

Master Franchise Agreement

Between and

Date:

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Telephone:

Facsimile:

Email:

Website:

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By this **Agreement** dated

between:

(the franchisor)

and

(the master franchisee)

Recitals

A. The franchisor has developed a business system featuring a brand, trademarks, and particular systems and procedures for the sale of the franchise product.

B.

[REDACTED]

C. The franchisor wishes to appoint a master franchisee to grow, develop and manage the network of franchisees in the territory. The master franchisee is to have the responsibility for recruiting, supplying, motivating, training, supervising and supporting franchisees located in the territory.

[REDACTED]

E. The parties set out the terms of their agreement as follows:

Terms

1 Definitions

In this agreement the following definitions will apply:

Application form means the form which the master franchisee is required to complete and provide to the franchisor prior to the granting of this master franchise.

Approved suppliers means the franchisor and those suppliers approved by the franchisor to supply members of the network.

Approved products means those products manufactured and/or distributed by the franchisor or approved suppliers to the franchisor network.

Business plan means the annual plan to be prepared by the master franchisee in consultation with the franchisor prior to the commencement of each trading year and containing budgeted sales and expenses for the territory on a period by period basis for the ensuing 12 month trading year together with marketing and business strategies to achieve the budgets and such other relevant information as the franchisor will reasonably require.

Code means the Franchising Code of Conduct prescribed as a mandatory code pursuant to [s 51AE of the Trade Practices Act 1974 \(Cth\)](#).

Commencement date means the date described at Item 2 in the Schedule.

Designated representative means the individual person



Franchise means the right granted by the franchisor or the master franchisee with the consent of the franchisor to carry on a retail business using the marks, the image and the system in the sale of the approved products to customers pursuant to the terms of a franchise agreement.

Franchise agreement is the franchise agreement whereby the franchisee is granted a franchise. A copy of the current franchise agreement is annexed to this agreement as Annexure A.

Franchised businesses means the businesses conducted by

Franchisee means a person to whom a franchise has been granted, and includes the master franchisee where the master franchisee carries on business as a franchisee.

Franchisees means all franchisees carrying on business activities within the territory.

Franchisee standards means the service, competency, performance and conduct standards to apply to franchisees, as set by the franchisor from time to time.

Franchise fee means the amount paid by a franchisee pursuant to a franchise agreement on commencement of a franchise as specified at Item 10 of the Schedule.

Franchisor means the entity described in Item 1 of the Schedule, its successors, transferees and assigns.

Further term is as defined at Item 14 of the Schedule.

Gross purchases of the franchisees means all purchases of approved products by the franchisees whether cash or credit

Gross sales of the master franchisee means all income whatsoever derived by the master franchisee whether cash or credit (regardless of collection in the case of credit) arising from the sale of approved products, other products or services by

the master franchisee including products purchased from

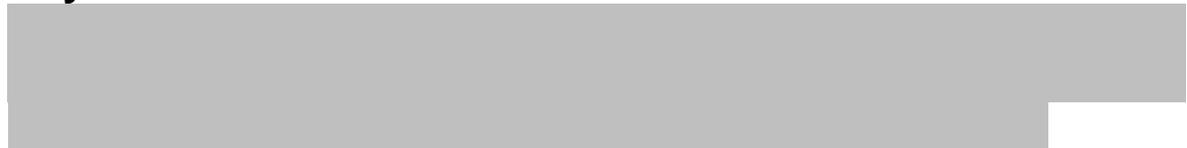


Image means the distinctive image, reputation, appearance and presentation of the franchisor and its representatives and franchisees in the market as described in this agreement and the manual. The franchisor image features the marks, various slogans used in connection with the marks; a distinctive and common colour, shape, size and appearance of vehicles and



Interest rate means the rate per annum which is six (6) percentage points higher than the cash rate last published by the Reserve Bank of Australia before that period commenced.

Key Performance Criteria means the minimum number of



Management services fee is as described at Item 12 of the Schedule.

Marketing fund means a separate bank account to be established and operated by the franchisor into which the marketing levy and all specific marketing, advertising or promotional levies and contributions paid to the franchisor by the master franchisees and the franchisees will be deposited.

Marketing levy is the levy payable by the master franchisee and the franchisees towards group marketing, advertising or promotion pursuant to this agreement or the franchise agreement. It is the percentage of gross purchases of the franchisees specified in Item 13 of the Schedule. The marketing levy is payable by the master franchisee to the franchisor within 7 days of the conclusion of each calendar month.

Marks means the registered franchisor trademarks as described at Item 7 of the Schedule.

Master franchise means the right to manage the network and to seek, recruit, supply, motivate, train, supervise and support the franchisees located in the territory in accordance with the terms of this agreement.

Master franchise fee means the amount specified at Item 19 of the Schedule and payable by the master franchisee in the manner set out therein.

Master franchisee means the party described in Item 1 of the Schedule and, in the event of there being more than one party, means all parties jointly and severally.

Master franchisees means the master franchisee and all other

Master franchisee standards means the service, competency, performance and conduct standards to apply to all of the master franchisees, as set by the franchisor from time to time.

Network means collectively the franchisor and all the master franchisees, franchisees, and other agents or representatives of the franchisor throughout Australia.

Operations Manual means the manual lent to the master



Premises in this context refer to the property from which the master franchisee is authorised to carry on business as defined at Item 8 of the Schedule.

Principals means the parties who own and control the master franchisee as described at Item 5 of the Schedule and if more than one means all such parties jointly and severally.

Renewal fee is as defined at Item 15 of the Schedule.

Schedule means the Schedule annexed to this agreement.

System means the business systems and operating techniques and procedures which the franchisor has established as essential or desirable for the establishment development and operation of a well run franchise business as described in Item 6 of the Schedule. The System is described in this agreement, the manual, documentation and procedures, and product range. The System is designed to ensure consistency in all franchised businesses, and standard procedures for the sale of the approved products to customers in a way that ensures the customer experience is consistent throughout the network of franchisees.

Territory means the area in which the master franchisee is authorised to operate as described at Item 9 of the Schedule, or such other area as will be agreed between the franchisor and the master franchisee in writing from time to time.

Term is the period of time during which the master franchisee is granted the right to carry on business by virtue of this agreement as defined at Item 1 of the Schedule.

2 PRIMARY ACKNOWLEDGMENTS

- (a) The parties acknowledge that the franchisor is the proprietor of all of the marks and the brand names



- (b) The master franchisee acknowledges that the designated representative is appointed by the master franchisee to be in full time attendance at the premises and to have full power to transact in all respects on behalf of and legally bind the master franchisee. Such appointment may only be revoked by the master franchisee with the prior written consent of the franchisor, which consent will not be unreasonably withheld provided a replacement designated representative acceptable to the franchisor is immediately appointed.

3 COVENANTS

(a) The master franchisee covenants with the franchisor as at the commencement date as follows:

(i) that the principals are the sole directors and shareholders of the master franchisee and that no other person has any legal or beneficial interest in, or claim over the assets of the master franchisee except as disclosed in the application form.

(ii) that the master franchisee does not act or propose to act as trustee of any trust unless so disclosed at item 1 of the Schedule to this agreement. In the event that the master franchisee proposes to act as trustee of any trust, the master franchisee will execute an appropriate deed of covenant in relation to the trust in a form prescribed by the franchisor.

(iii) that all information provided to the franchisor for consideration by the franchisor in connection with the master franchisee's



(iv) that the master franchisee has disclosed to the franchisor in the application form all facts and things concerning the master franchisee and the principals, including their financial position and past business history, which could reasonably be considered relevant to

the franchisor's decision to grant the master franchise to the master franchisee.

4 GRANT OF MASTER FRANCHISE

(a) Subject to the Conditions Precedent and



(b) The master franchise will be subject to the following restrictions:

(i) The master franchise is granted solely in respect of the territory. The master franchisee will not seek or appoint franchisees, enter into franchise agreements, perform services for franchisees, or permit franchisees to operate



(ii) Provided the master franchisee continues to meet the Key Performance Criteria, the franchisor will not during the term:

(A) grant any master franchise or similar rights to any person for any part of the territory; nor,

- (B) sell or supply any of the approved products in the territory except to any person with whom the franchisor had an existing business relationship prior to the commencement of the prior agreement,
- (C) The master franchisee will, where the master franchisee intends or is likely to



5 CONDITIONS PRECEDENT

- (a) The following Conditions Precedent apply to the grant of the master franchise by the franchisor:
 - (i) The master franchisee will have submitted to the franchisor a duly completed and executed application form, and disclosure documents.
 - (ii) The master franchisee will have properly
- 
- (iii) The master franchisee will have paid to the franchisor the master franchise fee.
 - (iv) The designated representative and the master franchisee will have satisfactorily completed any training program required by the franchisor and obtained all necessary permits and licences to enable the master

franchisee to properly carry out its responsibilities pursuant to this agreement, and in particular to train franchisees in the system and the image.

(v) The master franchisee will have provided

[REDACTED]

(vi) The master franchisee will have secured an appropriate lease for the premises for a term including options at least as long as the term.

(vii) The master franchisee will have executed a franchise agreement for any area where it intends to operate a franchised business itself.

(b) The franchisor may refuse to grant this master franchise or, if granted, may terminate this master franchise by written notice effective immediately in the event that any of the foregoing Conditions Precedent has not been satisfied within 14 days from the time of execution of this agreement, or such longer period as the franchisor will allow.

6 TERM & TERMINATION

(a) Unless terminated in accordance with the terms of this agreement, the master franchise will end at the expiration of the term, subject only to clause (b) and clause (e) below.

(b) The franchisee may terminate this agreement by written notice served on the franchisor within seven days from signing this agreement. The franchisee will however remain bound by the

provisions intended to survive termination, such as clauses 21, 25 and 26.

- (c) In the event of the franchisee terminating this agreement pursuant to clause (b) above, but not otherwise, the franchisor will refund to the



- (d) The master franchisee acknowledges that no employee or representative of the franchisor has any authority to make any statement, promise or undertaking in relation to the term. The franchisor will not be bound by any statement, promise or undertaking unless made in writing and engrossed with the company seal of the franchisor.

- (e) Within 12 months but not less than 6 months before the expiration of the term the master franchisee will notify the franchisor in writing if it



- (f) The Conditions Precedent to extension of the master franchise for the further term are:

- (i) the master franchisee will not be in default under any provision of this agreement;
- (ii) the master franchisee and the principals will first execute the franchisor's then current form of standard master franchise agreement and personal guarantee, indemnity and covenant effective as of the date following the last day of the initial term, which agreement will supersede in all respects this agreement and which will



- (iii) the master franchisee will first pay to the franchisor the renewal fee;
- (iv) the master franchisee will pay to the franchisor its reasonable legal and administrative fees and costs associated with the renewal;
- (v) the master franchisee will at its sole cost and expense undertake such works as are reasonable and necessary to refurbish, repaint and refit the premises to conform to the franchisor image and the system;
- (vi) the master franchisee and the designated representative will satisfactorily complete any further training that the franchisor will reasonably require. Any training will be

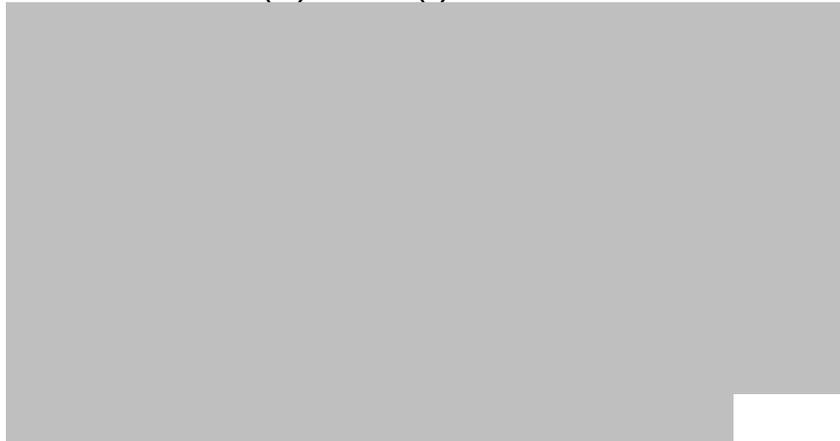
conducted within the territory and the franchisor will bear all costs of presenting the training at the selected venue. The master franchisee will bear all necessary travel, accommodation and living expenses;

(vii) the master franchisee will have procured that all parties have executed a surrender and release in the form set out in Annexure D to this agreement containing a mutual release by each party from all past claims and liability for the first period of the term.

(viii) the master franchisee will have provided appropriate security for any trading or credit arrangements that the master franchisee may enter into with the franchisor or any approved suppliers; and

(ix) the master franchisee will have secured an appropriate lease for the premises for a term including options at least as long as the further term.

(x) The master franchise will only be capable of renewal for the further term in accordance with clauses (e) and (f) above. In the event



(xi) Notwithstanding the foregoing, the parties acknowledge that the master franchisee

may enter into franchise agreements beyond the end of the term as the franchise agreement provides for the franchisor to assume the responsibilities of the master franchisee under the franchise agreement.

7 DUTIES OF THE FRANCHISOR

- (a) The franchisor will for the duration of this agreement permit the master franchisee to use, and to franchise others to use, the image and the system.
- (b) The franchisor will train the master franchisee in the system to enable the master franchisee to then train the franchisees within the territory. The franchisor will provide an initial training program of 2 weeks duration supported by the loan of the manual to the master franchisee for the duration of 
- (c) The franchisor will supply the approved products, or coordinate their supply from approved suppliers. The master franchisee will acquire from the franchisor or from approved suppliers all quantities of the approved products required by the master franchisee or the franchisees located within the territory.
- (d) The franchisor will provide to the master franchisee during the term ongoing technical and general support, advice and assistance in relation to the

approved products and the system including regular field support and access during normal business hours to telephone and facsimile support.

(e) The franchisor will take reasonable steps to maintain the integrity of the marks and protect them against any action or infringement by any person.

(f) The franchisor will lend the master franchisee

[REDACTED]

(g) The franchisor will review the suitability and mix of the range of approved products from time to time. On the basis of such review the franchisor may add, remove or modify the range of approved products and/or approved suppliers.

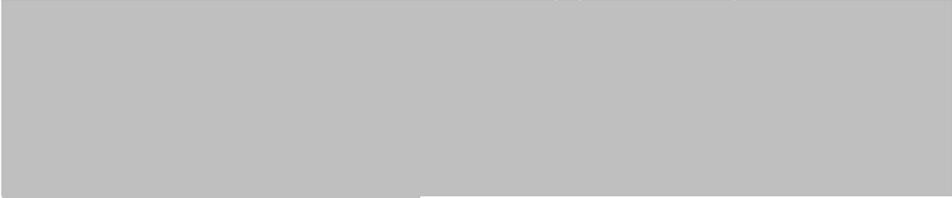
(h) The franchisor will from time to time conduct market research and disseminate the results of the research to the master franchisee.

(i) The franchisor will develop and introduce, after consultation with all master franchisees, ongoing training programs for master franchisees and franchisees.

(j) The franchisor will use its reasonable best

[REDACTED]

8 DUTIES OF THE MASTER FRANCHISEE

- (a) The master franchisee will meet or exceed the Key Performance Criteria each period as specified at Item 20 of the Schedule. Where the master franchisee is on a cumulative basis ahead of the Key Performance Criteria, such excess may be carried forward to assist in satisfying the Key Performance Criteria for a subsequent period.
- (b) The master franchisee will at all times during the term strictly comply with the system and the image, and will carry on business in accordance with the master franchisee standards.
- (c) The master franchisee will use its best endeavours to ensure that all franchisees in the territory at all 
- (d) The master franchisee will use its best endeavours to ensure that the premises are properly outfitted, painted, signwritten, equipped and maintained in accordance with the image and the system as set down in the manual or this agreement.
- (e) The premises will contain adequate storage space for sufficient stock of the approved products to  in the proper conduct of its activities.
- (f) The master franchisee will actively and diligently promote the franchised businesses within the territory and use its reasonable best endeavours to

assist all franchisees in the territory to maximise their sales.

- (g) The master franchisee will comply with the business plan implementing all strategies listed in the business plan and using its best endeavours to meet the sales budgets and Key Performance Criteria included in the business plan.

9 RECRUITMENT AND MANAGEMENT OF FRANCHISEES

- (a) The primary role of the master franchisee is seeking, recruiting, supplying, motivating, training



- (b) The franchisor will provide guidelines and precedent documentation and procedures to the master franchisee in relation to the recruitment, selection, appointment and induction of franchisees.

- (c) The master franchisee will accept a standardisation of the franchise such that the terms of the franchise, the fees charged and the process of recruitment of franchisees is uniform throughout the network, and will comply with all policies, procedures and rules for recruitment set out in the manual.

- (d) The franchisor will prepare a standard disclosure



provide all requested information to enable the franchisor to prepare the disclosure document.

- (e) The franchisor will develop a recruitment training program for master franchisees to enable master franchisees to become familiar with the recruitment policies, procedures and rules and to receive information from those experienced in recruitment.
- (f) The franchisor will develop an induction program for franchisees in consultation with the master franchisees. The aim of this program will be to familiarise franchisees with the system and acquire skills useful to their operation of their franchised business.
- (g) Both parties to this agreement acknowledge that
.
- (h) The parties acknowledge that all costs to recruit, select, induct and train franchisees will be borne by the master franchisee.

10 AUTHORITY TO GRANT FRANCHISES

- (a) The master franchisee will not enter into any franchise agreements or grant any rights to carry


(b) The master franchisee will be entitled to request the franchisor to grant a franchise to a person who meets the criteria established by the franchisor. The franchisor will grant the franchise provided:

- (i) the proposed franchisee has satisfied the conditions as set out in this agreement and in the manual;
- (ii) the proposed franchisee and all directors and shareholders have properly executed a franchise agreement and annexed personal guarantee, indemnity and covenant;
- (iii) the proposed franchisee possesses the requisite skills, resources and capabilities to carry on business in accordance with the terms of the franchise agreement;
- (iv) the proposed franchisee has completed all

- (v) the proposed franchisee has paid to the master franchisee, the franchise fee;
- (vi) no grounds exist upon which the franchisor may reasonably refuse to grant the franchise.

(c) In selecting, recruiting and appointing franchisees:

- (i) the master franchisee will comply with the


- (ii) the master franchisee will only make available to prospective franchisees and other persons approved disclosure material in relation to the franchise and the master franchisee, and will not make any warranties as to the potential turnover, profitability or growth of any franchise nor make any unauthorised warranties in relation to the approved products, the marks, the image or the system, nor generally make any false or misleading statements.
 - (iii) prior to giving any prospective franchisee or any other person any information concerning the franchise, the master franchisee will obtain from such person a properly executed confidentiality agreement in the form approved by the franchisor.
 - (iv) all franchisees will be granted strictly in 
 - (v) the master franchisee will not be entitled to charge a franchise fee in excess of the franchise fee specified at Item 10 of the Schedule without the written approval of the franchisor.
- (d) The franchisor will promptly execute the relevant franchise agreement and promptly return the franchisee's copy and the master franchisee's copy to the relevant party.

11 MEETINGS

- (a) The master franchisee will use its best endeavours to ensure that the designated representative will attend all master franchisee meetings called by the



- (b) The costs of attending any meetings will be borne by the master franchisee, which without limiting the foregoing will include the costs of travel, accommodation and meals. The cost of organising the venue and contents of the meetings will be borne by the franchisor.

12 REPORTING

- (a) The master franchisee will promptly pass on to all franchisees located within the territory all information received from the franchisor, and any other information received relevant to their businesses and agrees to assist the franchisor to meet such franchisees directly if required.

- (b) The master franchisee will participate, and will use its best endeavours to ensure that all franchisees



- (c) The master franchisee will provide during the term ongoing technical and general support, advice and assistance in relation to the system including occasional field support and access, and will

ensure that all franchisees enjoy the same level of support and assistance as franchisees located elsewhere.

- (d) The master franchisee will conduct training in various aspect of operating a franchise and will ensure that all such training is conducted at appropriate and convenient times and locations for the franchisees.
- (e) The master franchisee will ensure that franchisees comply with the manual and the franchise agreement and will take all necessary steps and actions to ensure such compliance.
- (f) The master franchisee will comply with the requirements set out in the franchise agreement, the provisions dealing with termination procedures and documentation.
- (g) The master franchisee will immediately advise the franchisor of any litigation, threatened litigation or other material dispute involving the master franchisee or any of the principals and any franchisee, past or prospective franchisee, supplier or any other person.
- (h) If the franchisor determines on reasonable

- (i) If a franchisee is terminated, the master franchisee will operate the franchise from the date of termination until a new franchisee is appointed. In the meantime, the master franchisee will assume the obligations of the franchisee under the franchisee's franchise agreement, paying for all

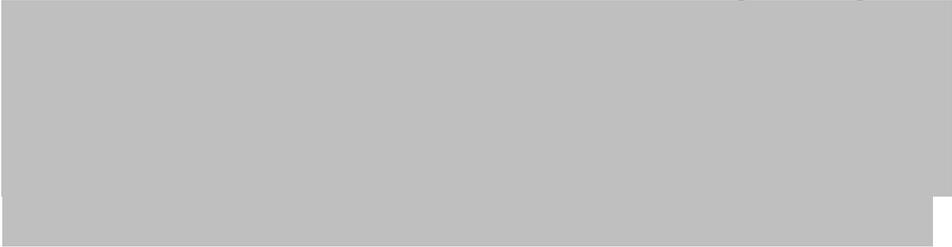
stock and contributing all marketing and other levies.

- (j) The master franchisee will use its best endeavours by regular field visits, audits and other monitoring



- (k) The master franchisee will assume all the obligations of and all services to be provided by the franchisor under all franchise agreements between the master franchisee and/or the franchisor and any franchisee located within the territory and will carry out its obligations strictly in accordance with the franchise agreement.

- (l) The master franchisee will ensure that the franchisees are provided with relevant information and valuable support and encouragement in their franchised businesses. All field support visits will be undertaken by appropriate senior personnel and the master franchisee will attend ongoing training and development in relation to the system and the approved products and pass on to the franchisees located within the territory all information gained, and the master franchisee will be readily accessible to all franchisees by telephone and facsimile for ongoing support, advice and assistance as and when reasonably required.

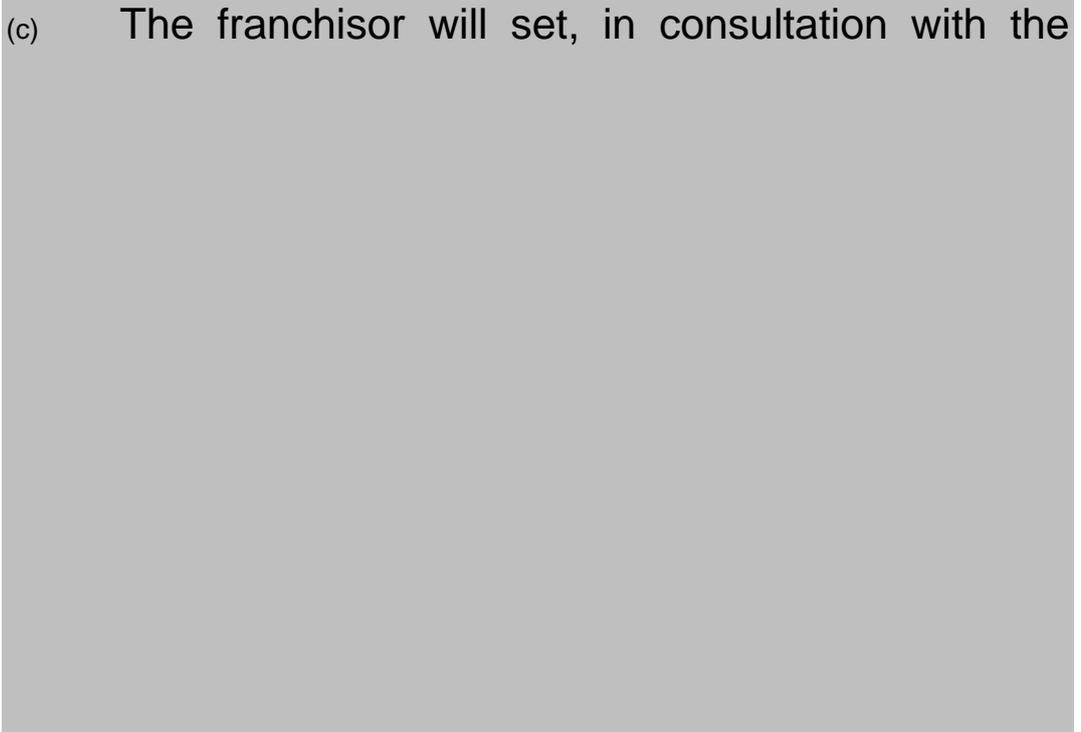
- (m) The master franchisee will use its reasonable best endeavours to ensure that all stock of the approved products is readily accessible and available to all franchisees at times convenient to the franchisees.
- (n) The master franchisee will promptly respond to all enquiries, complaints and requests for assistance from any franchisee within the territory.
- (o) The master franchisee will immediately notify the

- (p) The master franchisee will not enter into any collateral or other agreement that has the effect or intention of modifying, waiving, varying or prejudicing this agreement or any franchise agreement with any franchisee.

13 FRANCHISE FEES

- (a) The franchise fee paid by each franchisee will be split between the franchisor and the master franchisee in the manner set out at Item 21 of the Schedule The Master Franchisee will expend not less than 50% of the franchise fee in the manner determined by the franchisor after consultation with the master franchisee on such items as initial promotions, canvassing for the franchisee's territory, uniforms and other items of direct benefit to the franchisee.
- (b) The master franchisee will not charge any franchisee any amount on signing the franchise agreement or during the term of the franchise other

than the franchise fee, the management services fee, any costs of additional training, the advertising levy, any additional promotional costs, the documentation fee and the Renewal fee without the prior written consent of the franchisor.

(c) The franchisor will set, in consultation with the



(d) The master franchisee will be entitled to retain any renewal fee paid by any franchisee on renewal of their franchise provided not less than 50% is spent on items of direct benefit to the franchisee.

14 SUPPLY OF STOCK

(a) The master franchisee will not, and will use its best endeavours to ensure that all franchisees in the territory do not stock, sell or supply any products or services other than the approved products.

(b) The master franchisee must pay at the time of delivery for all stock of the approved products delivered or in accordance with any credit terms pursuant to this agreement or agreed upon

between the parties from time to time in writing, and will ensure that all franchisees located within the territory do likewise.

- (c) Where any product supplied by the franchisor is not of merchantable quality or not fit for the purpose for which it is intended:
- (d) the master franchisee will comply with the franchisor's return's policy as specified in the manual;
- (e) the franchisor will use its reasonable best endeavours to replace the faulty product as quickly as possible.
- (f) The franchisor will be responsible for new product development. Where the master franchisee considers that a product or service could complement the existing approved products and not compete with any of the approved products, the master franchisee may request the franchisor



- (g) The master franchisee acknowledges that the franchisor image and the quality and reputation of

the brand names are such that any product or service sold by the master franchisee or by franchisees under the franchisor image and the franchisor system will attract a royalty payment to the franchisor irrespective of whether such product is manufactured by the franchisor or at the



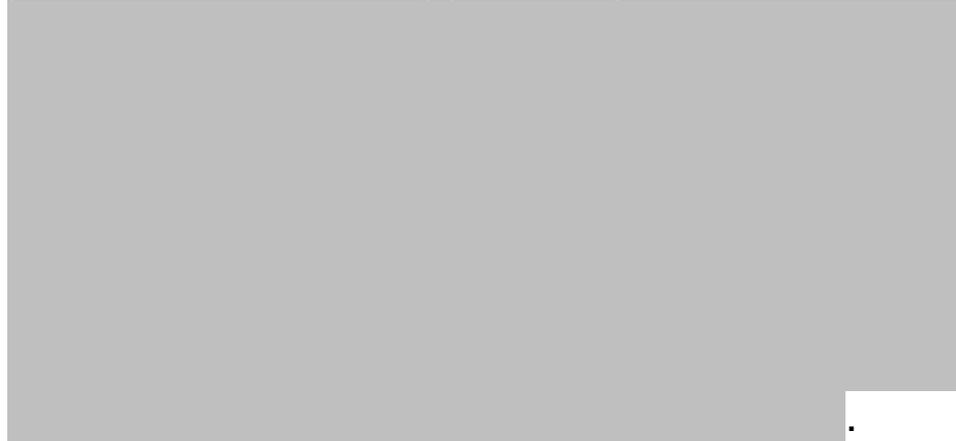
- (h) Where a product is supplied by the franchisor and the franchisor desires to increase the price of such product, the franchisor will provide the master franchisee with 30 days prior written notice of the price increase. In setting any new price the franchisor will consider the impact upon the master franchisee and the franchisees in the territory along with all other factors the franchisor considers relevant.

15 PRODUCT WARRANTIES

- (a) The franchisor warrants that the approved products and packaging supplied to the master franchisee will be of merchantable quality and fit
- 

Australian Design Standards, Product Safety Standards and Product Information Standards.

- (b) Where any of the approved products are defective, the master franchisee will follow the franchisor's returns policy as specified in the manual. The franchisor will be responsible for the costs of freight, delivery, packing and insurance in respect of the return of defective approved products, provided that no approved products will be



- (c) Any claim for defective product must be made at the earliest stage that the defect becomes obvious to enable prompt action and to avoid further damage, and must be made no later than 1 month of the defect becoming obvious.
- (d) Any claim for warranty must be accompanied by appropriate documentation which stipulates the date of the delivery, the invoice number, the details of the alleged defect and any other information reasonably required by the franchisor.
- (e) No liability is accepted for defects caused by the master franchisee's handling or storage of the approved products, or where the master franchisee has failed to observe the franchisor's terms of payment for the approved products.

- (f) Although it will use its best endeavours to satisfy any customer complaint in relation to the materials the franchisor will be under no liability to the master franchisee for any damages or losses, direct or indirect, resulting from defects in manufacture or packaging.
- (g) The franchisor will have no liability for any indirect or consequential losses or expenses suffered by the master franchisee, however caused.
- (h) Except as specifically set out in the agreement, any term, representation, condition or warranty in 
- (i) Nothing in these conditions will be interpreted as excluding or restricting any legal liability of the franchisor for death or personal injury resulting from the negligence of the franchisor, its employees, agents, or sub-contractors and will be read subject to the provisions of the *Trade Practices Act 1974* (as amended) (**the Act**) and any other similar state or territory legislation which cannot be lawfully excluded. These conditions will have the maximum effect permitted by law.
- (j) In all cases other the liability of the franchisor for a breach of a term or condition implied by the Act or similar state or territorial law (other than by [s 69](#) of the Act or corresponding section of any similar state or territory Act or ordinances) will be limited at the franchisor's option to the replacement of the approved products or the supply of equivalent approved products or the payment of the cost of replacing the approved products.

16 DUTIES OF THE MASTER FRANCHISEE

- (a) The master franchisee will not permit any change in its shareholding, directorship or legal or beneficial ownership or control without the prior written consent of the franchisor. The franchisor



- (b) The master franchisee will not sell, transfer, assign, mortgage, charge, lease, deal with or part with possession of the premises or any material asset used by the master franchisee without the prior written consent of the franchisor. The franchisor will not unreasonably withhold its consent where there is no prejudicial effect on either the franchisor or any of the franchisees located within the territory.

- (c) The master franchisee will pay all moneys, fees or levies owing to the franchisor as and when due



- (d) The master franchisee will use the marks solely in the conduct of its activities pursuant to this agreement and strictly in the manner prescribed by the franchisor and not otherwise. The master

franchisee acknowledges that the franchisor is the owner of the marks and that the master franchisee's sole right to use them is derived from this agreement. The master franchisee will not use any other trademarks, tradenames, business names, logos, designs or colour schemes in connection with the master franchised business.

- (e) The master franchisee will not by any act or omission cause the marks or any part of the marks owned or used by the franchisor to be prejudicially affected or contested or in any way impaired either during the term of this agreement or after it is terminated. Any unauthorised use of the marks by the master franchisee will be deemed an infringement of the franchisor's rights under this agreement.
- (f) The master franchisee or its employees will at the master franchisee's expense attend any initial and ongoing training as from time to time as directed

- (g) The master franchisee will promptly pay all taxes, duties or other amounts payable and will likewise ensure that all creditors are promptly paid to ensure that the goodwill and reputation of the business and the franchisees is not adversely affected by the credit standing of the master franchisee or any other factor.
- (h) The master franchisee hereby agrees to clearly indicate on all stationery and other materials given

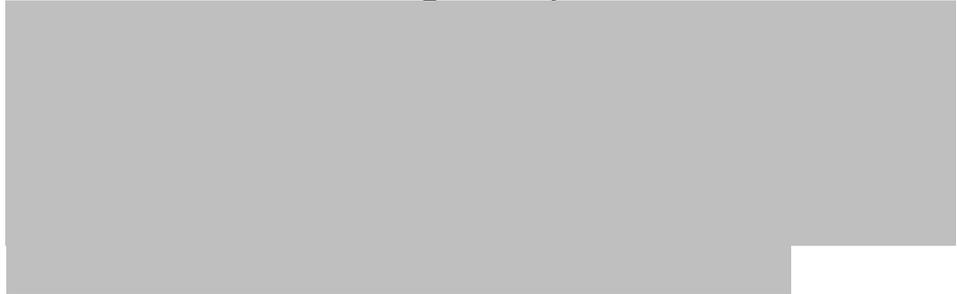
to customers that it is an independent business proprietor.

- (i) The master franchisee will cooperate where required with other members of the franchisor network as specified in the manual or by the franchisor from time to time.
- (j) The master franchisee will ensure that the designated representative (subject to absence for reasonable holidays, sick leave and other normal employee entitlements) devotes their full time



17 ADVERTISING, MARKETING & PROMOTION

- (a) A national marketing fund is to be established to conduct all advertising and promotional activities



- (b) The master franchisees will collect from the franchisees located within the territory the marketing levy payable pursuant to the franchise agreements, and will pay all such moneys received into the national marketing fund where such moneys will be held upon trust for the benefit of all franchisees in the network.

- (c) The master franchisee acknowledges that the franchisor in consultation with all master franchisees is entitled to administer the marketing fund as it deems appropriate.
- (d) The national marketing fund will be subject to an 
- (e) The master franchisee will participate in any market research conducted by the franchisor and agrees to contribute all relevant data collected from such research.
- (f) The master franchisee agrees to strictly comply with the terms of and actively participate in all 
- (g) In addition to the prohibitions contained in this agreement in relation to the use of the marks the master franchisee will not undertake any advertising in any media or prepare any written advertising or promotional material whatsoever without the consent of the franchisor irrespective of whether the marks are used in such advertising or promotional material.

18 DEFAULT

- (a) In the event of default by the master franchisee in the performance of its responsibilities or the payment of any moneys pursuant to this

agreement the master franchisee will, in addition to interest as prescribed in this agreement and without prejudice to any other rights of the franchisor, pay to the franchisor all costs, expenses or damages (including legal costs, expenses or damages on a solicitor-own client basis) incurred by the franchisor as a result of the default.

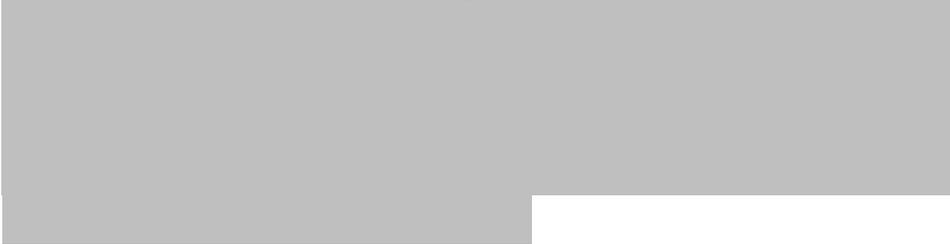
- (b) No acceptance by the franchisor of any payment by the master franchisee and no failure, refusal or neglect of the franchisor to exercise any right under this agreement or to insist upon full



- (c) The master franchisee agrees that it will not, on the grounds of an alleged non-performance by the franchisor of any of its obligations or for any other reason, withhold payment of any amount due to the franchisor, nor will it offset against any payment due to the franchisor any claim by the master franchisee for any rebate or other entitlement unless the franchisor has authorised



its right to recover the balance due or pursue any other remedy provided herein or by law. The franchisor may apply any payments made by the master franchisee against any past due



- (d) The rights of the franchisor hereunder are cumulative and no exercise or enforcement by the franchisor of any right or remedy hereunder will preclude the exercise or enforcement by that party of any other right or remedy herein contained, or to which it is entitled by law.

19 INSURANCE & INDEMNITY

- (a) The master franchisee hereby agrees to fully indemnify the franchisor in respect of any cost, claim, expense or liability arising out of breach by the master franchisee of its responsibilities under this agreement or any other agreement referred to in this agreement.
 - (b) The franchisor will indemnify the master franchisee in relation to any inaccurate or misleading statements, representations or information contained in the disclosure document other than information provided by the master franchisee or any other master franchisee.
 - (c) The master franchisee will take out and maintain
- 

time provided that such approval will not be unreasonably withheld. All such insurance policies will name the franchisor as an additional named insured specifying its interest under this agreement. The master franchisee will provide to the franchisor on request such evidence as the franchisor may require to prove currency and extent of insurance coverage.

- (d) The master franchisee will at all times observe the conditions of the insurance policies and produce to the franchisor when required from time to time copies of the insurance policies and certificates of currency.
- (e) The franchisor may from time to time with due notice reasonably determine and increase the minimum insurance limits and require different or additional types of insurance to reflect changes in insurance standards, normal business practices, higher court awards and other relevant circumstances.
- (f) If the master franchisee at any time fails or refuses to effect and maintain any insurance coverage required by the franchisor or to furnish satisfactory evidence thereof, the franchisor will be entitled to



20 FINANCIAL REPORTING

- (a) The master franchisee will at all times maintain complete, true and proper accounting records in accordance with generally accepted accounting principles and the requirements of the franchisor. The master franchisee will forward to the franchisor on a monthly basis details of the gross sales of the master franchisee, the gross purchases of the master franchisee, all franchisee's fees or levies charged to franchisees and such other items and information as the franchisor will reasonably require, including any information required pursuant to the Franchising Code of Conduct.
- (b) The master franchisee will report by telephone or facsimile to the franchisor overall sales figures

- (c) The master franchisee will make available to the franchisor all franchisee customer information upon request.
- (d) The master franchisee will produce for the franchisor on a quarterly basis a comparison of actual sales against budgeted sales as set out in

the business plan with a brief explanation of the key reasons for any variance.

- (e) The master franchisee will provide to the franchisor on request a copy of any reports submitted to the master franchisee by each of the franchisees within the territory.
- (f) The master franchisee will not be required to provide the franchisor with details of its financial position except where such information is relevant to any trading or security arrangements.

21 INSPECTION AND AUDIT OF FINANCIAL RECORDS

- (a) The franchisor or its authorised representatives will have the right without notice from time to time to inspect and/or conduct an audit of the master franchised business, the premises and/or the financial statements and/or reports and/or accounting records of or related to the master franchised business to ensure compliance with the terms of this agreement and the manuals. The master franchisee covenants to fully cooperate with all such inspections, to provide all information



- (b) Any audit or inspection as specified above will be at the cost of the franchisor unless the audit or inspection discloses that the master franchisee has deliberately understated any amounts payable to the franchisor pursuant to this agreement or has understated by more than 2.5% any amounts payable to the franchisor pursuant to this agreement, whereupon the master franchisee will pay to the franchisor the full cost of the audit and/or inspection within 14 days of demand by the franchisor.

22 CONFIDENTIALITY & NON-DISCLOSURE

- (a) The master franchisee will at all times during and after the expiry of the term maintain strict secrecy about the franchisor's modes and methods of business and finances which without limiting the generality of the foregoing will include any manuals issued by the franchisor, trade secrets, advertising and publicity material issued during the term. The master franchisee will take all steps necessary to ensure that its nominees, employees or agents also observe such requirements of secrecy and confidentiality and will if required by the franchisor cause such nominees, employees or agents to enter into a secrecy agreement in a form approved by the franchisor.
- (b) The master franchisee will not, and will use its best



entity whatsoever unless such disclosure is required by law and will inform the franchisor of any such disclosure compelled to be made as aforesaid.

- (c) The master franchisee and its nominees, employees or agents will not after the expiration or earlier termination of this agreement use the said secrets or confidential information without the written consent of the franchisor first being had and obtained.

23 OPERATIONS MANUAL

- (a) The master franchisee acknowledges that it will be bound by the provisions of the operations manual and by any amendments variations or additions to the operations manual not inconsistent with any term of this agreement and made by the franchisor from time to time. The master franchisee acknowledges that it is a fundamental right reserved by the franchisor by this agreement to amend, vary or add to the system, the approved products and the image from time to time.

- (b) In addition to any other restrictions or rights



- (c) Any breaches by the master franchisee of any requirements of the system or the image contained

in the manual are deemed to be breaches of this agreement.

24 ASSIGNMENT

- (a) The franchisor may at any time transfer or assign its rights pursuant to this agreement and this agreement will inure to the benefit of any transferee or assignee, and to any subsequent successors in title. The master franchisee will on request execute any assignment documentation requested by the franchisor.
- (b) The master franchisee will not be entitled to sublicense, mortgage, charge, subcontract or otherwise deal with or change the underlying beneficial ownership or control of the master franchise. However, the master franchisee may with the consent of the franchisor transfer or assign this agreement and the franchisor will not withhold its consent provided:
 - (i) the transfer or assignment is part of a bona fide sale of the master franchised business to a purchaser;
 - (ii) the proposed assignee or transferee is a responsible and solvent person with sufficient financial and business capacity to successfully operate the master franchised business;
 - (iii) the proposed new master franchisee first obtains all licences and permits required to operate the master franchised business and undertakes at the cost of the master franchisee all training programs required by the franchisor of new master franchisees;

- (iv) the master franchisee first pays to the 
 - (v) the proposed new master franchisee first executes the franchisor's then current standard franchise agreement, any associated guarantees, any security documentation and otherwise complies with any Conditions Precedent to the grant of a franchise imposed upon existing or new master franchisees of the franchisor;
 - (vi) the master franchisee is not in default under any provision of this agreement or any other agreement between the franchisor and the master franchisee and will have substantially complied with all the terms and conditions of such agreements during the terms thereof; and
 - (vii) there are no moneys outstanding owed by the master franchisees to the franchisor under this agreement or any other agreement between the franchisor and the master franchisee.
- (c) The master franchisee acknowledges that any change in its shareholding or directorship will constitute a breach of clause (b) and therefore this agreement.

25 TERMINATION

- (a) The franchisor may terminate this agreement where:

- (i) the franchisee has breached a provision of this agreement;
- (ii) the franchisor has given the franchisee written notice of:
 - (A) the breach;
 - (B) the fact that the franchisor proposes to terminate this agreement as a result of the breach unless it is rectified within a reasonable period;
 - (C) the action required by the franchisor to do to rectify the breach; and
 - (D) the franchisee fails to rectify the breach within a reasonable period.

For the purposes of this clause (a), reasonable period means not more than 30 days.

- (b) The franchisor may terminate this agreement by written notice effective immediately in the event that the franchisee, the designated representative or any of the principals:
 - (i) enters into bankruptcy, makes a scheme of arrangement with creditors, or is placed in receivership, liquidation, administration or any form of insolvency administration;
 - (ii) abandons the franchised business, which will include any situation where the franchisee fails without the prior consent of the franchisor to operate the franchised business for 3 consecutive business days;
 - (iii) is fraudulent in the operation of the franchised business;

- (iv) operates the franchised business in a way that endangers public health or safety;
- (v) is convicted of a criminal offence carrying a gaol term of five years or more, or an offence involving fraud, deception, dishonesty or misleading conduct;
- (vi) has cancelled, revoked, suspended or lapsed any licence, accreditation or authority required by this agreement;
- (vii) takes, or omits to take, any action which is at the time listed in the Code as a ground for immediate termination of a franchise agreement.

(c) Where a franchisee breaches a provision of this



- .
- (d) Where the franchisor determines on reasonable grounds that any breach of this agreement has been deliberate and calculated to cause damage to the franchisor, the parties agree and accept that the reasonable period of notice required under this agreement and the Code is seven days or such shorter period as the franchisor determines as necessary to avoid the franchisor suffering material loss or damage.
 - (e) The franchisor may terminate this agreement by written notice effective immediately in the event that:

- (i) the breach is incapable of being remedied and the franchisor has suffered or is likely to suffer substantial loss or damage; or
 - (ii) the franchisee acts in a manner which would permit immediate termination at law.
- (f) The franchisor reserves the right to immediately suspend the supply of stock and/or the provision of other services to the master franchisee upon service of a notice of breach pending rectification of the breach.
- (g) The provisions of this agreement will not merge on termination of this agreement.

26 EFFECT OF TERMINATION

- (a) Immediately upon termination of this agreement the master franchisee will forthwith cease to

- (b) Furthermore the master franchisee will upon termination immediately and permanently cease to participate in the system or use the marks or display any aspects of the image and will immediately take such action and make such modifications or alterations to the premises (including alteration of signage, removal of the marks and repainting of the premises) and any other aspects of the master franchised business as may be requested by the franchisor. In the event

of the master franchisee's failure to do so within seven days of the date of termination, the franchisor will have the right without affecting its other rights at law or in equity to take such action



- (c) The master franchisee on termination will also return to the franchisor all copies of the manuals, any customer listings or other confidential information, all stationery or other materials, and all stock of the approved products. If the master franchisee does not comply with its obligations pursuant to this clause immediately on termination the franchisor will be entitled to enter the premises without liability in trespass or any other tort to take possession of any items contained therein.
- (d) The franchisor within 14 days will reimburse the master franchisee the trade cost price of any stock returned or repossessed pursuant to clause (c).
- (e) If the master franchisee proposes to vacate and lease or sublease the premises upon termination, the franchisor will have the first option to lease or sublease the premises.
- (f) The franchisor will assume all responsibilities to the franchisees located within the territory as and from termination, but without prejudice to any claims the franchisor may have against the master franchisee.

27 NON-COMPETE

- (a) The master franchisee and the designated representative jointly and severally covenant, after carefully considering the nature and extent of the restrictions imposed upon them and the rights and remedies conferred on the franchisor, which are agreed and acknowledged to be reasonable in time and extent to fairly and not excessively protect the legitimate interests of the franchisor, the franchisees and other members of the network, that neither the master franchisee nor the designated representative will within the territory during this agreement or for a period of 12 months from the date of termination or expiration of this agreement directly or indirectly as principal, servant, agent, partner or representative operate, be involved or interested in or have any connection whatsoever with any employment, business or occupation involving the franchised business or a similar business as described in Item 6 Schedule.
- (b) In addition as a separate and distinct restraint the master franchisee and the designated representative jointly and severally covenant with the franchisor that neither of them will during this
- 
- (c) In addition as a separate and distinct restraint the master franchisee and the designated representative jointly and severally covenant with the franchisor that for a period of 12 months from

the date of termination or expiration of this agreement neither of them will convene or attend any meeting with one or more franchisees located within the territory or attempt to induce any of the franchisees to breach any agreement between the franchisee and the franchisor.

- (d) The master franchisee and the designated representative acknowledge that breach or threatened breach of either of these clauses will cause such immeasurable damage to the franchisor that the franchisor will be entitled to apply to any court of competent jurisdiction for an injunction to prevent any breach or threatened breach in addition to any other remedy the franchisor may have.

28 FRANCHISING CODE OF CONDUCT

- (a) The parties to this agreement agree to comply with the provisions of the Code throughout the duration of this agreement.
- (b) Where the franchisor elects to register or comply with the terms of any voluntary code pursuant to s 51AE of the *Trade Practices Act 1974* (Cth) or any other industry code or other standards of conduct, the parties to this agreement will comply from the time of such election with such code or standards.
- (c) Where any amendments are made to the Code,

- (d) This clause will at the option of the franchisor to be exercised by written notice to the franchisee cease to apply immediately where:

- (i) The Code is withdrawn or declared invalid or unconstitutional by any court of competent jurisdiction;
- (ii) the Code ceases to be mandatory.

29 RELATIONSHIP OF PARTIES

The parties acknowledge that they are independent proprietors and no relationship of partnership, agency, joint venture or employment is expressly intended or to be implied into this agreement. The master franchisee does not have the power to obligate or bind the franchisor other than specified in this agreement.

30 ENTIRE AGREEMENT

- (a) This agreement constitutes the whole agreement between the parties to the exclusion of any and all other agreements, representations or warranties. No amendment to this agreement will be binding unless in writing signed by the parties.
- (b) The master franchisee acknowledges that it has

[REDACTED]

31 GOVERNING LAW

This agreement will be governed by the laws of the state specified in Item 22 of the Schedule 'the Jurisdiction' and the parties hereby submit to the courts of the jurisdiction in connection with the determination of any matters concerning or arising from this agreement.

32 FORCE MAJEURE

Each party hereby releases the other from any claim liability or



33 INTERPRETATION

- (a) A reference to this agreement includes the recitals of and any schedules or annexures to this agreement and where amended means this agreement as so amended.
- (b) Unless the context otherwise requires a word which denotes:
 - (i) the singular includes the plural and vice versa;
 - (ii) any gender includes the other genders;
 - (iii) a person includes an individual, a body corporate and a government;
 - (iv) unless the context otherwise requires a reference to:
 - (A) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
 - (B) any other agreement or instrument where amended or replaced means

that agreement or instrument as amended or replaced;

(C) a clause, schedule, annexure or exhibit is a reference to a clause of, annexure to, schedule to or exhibit to this agreement;

(D) a group of persons includes any one or more of them;

(E) any thing or amount is a reference to the whole and each part of it; and

(c) In the event of there being more than one franchisee the responsibility will be shared jointly and severally between the two (or more) parties.

(d)

34 DISPUTE RESOLUTION

(a) Where a dispute under this agreement arises between the franchisor and the franchisee and/or

(i) the complainant will notify the other party of the dispute by giving the other party written notice specifying:

(A) the nature of the dispute;

(ii) the outcome required by the complainant; and

(iii) the action the complainant believes will settle the dispute;

(A) the parties will attempt to resolve the dispute by mutual negotiation.

(B) In the event that the parties are unable to reach a resolution of the dispute



(b) In the event that no agreement can be reached between the parties on an appropriate mediator within 14 days, either party may ask the mediation adviser for the time being under the Code to appoint a mediator.

(c) The mediator will have the right to determine the time, place and procedures for the mediation and



(d) Both parties must attend the mediation and make a determined and genuine effort to resolve the dispute.

(e) Proceedings of the mediator will be as informal as

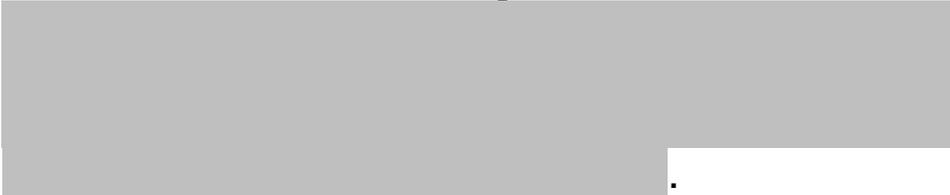


(f) The parties to the mediation will agree that:

(i) everything that occurs before the mediator will be in confidence and in closed session;

(ii) all discussions will be without prejudice; and

(iii) no documents brought into existence specifically for the purpose of the mediation process will be called into evidence in any subsequent litigation by either of the parties.

- (g) It will be the role of the mediator to act fairly, in good faith and without bias with the purpose of seeking a resolution of the dispute and will treat all matters in confidence.
- (h) Each of the parties will have the opportunity to adequately present their case.
- (i) The mediator will have regard to the fairness and
.
- (j) The mediator will deal with any matter as expeditiously as possible by no later than 14 days after referral to the mediator.
- (k) The parties to the mediation will bear the mediation costs on an equal basis and grant immunity from liability to the mediator.
- (l) The parties will report back to the mediator within 14 days, on actions taken, based on the outcome of the mediation.
- (m) Where any of the parties believes the mediator is

- (n) none of the parties will have any cause of action against the mediator or arising out of the conduct of the mediation. The mediator will have no power to make any decision, determination or recommendation binding on the parties to resolve the dispute.
- (o) Nothing contained in the dispute resolution procedures above will deny either of the parties the

right to seek injunctive relief from an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned



35 SERVICE OF NOTICES

All payments will be made to and all notices requests demands and other communications hereunder will be deemed to have been duly received by the person to whom addressed when



36 WAIVER

Any delay or failure to enforce any term of this agreement by the franchisor will not be deemed to be a waiver of any term of this agreement. Any waiver by the franchisor of a term of this agreement must be in writing and will not be deemed to be a waiver of subsequent breaches of the same or of a different kind.

37 SEVERABILITY

In the event that any provision or portion of any provision of this agreement is held to be unenforceable or invalid by a court of

38 COST AND (STAMP) DUTY

The master franchisee will pay to the franchisor on signing this agreement the Documentation fee referred to at Item 18 of the Schedule as a contribution towards the costs of the preparation of this agreement, and will in addition pay all stamp duties relating to this agreement or arising out of it. In addition, the master franchisee will pay all costs and expenses incurred by the franchisor in relation to any default by the master franchisee hereunder.

39 FURTHER ASSURANCE

- (a) The parties covenant to do such further acts and things and execute such further documents as will be necessary in the reasonable opinion of the franchisor to give effect or better effect to the provisions of this agreement.
- (b) In the event of the master franchisee failing to execute any document or do any act or thing

40 INJUNCTION & INTERLOCUTARY RELIEF

The master franchisee acknowledges that strict adherence by the master franchisee to the provisions of this agreement is



41 WARRANTIES AND REPRESENTATIONS OF MASTER FRANCHISEE

(a) The master franchisee acknowledges, warrants and represents to the franchisor that prior to having executed this agreement, it has:

- (i) carefully read the provisions of this agreement and has understood them;
- (ii) not relied upon any statement, representation or warranty made by the franchisor other than as set out herein;
- (iii) understood that the franchisor does not guarantee to provide a rate of return on



- (iv) sought independent and specific advice from its personal taxation adviser concerning the likely taxation consequences of investment pursuant to this agreement and accordingly

has not received from or relied upon any representations by the franchisor, its officers servants or agents whom the master franchisee acknowledges are not qualified to provide taxation advice;

- (v) sought its own independent legal and accounting advice with respect to this agreement and all other aspects of the master franchised operation.

42 DIRECTORS GUARANTEE

The master franchisee (if a corporation) will simultaneously with the execution of this agreement procure the execution by all directors of the master franchisee of the form of guarantee annexed hereto. The master franchisee will also procure that any directors appointed subsequently will also execute such form of guarantee promptly upon their appointment.

SCHEDULE

1. The Franchisor
2. The Commencement date
3. Term
4. The Master Franchisee
5. The principals
6. Franchise Business [include detailed description of franchised business]
7. The marks. The Franchisor owns the following trademarks:
8. The premises
9. The Territory
10. Franchise fee
11. Retention amount
12. Management services fee
13. Marketing levy %
14. Further term
15. Renewal fee
16. The designated representative
17. Insurance. The master franchisee will insure for the following risks:
18. Documentation fee
19. Master Franchise fee
20. The Key Performance Criteria
21. The Franchise fee is to be divided as:
22. Governing jurisdiction

Executed as an Agreement.

Executed for and on)
behalf of by)

.....)

.....)

(print name and position) a)
duly authorised person in)
the presence of:)

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Witness signature

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Name of Witness (print)

Date:

Executed for and on)
behalf of by)

.....)

(print name) a duly)
authorised person in the)
presence of:)

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Witness signature

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Name of Witness (print)

Date: