

Franchise Agreement

This is an agreement made between

Sample Franchisor Ltd

And

Sample Franchise Ltd

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2 Definitions

In this Agreement (including the Introduction):

- “**Advertising Fee**” means a fee paid to the Franchisor to be accumulated and dispersed as specified in this agreement for the purposes of advertising and marketing the franchise on a collective basis outside the Territory;
- “**Associations**” means the industry associations or groups applicable to the industry or industry in which the franchise operates;
- “**Approved Apparel**” means clothing or uniforms that are deemed acceptable by the Franchisor or specified from time to time by the Franchisor;
- “**Authority**” means any Central or Local Government, Central or Local Government departments, authorities, statutory corporations, statutory bodies or any other bodies or boards with authority in relation to the Business;
- “**Brand Identification**” means the registered or unregistered trade names, trademarks, service marks, branding, brand identity, Marks, Business Name, colours, logos or devices set out in Item 13 of Schedule 1 or as may at any time be used by the Franchisor and approved for use by the Franchisee in relation to the Branding and customer recognition of the Franchise System;
- “**Brand Image**” means the graphical image for the Franchise System comprising the Business Name, Branding, Marks, Logo, colour schemes, font, designs, web page, layout, stationary, signage, uniforms and livery defined in the Operations Manuals or Branding Manuals or as otherwise stipulated by the Franchisor at any time;
- “**Business**” means the franchise business conducted by the Franchisee;
- “**Business Day**” means any day other than a public holiday;
- “**Commencement Date**” means the date of commencement of this Agreement set out in Item 1 of Schedule 1;
- “**Company Products**” means all products and associated products made available by the Franchisor and company for Franchisee;
- “**Confidential Information**” means all information relating to financial information; accounting procedures; techniques; intellectual property or information; trade secrets or other data; specifications, processes, patents, techniques, inventions, systems; planning or marketing procedures; know-how, identity of supplier and customers; the contents of any Manuals; the terms and conditions of this Agreement; all commercially valuable information regarding the current or future business interests or affairs of the Franchisor and Franchisee and its related businesses, or any person or entity with which the Franchisor deems confidential. All such information, in whatever such form it may take or be recorded or stored or disseminated and whether originated by the Franchisor or any other party;
- “**Deed of Confidentiality**” means a confidentiality deed between the parties or between any parties to this agreement and any other party outside this agreement;
- “**Disclosure Document**” means the document obtained by the Franchisee from the Franchisor prior to the Franchisee entering into this Agreement disclosing information about the Franchise and Franchisor;
- “**Equipment**” means the equipment listed in Item 1 of Schedule 2;
- “**Equipment Fee**” means the fee for the supply of the Equipment to the Franchisee, as set out in Item 6 of Schedule 1;

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7 Franchise Manuals

The Franchisee must operate the Business strictly in accordance with the processes, policies, instructions and standards as specified in the Manuals. The Manuals contain information relating to business practices, standards, specifications, use of stationery, procedures, training, the Business Name, Branding Image, Branding Identification and Business Systems prescribed at any time by the Franchisor for the operation of the Business.

7.1 Ownership of Manuals

The Franchisor will retain proprietary ownership of the Manuals including the intellectual property contained within the Manuals including the Business Name, Branding Image, Branding Identification and Business Systems and Know-How.

7.2 Loan of Manuals

The Franchisor will loan the Manuals to the Franchisee during the Term of this Agreement.

7.2 Franchisee Compliance

The Franchisee must comply and must ensure its personnel comply with all of the business practices, standards, specifications, use of stationery, procedures and obligations set out in the Manuals.

7.3 Conflict of Provisions

The provisions of this Agreement will prevail should there be any conflict between the provisions of this Agreement and the provisions of the Manuals,

7.4 Right to Vary Manuals

The Franchisor has the right to amend, vary and revise the contents of the Manuals at any time and in any manner as the Franchisor in its absolute discretion sees fit. Should the Franchisor wish to vary, amend or revise the Manuals, then the Franchisor will advise the Franchisee of any variations, amendments or revisions in writing by instruction to the Franchisee and by supplying the Franchisee a copy of any variations, amendments or revisions to be inserted into the Manuals.

7.5 Variation Effective After Three Days

Any variations, amendments or revisions to the Manuals will be deemed to be effective three (3) Business Days after the Franchisor has notified the Franchisee, unless the Franchisor specifies a later effective date in such notice.

7.6 Innovations

The Franchisee agrees to promptly disclose to the Franchisor all Innovations to the Systems defined in the Manuals, whether or not protectable intellectual property and whether created by or for the Franchisee or employees. All Innovations will be deemed the Franchisor's sole and exclusive property and works made-for-hire for the Franchisor. The Franchisor has the right to incorporate Innovations into the System and may use them and authorize the Franchisee and others to use them in the operation of the Business. Innovations will then also constitute Confidential Information. The Franchisor will disclose to the Franchisee the Innovations that are made a part of the System. To the extent any Innovation does not qualify as a work made-for-hire for the Franchisor, the Franchisee assigns ownership of that Innovation, and all intellectual property and other rights to the Innovation, to the Franchisor and agrees to sign and deliver such instruments and documents, and provide such assistance and perform such other acts as the Franchisor periodically designate in order for the Franchisor or its designee to obtain exclusive rights in such Innovations. The Franchisor will have no obligation to make any lump sum or other payments to the Franchisee or any other person with respect to any such Innovations. The Franchisee will not use, nor will allow any other person to use, any

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- 11.1 Branding and Signage**
The Franchisee must display the Business Name, Branding Image and Branding Identification and any Signs in the manner specified by the Franchisor and specified in the Manuals.
- 11.2 Branding or Signs Restrictions**
The Franchisee must obtain the prior written consent of the Franchisor to display on the Premises and Vehicle of any trademark, logo or emblem other than those specified with the Business Name, Branding Image and Branding Identification and identified in the Manuals.
- 11.3 Cost of Signage**
The Franchisee will pay for all costs associated with updating the display of signs bearing the Business Name, Branding Image and Branding Identification.
- 11.4 Business Promotion**
The Franchisee must use its best endeavours to promote the Business and the Business Name, Branding Image and Branding Identification.
- 11.5 Promotional Material**
The Franchisee must ensure that any stationery, advertising and promotional material includes a statement approved by the Franchisor that specifies that the Business is operated as an independent business of the Franchisee under license from the Franchisor, and as specified in the Manuals to this effect.
- 11.6 Other Advertising**
Prior consent of the Franchisor must be gained by the Franchisee before using any advertising or promotional material not supplied by the Franchisor.
- 11.7 Adherence to Manuals**
The Franchisee must follow the procedures and guidelines outlined in the Manuals when undertaking any advertising, marketing or promotional activity.

12 Use of Company Products

- 12.1 Exclusive Promotion**
The Franchisee exclusively must promote the sale and supply of Company Products. The Products include, but are not limited to, the Products specified in Schedule 2.
- 12.2 Alternative Sources**
The Franchisor may, at its sole discretion, permit the Franchisee to promote and sell products from other sources that the Franchisor deems to be suitable for the clients of the business. Should the Franchisor permit the sale of such items, then the turnover and profitability figures will be included in the Gross Revenue figures of the Franchisee.
- 12.3 Sufficient Quantity**
The Franchisee must at all times ensure that the Business has sufficient quantities of the Franchises Products.
- 12.4 Limitation of Supply**
The Franchisee will not supply any Company Products to a competitor of the Franchisor without the prior written consent of the Franchisor.
- 12.5 Franchisor Benefits**
The Franchisee acknowledges that the Franchisor:

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16 Personnel

16.1 Key Personnel

The Franchisee will;

- (a) submit a list of Key Personnel to be employed by, or be involved in the management of the Business; and
- (b) must immediately notify the Franchisor if any of the Key Personnel are no longer involved in the Business or leave the Franchisee's employment; and
- (c) The Franchisee must promptly submit to the Franchisor the names, experience and background of any person proposed to be employed in the business.

16.2 Employment of Personnel

The Franchisee will at all times employ suitably experienced, qualified and trained personnel.

16.3 Representations to Employees

Under no circumstances will the Franchisee hold out to any employee or prospective employee that they are or will be employed by the Franchisor. The Franchisee will give to each of its employees (in addition to any employment documentation required by any Local or Government Authority) a letter containing a clear statement that the employee is not an employee of the Franchisor.

16.4 Responsibility for Personnel

The Franchisee is responsible for any income tax, annual leave, long service leave, sick leave, parental leave, workers compensation, superannuation, educational and training expenses, termination payments and any other taxes, duties, benefits or entitlements in respect of the Franchisee's personnel as required by law. The Franchisee must comply with relevant employee and workers' legislation in all dealings with employees.

16.5 Personnel Conducting Business

The Franchisee and all personnel of the Franchisee while conducting the Business must:

- (a) observe a high standard of dress and appearance, personal hygiene and always act in a professional manner; and
- (b) display consistent courtesy to all clients, general public and to all personnel of the Franchisor.

16.7 Sub-Contractor Restrictions

The Franchisee may not appoint sub-contractors for the Business, unless approved in writing by the Franchisor.

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23 Insurance

23.1 Insurance required

Prior to commencing the Business, and at all times throughout the Term of this Agreement, the Franchisee will put in place and maintain the following insurance policies to the satisfaction of the Franchisor;

- (a) **Motor Vehicle Insurance**
A comprehensive motor vehicle insurance policy to cover any Vehicles against all loss or damage and to cover the Franchisee against any claims by third parties arising from any accident in which a Vehicle is involved.
- (b) **Property Insurance**
An insurance policy to cover all risks to all property of any nature which is used in the Business (whether such property is owned or leased). Such insurance cover is to include (without limitation) the Equipment and Company Products. The property must be insured against all risks and perils which a business owner would commonly insure for an amount not less than the full insurable value calculated on a replacement basis without deduction for depreciation;
- (c) **Public Liability Insurance & Professional Indemnity**
A public risk liability insurance policy including (without limitation), cover for all claims for personal injury, death, property damage, contractual liability and contingent liability for an amount of not less than One Million Pounds (£1,000,000) arising out of any single event or series of events;

<<Insert any other forms of Insurance you may require for the Franchisee>>

All such insurance policies must:

- (a) wherever possible, contain a provision that the insurance cannot be terminated or varied for any reason (including for the non-payment of any premium) unless the Franchisor has received ten (10) Business Days' prior notice of any proposed termination or variation from the insurer; and
- (b) be with a reputable insurer approved by the Franchisor; and
- (c) should the Franchisor have an insurable interest then the policy is to be in the joint names of the Franchisor and the Franchisee, and name the Franchisor (where appropriate) noted as the loss payee or interested party where applicable.

23.2 Business Commencement

Before entering into each of the insurances policies, the Franchisee must make full, true and accurate disclosure to each proposed insurer of all facts which are material to the insurer's risk and which if not disclosed may void the insurance. The Franchisee must then deliver to the Franchisor a copy of each policy together with a Certificate of Currency for each policy before commencing the Business.

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27 Guarantees

- 27.1** The Guarantor has requested the Franchisor to grant the license to operate the Business to the Franchisee and in consideration of the Franchisor agreeing to such request, the Guarantor hereby:
- (a) guarantees to the Franchisor the due performance and compliance by the Franchisee of all the terms and conditions of this Agreement that are to be performed or complied with by the Franchisee and, for the purposes of this guarantee, the Guarantor will be regarded as personally bound by the provisions of this Agreement; and
 - (b) indemnifies and agrees to keep indemnified the Franchisor against all loss, damage, costs and expenses suffered or incurred by the Franchisor as a result of any failure by the Franchisee to perform or comply with any of the terms and conditions of this Agreement.
- 27.2** The Guarantor acknowledges that the liability of the Guarantor will not be affected by reasons of any of the following:
- (a) there is any extension or renewal of this Agreement or any other agreement between Franchisor and the Franchisee; or
 - (b) the Franchisor may grant time or any other indulgence to the Franchisee in respect of all or any of the obligations of the Franchisee under this Agreement; or
 - (c) there is any assignment by or replacement of the Franchisor or the Guarantor; or
 - (d) any other person becomes a party to this Agreement; or
 - (e) the Franchisee may avoid liability on the ground of any invalidity or irregularity in the execution of this Agreement; or
 - (f) there is available to the Franchisee or to the Guarantor any defense at law in respect of liability under this Agreement and the Guarantor hereby waives all such defenses the Guarantor may have (if any); or
 - (g) the Franchisor for any reason has not exercised, or does not exercise, all or any of the rights or remedies available to the Franchisor against the Franchisee to satisfy any liability of the Franchisee; or
 - (h) the Franchisee or the Guarantor is wound up or made bankrupt or is otherwise subject to some form of insolvency administration or management; or
 - (i) any obligation on the part of the Franchisee may still be current or outstanding; or
 - (j) there is the acceptance of termination of this Agreement by either the Franchisor or the Franchisee or of any other agreement between the Franchisor and the Franchisee; or
 - (h) there is any moratorium or legislation or court order staying or suspending any of the Franchisor's rights, remedies or recourse against the Franchisee or the Guarantor; or
 - (i) the Franchisee, the Guarantor or the Key Personnel dies; or

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31.2 Consent to Sell

The Franchisee must not transfer the whole or any part of the Business or this Agreement without the consent of the Franchisor.

In determining whether or not to grant consent the Franchisor shall, among other things, have regard to:

- (a) **Suitable Purchaser**
The proposed purchaser is respectable, competent and financially responsible, have sufficient financial resources and the ability to run the Business to the satisfaction of the Franchisor; and
- (b) **Terms of Sale Acceptable to the Franchisor**
The terms and conditions of the proposed contract of sale between the Franchisor, the Franchisee and the proposed purchaser are acceptable to the Franchisor; and
- (c) **No Existing Breach**
No existing breaches by the Franchisee under this Agreement which have not been waived by the Franchisor; and
- (d) **Training**
The proposed purchaser will be required to attend the current training programme offered by the Franchisor. The cost of the training programme shall be borne by the proposed purchaser and payment will be completed prior to the commencement of the training course; and
- (e) **Availability after Sale**
The Franchisee will make themselves available during normal business hours for a period of three (3) weeks after the date of the transfer to introduce the proposed purchaser to existing clients within the Territory and to facilitate any additional training at the place of Business as deemed necessary by either the Franchisor or proposed purchaser; and
- (f) **Payment of Outstanding Accounts**
The Franchisee paying to the Franchisor all amounts due by the Franchisee to the Franchisor under this Agreement up to the date of the sale of the Business; and
- (g) **New Franchise Agreement**
The proposed purchaser will enter into a new Franchise agreement for a new term containing the same provisions as are contained in the standard Franchise agreement of the Franchisor at the time of sale. The Franchisee and proposed purchaser acknowledge the terms and conditions of the new agreement may differ from those included in this Agreement due to factors including (but not limited to) technological changes, changes in the Business operating systems of the Franchisor and economic conditions prevailing at the date of sale; and
- (h) **Transfer Fee**
The Franchisee paying to the Franchisor, on the date of completion of the sale of the Business, the Transfer Fee as specified in the Schedule; and
- (i) **Franchisor's Costs**
The Franchisee agrees to pay all costs incurred by the Franchisor, including any legal, documentation and traveling costs incurred by the Franchisor in regards to the sale of the Business.

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