

Franchise Agreement – Sample Text

DATED **2020**

BETWEEN:

ABC

("the Company")

- and -

SAMPLE NAME

("the Franchisee")

- **SAMPLE BUSINESS NAME**

FRANCHISE AGREEMENT TEMPLATE

Sample Only Not Complete

Business Day means a day on which Banks are open for trading in YOUR COUNTRY.

Business Name means the name set out in Item 2 of the First Schedule, which is the only name under which the Franchisee shall conduct the Business.

Coaching means training, under which the Franchisee shall conduct, business.

Code means the Franchising Code described in the background and any amendments or variations to it from time to time.

Commencement Date means the date specified in Item 3 of the First Schedule.

Confidential Information means but not limited to the Operations manual(s), trade secrets, information, methods, ideas, concepts, prices, forms, techniques, database, copyright materials and all records relating to the System.

Consumer Price Index means the index (All Groups) published from time to time by the YOUR COUNTRY Bureau of Census and Statistics or if such publication is discontinued.

Customer means a person or entity with which the Franchisee provides Services.

Customer Contracts Premises means the premises of the customers described in the Third Schedule that the franchise provides the services, and in the event of a re-definition of the Franchisee's Customer Contracts Premises by the Franchisor under this Agreement means the Customer Contracts Premises so re-defined

Disclosure Document means a document containing certain confidential company information set out in the Code required to be prepared and delivered by the Company or the Franchisee.

Discontinue means to terminate – cease the operations of the business.

Field Consultant means any person nominated by the Company from time to time to visit the Franchisee and facilitate the commercialisation of the System.

Fortnight means the period of 14 days commencing as the Sundays designated by the Company and ending the following Saturday week.

Franchise means the rights granted by this Agreement.

Franchisor means the party described at the beginning of this Agreement and herein referred to as the Company.

Franchisee means the party named in Item 1 of the First Schedule and its legal representatives, successors and permitted assigns.

Franchise Fee means the initial fee payable by a Franchisee for the grant and other matters as specified in Item 6 of the First Schedule.

Franchise Service Fee means the amount specified in Item 7 of the First Schedule.

Franchise Package means the items and services detailed in the Fourth Schedule provided by the Company to the Franchisee as part of the Franchise Fee.

Gross Sales Revenue includes all receipts by the Franchisee from sales of any goods, products or services in the Business (whether from sales by way of cash or credit and irrespective of the collection of monies due) including sales tax EXCLUDING any sums in respect of taxes payable upon the sale of goods or services and fees payable for approvals or licences from governmental or semi-governmental regulatory bodies,

Intellectual Property includes all licensed copyrights, designs, trade marks, patents, processes and corporate names, computer software licensed by the Company and the goodwill of any licensed

business name, secret processes or Confidential Information licensed by the Company including the Marks and the System.

Interest Rate means the rate specified in Item 9 of the First Schedule.

Licensor means the Licensor described in Background Recital A and any trustee in addition to or in substitution for them.

System Improvement Fee means amount specified in Item 11 of the First Schedule.

Maintenance Service Agreements means agreements (whether in writing or otherwise) for the provision of services utilising the System entered into between the Franchisor and or Franchisee and a Customer. All contracts shall remain with the franchisor or its nominees.

Marks means the overall image of the system, including but not limiting to all trade marks, logos, colour schemes, trade names and business names associated with the System and the Image specified in this Agreement and or laid out in the Second Schedule.

ABC ("the Image") means a specific style and image created by the Licensor to identify the System and licensed by the Company and includes but not limited to names, marks, designs for signage, uniforms, shops, vehicles, identification badges and stationery, etc.

Month means a calendar month.

Operations Manuals means the procedural advice manuals lent to the Franchisee by the Company as may be amended from time to time.

Product means all products, and associated aids used in the services or to perform the Maintenance Service Agreement at a customers premises.

Renewal Term means the right or rights to renew the Franchise for the period or periods set out in Item 5 of the First Schedule.

Service means these services forming part of the System from time to time.

Term means the relevant period set out in Item 4 of the First Schedule.

2. INTERPRETATION

2.1 Headings are for convenience and reference only and shall not affect the construction and interpretation of this Agreement. The Background recitals are incorporated with and form part of this Agreement.

2.2 Words importing the singular include the plural and vice versa.

2.3 Any gender includes the other gender.

2.4 Any reference to a person includes a corporation or a body politic and a person includes the legal personal representatives, successors and assigns of that person.

2.5 Any term defined in the Code shall unless defined in a different manner in this Agreement have the same meaning as set out in the Code.

3. GRANT OF FRANCHISE

3.1 GRANT

The Company hereby grants to the Franchisee:

- (a) subject to the provisions of **Clause 3** the limited non exclusive right to advertise strictly in accordance with this entire agreement the Business in the State of purchase of the Business and to use the Business Name;

- (b) the limited non exclusive right to use the System and Marks during the Term and on the terms and conditions of this Agreement.
- (c) the limited, non exclusive right to provide Services outside the Customer Contracts Premises strictly in accordance with this entire agreement and the provisions of **Clause 3**; and
- (d) The grant of rights under this Agreement is subject to:
 - (i) the Franchisee executing this Agreement;
 - (ii) the Franchisee paying the Franchise Fee(s);
 - (iii) the Guarantor executing this Agreement (if relevant);
 - (iv) the Franchisee providing cover notes or certificates of insurance concerning any requirement for insurance set out in this Agreement or the Operations Manual; and
- 3 the Franchisee providing all statements and other acknowledgments required by the Code.
- 4 the Franchisee providing full contact details, all statements and other acknowledgments required by the Company from time to time.
- 5 The Franchisee being in strict accordance with the terms and obligations created under this Agreement.

(b) NO SUB-FRANCHISE

The Franchisee acknowledges that it has no right to sub-franchise the rights conferred by this Agreement.

3.3 COOLING OFF

- (a) The Franchisee may, within seven (7) clear days of the earlier of:
 - (i) signing this Agreement;
 - (ii) signing any agreement to enter into this Agreement (in this Clause both called the **Agreement**);
 - (iii) paying any money under this Agreement;may discontinue the Agreement.
- (b) If the Franchisee elects to discontinue the Agreement pursuant to **sub-clause 3.3(a)**, the Franchisee will immediately return to the Company all documents relating to the System provided by the Company and any item and other matters capable of return making up the Franchise Package.
- (c) The Company will, within fourteen (14) days of the Franchisee discontinuing the Agreement, repay to the Franchisee any monies paid by it to the Company less the amount of ten (10) per centum of such monies together with such further sum as shall equate the cost of any item or service comprised in the Franchise Package that may not be capable of return to the Company, and less any reasonable expenses incurred in relation to the Business and or Agreement including but not limiting to legal fees and set-up fees and charges.
- (d) The cooling off rights set out in this clause will not apply to any renewals, extensions or any assignment or sale of the Franchise.

3.4 **CENTRAL BUSINESS DISTRICT**

- (a) The Franchisee acknowledges that the Company may reserve to itself the right to secure and or provide Services to the Customers within the Central Business District of any capital city in YOUR COUNTRY.
- (b) in the event the Company exercises its rights under the preceding sub-clause, the Company may in its absolute discretion, provide Services within the central business district personally or may distribute that work to the franchisees. The Company grants to its franchisees the limited, non exclusive right to undertake work in the Central Business District for Customers referred by the Company.
- (c) any distribution of the work within the Central Business District to franchisees by the Company shall be on a fair and equitable basis having regard to the then availability and location of the respective franchisees;
- (d) at the conclusion or any other time during the Maintenance Service Agreement within the Central Business District the Company may, in its absolute discretion, reallocate the work to be provided pursuant to the Maintenance Service Agreement to another franchisee of the Company or permit the franchisee to provide services pursuant to the Maintenance Service Agreement for a further period, on the same terms and conditions as the first period, as determined by the Company.

3.5 **WORK OUTSIDE OF CUSTOMER CONTRACTS PREMISES**

The Franchisee may, provide services for an initial period of time and such further periods as the Company may from time to time approve in writing, provide Services outside the Customer Contracts Premises but the Franchisee must not advertise to an existing Customer of the Company or of another Franchisee or provide service within the Central Business District or within the Customer Contracts Premises of any other franchisee of the Company except strictly in accordance with the provisions of this agreement or provisions provided in the confidential operations manuals.

Sample Only Not Complete

SECTIONS PURPOSELY REMOVED

19 **CODE OF CONDUCT**

The parties agree to comply with the provisions of the Code.

14. **TECHNOLOGY**

The Franchisee acknowledges that the Company may require of it the installation and use of equipment and facilities designed to enhance the System. The Franchisee agrees to immediately and at its cost act on the Company's requirements. Such requirements may in the future include the need to:

- 14.1 if required by the company contribute to the cost of the acquisition, marketing and administration of a telephone number which telephone number shall be for a central referral office;
- 14.2 if required by the company establish and maintain credit card facilities for the payment of accounts by Customers;
- 14.3 If required by the company, establish a dedicated telephone line, modem or other system integration equipment and computer software specified in the Operations Manual for the purposes of the Company having access to all information concerning the Business stored on a computer maintained by the Franchisee at the time and to further facilitate communication between the parties;
- 14.4 acquire a digital mobile phone utilising a number approved by the Company and to maintain the same and answered in a uniform manner approved by the Company; The mobile phone must be purchased outright and up front and not on a payment plan.
- 14.5 have a personal answering service (Memo Service, not Message Bank) engaged to answer mobile telephone enquiries in a uniform manner approved by the Company;
- 14.6 The franchisee acknowledges that any breach under this clause, then the company may issue a Notice of Dispute and or issue a non-compliance fee(s) specified in Item 15.

15. **FRANCHISEE'S OBLIGATIONS**

The Franchisee agrees with the Company as follows:

15.1 **PAYMENTS TO COMPANY**

to pay on the relevant due dates for payment (time being of the essence) all amounts due to the Company;

15.2 **BEST ENDEAVOURS**

to use its best endeavours to carry on to promote and conduct the Business (either by itself or by an employee approved by the Company) in a proper and efficient manner and to devote, unless otherwise agreed to by the Company, complete attention to the conduct of the Business or in the case of the Franchisee being a Company, to ensure that a Manager approved by the Company devotes full time attention to the Business;

15.3 **COMMENCE BUSINESS/HOURS**

to commence Business operations within fourteen (14) days of Commencement Date and to conduct the Business between such hours and on such days as the Company shall from time to time reasonably direct;

15.4 **COACHING**

at its own cost to participate in such initial and ongoing Coaching as the Company may require at the locations nominated by the Company and to ensure that such of its employees as the Company may nominate undertake such Coaching;

15.5 **OPERATE AS INDEPENDENT PROPRIETOR**

to conduct the Business as an independent proprietor and under the Business Name at its sole risk and expense and for its sole benefit and not as a representative, agent, partner, joint venturer or employee of the Company. Neither party has the authority (expressed or implied) to represent, act on behalf of or by any other means bind the other except as expressly provided for in this Agreement;

15.6 **BUSINESS NAME/POWER OF ATTORNEY**

before registering the Business Name the Franchisee shall sign (in blank) and hand to the Company a statement of change of persons of the proprietorship of the Business Name (or such other form as is appropriate in the Customer Contracts Premises) so that if this Agreement is discontinued (for whatever reason) the Company is authorised to complete and file it with the appropriate authorities either in favour of the Company or a party nominated by it. For these purposes the Franchisee appoints the Company as its attorney;

15.7 **FOLLOW DIRECTIONS**

to follow the reasonable directions of the Company and or the Field Consultant as to the operation of the Business;

15.8 **MARKS**

not to contest or challenge in any legal proceedings or otherwise the Licensor's proprietorship of the Marks, Confidential Information, Intellectual Property, Data Base or any other matter making up the System and the Company's rights to commercialise the same;

15.9 **GOOD CHARACTER**

The franchisee agrees to be of good character and reputation and not indulge in unethical conduct or acts of ill will or acts of moral turpitude.

15.10 **NOT TO BRING SYSTEM INTO DISREPUTE OR PREJUDICE INTERESTS**

The Franchisee agrees not to knowingly prejudice or bring into disrepute and or act in a manner which will be prejudicial to the interests of The Company, The Licensor, The System, The Franchisees and or Directors, Employees or Contractors (where relevant) of the Business.

Any Franchisee or Guarantor of the Franchisee unlawfully found to and including but not limiting to combine, conspire and or induces together, with intent to oppose any measure or measures of the Business or Systems of the Business or Requests of the Business; or with such intent, to counsel, advise, or attempt to procure any insurrection, unlawful assembly, or combination; or to write, print, utter, or publish, or cause, or procure to be written, or willingly to assist in writing, or utter, any false, scandalous, and malicious comments, suggestions, writing, writings against the Business, with intent to defame them, or to bring them into contempt, or disrepute, or to excite against the Business with other Franchisees and or Contractors of the Business and or System, or to stir up sedition; or to excite and or induce any unlawful combination for opposing, or resisting any Clause, or any lawful act of the Business and or System Adjustment from time to time, or to resist, oppose, or defeat any such Clause or act; or to aid, encourage, induce, or abet any hostile relationship whatsoever against The Company, The Licensor, The System, The Franchisees and or Directors, Employees or Contractors of the Business and furthermore agrees that this would be a fundamental breach of this entire Agreement and furthermore agrees to an Immediate Discontinuation of the Franchise Agreement and Franchise relationship without claim for compensation. Notwithstanding this clause the lawful act of franchisees wishing to form an association or to associate in a lawful manner with other franchisees is consented.

SECTIONS PURPOSELY REMOVED

16. **MAINTAIN SECRECY AND NOT DISCLOSE ANY CONFIDENTIAL INFORMATION**

16.1 **NO DISCLOSURE**

The Franchisee (and where relevant) its directors, employees or agents, will not during the Term or any Renewal Term or after its expiry or discontinuation, use or disclose any Confidential Information received by any of them from the Company in the course of the Business, unless so required by law and will inform the Company of any such disclosure it is compelled to make.

16.2 **ACKNOWLEDGMENT**

The Franchisee expressly acknowledges that all materials, information, manuals and advice provided by the Company during Coaching or thereafter is and shall remain the property of the Licensor and or the Company (except where expressly stated in writing to the contrary) and shall not be copied, reproduced or used except in the proper conduct of the Business. A Breach of **Clause 16** would be a fundamental breach of this entire agreement and the Company reserves its rights to take whatever action necessary to remedy such a breach, including but not limiting to a Discontinuation of the Franchise Agreement, legal action such as an injunction and or issue a non compliance fee(s) specified in Item 15.

17. **ACCOUNTING AND REPORTING**

The Franchisee agrees to:

17.1 **RENDER WRITTEN INVOICES**

render to all customers written invoices recording services provided and the fee charged for the same;

17.2 **JOB SHEETS**

use the form of jobsheets provided by the Company or set out in the Operations Manuals;

17.3 **DELIVER COPY INVOICES**

deliver to the Company a true copy of all invoices rendered to Customers;

17.4 **FULL PARTICULARS**

provide on each invoice and or job sheets such particulars as required from time to time by the Company and or set down in the Operations Manuals, such particulars may include but not limiting to, size of the Customers Contract Premises, time taken to complete the required service(s), quantity, model, type, brand, location and serial number(s) of equipment and or site serviced or located at the Customers premises.

17.5 **KEEP BOOKS**

keep a proper set of books of account and proper records relevant to the Business in accordance with procedures set out in the Operations Manuals and accurately maintain them up to date at all time. The Franchisee acknowledges that the Company may require that the books of account and records relevant to the Business be maintained on a computer using software approved by the Company from time to time;

17.6 **INSPECTION BY COMPANY**

permit the Company and its servants and agents (including the Field Consultant) at all reasonable times to inspect and copy all books of accounts and other records (including

taxation assessment notices) relating to the Business including Maintenance Service Agreements and all documents concerning relations with Customers;

17.7 MONTHLY STATEMENTS

to provide to the Company, in a form and manner approved by the Company in the Operations Manual, by the close of business on the third day following the end of each month during the Term and Renewal Terms such reports as the Company may prescribe from time to time; The franchisee acknowledges that any breach under this clause, then this Agreement may be discontinued and or pay a non compliance fee specified in item 15

17.8 ANNUAL STATEMENTS

provide to the Company true copies of its annual financial statements (including a balance sheet) no later than thirty (30) days of the end of each financial year;

17.9 ACCOUNTING STANDARDS

ensure that all financial statements are drawn by a qualified accountant made up in accordance with proper and accepted accounting standards or as set out in the Operations Manual;

17.10 RECORDS

provide the Company with copies of such invoices, statements, copy receipts, financial statements and other like relevant documents as the Company may require;

17.11 AUDITOR

permit the Company to nominate an independent auditor to examine the books of account of the Franchisee. The auditor's fees and expenses shall be paid by the Company unless the books of account are not in order and are inaccurate to the extent of disclosing an understatement of two per centum (2%) or more of the Franchisee's Gross Sales Revenue. In that event the costs of the auditor shall be borne by the Franchisee and the Company shall have the right to discontinue this Agreement and or take further actions as required.

18. RESTRICTIONS WHERE FRANCHISEE IS TRUSTEE OF TRUST

If the Franchisee holds this Agreement in the capacity of trustee of a trust which has been disclosed and approved by the Company prior to its execution, the Franchisee shall not during the Term or any Renewal Term:

18.1 vary, amend, alter, revoke or modify the provisions or powers contained in the trust deed constituting the said trust;

18.2 distribute or join in the distribution of any or all of the capital of the trust fund or in any other way invest the said trust fund; or

18.3 resign office as trustee; without the prior written approval of the Company which shall not be unreasonably withheld.

19. TO PAY LEGAL COSTS

19.1 The Franchisee shall pay all reasonable legal costs of and incidental to the preparation of this Agreement and all stamp duty assessed hereon; such legal cost have been included in the opening investment package.

19.2 The Franchisee shall reimburse the Company for all legal fees incurred by the Company as a result of breaches of this Agreement by the Franchisee (except costs associated with the dispute resolution **clause 34** of this Agreement).

20. **INDEMNITY**

The Franchisee covenants and agrees that it will assume the sole and entire responsibility for and indemnify and save harmless the Company from any and all claims, liabilities, losses, expenses, responsibility and damages by reason of any claim, proceedings, action, liability or injury arising out of the Franchisee's conduct of the Business or as a result of the Franchisee's dealings with Customers and other third parties or because of any breach of this Agreement by the Franchisee.

21. **REGULAR INCOME**

For the purpose of this clause Base Revenue shall mean the amount per calendar month set out in Item 17 of the Schedule.

21.1 Subject to the provisions of the next sub-clause if, at the end of any month during the first twenty four months of the Term the Gross Revenue of the Franchisee is less than the Base Revenue (the Subject Month) because a Maintenance Service Agreement is terminated or expires, other than **clause 15.33** the Franchisor may, at its option, either:

- (a) pay to the Franchisee the sum equal to the amount of the difference between the Base Revenue and the Gross Revenue;
- (b) within four months provide to the Franchisee a Maintenance Service Agreement of a similar nature to the expired or terminated Maintenance Service Agreement generating a revenue equal to, or greater than, the difference between the Gross Revenue and the Base Revenue per calendar month, without charge to the Franchisee; or
- (c) refund to the Franchisee a proportion of the amount paid by the Franchisee in respect of the Maintenance Service Agreement which was terminated during the calendar month. The refund amount shall be calculated by reference to the amount of the Maintenance Service Agreement and shall be calculated on a pro-rata basis having reference to the Term of the Maintenance Service Agreement and the unexpired portion thereof;

AND the Franchisor shall, by notice in writing, advise the Franchisee of the option chosen by the Franchisor within four weeks of the end of the Subject Month.

21.2 The obligations of the Franchisor contained in **sub-clause 21.1** above:

- (a) are personal to the Franchisee named herein and shall not survive any assignment of this Deed, and
- (b) shall remain binding upon the Franchisor only if the Franchisee has been in strict compliance with all of the terms and conditions of this Deed and only in respect of income generated from Initial Maintenance Service Agreements.

REMAINDER OF AGREEMENT NOT AVAILABLE FOR VIEWING AS A SAMPLE.

Sample Only Not Complete