



AGREEMENT OF FRANCHISE

made this (insert day, month, year) between:

.....
.....

("Franchisor"),

.....
.....
(description)

having its registered office at (insert address)

.....
.....

("Franchisor")

and

.....
.....
("Franchisee"),

.....
.....

(description and address)

(hereinafter called the "Franchisee")

Consumer Protection Act 68 of 2008 right of cancellation in terms of Section 7(2)

The following paragraph has been inserted to give effect to Regulation 2(2)(a) in Regulation in terms of Consumer Protection Act (promulgated on 1 April 2011).

In terms of Section 7(2) of the Consumer Protection Act, a franchisee may cancel a franchise agreement without cost or penalty within 10 business days after signing such agreement, by giving written notice to the franchisor.



Regulation 2(2)(b) states that every franchise agreement must contain provisions which prevent:

- unreasonable or overvaluation of fees, prices or other direct or indirect consideration;
- conduct which is unnecessary or unreasonable in relation to the risks to be incurred by one party;
- conduct which is not reasonably necessary for the protection of the legitimate business interest of the franchisor, franchisee or Business System.

1 Franchisor's business

The Franchisor has originated a Business System for the purpose of establishing and operating a (describe the nature of the Franchised Business) and is the owner of certain Intellectual Property rights used together with the Business System;

2 Franchisee

The Franchisee desires to establish and operate the business of (nature of Franchised Business) and for this purpose to use the Franchisor's Business System and Intellectual Property rights;

3 License of use of the Franchised Business

The Franchisor hereby licenses such use subject to the terms and conditions of this agreement.

Consumer Protection Act 68 of 2008 acknowledgments

4 Consumer Protection Act acknowledgment

The Franchisor acknowledges that it is not entitled to any direct or indirect compensation from suppliers from its franchisees or franchise systems, unless the fact thereof is disclosed in writing with an explanation of how it will be applied.

5 Disclosure document

The Franchisee acknowledges that it has received a disclosure document at least 14 days before the date of this Agreement, as required in terms of Regulation 3(1) of the Consumer Protection Act 68 of 2008 and is satisfied with its contents.

6 Pre-Agreement certificate

The Franchisee acknowledges that it received a certificate along with the disclosure document stated above on an official letterhead from a person eligible in law to be registered as the accounting officer of a close corporation, or the auditor of a company, as the case may be, certifying that the Franchisor complies with all the necessary requirements as set out in Regulation 3(3) promulgated under the Consumer Protection Act 68 of 2008.

7 Current list of Franchisees

The Franchisee acknowledges that it received a list of all current franchisees of the Franchisor along with the disclosure document stated above, which complies with all the requirements as set out in Regulation 3 (4) promulgated in terms of the Consumer Protection Act 68 of 2008.



FRANCHISE AGREEMENT

1 Definitions

Unless otherwise determined by the context, the following words will bear the following meanings:

1.1 “Business System”

means the system of operating (nature of Franchised Business) devised and originated by the Franchisor and recorded in the Operating Manual, and includes any improvements or variations made to the Business System;

1.2 “Commencement Date”

means (the date on which the franchise starts);

1.3 “Designs”

means the registered Designs listed in Annexure “A”, together with such further registered Designs as may be specified in an addendum to this agreement and signed by both parties;

1.4 “Franchised Business”

means the business of (specify nature of Franchised Business) conducted in accordance with the Business System using the Intellectual Property;

1.5 “Copyright”

means all rights of Copyright whether existing now or in the future in and to:

1.5.1 the Operating Manual;

1.5.2 the fixation of the Know-how, whether incorporated in the Operating Manual or in any other documentation;

1.5.3 (other forms of Copyright which may appertain to the business, for example menus in the case of a fast food franchise);

1.6 the “Goodwill”

means the Goodwill arising out of the use of the Business System and the Intellectual Property by the Franchisor and all its Franchisees, including the Franchisee;

1.7 “Intellectual Property”

includes, but is not limited to the:

- Designs;
- Know-how;
- Copyright;
- Goodwill;
- Trade Dress;
- Trade Marks;
- Trade Secrets;
- Patents;

1.8 “Know-how”

includes all confidential technical and commercial information relating to the operation of the existing Business System, including, without limitation, information contained in the Operating Manual or other documents together with unrecorded information known to individuals who are office bearers or employees of the Franchisor. Technical information includes all:



- specifications;
- methods of production or manufacture;
- recipes; and
- formulae developed by the Franchisor.

1.9 “Net Sales”

means (include a definition of how Net Sales are arrived at; a possible definition is: Net Sales means the value of total amounts received by the Franchisee from any source for the Franchised Business, excluding value added tax (VAT), on an arm’s length basis, less any bona fide (good faith) trade discounts given and the value of any goods returned);

1.10 “Operating Manual”

means the Franchisor’s ordinary Operating Manual, as amended and supplemented by further written directions and regulations, giving details of the Business System and Intellectual Property and imparting the Know-how;

1.11 “Patents”

means the registered patents listed in Annexure “B”, together with such further registered patents that may be specified in an addendum to this agreement and signed by both parties;

1.12 “Premises”

means (describe the premises from which the Franchisee will operate the Franchised Business);

1.13 “Termination Date”

means (the date upon which the franchise will terminate because a period of time has elapsed);

1.14 the “Territory”

means (where the Franchisee is given a geographical Territory within which to operate it is described here);

1.15 “ Trade Dress”

includes the get-up for any:

- goods; • labels; and • packaging.

as well as the particular form of design and decor of the Premises from which the Franchised Business is conducted;

1.16 “Trade Marks”

means the registered and unregistered Trade Marks listed on Annexure “C”, together with such other registered and unregistered Trade Marks which the Franchisor may adopt and designate for use in connection with the Franchised Business from time to time;

1.17 “Trade Secrets”

include all confidential information of whatever nature relating to the business of the Franchisor and its other Franchisees, the Business System and the Intellectual Property.



2 Grant of franchise

The Franchisor hereby grants to the Franchisee a licence for the duration of this agreement to operate the Franchised Business from the Premises strictly in accordance with the Operating Manual and subject to the terms and conditions of this agreement. The licence will start with effect from the Commencement Date and terminate on the Termination Date unless otherwise terminated in accordance with the provisions of this agreement.

3 Duties of the Franchisor

3.1 Subject to payment

The Franchisor will, provided that the initial payment referred to in sub-clause 4.1 has been made:

3.1.1 disclose the Business System to the Franchisee and make available the Intellectual Property rights licensed to the Franchisee in terms of this agreement;

3.1.2 deliver to the Franchisee the items listed in Annexure "D" to this agreement.

3.2 Advice to establish Franchise Business

The Franchisor will advise the Franchisee of the following matters relating to the establishment of the Franchised Business on the Premises:

3.2.1 the design and decor of the Premises;

3.2.2 suitable building, shop-fitting, electrical, sign writing and other such contractors;

3.2.3 sources of supply of equipment, furnishings and (detail other items which the Franchisor will assist the Franchisee in acquiring);

3.2.4 (list other applicable forms of advice the Franchisor will provide; eg advice on initial advertising and promotional campaign, advice on initial staff requirements, etc).

The Franchisee will be responsible for entering into contracts with suppliers and contractors and for ensuring that the terms of such contracts are performed timeously. The Franchisor will not be obliged either to give any instructions to contractors or suppliers or to intervene in any dispute which may arise between the Franchisee and any of its contractors or suppliers.

3.3 Training

The Franchisor, in consultation with the Franchisee, will determine which of the Franchisee's employees (including the Franchisee personally if a natural person) must undergo training in the Business System.

- This training will take place at the commencement of this agreement at a place chosen by the Franchisor and the extent and duration of any training will be determined by the Franchisor.
- The Franchisor will provide such training free of cost to these persons. However, the Franchisee will be responsible for the payment of all the expenses, including travel expenses and subsistence of a trainee as well as the trainee's salary payable during the training period.

3.4 Training replaced employee

In the event of any of the persons required to undergo a course of training ceasing to act in the Franchised Business, the Franchisor must provide the persons who will act in the business in their place with similar training.

- Training will be provided free of charge by the Franchisor. (Alternatively: The Franchisee will pay the Franchisor for such training at the Franchisor's standard hourly rate for such training stipulated from time to time.)



- The Franchisee will be responsible for the payment of all the trainee's expenses including travelling expenses and subsistence as well as the trainee's salary payable during the training period.

3.5 Disclosure

The Franchisor will disclose improvements and developments in the Business System to the Franchisee and will provide free of charge further training to the Franchisee and other persons engaged in the conduct of the Franchised Business as the Franchisor considers necessary. The Franchisee will be responsible for all the expenses of the persons undergoing such training, including travel expenses and subsistence as well as their salaries payable during the period of training.

3.6 Resolving problems

The Franchisor will assist the Franchisee in trying to overcome problems which the Franchisee may experience in operating the Franchised Business. The following terms will then apply:

- The Franchisor will make certain members of its management staff which the Franchisee considers suitable available to the Franchisee as soon as is reasonably practicable.
- The Franchisee will be responsible for the expenses of a staff member in travelling from the office of the Franchisor to the Franchisee's Premises together with the subsistence of the staff member for the duration of the staff member's attendance on the Franchisee.
- (The Franchisor will not make any charge for the attendance of the Franchisor's staff for the first two man days or part thereof (or other specified period) in any calendar month.
- Thereafter the Franchisor will be entitled to make a charge for the services of its staff at its current hourly charge-out rate for the services of its staff from time to time. The charge-out rate current at the commencement of this agreement is R..... per hour and will increase at the beginning of each calendar year by (insert)% of the rate for the preceding calendar year.)

(The Franchisor may wish to provide for a charge for its services to be made at the outset in which case the part of the clause in brackets will be replaced by the following: The Franchisor will be entitled to make a charge for the services of its staff at its current hourly charge-out rate for the services of its staff from time to time. The charge-out rate current at the commencement of this agreement is R..... per hour and will increase at the beginning of each calendar year by (insert)% of the rate for the preceding calendar year.)

3.7 Service facilities

The Franchisor will make available to the Franchisee all services and facilities which the Franchisor makes available to its other Franchisees. The Franchisor will furnish on loan to the Franchisee a copy of all updates and amendments to the Operating Manual issued by it. Where improvements and additions to the Business System involves improvements and additions to the Intellectual Property these will be disclosed to the Franchisee and will form part of the Intellectual Property the use of which is licensed to the Franchisee in terms of this agreement.

3.8 Procuring supplies, services and equipment

The Franchisor will assist the Franchisee in procuring supplies, services and equipment necessary for the operation of the Franchised Business and will pass on to the Franchisee any trade discounts obtained from suppliers.

3.9 Restriction on Franchise Business

The Franchisor will not operate or license another to operate the Franchised Business within the Territory.



Alternatively:

The Franchisor will not operate or license another to operate the Franchised Business within the Territory unless the Franchisee is first offered the right to operate the proposed new Franchised Business on terms no more onerous than those set out in this agreement.

4 Royalties

- 4.1 Within seven days after the signature of this agreement by the Franchisee, the Franchisee will pay the Franchisor the sum of R..... by way of an initial payment for the rights granted in terms of this agreement and for the equipment and other items as referred to in clause 3.1.2 of this agreement and for the advice, assistance and training given by the Franchisor to enable the Franchisee to establish the Franchised Business.
- 4.2 A royalty week is calculated from the opening of business on a Monday to the close of business on the Sunday following.

Alternatively:

A royalty month is calculated from the opening of business on the first working day of a month until the close of business on the last working day of the same month.

- The Franchisee will pay the Franchisor a royalty calculated at the rate of (insert)% on Net Sales, together with VAT or any similar tax or levy as may be imposed on it.
 - Royalties will be paid weekly (monthly) in arrears within three days after the end of each royalty week (royalty month).
 - Simultaneously with each royalty payment the Franchisee will furnish the Franchisor with a complete and accurate royalty statement in a form stipulated by the Franchisor from time to time. (The Franchisor may by written notice to the Franchisee require that royalty statements submitted by the Franchisee in terms of this paragraph be certified as correct by the Franchisee's auditors.)
- 4.3 (The Franchisee will pay the Franchisor a marketing or advertising contribution calculated at the rate of (insert)% of Net Sales, together with VAT or any similar tax or levy as may be imposed thereon from time to time.
- The marketing or advertising contribution will be paid weekly or monthly in arrears simultaneously with the royalty payment for the respective royalty week or month.
 - The marketing or advertising contribution will be applied in the manner decided upon by the Franchisor towards advertising, promotion, publicity, market research and other marketing programmes and related activities.)
- 4.4 All payments which are required to be made by the Franchisor in terms of this agreement will be made without deduction or demand and free of bank charges to such address within the Republic of South Africa as may be stipulated by the Franchisor.

5 Obligations of the Franchisee

5.1 Operation of Franchised Business

The Franchisee will operate the Franchised Business strictly according to the Business System and will adhere strictly to the Operating Manual, supplemented by any written specifications and directions as may be laid down or given by the Franchisor. The Franchisee will have the right to use, and agrees to use, the Trade Marks in relation to the Franchised Business provided the Franchisee conducts the Franchised Business strictly according to the terms of this agreement and the Business System.



5.2 Conformity with other Franchised Businesses

The Franchisee must ensure that the Franchised Business conforms with other Franchised Businesses operated in accordance with the Business System.

- The Franchisee acknowledges that this is essential to the successful operation of the Franchised Business and other businesses operated in accordance with the Business System.
- It is also essential for the proper protection of the Intellectual Property, in particular the Trade Marks and the Goodwill.
- The Franchisee will protect and promote the Goodwill associated with the Franchised Business and all Goodwill generated by the conduct of the Franchised Business will inure to the benefit of the Franchisor.

5.3 Trained persons only

The Franchisee will not start with conducting Franchised Business until the persons referred to in clause 3.3 have undergone the training referred to in that sub-clause. The Franchisee will not permit any person to act or assist in the Franchised Business in the place of persons trained in accordance with sub-clause 3.3 unless such person has undergone a course of training referred to in clause 3.4 and has been approved as competent by the Franchisor.

5.4 Engaging of other parties

The Franchisee will on and after the Franchised Business starts engage all staff and other persons required for the operation of the Franchised Business. The Franchisee will ensure that all staff who are not required to be trained by the Franchisor in terms of this agreement are nevertheless adequately trained in the Business System to the satisfaction of the Franchisor where this is necessary for the performance of their duties.

5.5 No prior knowledge of Business Systems

The Franchisee acknowledges that neither he nor his employees have any prior knowledge of the Business System or any aspect of the Know-how or the Trade Secrets.

- The Franchisee will not divulge or permit to be divulged to any person any aspect of the Business System, the Know-how or the Trade Secrets otherwise than for the purposes of this agreement.
- The Franchisor may by written notice to the Franchisee specify which of the Franchisee's employees are required to sign a secrecy undertaking and no such person will be employed in the conduct of the Franchised Business until he or she has signed such a secrecy undertaking which will be in a form stipulated by the Franchisor.

5.6 Protection of Intellectual Property

The Franchisee will not do, cause or permit anything to be done which may adversely affect the Intellectual Property or the Franchisor's rights in the Intellectual Property. The Franchisee will bring to the attention of the Franchisor any infringement or threatened infringement of the Intellectual Property which may come to its attention. The Franchisee will give all reasonable assistance to the Franchisor to enable the latter to further or defend its rights in the Intellectual Property.

5.7 Acknowledgment of ownership

The Franchisee acknowledges that the Franchisor is the owner of all rights of whatever nature in the Intellectual Property and that it has no claims of any nature to either the Business System or to any element of the Intellectual Property. The Franchisee will not at any time attack or challenge the rights of the Franchisor to the Intellectual Property or induce or procure any other person to attack or challenge such rights.



5.8 Advertising or promotional activities

The Franchisee will not advertise or conduct promotional or marketing activities without the prior written approval of the Franchisor. The Franchisee will use and display such point of sale or advertising or promotional matter as the Franchisor may stipulate from time to time.

5.9 Written consent to start Franchised Business

The Franchised Business will only be carried on from the Premises unless the Franchisor gives its prior written consent to the conduct of the Franchised Business from any other Premises.

5.10 Operating hours

The Franchised Business will be open between the hours of (state the opening hours) each day of the week (if the Franchised Business is only to be open from Mondays to Saturdays, this must be stated), provided that the Franchisee will not be obliged to open the Franchised Business on (state the public or religious holidays on which the Franchised Business will not be open).

5.11 Engaging in other business ventures

While this agreement remains in force, the Franchisee will not engage directly or indirectly in any capacity in any other business venture which is in the nature of the Franchised Business, without the prior written consent of the Franchisor. (If members of the Franchisee are to be similarly restrained, this should be stated and the members concerned should be parties and signatories to the agreement).

5.12 Required licences

The Franchisee will obtain any and all statutory licences required to conduct the Franchised Business. The Franchisee will comply in the conduct of the Franchised Business with all applicable laws, by-laws and regulations of any competent authority.

- The Franchisee will maintain the Premises in a good, clean and sanitary condition.
- The Franchisee will also at its cost redecorate or refurbish the Premises when reasonably required to do so by the Franchisor in order to ensure that the Premises are in the same condition as those of other Franchisees. The above services will be carried out by a supplier or other party nominated by the Franchisor or approved in writing by the Franchisor.

5.13 Payment of suppliers

The Franchisee will pay its suppliers promptly in accordance with their usual terms and conditions of supply.

(If the Premises are subject to a lease with a lessor other than the Franchisor, the following clause may be inserted: The Franchisee will adhere strictly to the terms contained in the lease agreement pertaining to the Premises and will notify the Franchisor within 48 (forty eight) hours of any notification received from the landlord for the Premises.)

5.14 Conduct towards employees of other franchisees

The Franchisee will not induce employees of other of the Franchisor's franchisees to leave their employment and take up employment with the Franchisee.

5.15 Keeping records

The Franchisee will keep and maintain at the Premises, in a form approved by the Franchisor, full and accurate books of account and all underlying or supporting records and vouchers relating to the Franchised Business and will permit the Franchisor or its duly authorised representative at all reasonable times to carry out such inspections or investigations which they may consider necessary for the purposes of ascertaining whether the provisions of this agreement are being complied with. The Franchisee will ensure that he and his employees co-operate fully in such inspections or investigations.



5.16 Indemnity

The Franchisee will indemnify the Franchisor and keep it indemnified against all claims of whatever nature, unless otherwise specified in law, whether real or imagined, criminal or civil, together with any legal fees and costs incurred by the Franchisor, arising out of the establishment and operation of the Franchised Business by the Franchisee.

5.17 Purchase of items

The Franchisor may in its discretion designate in writing items which are to be purchased by the Franchisee either from the Franchisor or from a supplier specified by the Franchisor. The Franchisor will take reasonable steps to procure that such items are not more expensive than comparable items purchased from other suppliers after taking into account any additional costs which may be occasioned by the labelling or packaging of the items specifically for the purposes of the Business System.

5.18 Notice of franchise agreement

The Franchisee will give notice in such places on the Premises as the Franchisor may require and upon all stationery, advertising matter and other documents or printed material used by it in connection with the Franchised Business as the Franchisor may direct that the Franchised Business is operated in terms of a franchise agreement with the Franchisor and that the Franchisee is using the Intellectual Property under licence from the Franchisor. Such notice will contain such other information as the Franchisor may deem necessary to inform third parties that the Franchisor does not accept any liability for the acts, omissions, debts or defaults of the Franchisee.

5.19 Insurance policies

The Franchisee will maintain such policies of insurance as may be stipulated by the Franchisor from time to time and will ensure that all insurance premiums are paid promptly.

- The Franchisee will procure that the interest of the Franchisor in such policies is noted thereon. The Franchisee will procure that a note is made on all policies maintained by it in accordance with the provisions of this agreement that the insurer will notify the Franchisor in the event of the late payment of any premium by the Franchisee.
- The Franchisee will furnish the Franchisor with all receipts for the payment of premiums on request. The Franchisee will not cause or permit any breach of any insurance policy maintained under the provisions of this agreement.
- The Franchisee will give the Franchisor notice of any claim arising or made under a policy of insurance required to be maintained in terms of this agreement.

6 Trade marks

- 6.1 If requested to do so by the Franchisor, the Franchisee agrees to join the Franchisor in making application to the proper authority for the registration of the Franchisee as the registered user of the Trade Marks and undertakes to execute such documents as may be necessary for that purpose.
- 6.2 The Franchisee will not in any way represent that it has any rights of any nature in the Trade Marks or in any registrations thereof and all use of the Trade Marks will inure to the benefit of the Franchisor.
- 6.3 The Franchisee will not register any of the Trade Marks, or any part of them, or any trade mark which is deceptively or confusingly similar to the Trade Marks, as part of its company or close corporation name or the name of any subsidiary company or company with which it is associated either directly or indirectly and if it does so, it will procure that such company or close corporation name is changed upon demand by the Franchisor.



- 6.4 When using the Trade Marks, the Franchisee will cause them to be reproduced exactly and accurately and in accordance with specifications and directions laid down by the Franchisor from time to time.
- 6.5 Upon termination of this agreement for whatever reason:
- 6.5.1 the Franchisee will immediately cease any further use of the Trade Marks;
- 6.5.2 the Franchisee will hand over to the Franchisor all dies, blocks, labels, advertising matter, printed matter or the like featuring the Trade Marks which were obtained from or which he was authorised to use by the Franchisor;
- 6.5.3 the Franchisee will do such acts as may be necessary to procure the cancellation of itself as a registered user of the Trade Marks. For this purpose the Franchisee hereby appoints the Franchisor as its agent in rem suam (in its own interest) to do all such acts and to sign all such documents as may be reasonably necessary to procure such cancellation.

7 Operating manual

- 7.1 All of the provisions of the Operating Manual, any new edition of the Operating Manual, and any amendments to or revisions of the Operating Manual form part of this agreement. If however there is any conflict between the terms of this agreement and a provision in the Operating Manual, the provisions of this agreement will prevail.
- 7.2 The Franchisee will not make any copies of the Operating Manual without the Franchisor's prior written consent and upon termination of this agreement will return all copies of the Operating Manual to the Franchisor.

8. No cession, assignment (transfer of rights) or lease

- 8.1 The rights and obligations of the Franchisee are personal and may not be ceded, assigned, let or otherwise disposed of in any manner whatsoever without the prior written consent of the Franchisor. (In the case where the Franchisee is a close corporation, limited liability company, partnership or trading trust, no change of membership, shareholding, directors, partners, trustees or beneficiaries may take place without the prior written consent of the Franchisor.)
- 8.2 In particular the Franchisee may not sell the Franchised Business without the prior written consent of the Franchisor.
- 8.3 The Franchisor may in its discretion give consent to the sale of the Franchised Business provided the prospective purchaser meets the following criteria: (List these depending on the nature of the Franchised Business).

9 Death or incapacity of the Franchisee

- 9.1 If the Franchisee is a natural person, on the death of the Franchisee the Franchisor may approve the transfer of the Franchised Business to any of the beneficiaries of the deceased Franchisee.
- Such person(s) will be required to assume the management of the Franchised Business as soon as is practicable once they have bound themselves to observe the terms and conditions of this agreement.
 - Pending such transfer, the Franchisor will be entitled to assume the control and management of the Franchised Business and to operate it on behalf of the representative of the deceased estate of the Franchisee, and for the benefit and account of the deceased estate of the Franchisee provided that:
- 9.1.1 the Franchisor will be entitled to charge its usual fee for the conduct and management of the Franchised Business, and the Franchisor is hereby authorised to do all things and to sign all documents reasonably necessary for the purposes of conducting and managing the Franchised Business;



- 9.1.2 if the Franchisor does not approve the transfer of the Franchised Business to a beneficiary in terms of clause 9.1.1, the representative of the deceased estate of the Franchisee may dispose of the Franchised Business to such person as may be approved of by the Franchisor, for such sale price and upon such terms and conditions as may be agreed upon between the person concerned and the representative of the deceased estate of the Franchisee;
- 9.1.3 the purchaser of the Franchised Business may not take transfer thereof until he has bound himself to the terms and conditions of this agreement, and pending such sale and transfer, the Franchisor may operate and manage the Franchised Business on behalf of and for the account of the estate of the deceased Franchisee. The Franchisor will be entitled to charge its usual fee for managing and conducting the Franchised Business and will be authorised to do all things and to sign all documents reasonably necessary to enable it to conduct and manage the Franchised Business.
- 9.2 If the Franchisee consists of a partnership, then, subject to the approval of the Franchisor upon such terms and conditions for such approval as it may determine, the interest of a deceased partner in the partnership may be transferred to any of the remaining partners or to a beneficiary of the deceased partner.
- Failing such transfer, the interest of the deceased partner in the partnership may be sold and transferred to such person or persons as may be approved of by the Franchisor, upon such terms and conditions as may be agreed upon between the transferee and the representative of the estate of the deceased partner.
 - Such transfer of the deceased interest may take place only once the beneficiary or transferee concerned has bound himself to the terms and conditions of this agreement. The Franchisor, if it deems it expedient, may, pending any transfer of the interest of a deceased partner, participate in the control and management of the Franchised Business and will be entitled to charge its usual fee for such participation, payable by the Franchisee.
 - The Franchisor will be authorised to do all things and to sign all documents reasonably necessary to enable it to participate in such management and control of the Franchised Business.
- 9.3 If the Franchisee is a close corporation or a limited liability company, then, upon the death of a member or shareholder, the deceased member's interest or share may, subject to the approval of the Franchisor upon such terms and conditions for approval as the Franchisor may determine, be transferred to the remaining members or shareholders of the close corporation or limited liability company or the beneficiaries of the deceased member or shareholder. Failing such transfer, the interest or shares of the deceased member or shareholder may be sold and transferred to such person or persons as may be approved of by the Franchisor upon such terms and conditions as may be agreed upon between the transferee and the representative of the estate of the deceased member or shareholder.
- The Franchisor may, if it deems it expedient, and pending the transfer of the interest or share of the deceased member or shareholder, participate in the control and management of the Franchised Business and will be entitled to charge its usual fee for such participation, payable by the Franchisee.
 - The Franchisor will be authorised to do all things and to sign all documents reasonably necessary for the purposes of participating in such control and management of the Franchised Business.
- 9.4 At and after the commencement of the franchise, the parties will determine who are key staff members (including the Franchisee if he is a natural person, and partners, members and directors of the Franchisee as the case may be).
- In the event of the death, incapacity, failure to act, resignation or dismissal of a key staff member, the Franchisor may itself provide a person, which in its discretion it considers suitable, to fulfil the key position until the Franchisee is able to fill the key position to the satisfaction of the Franchisor.
 - The person provided by the Franchisor will be deemed to be an employee of the Franchisee, who will be responsible for the payment of the reasonable remuneration of the person concerned as determined by the Franchisor in consultation with the Franchisee.



9.5 Unless otherwise stipulated in law, the Franchisee indemnifies and holds the Franchisor harmless against all losses or expenses incurred or claims made of whatever nature, arising out of the conduct of the Franchised Business by the Franchisee, or the management and control, or the participation in the management and control of the Franchised Business by the Franchisor pursuant to this agreement, or for the acts or omissions of the persons supplied by the Franchisor in terms of clause 9.4 provided that the Franchisor has acted in good faith and the Franchisor will be deemed to have acted in good faith unless proved otherwise.

10 Termination of this agreement

10.1 The Franchisor may terminate this agreement on written notice to the Franchisee in the event of:

10.1.1 the Franchisee failing to pay to the Franchisor, by the due date, any sum due to the Franchisor in terms of this Agreement or in any other way breaching the terms and conditions of this agreement, all of which are declared to be material, and failing so to pay or to remedy the breach within 14 days of written notice by or on behalf of the Franchisor, calling upon the Franchisee to make payment or remedy the breach complained of;

10.1.2 if the Franchisee commits an act of insolvency or is sequestrated or is placed under a provisional or final winding-up or judicial management order or if the Franchisee makes an assignment for the benefit of his creditors, or fails to satisfy or take steps to have set aside any judgment taken against the Franchisee, within seven days after such judgment has come to the notice of the Franchisee;

10.1.3 if any material change occurs in the management, ownership or control of the Franchised Business or of the Franchisee otherwise than in accordance with the provisions of this agreement;

10.1.4 the Franchisee attacks or challenges the rights of the Franchisor to the Intellectual Property or induces or procures any other person to make such challenge or attack.

10.2 The termination of this agreement, for whatever reason, will not affect the rights of a party which may have accrued as at the date of termination and will further not affect any rights and obligations which specifically or by their nature survive the termination of this agreement.

(If the circumstances justify the inclusion of a restraint of trade clause, provide:

10.3 Restraint Upon the termination of this agreement the Franchisee will not (insert description of the activities the Franchisee will be restrained from conducting, the period of the restraint and the territorial scope of the restraint).

- The Franchisee acknowledges that this restraint is a reasonable one in order to protect the Franchisor's Business System and Intellectual Property rights.
- Except for the above restraint, the Franchisee will not be prevented from participating in the management and control of a business in competition with that of the Franchisor, provided that the business is not conducted in accordance with the Business System and the Franchisee maintains the confidentiality of the Intellectual Property.)

10.4 In the event of the termination of this agreement for whatever reason, the Franchisee will not dispose of any item bearing the Trade Marks without prior written consent of the Franchisor and such consent may be given on such conditions as the Franchisor may deem fit including the condition that the Trade Marks be removed or obliterated from the item concerned.

11 Acknowledgement by the Franchisee

The Franchisee acknowledges that the success of the business venture undertaken by him in terms of this agreement depends to a large extent upon his own business ability. The Franchisee acknowledges that the Franchisor has made no warranty, express or implied, as to the potential success of the Franchised Business.



12 Domicilium citandi et executandi (addresses for legal notices)

The parties choose as their domicilium address for all purposes including the service of court process the following:

- 12.1 Franchisor at (insert address).
- 12.2 Franchisee at (insert address).
- 12.3 A party may change its domicilium address by 30 days' written notice to the other party.

13 Notices

Every notice, consent or other communication required or permitted hereunder from either party will be in writing. It will be sufficiently given or transmitted if and when:

- 13.1 hand-delivered to the other party at its domicilium address, or at such other address as the party may have designated in writing;
- 13.2 transmitted by means of a telefax to the addressee's telefax number and for which telefax an acknowledgement has been received; or
- 13.3 deposited in the mail, duly registered with postage prepaid for prompt delivery and addressed to the other party at its domicilium address, or at such other address as the addressee may have designated in writing. A notice deposited in the mail in terms of this sub-clause will be deemed to have been delivered on the fourth business day after the date of posting.

14 General

14.1 Non-waiver

No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this agreement, will constitute a waiver of the provisions of this agreement and a party may at any time require strict compliance with the provisions of this agreement.

14.2 Entire Agreement and non-variation

This agreement constitutes the entire agreement between the parties on the subject. No amendment or other modification of this agreement will be valid or binding on a party hereto unless reduced to writing and executed by both parties.

14.3 Governing law

This agreement will be governed in accordance with the laws of South Africa.¹

14.4 Severability

All the provisions of this agreement will be severable and no provision will be affected by the invalidity of any other provision of this agreement.

14.5 Interpretation

Whenever a personal pronoun is used herein, it is understood that such usage will include singular and plural, masculine, feminine and neuter and refer in appropriate cases to juristic persons as well as natural persons.



14.6 Acknowledgment

The Franchisee acknowledges that he has entered into this agreement after making an independent investigation and that the Franchisor has not made any representations or warranties other than as may be set out in this agreement. The Franchisee has relied solely upon his independent investigations in entering into this agreement.

14.7 Interpretation in accordance with the Consumer Protection Act 68 of 2008

The principles of honesty, fairness, reasonability and equality must guide the interpretation of this franchise agreement and relationship between the parties as required by the regulations promulgated under the Consumer Protection Act 68 of 2008.

SIGNED at on 20

(Signature of franchisor)

Names of Witnesses:

Signature Witnesses:

1

2.....

(Signature of franchisee)

Names of Witnesses:

Signature Witnesses:

1

2.....



ANNEXURES

Annexure A

Annexure B

Annexure C

Annexure D

A schedule of registered Designs is annexed to the agreement

A schedule of Patents is annexed to the agreement

A schedule of Trade Marks is annexed to the agreement

List the items of equipment etcetera which are to be delivered by the Franchisor to the Franchisee (giving particulars of the purchase consideration for each item included in the initial fee referred to in clause 4.1, if applicable).