13.2 and 13.3 are not payable during the Premises Location Period, save and except that the Opening Promotion Spend may be required to be paid in part prior to a Premises being located in order to conduct marketing to obtain prospective customers within the Territory.
- (c) In the event that the Franchisee locates a premises in the Territory that is acceptable to Success Tutoring within the Premises Location Period, the parties acknowledge and agree that the Commencement Date will be the same as the commencement date under the Lease for the Premises. Upon the Commencement Date, the Premises Location Period ceases and the Franchisee must commence payment of the fees and payments in clauses 13.2 and 13.3.
- (d) In the event that:
 - (i) the Franchisee having used it's best endeavours, fails to locate a premises that is acceptable to Success Tutoring; and
 - (ii) Success Tutoring does not, in its total discretion, locate or provide a suitable Premises for the Franchisee,

prior to the expiry of the Premises Location Period then this Agreement will expire at the end of the Premises Location Period, and Success Tutoring will refund the Initial Franchise Fee less the Retention Amount and Documentation Fee.

14.4 Breach of Lease Agreement

Where the Premises are occupied pursuant to Lease or Licence, the Franchisee will notify Success Tutoring:

- (a) immediately upon becoming aware of any breach of the terms of the Lease which may result in the termination of the Lease;
- (b) immediately if the landlord of the Premises provides any breach notices under the Lease to the Franchisee;
- (c) immediately upon becoming aware that the landlord of the Premises is intending to terminate the Lease; and

- (d) no less than sixty (60) days prior to the date required by the Lease, to exercise any option to renew the Lease, of the Franchisee's decision not to renew the term of the Lease.

14.5 Relocation, Extension or Contraction of the Premises

- (a) The Franchisee may with the prior written approval of Success Tutoring, extend or contract the Premises from which the Franchised Business is operated or relocate the Franchised Business to other premises, within the Territory, during the Term subject to:
 - (i) the Franchisee complying with this clause 14;
 - (ii) the Franchisee complying with the Fit Out obligations at its expense in relation to the new premises;
 - (iii) Success Tutoring's prior written approval, which approval must not be unreasonably withheld; and
 - (iv) the Franchisee paying the Relocation Fee to Success Tutoring in full.
- (b) The fees and payments in clauses 13.2 do not apply for a period of up to 14 days during the relocation, expansion or contraction where the Franchised Business is not trading.
- (c) In the event that the Franchised Business has ceased trading from the Premises and has not relocated to new Premises within 6 months, the term of this Agreement is reduced and this Agreement is deemed to have expired.

14.6 Success Tutoring May Enter the Premises

The Franchisee agrees that Success Tutoring and persons authorised by Success Tutoring may enter the Premises at any time during normal business hours to inspect the state of repair and condition of the Premises, to survey the need to repair the Fit Out in accordance with clause 15 and to ensure compliance with the Franchisee's obligations under this Agreement.

15 Fit Out of the Premises

15.1 Fit Out by Franchisee

- (a) the Franchisee must, at its sole expense, arrange for an Approved Supplier to carry out the Fit Out of the Premises in accordance with the layout, fixtures and fittings and any other specifications as advised by Success Tutoring or set out in the Operations Manual and the requirements of any Authority and the Department prior to the Commencement Date;
- (b) the Franchisee must use an Approved Supplier to conduct the Fit Out;
- (c) the Franchisee must complete the Fit Out during the Fit Out Period;
- (d) the Franchisee is solely responsible for obtaining all Development Approvals and Certificates for Public Use for the Fit Out and Premises;
- (e) the Franchisee must purchase the signage, fixtures and fittings and any other items, including the Approved Equipment required to ensure that the Premises is consistent with the Image and Fit Out as set out in the Operations Manual or advised by Success Tutoring from the relevant Approved Supplier or Core Supplier.

15.2 Maintenance, Refurbishment or Rebuild of the Fit Out During the Term

- (a) During the Term the Franchisee must (at its cost) keep and maintain the Premises and the Fit Out in a safe, clean, hygienic and tidy state of good order and, at its own cost, engage an Approved Supplier to maintain, refurbish, rebuild or replace, without any undue delay, any item of the Fit Out that falls into disrepair or becomes damaged in any manner whatsoever or falls out of compliance with the Operations Manual including:
 - (i) re-painting of the Premises;
 - (ii) maintenance of the Approved Equipment within the Premises; and
 - (iii) any requirements for furnishings, fixtures, floor coverings, signage, internal and external colour schemes, image, décor, equipment, layout and materials.
- (b) So as to ensure that all premises in the Network are maintained to a consistent standard and in accordance with the Fit Out requirements contained within the Operations Manual, from time to time during the Term, Success Tutoring may require the Franchisee (at its cost) to engage an Approved Supplier to modify or substitute any or all items of the Fit Out to conform to the then current fit out requirements.
- (c) The Franchisee (at its cost) must comply with any requirements by Success Tutoring regarding the modification or substitution of the Fit Out within a reasonable period of receipt of written notice from Success Tutoring.
- (d) The Franchisee will ensure that the Fit Out complies with the then current fit out specifications as set out in the Operations Manual prior to the commencement of both the First Renewal Term and the Second Renewal Term.
- (e) The Franchisee must use an Approved Supplier to carry out any maintenance, refurbishment, rebuild or other works related to the Fit Out of the Premises.
- (f) Despite anything to the contrary expressed or implied in this Agreement, the Franchisee will not be required to undertake any significant capital expenditure during the Term or any Renewal.

15.3 Inspection and Access to Fit Out

- (a) The Franchisee must permit Success Tutoring (or its nominee) to inspect the Premises on reasonable notice to ensure that the Fit Out complies with the then current fit out specifications as set out in the Operations Manual.
- (b) The Franchisee acknowledges and agrees that it will provide Success Tutoring with:
 - (i) a copy of all information regarding the Fit Out of the Premises; and
 - (ii) any other information that Success Tutoring may reasonably require regarding the Fit Out of the Premises.

15.4 Approvals

The Franchisee must not commence or undertake any construction, renovation or alteration of the Premises (whether interior or exterior) without first having obtained the prior written consent of Success Tutoring.

16 Intellectual Property

16.1 Ownership of the Intellectual Property

- (a) Success Tutoring is authorised by the IP Owner to use the Intellectual Property and to grant the Franchisee the right to use the Intellectual Property during the Term.
- (b) The Franchisee acknowledges that it does not own and cannot register the Intellectual Property or any change to the Intellectual Property (including the Customer Information).
- (c) If the Franchisee is or becomes the owner of the Intellectual property it must do all things necessary to transfer the ownership (excluding moral rights) to Success Tutoring or Success Tutoring's nominee and where appropriate, consent in respect of property rights must be issued to Success Tutoring.
- (d) If the Franchisee develops any intellectual property that is used in the conduct of the Franchised Business, the Franchisee must promptly assign all right title and interest in such intellectual property to Success Tutoring or Success Tutoring's nominee at no cost to Success Tutoring or its Related Entities.

16.2 Business Name

- (a) The Franchisee must not lodge or sign any documentation in relation to applying for, obtaining or using a business name registration or corporate name containing the Business Name without Success Tutoring's prior written consent.
- (b) In the event that Success Tutoring agrees to provide its consent in accordance with clause 16.2(a), the Franchisee acknowledges and agrees that it will:
 - (i) Give Success Tutoring an irrevocable authority to transfer the business name together with all things necessary to facilitate a transfer of the business name following registration; and
 - (ii) Grant Success Tutoring the authority to request a transfer or cancel the Business Name upon termination, end or expiry of this Agreement.
- (c) The Franchisee acknowledges and agrees that the Business Name remains the property of Success Tutoring at all time despite being registered by the Franchisee.

16.3 Goodwill

- (a) The Franchisee must maintain the goodwill and good reputation connecting to Success Tutoring or its Associates or Related Entities, the Intellectual Property, the Franchised Business, the System and the Network.
- (b) The Franchisee agrees that any goodwill established in the Intellectual Property, or the System is for the exclusive benefit of Success Tutoring and its Related Entities. This Agreement does not confer to the Franchisee any interest in the goodwill relating to the Intellectual Property or the System.
- (c) The parties agree that the Franchisee is entitled to any goodwill realised by the sale of the Franchised Business by the Franchisee to an approved third party during the Term.

16.4 Use of the Intellectual Property

The Franchisee must:

- (a) only use the Intellectual Property in the manner prescribed in this Agreement and in the Operations Manual unless otherwise consented to by Success Tutoring;
- (b) indicate that it is the proprietor of the Franchised Business, a Franchisee and an authorised user of the Intellectual Property at the Premises and on all stationery issued or otherwise used by the Franchisee in the Franchised Business;
- (c) at its own cost, place or display both inside and outside the Premises all Images and display materials required by Success Tutoring;
- (d) ensure that the Image is used in association with all advertising and promotional activities of the Franchised Business; and
- (e) not do or be involved in anything which may impair or prejudicially affect the reputation of Success Tutoring, the System or the Image.

16.5 Notification of Threats to the Intellectual Property

The Franchisee must notify Success Tutoring of any threat to the Franchised Business, the System, the Intellectual Property or the Network including any passing off, unauthorised use, infringement or threatened infringement of the Intellectual Property.

16.6 Actions to Protect the Intellectual Property

- (a) Upon request by Success Tutoring or its Related Entities, the Franchisee must assist Success Tutoring or its Related Entities to resolve any threats against the Intellectual Property as contemplated in clause 16.5 including a requirement that the Franchisee take legal action.
- (b) Success Tutoring and its Related Entities will have control over the conduct and settlement of any legal action brought by the Franchisee in relation to the Intellectual Property.
- (c) Subject to clause 16.6(b), Success Tutoring and its Related Entities will indemnify the Franchisee for the reasonable costs incurred by the Franchisee in relation to the requested assistance provided by the Franchisee to Success Tutoring and its Related Entities under this clause.
- (d) Any benefits (including damages) awarded out of legal action will accrue solely and exclusively to the benefit of Success Tutoring and its Related Entities.

17 General Marketing and Marketing Fund

17.1 Success Tutoring Marketing Activities

Success Tutoring will conduct marketing activities in respect of the Network as it deems appropriate in its sole and absolute discretion and such activities may include:

- (a) advertising and other promotional campaigns for the Network such as promotional materials, brochures and leaflets;
- (b) developing public relations, customer and supply relations;
- (c) engaging advertising firms and other marketing consultants;
- (d) market research regarding Customer satisfaction, promotional activities, product and service issues and the System.

17.2 Marketing Fund

- (a) In the event that Success Tutoring commences an advertising program for the marketing and promotion of the Success Tutoring Business, Success Tutoring will impose the Marketing Fund Fee.
- (b) Success Tutoring will hold the Marketing Fund Fee funds collected from Success Tutoring Franchisees for the payment of costs associated with the creation, production, distribution, media placement and administration of local, national or integrated advertising programs (including online and via the Website and Social Media), market research and public relations programs designed to promote and enhance the Success Tutoring Business and Marks, for expenses incurred in administering the Marketing Fund (including audit) and for any taxes incurred on the Marketing Fund.
- (c) Success Tutoring will, make financial contributions to the Marketing Fund for any Franchised Business that Success Tutoring operates. Any other non-mandatory contributions to the Marketing Fund by Success Tutoring are at Success Tutoring's discretion.
- (d) Where Success Tutoring decides to carry out additional advertising and/or sales promotional activities, it shall be at liberty to levy such additional amounts from the Franchisees as are required to fund such programs, provided that such amounts are not unreasonable in magnitude or frequency or likely to cause financial hardship to the Franchisee. The Franchisee shall pay each such amount upon receipt of a request in writing from Success Tutoring.
- (e) Success Tutoring reserves the right to wind up the Marketing Fund at any time it considers necessary. In this event, Success Tutoring may:
 - (i) Establish another Marketing Fund and transfer any monies remaining from the wound up Marketing Fund;
 - (ii) Refund any money remaining on a pro-rata basis to the Success Tutoring Franchisees that contributed to the Marketing Fund after:
 - (A) Refunding any discretionary contributions that Success Tutoring may have made to the Marketing Fund; and
 - (B) Satisfaction of the Marketing Fund's debts including any monies owed to Success Tutoring by way of loan repayments.
- (f) After the expiration or termination of a Franchised Business, the Success Tutoring Franchisee (including the Franchisee if applicable) is not entitled to any refunds from the Marketing Fund.
- (g) The Franchisee acknowledges and agrees that:
 - (i) The Marketing Fund is intended to maximise recognition of the Success Tutoring Business, Marks, Approved Products and Approved Services and that promotion and marketing may not necessarily take place or be broadcast to the area in which the Franchisee operates (and that any online marketing or promotion, including via Social Media may or may not "tag", link or reference the Franchisee); and
 - (ii) Success Tutoring is not responsible for the effectiveness or success of such advertising, promotion or marketing expenditure.

18 Meetings and Conferences

- (a) Success Tutoring may convene meetings and conferences for the Network as Success Tutoring considers it is necessary or appropriate. Success Tutoring will not require attendance at more than 4 conferences per year (being online or in-person).
- (b) The location, agenda, duration and all procedures and formats of each meeting and conference are determined by Success Tutoring.
- (c) Success Tutoring will give the Franchisee reasonable notice of any meetings or conferences.
- (d) At their sole cost, the Franchisee or the Centre Manager must attend any meetings or conferences held by Success Tutoring.

19 Centre Manager

19.1 Appointment and Approval of Centre Manager

- (a) The Franchisee must appoint the Centre Manager.
- (b) The Franchisee may only change the Centre Manager with the prior written consent of the Franchisor and the Franchisor may withhold its consent in its reasonable discretion. Any replacement Centre Manager shall, at the sole cost of the Franchisee, undertake all induction and training required.
- (c) The Centre Manager (and any replacement Centre Manager appointed in accordance with this clause) must have such experience and must have (and maintain at all times) those qualifications as set out in the Operations Manual.
- (d) The Franchisee acknowledges that the Centre Manager shall be the individual with whom the Franchisor shall be entitled to deal to the exclusion of any other individuals. The Centre Manager shall have full and unfettered power to negotiate, agree, transact on behalf of and bind the Franchisee.

19.2 Full Time and Attention of the Centre Manager and Guarantor

- (a) The Franchisee shall ensure, at its own cost, that the Centre Manager shall:
 - (i) attend and complete any training program required by the Franchisor under clause 10 to the Franchisor's satisfaction;
 - (ii) attend all meetings called by the Franchisor at which a representative of the Franchisee is required; and
 - (iii) hold any accreditations necessary to operate the Franchised Business in accordance with the System and the standards as specified in the Operations Manual or otherwise in writing by the Franchisor from time to time and any other accreditations required by law or any authority.

19.3 Revocation of approval

- (a) The Franchisor may, if it so determines in its absolute discretion, revoke the Franchisor's approval of the Centre Manager at any time by written notice if the Franchisor considers that the Centre Manager is in breach of any of the Centre Manager's obligations under clause 19.2 or is not capable of managing the Franchised Business.
- (b) If the Franchisor notifies the Franchisee of the Franchisor's revocation of the Franchisor's approval of the Centre Manager in accordance with clause 19.3(a),

the Franchisee must appoint an alternative Centre Manager within thirty (30) days of receiving notice from the Franchisor.

19.4 Temporary Incapacity of the Centre Manager

In the event of any incapacity of the Centre Manager preventing him or her being available to manage the Business during the normal hours of business specified at clause 7.11 and in the Operations Manual continuing for a period of not less than five (5) Business Days the Franchisee shall ensure that a replacement Centre Manager is appointed in accordance with this clause as soon as possible, but not more than thirty (30) days.

19.5 Permanent Incapacity of the Centre Manager

- (a) In the event that the Centre Manager dies or suffers total and permanent disablement (**TPD**) the Franchisee shall either:
 - (i) ensure that a replacement Centre Manager is appointed in accordance with this clause as soon as possible; or
 - (ii) attempt to sell the Franchised Business in accordance with, and subject always to, clause 28.1;
- (b) If:
 - (i) a suitable replacement Centre Manager is not appointed within three (3) Months of the death or permanent disability of the Centre Manager; or
 - (ii) the Franchisee fails to transfer the Franchised Business within three (3) Months of the death or permanent disability of the Centre Manager,the Franchisor may terminate this Agreement after giving notice in writing in accordance with clause 30.1.
- (c) In this clause, TPD occurs where:
 - (i) a certified medical practitioner is reasonably satisfied that the person is unlikely, because of accident or ill health, to ever again engage in gainful employment in a role the same as, or similar to, his or her role in the Franchised Business; or
 - (ii) the person is absent from his or her employment for a period of 180 days or more and the Franchisor considers that he/she is unlikely, because of accident or ill health, to ever again engage in gainful employment in a role the same as, or similar to, his role in the Franchised Business.

19.6 Franchisor may step-in

- (a) At any time whilst the Centre Manager is incapacitated absent or removed and until such time as he or she returns or the replacement Centre Manager is appointed as required under this clause, the Franchisor may:
 - (i) if it so determines in its reasonable discretion (having regard to protection of the Success Tutoring brand and continued servicing of Customers), manage the Franchised Business;
 - (ii) do all such other things necessary (including, without limitation, directing the Franchisee's existing employees or appointing any new Centre Manager) for the proper management of the Franchised Business; and
 - (iii) the Franchisee:

- (A) appoints the Franchisor to act for and on behalf of the Franchisee as its agent; and
- (B) shall pay the Franchisor all reasonable costs and expenses of the Franchisor in managing the Franchised Business.

19.7 Success Tutoring Recruitment

Success Tutoring or its Associate may assist the Franchisee in the recruitment of a suitable Studio Manager upon receipt of a written request by the Franchisee and assist in providing the recruitment services.

19.8 Intellectual Property Protection

If the Centre Manager is not the same person as the Franchisee or Guarantor then Success Tutoring may require, the Franchisee to procure a deed of acknowledgement between the Centre Manager, the Franchisee and Success Tutoring binding the Centre Manager to the Franchisee's obligations in clauses 16 (Intellectual Property), 21.3 (ownership of Customer Information).

20 Staff

20.1 General

- (a) The Franchisee must employ a reasonable number of employees as may be necessary and appropriate to efficiently operate and supervise the Franchised Business.
- (b) The Franchisee must comply with Success Tutoring's procedures, guidelines and other requirements for recruitment specified in the Operations Manual or otherwise in writing by Success Tutoring and modified by Success Tutoring from time to time.
- (c) The Franchisee must ensure that all employees in respect of the Franchised Business are prompt, courteous, friendly, adhere to the highest standards of honesty, integrity and fairness in accordance with the Operations Manual.
- (d) The Franchisee must ensure that all employees meet the accreditation requirements set by Success Tutoring from time to time.

20.2 Compliance

The Franchisee must comply with all obligations under relevant employment laws in connection with the employees including, but not limited to:

- (a) pay all Accident Compensation Corporation (ACC) levies;
- (b) pay or allow any sick, annual and long service leave entitlements; and
- (c) pay or remit fringe benefits tax, kiwisaver and other statutory charges;
- (d) pay wages and salaries;
- (e) pay or remit payroll tax in respect of any statutory liability to make payroll tax payments; and
- (f) maintain registrations and certificates under the applicable occupational health and safety and workers compensation laws, in respect of the Franchisee's employees, agents and contractors.

20.3 Employee Costs not recoverable by the Franchisee

- (a) None of the costs, payments or remittances referred to in clause 20.2 are recoverable by the Franchisee from the Franchisor.
- (b) If the Franchisor has an obligation to pay any employee entitlement or statutory charge in respect of any of the Franchisee's employees, the Franchisee must pay the entitlement or charge on the Franchisor's behalf. If the Franchisor pays the entitlement or statutory charge, the Franchisee must immediately reimburse the Franchisor an amount equal to the amount paid out by the Franchisor.
- (c) To the extent permitted by law, the Franchisee indemnifies the Franchisor in respect of any fine, penalty or other charge imposed on the Franchisor as a result of any non-compliance by the Franchisor with its statutory obligations with the Franchisee's employees or as determined by a relevant authority.

20.4 Approved Supplier of Human Resources Procured Services

The Franchisee acknowledges that the Franchisor may, from time to time, require the Franchisee to obtain Procured Services from an Approved Supplier in connection with the following:

- (a) compliance with employment laws;
- (b) preparation of employment documentation;
- (c) management of employment records;
- (d) advising on employment disputes.

20.5 Training employees

The Franchisee must at its sole expense:

- (a) hire and train a reasonable number of employees in the operation of the Franchised Business in accordance with the specifications and procedures specified in the Operations Manual or otherwise in writing by Success Tutoring and modified by Success Tutoring from time to time;
- (b) ensure that the employees attend any training required by Success Tutoring under clause 10;
- (c) ensure that the Franchisee's employees obtain any accreditation specified by Success Tutoring including a working with children check and any other accreditations required by law or any authority necessary to work in the Franchised Business; and
- (d) ensure that any nominated employees attend all meetings, workshops and seminars upon Success Tutoring's reasonable request.

20.6 Uniforms

- (a) The Franchisee must ensure that each person working in the Franchised Business wears a uniform which complies with the specifications contained in the Operations Manual or otherwise in writing by Success Tutoring and modified by Success Tutoring from time to time.
- (b) The Franchisee must purchase all uniforms directly from an Approved Supplier.

20.7 Employee Performance

- (a) Success Tutoring and its Related Entities are authorised to enter the Premises at any time without notice to inspect and confirm that:

- (i) the Franchisee has complied with the procedures and requirements in the Operations Manual; and
 - (ii) all employees have the required level of proficiency in the technical, customer service and other training areas as set out in the Operations Manual.
- (b) Success Tutoring and its Related Entities may conduct or supervise a physical inspection of the Franchised Business and the Premises in any manner it deems appropriate.
- (c) The Franchisee must fully co-operate with Success Tutoring when conducting, supervising or observing any such inspection, provide full and free access to the employees and providing all information and explanations as reasonably requested including answers to direct questions.
- (d) Success Tutoring will pay all costs associated with the inspection unless it is revealed that the Franchisee has failed to comply with clause 20.7(a).
- (e) The Franchisee acknowledges and agrees to ensure compliance with the employee performance requirements in clause 20.7(a) as soon as practicable.

20.8 Success Tutoring Recruitment

Success Tutoring or its Associate may assist the Franchisee in the recruitment of suitable employees upon receipt of a written request by the Franchisee assist in providing the recruitment services.

21 Customer Information

21.1 Customer and Employee Information

- (a) The Franchisee must comply with all Laws and other privacy policies specified in the Operations Manual, when collecting, storing, disclosing or using, in any manner, any information, including from Customers, prospective Customers and the Franchisee's employees.
- (b) The Franchisee must obtain all the necessary consents from individuals providing information to the Franchisee to enable the Franchisee to fully comply with the Franchisee's obligations under this clause 21.1.

21.2 Creation of Customer Information Database

The Franchisee must create a database containing past, present and prospective Customer Information and the Franchisee must ensure that the Customer Information is accurate and up-to-date at all times.

21.3 Success Tutoring Owns the Customer Information Database

- (a) The Franchisee acknowledges and agrees that Success Tutoring owns any and all right, title and interest in and including any intellectual property rights, in and to the Customer Information.
- (b) The Franchisee must provide Success Tutoring with the Customer Information within 5 business days after receiving Success Tutoring's request for the Customer Information.

22 National Rewards and Marketing Programs

- (a) The Franchisee acknowledges and agrees to participate in national reward point programs and marketing programs as specified by Success Tutoring from time to time, including by signing all documents and complying with all obligations.
- (b) Prior to Success Tutoring requiring participation in a national reward point program or marketing program, Success Tutoring will undertake a consultation process with the franchisees in the Success Tutoring Network.
- (c) The parties acknowledge that Success Tutoring may, in its absolute discretion, require participation in a national reward point program or marketing program with a specified strategic corporate partner to be implemented under clause 22(a) provided that Success Tutoring has consulted with the Success Tutoring Network as set out in clause 22(b).
- (d) The Parties acknowledge that Success Tutoring will only require participation in a national reward point program or marketing program if, in Success Tutoring's opinion, the reward point program or marketing program is likely to:
 - (i) benefit the Success Tutoring Network;
 - (ii) result in a strategic business benefit;
 - (iii) create brand recognition within Success Tutoring's business in relation to the program; or
 - (iv) increase Success Tutoring's exposure to customers.
- (e) Where a strategic corporate partner requires that it only deals with a single entity, the Franchisee agrees that Success Tutoring can enter into, administer and where necessary terminate or amend any documents with the specified strategic corporate partner for the purposes of the Franchisee participating in a national reward point programs or marketing programs with specified strategic corporate partners as the Franchisee's agent.
- (f) The Franchisee agrees to be bound by the obligations, insofar as they relate to the Franchisee, under any agreement Success Tutoring enters into with a strategic corporate partner pursuant to clause 22(e).
- (g) The Franchisees agrees to the appointment referred to in paragraph 22(e).
- (h) Success Tutoring accepts the appointment referred to in paragraph 22(e).
- (i) During the Term of this Agreement and following the expiry or termination of this Agreement, the Franchisee will release Success Tutoring from any liability and indemnify Success Tutoring and hold it harmless for and against any and all claims, notices, demands, actions, proceedings, litigations, prosecutions, arbitration, investigation, judgement, award, losses, expenses, damages (including any legal costs) or liability for which it is held liable for which it incurs (including its solicitor and client costs, travel, investigation and living expenses of Success Tutoring employees) arising directly or indirectly out of:
 - (i) the Franchisee's breach of these conditions, or any other agreement (insofar as the agreement relates to the Franchisee) between Success Tutoring and a strategic corporate partner that Success Tutoring has entered into as agent for the Franchisee; or
 - (ii) the Franchisee's breach of any agreement between the Franchisee and a specified strategic corporate partner.

- (j) The indemnity set out in clause 22(i) excludes any loss arising out of any negligence or wilful misconduct by Success Tutoring.

23 Reporting, Records, Audit Obligations and Solvency Statements

23.1 Reporting

- (a) The Franchisee must report its Gross Revenue and other financial information in accordance with the reporting procedures set out in the Operations Manual from time to time.
- (b) The Franchisee must provide all information and reports as reasonably requested from time to time by Success Tutoring.

23.2 Records

- (a) The Franchisee must keep and maintain true, accurate and complete Records including accounts, books and data relating to the Franchised Business and the Premises.
- (b) All Records must be prepared in accordance with the Operations Manual and the Accounting Standards consistently applied and must be retained for a minimum period of seven (7) years following the year in which the Records were created.
- (c) Within 14 days of a request by Success Tutoring, the Franchisee must provide to Success Tutoring any information and copies and or access to the Records (including taxation records) as Success Tutoring requests in relation to the Franchised Business.

23.3 Verification of Records

- (a) Success Tutoring may use the Records to verify compliance with this Agreement and to provide benchmarking information to the Network.
- (b) The Franchisee authorises Success Tutoring to make inquiries and direct that Information be provided to Success Tutoring regarding the Franchised Business from Approved Suppliers, Customers, the Franchisee's bank and or trade creditors.

23.4 Inspection of Records

- (a) Success Tutoring and its Related Entities are authorised to enter the Premises during normal business hours without notice to inspect and copy the Records.
- (b) Success Tutoring and its Related Entities may conduct or supervise a physical inspection of the Franchised Business and the Premises in any manner it deems appropriate.
- (c) The Franchisee must fully co-operate with Success Tutoring when conducting, supervising or observing any such inspection.

23.5 Solvency Statement

- (a) The Franchisee must, within 24 hours of a demand from Success Tutoring, provide Success Tutoring with a statement declaring that there are reasonable grounds to believe the Franchisee will be able to pay its debts as and when they fall due (**Solvency Statement**), signed by:
 - (i) at least 1 director of the Franchisee (if the Franchisee is a company);
 - (ii) the individual (if the Franchisee is an individual);

- (iii) the trustee or a director of the trustee (if the Franchisee is a trust); or
 - (iv) at least 1 of the partners (if the Franchisee is a partnership).
- (b) The Franchisee must, within 5 days of a demand from Success Tutoring, provide Success Tutoring with a financial statement (**Supporting Financial Statement**) in the form specified by Success Tutoring to support the Solvency Statement.
- (c) For the avoidance of doubt, if:
 - (i) the Franchisee fails to provide the Solvency Statement or the Supporting Financial Statement within the time specified in, and in accordance with this clause 23.5(a); or
 - (ii) the Supporting Financial Statement fails to establish that the Franchisee is solvent;then such failure will constitute a breach of this Agreement.
- (d) If the Franchisee fails to provide the Supporting Financial Statement within the time specified in, and in accordance with, this clause 23.5, Success Tutoring may conduct an audit of the reports, financial statements and books of the Franchised Business to prepare the Supporting Financial Statement on behalf of the Franchisee (**Solvency Audit**) and may appoint an independent auditor to conduct the Solvency Audit.
- (e) The Franchisee must fully co-operate with Success Tutoring's reasonable requirements and those of the auditor, including by providing access to the Premises and the reports, financial statements and books of the Franchised Business to enable Success Tutoring or the auditor to conduct the Solvency Audit.
- (f) The Franchisee must reimburse Success Tutoring for the Costs incurred by Success Tutoring in conducting the Solvency Audit or engaging an auditor to conduct the Solvency Audit on its behalf.

23.6 Audit

- (a) Success Tutoring may appoint a representative to conduct an audit of the Franchisee's Records during normal business hours.
- (b) The Franchisee must cooperate with the auditor, provide full and free access to the Records and providing all information and explanations as reasonably requested by the auditor including answers to direct questions.
- (c) Success Tutoring will pay all costs associated with the audit unless the Franchisee:
 - (i) has underpaid an amount due and payable to Success Tutoring by more than 3%; or
 - (ii) has failed to or refused to comply with this clause 23.
- (d) If the audit reveals the events set out in clause 23.6(c) above, the Franchisee must pay or reimburse Success Tutoring for all the costs and expenses of the auditor and any other costs incurred by Success Tutoring and a consequence of the audit.

24 Insurance

24.1 Required Insurance

During the Term, the Franchisee must obtain and maintain insurance policies at the sole expense of the Franchisee in accordance with the terms of this clause 24 and such other insurances as may be required to comply with any Laws.

24.2 Certificates of Currency

Copies of all certificates of currency for the insurance policies must be provided to Success Tutoring by the Franchisee on or before the date of execution of this Agreement and upon reasonable notice by Success Tutoring at any time during the Term.

24.3 Insurance Coverage

The Franchisee must ensure that the insurance policies:

- (a) are obtained from a reputable insurer and note the interest of Success Tutoring in relation to:
 - (i) public liability insurance policy for a minimum coverage of \$10,000,000;
 - (ii) contents insurance;
 - (iii) and any other insurance required under the Lease.
- (b) name Success Tutoring as an interested party and be expressed to protect both Success Tutoring and the Franchisee and must require the insurer to defend both parties in any action;
- (c) provide cover of not less than the amount specified in respect of that insurance policy in respect of any single insurable event; and
- (d) be on such terms which a prudent proprietor of the Franchised Business would consider appropriate and necessary having regard to the nature of the Franchised Business.

24.4 Cancellation and alteration of the insurance policies

The insurance policies may not be cancelled by the Franchisee until the Franchisee provides Success Tutoring with no less than thirty (30) days prior written notice.

24.5 Increases to Coverage

Success Tutoring reserves the right to increase the minimum levels of insurance and the right to require additional or other types of insurance to be maintained by the Franchisee during the Term.

24.6 Reporting Claims

The Franchisee must promptly and in accordance with the terms of the relevant insurance policy report to both the insurer and Success Tutoring any claim, or event which may give rise to a claim, against the Franchisee or Success Tutoring.

24.7 Success Tutoring may affect insurance

If the insurance coverage required by Success Tutoring is not affected by the Franchisee, Success Tutoring may obtain the insurance coverage on behalf of the Franchisee. The Franchisee must:

- (a) execute any form required to obtain the insurance; and

- (b) pay on demand all costs incurred and premiums paid by Success Tutoring in obtaining insurance coverage on behalf of the Franchisee.

24.8 Business interruption pay-out

Where the Franchisee receives proceeds under a business interruption insurance policy, the Franchisee is liable to pay the Franchisor fees under this agreement as if the business was trading during that period of interruption or closure.

24.9 Indemnity

Compliance with the obligations set out in this clause 24 does not relieve the Franchisee of its obligations of indemnification as set out in clause 35.

25 Confidential Information

25.1 Obligations of Confidentiality

The Franchisee and the Guarantors acknowledge and agree that the Confidential Information is the valuable and confidential property of Success Tutoring and subject to clause 25.2, the Franchisee and the Guarantor will:

- (a) keep the Confidential Information confidential;
- (b) not directly or indirectly divulge or communicate or otherwise disclose the Confidential Information, in whole or part, to any third party without Success Tutoring's prior written consent;
- (c) not memorise, use, modify or reverse engineer the Confidential Information for any purpose other than the performance by the Franchisee of its obligations under this Agreement; and
- (d) take all reasonably necessary precautions to prevent the unauthorised disclosure of the Confidential Information to third parties or the unauthorised use of the Confidential Information.

25.2 Exceptions of Confidentiality

The obligations set out in clause 25.1 do not apply to any information that:

- (a) has entered the public domain, other than through a breach of this Agreement; or
- (b) is required to be disclosed by New Zealand Law, court order or a person acting under the authority of the New Zealand Law or such court order.

26 Conduct of Business on the Internet

26.1 Internet

- (a) The Franchisee must not conduct the Franchised Business or advertise for business over the internet unless permitted in the Operations Manual (which includes the right to advertise using social media) without Success Tutoring's prior written approval, which approval may be withheld by Success Tutoring in its absolute discretion.
- (b) The Franchisee acknowledges that Success Tutoring may conduct business via the internet (including the use of social media), which may be in competition with the Franchised Business, and that Success Tutoring is not obliged to compensate the Franchisee in respect of Success Tutoring's conduct of the business via the internet.

27 Restraint of Trade

27.1 Definitions

For the purposes of this clause 27:

- (a) **End Date** means the date this Agreement is terminated, ends or expires;
- (b) **Restrained Business** means a business, operation or activity which is:
 - (i) the same as or substantially similar to the Franchised Business;
 - (ii) competitive with the Franchised Business;
 - (iii) competitive with a material part of the Franchised Business.
- (c) **Restraint Area** means each of the following areas separately;
 - (i) within 2 kilometres from the premises of any franchisee in the Network;
 - (ii) the Territory.
- (d) **Restraint Period** means during the Term and for each of the following periods separately;
 - (i) 2 years from the End Date, or if that is not enforceable then;
 - (ii) 1 year from the End Date, or if that is not enforceable then;
 - (iii) 6 months after the End Date.

27.2 Restraints

During the Restraint Period the Franchisee, Centre Manager and the Guarantors (in any capacity including on its own account or as a member, shareholder, unitholder, director, partner, joint venturer, employee, trustee, beneficiary, principal, agent, adviser, contractor, consultant, manager, associate, representative or financier or in any other way or by any other means) jointly and severally covenant that, during the Restraint Period they will not directly or indirectly:

- (a) be Interested in a Restrained Business in the Restraint Area;
- (b) help or encourage any competitor of Success Tutoring in a way which might assist or enable it to conduct a business in the nature of a Restrained Business in the Restraint Area;
- (c) solicit, canvass, approach or accept the approach of any customer of the Franchised Business (including any former customer who was a customer of the Franchised Business within the preceding 12 months) with a view (express or implied) to procuring the business of that customer;
- (d) encourage or induce, or attempt encourage or induce, any person to terminate his or her office, employment or services arrangement with the Franchisor (or a related body corporate of the Franchisor) or the Franchised Business (including any person who was a director, employee or contractor of the Business within the preceding 12 months);
- (e) interfere with the relationship between the Franchisor (or a related body corporate of the Franchisor) or the Franchised Business and any customer, supplier, agent, independent contractor, distributor, licensee, officer, director or employee of the Franchisor (or a related body corporate of the Franchisor) or the Franchised Business (including any person who was a customer, supplier, agent,

independent contractor, distributor, licensee, officer, director or employee of the Business within the preceding 12 months);

- (f) use a logo, mark or name substantially the same or deceptively similar to any Intellectual Property owned by or licensed to the Franchisor (or a related body corporate of the Franchisor);
- (g) knowingly do anything that will, or might, adversely affect the Franchised Business or any member of the Network (except where that thing is otherwise permitted under this document);
- (h) disparage or otherwise make any statements to any person or persons whatsoever that may or may be likely to injure the commercial reputation of the Franchisor or a related body corporate of the Franchisor) or any member of the Network; or
- (i) assist or encourage any person to do any of the things referred to in this clause 27.2.

27.3 Associates

The Franchisee and the Guarantors must not assist and must use their best endeavours to ensure that their Associates and the Centre Manager do not directly or indirectly do any of the restrained activities specified in clause 27.2.

27.4 Restraints are Reasonable

The Franchisee and the Guarantors acknowledge and agree that each of the restraints imposed by this clause 27:

- (a) is reasonable in its extent (as to duration, geographical area and restrained conduct) having regards to the interest of each party to this Agreement; and
- (b) go no further than reasonably necessary to protect Success Tutoring' interests (and the legal personal representatives, transferees, successors and assigns of Success Tutoring) in respect of the reputation and goodwill of the System.

27.5 Injunctive Relief

The Franchisee and the Guarantors acknowledge that monetary damages may not be an adequate remedy to Success Tutoring in the event of a breach of the restraints imposed by this clause 27 and agree that Success Tutoring is entitled to seek injunctive relief if:

- (a) The Franchisee is in breach of the terms of this clause 27; or
- (b) Success Tutoring believes that the Franchisee is likely to be in breach of the terms of this clause 27.

27.6 Independent and Severable Restraints

The Franchisee and the Guarantors acknowledge and agree that:

- (a) each of the restraints in clause 27.2 resulting from the various combinations of the Restraint Periods and the Restraint Areas is a separate, severable and independent restraint; and
- (b) clause 27.4 applies to each of those restraints; and
- (c) this clause 27 shall survive the end of this Agreement; and
- (d) if, for any reason whatsoever, any part of this clause 27 is rendered void, unenforceable or otherwise ineffective, it will be deemed to be severed to the extent that it is void, unenforceable or otherwise ineffective and it shall not affect

the enforceability or effectiveness of the remainder of this clause 27 or any other terms or conditions of this Agreement.

28 **Transfer by Franchisee**

28.1 **Transfer by Franchisee**

- (a) The Franchisee must not transfer, sell, assign, charge or deal with (**Transfer**) its interest in the Franchised Business without Success Tutoring's prior written consent. Success Tutoring will not unreasonably withhold such consent.
- (b) A Change of Control, sale, assignment, transfer or dealing with the shares of the Franchisee or Guarantor is deemed to be a Transfer for the purposes of this clause 28.
- (c) To Transfer its interest in the Franchised Business, the Franchisee and Guarantor must give written notice to Success Tutoring setting out the relevant details of the proposed transferee (**Transferee**).
- (d) In the event that Success Tutoring consents to the Transferee or is deemed to have consented to the Transferee, the Franchisee and Guarantor must execute transfer documentation or a new franchise agreement for the remainder of the Term in a form satisfactory to Success Tutoring.
- (e) Upon completion of the Transfer, neither the Franchisee nor the Guarantors will be released from any liability in respect of the performance of any outstanding obligations under this Agreement, unless Success Tutoring agrees otherwise in writing.

28.2 **Conditions of Transfer**

It will be reasonable for Success Tutoring to withhold its consent to any written request by the Franchisee to transfer, sell, assign, charge or deal with its rights under this Agreement unless:

- (a) the Franchisee has paid (or made a provision to pay) the Transfer Fee to Success Tutoring;
- (b) Success Tutoring has first had an opportunity to exercise its right of first refusal in accordance with clause 28.3;
- (c) all trade creditors of the Franchised Business have been paid;
- (d) the Transferee agrees, at its sole expense, to maintain, refurbish or rebuild the Premises within 60 days of completion of the sale of the Franchised Business in accordance with clause 15.2 of this Agreement and the Success Tutoring Site Report provided to the Franchisee and Transferee on or before completion of the sale of the Franchise Business;
- (e) the Transferee and its guarantor sign the then current franchise agreement (which may contain substantially different terms to this Agreement) and other documents customarily used by Success Tutoring for its franchisees for the balance of the Franchisee's Term;
- (f) the Transferee and its nominated representatives meet Success Tutoring's selection criteria imposed upon existing or new franchisees and have the skills necessary to operate the Franchised Business and successfully complete the Initial Training;

- (g) the Franchisee, upon Success Tutoring's written request, provides the Transfer Retention Amount to Success Tutoring on completion of the sale of the Franchised Business;
- (h) the Franchisee pays to Success Tutoring any reasonable costs incurred in relation to the Transfer including any administrative costs and expenses, the Documentation Fee and any costs associated with training the Transferee;
- (i) the assignment is part of a bona fide sale, on arm's length terms, of the Franchised Business to the Transferee;
- (j) the assignment is not likely to, have a significant adverse effect upon Success Tutoring, its Related Entities or the Success Tutoring System;
- (k) the Transferee holds all necessary permits, registrations, memberships and licences required to operate the Franchised Business; and
- (l) the Transferee, its nominated representatives and its guarantor have sufficient financial and business capacity and are reputable, responsible and solvent.

28.3 Success Tutoring' Right of First Refusal

If the Franchisee receives a genuine offer that, subject to this clause 28.3, is binding on the third party that is not a Related Party to the Franchisee or Guarantors (**Third Party**) seeking to buy any of the Franchisee's interest in the Franchised Business in accordance with clause 28.1 and 28.2, the Franchisee must first offer to sell its rights and interests to Success Tutoring on the same terms as the offer received from the Third Party as follows:

- (a) the Franchisee must give Success Tutoring the details of the offer including the name and relevant details of the Third Party at the time the Franchisee requests consent to the Transfer;
- (b) Success Tutoring must notify the Franchisee if Success Tutoring accepts the offer within 14 days of receiving all the information sought under clause 28.3(a);
- (c) if Success Tutoring accepts the offer under clause 28.3(b), Success Tutoring will prepare the requisite documentation evidencing the Transfer and the parties will complete the Transfer within 60 days after the date of which the offer was accepted; and
- (d) if Success Tutoring rejects or fails to accept the offer under clause 28.3(b), the Franchisee may proceed with the Transfer on the terms set out in the offer provided to Success Tutoring under clause 28.3(a) to the Transferee provided that the Franchisee has complied with 28.1 and the conditions set out in clause 28.2 are satisfied.

If the terms of the agreed Transfer are changed, then Success Tutoring will have a new right of first refusal, and the Franchisee must not proceed with the transfer without first complying again with this clause 28.3.

28.4 Transfer Retention Amount

- (a) Success Tutoring will use the Transfer Retention Amount referred to in clause 28.2(g) for the sole purpose of satisfying any Costs or liabilities related to the Franchised Business which the Franchisee is liable for.
- (b) The balance (if any) of the Transfer Retention Amount which has not been expended pursuant to clause 28.4(a) will be returned to the Franchisee (in part or full) 45 days after completion of the sale of the Franchised Business.

28.5 Cooling Off on Transfer

- (a) In the event that Success Tutoring consents to the assignment of this Agreement from the Franchisee to the Transferee and the parties enter into a new franchise agreement, then the Franchisee may elect to terminate that new franchise agreement.
- (b) In the event that Success Tutoring consents to the assignment of this Agreement from the Franchisee to the Transferee without a new franchise agreement being entered into then the Transferee may cease to be the franchisee under this Agreement, on written notice to Success Tutoring and the outgoing Franchisee within the earlier of:
 - (i) the period of fourteen (14) days after the Transferee becomes the franchisee for the purposes of this Agreement; and
 - (ii) the period ending on the day the Transferee takes possession and control of the Franchised Business.
- (c) The outgoing Franchisee must take all reasonable steps to ensure that they remain ready and available to resume being the Franchisee under this Agreement in the event of an exercise by the Transferee of their right under Clause 28.5.
- (d) Where the Transferee has given notice under Clause 28.5, Success Tutoring must repay all payments made by the Transferee to Success Tutoring under this Agreement aside from the Documentation Fee and Retention Amount.

29 Transfer by Success Tutoring

- (a) The Franchisee Group acknowledge and agree that Success Tutoring may transfer, sell, assign, charge, delegate or otherwise deal with its right, title, interest and obligations under this Agreement during the Term.
- (b) The Franchisee and Guarantors must execute any document required by Success Tutoring within 14 days of a request by Success Tutoring to do so where such documents:
 - (i) state the last day of the Term of this Agreement and all other agreements between the parties;
 - (ii) certify that this Agreement and all other agreements between the parties are in full force and effect and have not been modified, amended or assigned;
 - (iii) certify that all obligations to be performed by Success Tutoring to date have been performed; and
 - (iv) certify that Success Tutoring is forever released from all further liability or obligation in respect of this Agreement, provided that the incoming transferee has agreed to be bound by Success Tutoring's obligations under this Agreement.

30 Breach and Termination

30.1 Breach

- (a) Success Tutoring may serve a Breach Notice on the Franchisee if any member of the Franchisee Group is in breach of a clause in this Agreement.

- (b) The Franchisee acknowledges and agrees that a breach of any Related Agreement is deemed to be a breach of this Agreement which will entitle Success Tutoring to serve a Breach Notice.

30.2 Termination for Franchisee Breach

Success Tutoring may terminate this Agreement immediately if the Franchisee Group has failed to remedy the breach in the reasonable time period specified in the Breach Notice, which need not be more than 30 days, by providing written notice to the Franchisee.

30.3 Success Tutoring may Remedy Franchisee Breach

At the sole cost of the Franchisee, Success Tutoring may in its sole and absolute discretion remedy a breach of this Agreement if the Franchisee fails to remedy that breach after having received written notice from Success Tutoring. The Franchisee will pay any costs incurred by Success Tutoring in remedying the breach.

30.4 Termination by Success Tutoring – Special Circumstances

Success Tutoring may terminate this Agreement on the provision of seven (7) days written notice to the Franchisee if any member of the Franchisee Group:

- (a) ceases to hold all permits, approvals, registrations, memberships and licences necessary to carry on the Franchised Business;
- (b) becomes bankrupt, insolvent (being not solvent in accordance with the solvency test set out in Section 4(1) of the Companies Act), under administration or an externally administered body corporate;
- (c) voluntarily abandons or threatens to abandon the Franchised Business or the franchise relationship;
- (d) is convicted of any serious offence;
- (e) operates the Franchised Business in a way that endangers public health or safety; and/or
- (f) is fraudulent in connection with the operation of the Franchised Business.

30.5 Success Tutoring to Operate Franchisee's Franchised Business

- (a) Success Tutoring (or its Associate or any third party nominee appointed by Success Tutoring) may enter the Premises and do any thing the Franchisor considers reasonably necessary to operate and manage the Franchised Business in accordance with this clause 30.5 (including directing the Franchisee to cease operating all or any part of the Franchised Business) in the event that:
 - (i) Success Tutoring has given written notice to the Franchisee in the circumstances outlined in Clause 30.4, and Success Tutoring reasonably considers that the continued operation of the Franchised Business by the Franchisee is likely to cause damage to the goodwill of the Franchised Business and/or the Network (irrespective of whether the 7 day notice period has elapsed);
 - (ii) any member of the Franchisee Group dies or becomes permanently incapacitated; and/or
 - (iii) any member of the Franchisee Group is in breach of this Agreement, for which notice has been otherwise given and the Franchisee has failed to rectify the breach within the time frame required by the notice.

- (b) In the event that Success Tutoring operates the Franchised Business in accordance with this clause 30.5, Success Tutoring will account to the Franchisee or the Franchisee's estate (as the case may be) for all net income from such operations less its reasonable expenses incurred and a reasonable management fee as remuneration for its operation of the Franchised Business up until termination of the Franchise Agreement.
- (c) Aside from any act of negligence by Success Tutoring, Success Tutoring will not be liable to the Franchisee when operating and managing the Franchised Business in accordance with this clause 30.5 and the Franchisee releases Success Tutoring from any liability whatsoever for its operation of the Franchised Business pursuant to this clause.
- (d) The Franchisee agrees to the appointment of Success Tutoring (or its Associate or nominee) as its agent during any period of operation of the Franchised Business pursuant to this Clause 30.5. The Franchisee must do all things necessary to provide Success Tutoring with an irrevocable authority to the Franchisee's nominated payment provider to redirect income held or received in respect of the Franchised Business to an account controlled by Success Tutoring and the Franchisee authorises Success Tutoring to pay expenses of the Franchised Business using the Franchisee's income and cash.

31 Effect of Termination or Expiry of Agreement

31.1 General Obligations

Immediately upon the termination or expiration of this Agreement, the Franchisee will:

- (a) cease to operate the Franchised Business and must cease to hold itself out as a member of the Network;
- (b) pay to Success Tutoring and all other trade creditors of the Franchised Business all the amounts owing under this Agreement and any other agreement;
- (c) sign all necessary documents to give effect to the expiry or termination of this Agreement; and
- (d) transfer to Success Tutoring or its nominee all telephone, facsimile, mobile phone numbers, e-mail addresses, social media accounts (without alteration) and domain names in relation to the Franchised Business;
- (e) if requested by Success Tutoring, use their best endeavours to assist Success Tutoring, in procuring an assignment or new Lease with the landlord.

31.2 Confidential Information Obligations

Immediately upon the termination or expiration of this Agreement, the Franchisee will:

- (a) cease to use, and shall withdraw from use, the Image, the Confidential Information, Trade Marks, Intellectual Property or any company or business name, trade mark or other commercial sign or identifier comprising or including any of the Intellectual Property or the Business Name or the Image;
- (b) deliver to Success Tutoring (at the sole cost of the Franchisee) the Operations Manual, all the Confidential Information, all items including the Intellectual Property and or the Image or at Success Tutoring direction, destroy the Operations Manual, all the Confidential Information and all items including the Intellectual Property and or the Image;

- (c) return to Success Tutoring all records, files, memoranda, guidelines, instructions, directions or correspondence containing information of Success Tutoring or about the System including, but not limited to, sales material, brochures, draft agreements, invoices, credit notes, stationery and any copies of the foregoing;
- (d) remove any signs, fixtures, logos or colour schemes on the Premises as Success Tutoring may reasonably request or permit a Success Tutoring representative to enter the Premises to remove such signs, fixtures, logos or colour schemes at the sole cost of the Franchisee; and
- (e) if the Franchisee itself or an Associate has a name, or is the registered proprietor of a company, business name or trade mark which comprises or includes any of the Intellectual Property or the Business Name or the Image or any combination or part of the foregoing or any other combination of letters, words or images which by their use, appearance or sound are the same as or similar to the Business Name or the Image for use in or for the identification of any business of the Franchisee or an Associate, the Franchisee must do all things necessary, and procure the Associate to do all things necessary, to transfer or cancel the registration and to cease to use all such names and marks.

31.3 No Release

- (a) The termination, end or expiry of this Agreement will not release the Franchisee from its performance of any covenant or agreement by which, in accordance with its terms, must be performed in whole or in part after the termination of this Agreement. The termination, end or expiry of this Agreement will not render such covenants or agreements unenforceable.
- (b) The termination of this Agreement will not abrogate, release, impair or extinguish any debt, obligation or liability of the Franchisee towards Success Tutoring whether the debt, obligation or liability accrues or arises before or after the termination, end or expiry of this Agreement.

31.4 Goodwill

The Franchisee Group acknowledges that it has no interest in the goodwill established in the Franchised Business, the Intellectual Property or the System on the termination, end or expiry of this Agreement.

31.5 Tripartite Deed Indemnity

The Franchisee must indemnify and must keep indemnified Success Tutoring and its Related Entities against all and any liabilities, losses, claims, damages, demands, costs and expenses whatsoever which Success Tutoring or its Related Entities may suffer or incur by reason of any Tripartite Deed (including the Franchisee's financier requiring Success Tutoring to operate the Franchised Business on its behalf). Success Tutoring and its Related Entities may enforce this right of indemnity at any time including before Success Tutoring and its Related Entities have incurred the liability, loss or cost.

31.6 Clauses to Survive Termination, End or Expiry

Despite any other provisions of this Agreement, clauses 1, 16, 21, 25, 27, 31,32, 35, 36 40, 41 and any indemnities or clauses intended to survive by their nature, shall survive the expiry, end or termination of this Agreement.

31.7 Success Tutoring's Option to Purchase the Remaining Items From the Franchisee

- (a) The Franchisee grants to Success Tutoring an option, but not the obligation, to purchase all or part of the Franchisee's remaining Approved Equipment, Fit Out,

IT Requirements, Approved Products and any other assets of the Franchised Business provided they are free from any and all encumbrances (**Remaining Items**).

- (b) The Remaining Items will be valued as follows:
 - (i) in relation to the Approved Equipment, the lower of cost and written down value;
 - (ii) in relation to the Approved Products, the lower of cost and net realisable value (to be determined in accordance with the Accounting Standards); and
 - (iii) in relation to all other Remaining Items, one dollar (\$1.00).
- (c) To exercise the right under this clause 31.7(a), Success Tutoring must provide the Franchisee with notice of its intention to purchase the Remaining Items within two (2) weeks of the date of termination, end or expiry of this Agreement.
- (d) The completion of the purchase of the Remaining Items will take place within a reasonable time and at a reasonable place to be determined by Success Tutoring.
- (e) Success Tutoring may set-off against the agreed purchase price for the Remaining Items any amounts then owed by the Franchisee under this Agreement or any other agreement between the Franchisee Group and Success Tutoring and its Related Entities.

32 Interest

32.1 Entitlement to Interest

The Franchisor shall be entitled to charge the Franchisee interest at the Default Interest Rate calculated daily on any amounts owing to the Franchisor under this Agreement or otherwise.

32.2 Calculation of Interest

The interest payable shall be calculated from (and including) the due date of payment of the amount (and not from the date of any demand for payment of such amount) until (but excluding) the date that payment of the due amount in full is received.

33 Warranties

33.1 General Warranties

The Franchisee represents and warrants to Success Tutoring that:

- (a) if the Franchisee is a company, it is a limited liability company and is registered and validly existing under the laws of New Zealand;
- (b) it has full legal capacity and power to enter into this Agreement and all corporate action has been taken that is necessary or desirable to authorise its entry into this Agreement; and
- (c) to its knowledge, there are no actions, claims, proceedings or investigations pending or threatened against the Franchisee.

33.2 Capacity as Trustee

Where the Franchisee enters into this Agreement in the capacity as trustee (**Trustee**) of a trust (**Trust**) under any trust deed or other instrument (**Trust Deed**), then the Trustee enters into this Agreement both as trustee of the Trust and in personal capacity.

33.3 Restrictions

Subject to Success Tutoring's prior written consent, the Franchisee agrees that the Trust Deed will be provided to Success Tutoring, the Trust Deed will not be altered, amended, varied or revoked, the Trustee will not retire or be removed as trustee and no restrictions on the Franchisee's rights of indemnity out of the asset of the Trust will be created. The rights of Success Tutoring will at all times have priority over the rights of the beneficiaries to the assets of the Trust.

33.4 Trustee Warranties

The Trustee (both in its own capacity and in its capacity as trustee of the Trust) represents and warrants to Success Tutoring that:

- (a) The Trust has not been terminated under the Trust Deed, the Trustee is not in default of the Trust Deed;
- (b) All necessary resolutions have been passed as required by the Trust Deed and its constitution (where applicable) in order to make this Agreement fully binding on the Trustee;
- (c) the Trustee is the sole trustee of the Trust;
- (d) the execution of this Agreement is for the benefit of the Trust; and
- (e) the Franchisee will exercise all rights of indemnity which the Franchisee may possess as Trustee and enjoy in relation to the Trust assets on Success Tutoring's demand.

34 Franchisee Independent of Success Tutoring

The business of the Franchisee is independent from the business of Success Tutoring and this Agreement does not constitute, and shall not be interpreted as, an agency, partnership or joint venture between Success Tutoring and the Franchisee. In accordance with this clause 34:

- (a) the Franchisee must conduct the Franchised Business as a business independent of Success Tutoring and clearly identify on all signage, stationery and the like that the Franchised Business is being operated pursuant to a franchise agreement from Success Tutoring; and
- (b) the Franchisee must not represent that it has the authority to act on behalf of Success Tutoring either in the capacity as a partner or agent, or that either party is a joint venturer, employee or fiduciary of the other.

35 Indemnity by Franchisee

- (a) During the Term of this Agreement and following the expiry or termination of this Agreement, the Franchisee will release Success Tutoring from any liability and indemnify Success Tutoring and hold it harmless for and against any and all claims, notices, demands, actions, proceedings, litigations, prosecutions, arbitration, investigation, judgement, award, losses, expenses, damages (including any legal costs) or liability for which it is held liable or which it incurs

(including its solicitor and client costs, travel, investigation and living expenses of Success Tutoring employees) arising directly or indirectly out of:

- (i) the Franchisee's breach of this Agreement, or any other agreement between Success Tutoring and the Franchisee;
 - (ii) any damage or loss of property arising out of the operation of the Franchised Business;
 - (iii) any injury to any person arising out of the operation of the Franchised Business;
 - (iv) the negligent or wilful misconduct by the Franchisee, its Related Entities, its Associates or any employee, agent or contractor of the Franchisee; and
- (b) The indemnity set out in clause 35(a) excludes the Franchisee's obligation to indemnify Success Tutoring for any loss arising out of any negligence or wilful misconduct by Success Tutoring.

36 Security

36.1 Circulating Security Interest

Until the Franchisee pays all monies owing to the Franchisor and its Associate, under this agreement or otherwise, the Franchisee hereby expressly grants the Franchisors a security interest in all its present and after acquired property (**Security Interest**) as per the PPSA.

36.2 Additional Documents

The Franchisee must do all things required by the Franchisor to formalise the Security Interest, including but not limited to executing the Franchisor's standard form Deed of General Security. The absence of more formal documentation does not invalidate the Security Interest granted in this Agreement.

36.3 Information

During the Term, the Franchisee shall provide all relevant information and do all things necessary to enable the Franchisor to register the Security Interest on the Personal Property Securities Register ('PPSR'). The Franchisee further acknowledges that it will not, or not allow, another security interest to be registered on the PPSR prior to the Company registering the Security Interest.

36.4 Release

Upon payment of all monies by the Franchisee to the Franchisor, the Franchisor undertakes to access the PPSR and release the Security Interest granted by the Franchisee.

36.5 Waiver of rights

Until such time as the Security Interest has been released by the Franchisor, the Franchisee acknowledges that it waives its rights in respect of the following, to the full extent permitted by the PPSA:

- (a) to require that the Franchisor requests its prior written consent in respect of dealing with the Franchisee's assets;
- (b) to receive notices; and
- (c) to receive verification statements.

36.6 Credit reports

The parties acknowledge that confidentiality shall not apply to the extent required for compliance PPSA and for the purpose of allowing the Franchisor to obtain a credit report in respect of the Franchisee.

37 Dispute Resolution

37.1 Dispute Notice

If any dispute between the parties arises out of or in connection with this Agreement (**Dispute**), the party claiming that a Dispute has occurred must deliver to the other party a written notice setting out the nature of the Dispute, the outcome the complainant wants and what action the complainant believes will settle the Dispute (**Dispute Notice**).

37.2 Resolution of Dispute

- (a) The parties must then try to resolve the dispute by discussion (whether in person or by virtual attendance technology or by in writing, as it mutually agreed.
- (b) If the parties are unable to resolve the dispute within 21 days, either party may refer the matter to mediation.
- (c) If the parties cannot reach agreement on a mediator within 3 weeks, then a mediator is to be appointed by the President of the New Zealand Law Society.
- (d) The mediator appointed for the dispute may decide the time and place for mediation.
- (e) The parties are to bear the costs of the mediator equally.
- (f) The parties must attend the mediation and try to resolve the dispute.
- (g) For subclause 37.2(f) a party is taken to attend mediation if the party is represented at the mediation by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.
- (h) If at least 30 days have elapsed after the day that mediation began and the dispute has not been resolved then either party may terminate the mediation process.
- (i) Subject to clause 37.2(j), nothing in this clause 37 affects the rights of the parties to this agreement from taking legal proceedings under this agreement.
- (j) A party may not commence proceedings in respect of a dispute unless it has complied with this clause 37 and until the procedures in this clause 37 have been followed in full, except where the party seeks injunctive relief in relation to a dispute from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned or following those procedures would be that a limitation period for a cause of action relevant to the issues in dispute will expire.
- (k) Notwithstanding the existence of a dispute, the parties must continue to perform their respective obligations under this agreement to the extent that such obligations are not the subject of the dispute.

38 **GST**

38.1 Taxable Supply

If the supply of goods or services by one party (**Supplier**) to another party (**Recipient**) under this Agreement is a taxable supply, then the amount due to the Supplier for that supply will be the sum of:

- (a) the amount that is payable under this Agreement by the Recipient for that supply (or, if no amount is payable, the value of that supply); and
- (b) the amount of GST payable by the Supplier in respect of that supply.

38.2 Tax Invoice

The Recipient's obligation to pay to the Supplier the amount by which consideration is increased under clause 38.1 is subject to the Supplier first providing to the Recipient a tax invoice conforming with the requirements of the GST Act.

38.3 Penalties and Interest

If a party becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of another party to comply with the terms of this clause 38, that other party shall pay to the first party an additional amount on demand equal to the amount of those penalties and interest.

38.4 Definitions

In this clause 38, any expression used that is defined in the GST Act has that defined meaning.

39 **Notice**

39.1 Valid Notice

A notice, consent or other communication under this Agreement is only effective if it:

- (a) is in legible writing, in English and addressed to the intended recipient; and
- (b) is signed by the sender (if an individual) or by an authorised representative of the sender; and
- (c) is given to the addressee by:
 - (i) delivery in person; or
 - (ii) post to, or leaving at, that party's address for service; or
 - (iii) sending by email to the party's email address; and
- (d) is regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person or by being left at the party's address for service, upon delivery;
 - (ii) if by post, two (2) Business Days from and including the date of posting by ordinary prepaid post in respect of an address for service within New Zealand and twenty-one (21) Business Days in respect of other any address; or
 - (iii) if by email, when legibly received by the addressee, receipt being deemed to have occurred unless the sender receives an error notification within 1 hour of sending;

but if the delivery or receipt occurs on a day which is not a Business Day or at a time after 5.00 pm (both the day and time being in the place of receipt) it is regarded as having been received at 9.00am on the next following Business Day.

39.2 Address for Service

For the purposes of this clause, the service address for each party is specified in item 26 of the Schedule.

40 Guarantee and Indemnity

40.1 Guarantee

- (a) The Guarantors unconditionally and irrevocably guarantee to Success Tutoring the punctual performance by the Franchisee of its obligations under this Agreement (including, without limitation, the payment of any amounts due and payable to Success Tutoring).
- (b) The Guarantors are liable hereunder as a principal obligor.

40.2 Indemnity

The Guarantors indemnify and must keep indemnified Success Tutoring against all and any liabilities, losses, claims, damages, demands, costs and expenses whatsoever which Success Tutoring or its Related Entities may suffer or incur by reason of any breach or non-payment of the Franchisee under this Agreement. Success Tutoring may enforce this right of indemnity at any time including before Success Tutoring has incurred the liability, loss or cost.

40.3 Failure to Make Payment of Money

If the Franchisee defaults in the payment of any amounts due and payable to Success Tutoring under this Agreement, the Guarantors must immediately pay that outstanding amount to Success Tutoring whether or not Success Tutoring has demanded that the Franchisee pay that outstanding amount.

40.4 Failure to Perform or Comply with Obligations

If the Franchisee does not comply with any of its obligations under this Agreement, the Guarantors must immediately comply with those obligations whether or not Success Tutoring has demanded that the Franchisee comply with those obligations.

40.5 Guarantee as a Continuing Obligation

The guarantee and indemnity in this clause 40 is a continuing obligation which will not be discharged by any matter or thing (including without limitation, part payment or part performance by the Franchisee).

40.6 Events that will not affect the Guarantee

The Guarantors acknowledge and agree that the Guarantors' obligations under this clause 40 will not be affected or discharged by:

- (a) the Bankruptcy of the Franchisee;
- (b) Success Tutoring granting any time or other indulgence to the Franchisee or Guarantors;
- (c) the novation, assignment or variation of this Agreement;

- (d) any compromise or settlement entered into between Success Tutoring and the Franchisee (including Success Tutoring agreeing not to sue the Franchisee);
- (e) any other event, act, neglect, omission, or default on Success Tutoring's part as a result of which the the Franchisee's or the Guarantors' liability to Success Tutoring would, but for this provision, have been affected or discharged; or
- (f) the failure of any of the Guarantors or any other party to execute this Agreement.

40.7 Indemnity on disclaimer

If a liquidator or trustee in bankruptcy disclaims this Agreement, the Guarantor indemnifies Success Tutoring against any resulting loss.

40.8 Guarantors not to prove in liquidation or bankruptcy

Until all money payable to Success Tutoring under this Agreement is paid, the Guarantors must not do any of the following, without the consent of Success Tutoring:

- (a) exercise a right of contribution or indemnity against the Franchisee;
- (b) prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors; or
- (c) claim any dividend it receives in trust for Success Tutoring.

40.9 Guarantee to continue on assignment of rights

If Success Tutoring assigns its rights under this Agreement, the benefit of the guarantee and indemnity in this clause 40 extends to the assignment and continues concurrently for Success Tutoring benefit regardless of the assignment unless Success Tutoring releases the Guarantors in writing.

40.10 Security

The Guarantors hereby grant Success Tutoring an equitable charge over all of their present and after acquired property, including but not limited to a registrable charge over all real estate, as security for the guarantee granted by them.

41 General Conditions

41.1 Further Assurances

Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.

41.2 Severability

Any provision in this Agreement which is invalid must be read down to the minimum extent necessary to achieve its validity and if applicable, be severed from this Agreement in any other case without invalidating or affecting the remaining provisions of this Agreement.

41.3 Non-Merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.

41.4 Relationship

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, or principal and agent or of trustee and beneficiary.

41.5 Waiver

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) 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.

41.6 Joint and Several Liability

Any provision of this Agreement which binds more than one person binds all of those persons jointly and each of them severally. Each obligation imposed on a party by the Agreement in favour of another is a separate obligation.

41.7 Entire Agreement

This Agreement embodies the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other agreements and understandings concerning the subject matter of this Agreement and any warranty, representation, guarantee or other term and condition of any nature not contained in this Agreement is of no force or effect.

41.8 No Amendments without Agreement

This Agreement may not be modified, discharged or abandoned unless such an amendment is agreed to by a document signed by the parties.

41.9 Survival of Indemnities

Unless this Agreement expressly provides otherwise each indemnity in this Agreement survives the expiry or termination of this Agreement and a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

41.10 Counterparts

- (a) This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- (b) This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, each person named as a party to this Agreement.

41.11 Jurisdiction and Governing Law

This Agreement is to be governed by and construed in accordance with all applicable laws in force in New Zealand from time to time and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

41.12 Announcements

The Franchisee and the Guarantors must not make or authorise to be made any public announcements relating to the negotiations between the parties, the existence and terms of this Agreement, the Franchised Business or the Network unless:

- (a) they have received Success Tutoring's prior written consent; or

- (b) they are required to do so in order to comply with any Law or regulatory body.

41.13 Right of Set-Off

- (a) The Franchisee has no right of set-off against a payment due to Success Tutoring; and
- (b) Success Tutoring has the right of set-off against any payment due to the Franchisee.

41.14 Power of Attorney

- (a) The Franchisee irrevocably appoints Success Tutoring to be its true and lawful attorney with the power to, where the Franchisee is in breach of this Agreement, do all acts, matters and things and sign and execute all such deeds, transfers, documents and writings as may be necessary or desirable to comply with this Agreement including the power to do any and all acts, execute and deliver all instruments necessary to give effect to any act which the Franchisee may do pursuant to clause 30.3.
- (b) The Franchisee agrees to ratify all and whatsoever the attorney lawfully may do or cause to be done pursuant to the terms and conditions contained in this Agreement.

41.15 Approvals and Consents

Except to the extent expressly provided to the contrary in this Agreement, a party may conditionally or unconditionally give or withhold any consent in its absolute discretion and is not obliged to give its reasons for so giving or withholding its consent.

41.16 Costs

The Franchisee must pay for its own legal costs and Success Tutoring's legal costs for:

- (a) the preparation and completion of this Agreement being the Documentation Fee;
- (b) the seeking of any consents and approval under this Agreement;
- (c) any Transfer by the Franchisee and Guarantor, being the Documentation Fee;
- (d) any Tripartite Deeds required as a consequence of financial arrangements of the Franchisee;
- (e) any variation to this Agreement by the Franchisee and Guarantor;
- (f) any breach of this Agreement by the Franchisee and Guarantor;
- (g) enforcing the remedies available under this Agreement; and
- (h) termination of this Agreement by Success Tutoring.

41.17 Special Conditions

Any conditions set out in item 28 of the Schedule form part of this Agreement. If there is any inconsistency between a provision of the special conditions and a provision of this Agreement, the provision of the special conditions prevail to the extent of the inconsistency.

41.18 Privacy




The Franchisee agrees to be bound by the provisions contained in the *Privacy Act 2020* (NZ).

Schedule

Details

Item	Description
1. Franchisee	Name: XXXXXXXX
	Address: XXXXXXXX
	Company Number XXXXXXXX
2. Guarantor(s)	Name: XXXXXXXX
	Address: XXXXXXXX
3. Commencement Date	The commencement date in the Lease for the Premises
4. Fit Out Period	The Fit Out Period is the period starting on the later of the Commencement Date or receipt of possession of the Premises by the Franchisee and ending 6 weeks later.
5. Premises	To be agreed between the Franchisee and Franchisor in writing
6. Territory	The area specified in Annexure A
7. Initial Term	5 years commencing on the Commencement Date
8. Renewal Terms	<p>(a) 5 years commencing on the expiry of the Initial Term (First Renewal Term)</p> <p>(b) 5 years commencing on the expiry of the First Renewal Term (Second Renewal Term)</p>
9. Business Name	Success Tutoring – XXXXXXXX NZ
10. Initial Franchise Fee	\$50,000 plus GST
11. Documentation Fee	\$3,000 plus GST
12. Initial Training Fee	Included in Success Pack Fee
13. Success Pack Fee	\$15,000 plus GST
14. Design and Documentation Fee	\$2,000 plus GST (if applicable)
15. Opening Promotion Spend	\$15,000 plus GST
16. Royalty	<p>The greater of:</p> <p>(a) 8% of the Gross Revenue plus GST; or</p> <p>(b) the Minimum Royalty, per Month.</p>
17. Minimum Royalty	\$2,200 plus GST increased by 3% on 1 July each year.
18. Marketing Fund Fee	<p>Not currently applicable</p> <p>The Franchisor reserves the right to charge a Marketing Fund Fee of not more than 3% of Gross Revenue plus GST if the Franchisor implements a Marketing Fund in the future however if it does so the Franchisor will revert the Local Marketing Spend to an optional basis.</p>
19. Local Marketing Spend	2% of Gross Revenue per Month.

Success Tutoring Franchise Agreement

20. Trade Marks	Trade Mark No.	Details	Class	Status
	N/A		N/A	N/A
	N/A	Success Tutoring	N/A	N/A
	N/A 		N/A	N/A
	N/A	Motivate Inspire Uplift	N/A	N/A
	N/A		N/A	N/A
21. Retention Amount	The sum of \$3,000 plus any costs incurred by Success Tutoring on behalf of the Franchisee such as stationary, uniforms and equipment.			
22. Relocation Fee	\$5,000 plus GST			
23. Renewal Fee	\$3,000 plus GST			
24. Transfer Fee	\$5,000 plus GST			
25. Transfer Retention Amount	\$10,000 to be retained by Success Tutoring for 45 days after completion of the sale of the Franchised Business.			
26. Notice	Success Tutoring	Attention: Michael Black		
		Address: c/- Lock & Partners Limited, Level 3, 16 College Hill, Freemans Bay, Auckland 1011 New Zealand		
		Email: michael@successtutoring.com		
	Franchisee	Attention: XXXXXXXX		
		Address: XXXXXXXX		
		Email: XXXXXXXX		
	Guarantor(s)	Name: XXXXXXXX		
		Address: XXXXXXXX		
		Email: XXXXXXXX		
27. Minimum Performance Criteria	a) You must participate in a minimum of 4 conferences per year (noting these will generally be held virtually and on a monthly basis). b) You must fully participate in all mandatory marketing initiatives. c) You must remain open for trade for a minimum of:			

	<ol style="list-style-type: none">a. Outside of school holidays: 4 days per week (and 3 hours per day open); andb. During school holidays: 2 days per week (and 2 hours per day open).
28. Special Conditions	<ol style="list-style-type: none">1. You are granted a X month Royalty free period from the Commencement Date.2. For the avoidance of doubt, the Special Conditions shall not apply to any renewal term or renewal agreement.

Annexure A Territory Map

The '[INSERT]' territory set out in '[INSERT]' below:

TEMPLATE

Annexure B Success Pack

Success Pack Inclusions	
1.1 Furniture & Decor*	Quantity
1 Student Folder Shelving	2
2 Light Blue Soft Rug	1
3 Orange Student Chairs	30
4 Timber Student Desks	12
5 Student Prize Cabinet	1
6 Bean Bags	2
1.2 Office Supplies & Appliances*	Quantity
7 50" TV	1
8 TV Wall Hanger	1
9 Stapler	2
10 Hole Puncher	1
11 Plastic Sleeves	100
12 Student Certificates	50
13 Folder Stickers	50
14 Bin	2
15 Colours	2
16 Stamps	2
17 Sissors	2
18 First Aid Kit	1
19 Blue, Red and Black Pens	1
20 Small Desk Whiteboards	4
1.3 Marketing Equipment*	Quantity
21 Business Cards	250
22 Shopping Promo Stand	1
23 Success Tutoring Promotional Flag	2
1.4 Company Merchandise*	Quantity
24 Success Tutoring Student Folders	100
25 Success Tutoring Logo Stickers	2000
26 Success Tutoring Pens	250
27 Success Tutoring Staff Polo Shirt	10
28 Tote bags	100
29 Lanyards	100

Execution Page

EXECUTED as an agreement on

EXECUTED by SUCCESS TUTORING NEW)
ZEALAND LIMITED (CN 9295789) in)
accordance with section 180 of the)
Companies Act 1993)

.....
Signature of sole Director / Secretary

.....
MICHAEL BLACK

.....
Name of sole Director / Secretary
(Please print)

EXECUTED by XXXXXXXX (CN XXXXXXXX) in)
accordance with section 180 of the)
Companies Act 1993)
)

.....
Signature of Director/Secretary

.....
Signature of Director/Secretary

.....
Name of Director/Secretary
(Please print)

.....
Name of Director/Secretary
(Please print)

SIGNED by XXXXXXXX in the presence of:)
)

.....
Signature of Witness

.....
Signature of XXXXXXXX

.....
Name of Witness
(Please print)