NZ-MADfrn01

Franchise agreement: service business

Contents

1. Definitions
2. Interpretation
3. Warranties for authority
4. Relationship of parties
5. Entire agreement
6. Grant of Franchise
7. Early obligations of the Company
8. Initial Training
9. Ongoing Company provision
10. Franchise fees and other payments
11. Payment terms
12. Right to renewal
13. Data Protection laws compliance
14. Franchisee's undertakings
15. Exclusive purchase arrangements
16. Transfer on death of franchisee
17. Company's right of pre-emption
18. Terms for transfer to a third party
19. Franchise operated by a partnership
20. Franchise operated by a company
21. Insurance
22. Risk and retention of title
23. Intellectual property
24. New intellectual property
25. Intellectual property / software
26. Termination by the Company on notice
27. Automatic or immediate termination
28. Consequences of termination
29. Confidentiality
30. Cooling off Period
31. Confidentiality of Know-how
32. Time is of the essence
33. Limitation of liability
34. Limitation of liability for defects
35. Publicity / Announcements
36. Irrevocable power of attorney
37. Indemnity
38. Damages not adequate
39. Uncontrollable events
40. Miscellaneous matters

Schedule 1 Intellectual Property
Schedule 2 Branded Supplies

Schedule 3 Press release

This agreement is dated [date] [redacted]:

ABC Limited, a company incorporated in New Zealand under Company registration number [number] and whose registered [redacted] [[redacted]] (“[redacted]”);

And DEF, whose address is [full [redacted]] (“[redacted]”)

It is now agreed as follows:

1. Definitions

In this agreement, the following words shall have the following meanings, [redacted]:

“Branded Equipment”	means [equipment, plant and machinery] specified [redacted].
“Branded Supplies”	means the consumable goods and semi-disposable goods listed in the Manual as Branded Supplies and provided [redacted], [redacted].
“Central Undertaking”	means the whole of the business carried on by the Company, part of which is intended [redacted].
“Close Relative”	means in relation to a deceased Franchisee.
“Confidential Information”	means all information about the Company. It includes among other things: information about businesses, methods of doing business, future plans, policies, suppliers and customers. It includes information about suppliers agents distributors and customers. [redacted], [redacted]; [redacted]-[redacted].
“Franchise”	means the arrangement for operation of the Franchise Business, [redacted]

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	[redacted].
“Franchise Premises”	means the real property or premises occupied by the Franchisee for [redacted].
“Franchise Service”	means any service provided by the Franchise Business, [redacted].
“Goods”	means Branded Supplies and Branded Equipment together.
“Franchise Business”	means the business, carried on under the brand name of the Company and is being [redacted].
“Disclosure Document”	means all information of the Company’s Business. It includes among other things: experience of Company, litigation history, payments to be made by the Franchisee to the Company existing and past franchisees. It includes information about the supply of goods and services, marketing or other cooperative [redacted]. [redacted], [redacted]-[redacted].
"Intellectual Property"	means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, [redacted], [redacted], [redacted]-[redacted], [redacted], [redacted].
“Know-how”	means the body of knowledge and ideas created by the Company and used in any [redacted].
“Manual”	means every manual and other document intended to provide instruction or set policy on any [redacted]

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[redacted].

“Software” means the software used in the Franchise Business and licensed [redacted].

“Termination Date” means the date when this agreement ends.

“Territory” means the area covered by [post code / [redacted] / [redacted] / [redacted]].

“Transferee” any person to whom the Franchisee wishes to sell or charge or make some other voluntary [redacted], [redacted].

2. Interpretation

In this agreement unless the context otherwise requires:

2.1. any agreement by any party not to do or omit to do something is deemed to include an obligation not to allow [redacted];

2.2. [except where stated otherwise], any obligation of any person arising from this [redacted];

2.3. in this agreement references to a party include [redacted]:

to whom those rights and obligations are transferred or pass as a result of a merger, division, [redacted] - [redacted].

2.4. the headings to the paragraphs and schedules (if any) of [redacted];

2.5. all money sums mentioned in this agreement are calculated net of GST, which [redacted].

2.6. a requirement for reasonableness shall not imply that reasons shall be given [redacted].

2.7. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified

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party, such cost calculated as, [redacted] .

2.8. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or [redacted] , [redacted] .

3. Warranties for authority

3.1. Each of the parties warrants that it has power to enter into this agreement [and [redacted]].

3.2. The Franchisee warrants and undertakes that it is not aware as at the date of this agreement of anything within his reasonable control which might [redacted] .

3.3. The Franchisee warrants that he is not at the time of entering into this agreement insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or [redacted] .

4. Relationship of parties

4.1. Nothing in this agreement shall create a partnership or agency or the relationship of employer and employee, or other relationship between any of the [redacted] , [redacted] .

4.2. Neither party shall have, nor represent that it has, any authority to make any commitment on the other party's behalf, except joint marketing [redacted] .

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5. Entire agreement

5.1. This agreement, together with the Manual, contains the entire agreement between the parties and [redacted].

5.2. The Franchisee acknowledges that he has read and understood the Manual, Disclosure Documents and he accepts that the Company may change anything in the Manual [redacted]

.

5.3. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information [redacted].

5.4. Conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law. As [redacted], [redacted]:

[Enter list of docs and dates [redacted]]

6. Grant of Franchise

6.1. With effect from [start date] the Company grants a [exclusive/non-exclusive] Franchise to the Franchisee [within the Territory] for the [provision of the service of trade [redacted] / [redacted]] [redacted].

6.2. The Franchisee will operate the Franchise from the Franchise Premises [redacted].

6.3. The Franchisee may use the [trade mark / trade name / copyright / Intellectual Property related to [redacted] 1].

6.4. The Termination Date is [date], when this agreement [redacted].

6.5. [The Company may terminate this agreement at any time within the first 12 months on [redacted]].

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7. Early obligations of the Company

After the signing of this agreement, The Company [redacted]:

7.1. [the set-up guide relating to selection of Franchise Premises, [redacted], [redacted], [redacted]];

7.2. the Manual;

7.3. the Disclosure Document;

7.4. names of approved suppliers and draft contract forms;

7.5. the stock of Branded Supplies listed [redacted] 2 ;

7.6. draft budget, management accounts and book keeping system based on [the Software] which the Franchisee [redacted];

7.7. a [three] year marketing plan, to [redacted] [[redacted]] [redacted];

7.8. advertising and marketing guide;

7.9. draft contract of employment of staff.

8. Initial Training

8.1. Within [28] days of signing this agreement, the Company will provide a minimum of [20] hours training in the [redacted] [[redacted] / [redacted] / [redacted]] [redacted].

8.2. The training will be provided free of charge at a location [redacted].

8.3. The Franchisee must pay for his travel and accommodation [redacted].

8.4. The Franchisee must complete the training to the level required by the Company. It is in the discretion of the Company as to whether the Franchisee has completed the training to a satisfactory level. [redacted] ([redacted]) [redacted].

8.5. The Company will provide training for employees or prospective employees of the Franchisee at [its head office / a location chosen by the Company]. Training will be provided by the day and charged [redacted]

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[redacted]. [redacted] $ [200] [redacted].

9. Ongoing Company provision

During the operation of the Franchise, the [redacted]:

9.1. provide the Branded Supplies;

9.2. provide and maintain the Manual;

9.3. provide training for the employees of the Franchisee at cost to the Franchisee [at the Franchise Premises / at premises [redacted]];

9.4. recommend sources of non-branded materials, goods and services from [redacted];

9.5. provide advice, to the extent it judges to be reasonably required, by telephone / [redacted];

9.6. provide and maintain Disclosure Documents;

9.7. provide whatever marketing assistance and promotional material in any medium [redacted];

9.8. develop public relations and promotional campaigns for the benefit of the Central [redacted];

9.9. supervise advertising by the Franchisee so as to impose appropriate [redacted].

9.10. provide disclosure document within [[redacted]] [redacted] financial [redacted].

10. Franchise fees and other payments

10.1. In consideration of the Company granting the Franchise, [redacted] $ [10 , 000] [redacted].

10.2. By the [tenth] day of each month, the Franchisee shall [redacted] [5 %] [redacted],

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[redacted], [redacted], [redacted].

10.3. During a period of [30] days prior to opening [redacted], [redacted] $ [1000] [redacted].

10.4. During the operation of the Franchise, the Franchisee will [redacted] $ [1000] [redacted].

10.5. All advertising must be approved [redacted], [redacted], [redacted], [redacted].

10.6. The Franchisee shall pay [redacted].

11. Payment terms

11.1. All sums due under this agreement:

11.1.1 shall be made by the due date, failing which the Company may charge the [redacted] [5] % [redacted] [[redacted]] [redacted];

11.1.2 Interest shall be calculated and compounded monthly.

11.1.3 shall be paid in dollars by [redacted].

11.2. Payment for Goods shall be made [redacted].

11.3. All Goods sold to the Franchisee [redacted].

11.4. All payments to be made by [name] under this agreement shall be made in [redacted] - [redacted] [([redacted] :) [redacted]

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[redacted]].

11.5. Payments shall be made without deductions. If the applicable law requires any tax or charge to [redacted], [redacted].

11.6. Any sum due under this agreement not expressed in New Zealand dollars shall be converted into New Zealand [redacted] [[redacted]] [redacted] [[redacted]].

12. Right to Renewal

12.1. The Franchisee may renew the Franchise [redacted] [5] [redacted], [redacted]:

12.1.1 gives written notice to [redacted];

12.1.2 has achieved the [redacted];

12.1.3 is not [redacted];

12.1.4 signs the then current version of the Franchise agreement of the Company, which may be different [redacted], [redacted], [redacted], [redacted];

12.1.5 is not affected by any circumstance ([redacted]) [redacted].

12.1.6 pays the renewal fee of $ [5000].

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13. Data Protection laws compliance

The Manual and the operation of the Software require that [redacted]; [redacted].

14. Franchisee's undertakings

The Franchisee now undertakes to:

14.1. participate personally in the operation of the Franchise Business for at least [30] hours [redacted] [48] [redacted] [[redacted] ;]

14.2. make certain that the Franchise [redacted].

14.3. comply in all respects with the procedures and [redacted], [redacted];

14.4. not conduct any aspect of [redacted];

14.5. not do anything which may harm [redacted];

14.6. employ suitably [redacted];

14.7. maintain high standards of [redacted];

14.8. to use only the Company's [redacted], [redacted].

14.9. obtain and maintain all the [redacted], [redacted], [redacted];

14.10. maintain accounting, employment and other [redacted];

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14.11. make available to the Company [redacted];

14.12. pay tax as due;

14.13. maintain a relationship with every [redacted],

14.14. sell the Franchise [redacted];

14.15. at all times [redacted];

14.16. always use his [redacted].

14.17. allow access to any person authorised by the [redacted], [redacted], [redacted].

14.18. at the request of the Company, [redacted] [[redacted] / [redacted]].

14.19. not incorporate or change the [redacted].

14.20. not use any business name of [redacted], [redacted].

14.21. conduct the Franchise [redacted];

14.22. not sell, transfer, sublicense, or assign this [redacted], [redacted].

14.23. provide for assessment by the [redacted] - [redacted].

14.24. Each shareholder in a corporate Franchisee, who signs [redacted], [redacted], [redacted].

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15. Exclusive purchase arrangements

The Franchisee will not buy from any supplier except the Company, [redacted], [redacted], [redacted].

16. Transfer on death of Franchisee

16.1. In the event of the death of the Franchisee, the franchise [redacted], [redacted] [30] [redacted], [redacted].

16.2. A Close Relative of the deceased Franchisee may take over the Franchise provided he is qualified [redacted] [[redacted]] [redacted].

16.3. No transfer fee shall be payable to [redacted] - [redacted].

16.4. The grant of a new franchise will be [redacted].

16.5. A transfer to any other person shall be [redacted].

16.6. If the quality of management of the Franchise Business is reduced in the judgement of the [redacted], [redacted] [[redacted]] [redacted], [redacted] [[redacted] 20 %.]

17. Company's right of pre-emption

17.1. The procedure set [redacted] “ [redacted] ”.

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17.2. If and whenever the Franchisee wishes to assign, sub-contract, [redacted], [redacted]-[redacted].

17.3. The Franchisee must give notice in writing to the Company, [redacted], [redacted], [redacted]:

17.3.1 the name of Transferee;

17.3.2 information relating to the Transferee of the [redacted];

17.3.3 the proposed transfer price, [redacted]-[redacted];

17.3.4 a draft [redacted].

17.4. The Company may make [redacted].

17.5. All of the information given to the Company ("[redacted]") [redacted].

17.6. The Company must, within [28] days of the date it was notified of the possibility of a transfer by the Franchisee, [redacted]-[redacted], [redacted]. [redacted] [28] [redacted], [redacted].

17.7. If the Company elects not to buy [redacted], [redacted]:

17.7.1 the Transferee is [redacted]; [redacted]

17.7.2 the Transferee is [redacted]; [redacted]

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17.7.3 the Transferee is disqualified by his or its failure [redacted].

17.8. If the Company so [redacted], [redacted].

17.9. If the Company elects to buy the Franchise Business, completion shall [redacted] [10] [redacted]-[redacted].

17.10. If the Company elects [redacted]:

17.10.1 the Franchisee is free to [redacted];

17.10.2 the Franchisee may not change any [redacted];

17.10.3 the Company shall not object to [redacted];

17.10.4 on completion of the transfer, the Franchisee shall procure that the Transferee simultaneously enters [redacted].

17.10.5 the Company shall co-operate fully and [redacted].

17.10.6 if the sale to the Transferee does not proceed, the Franchisee may not [redacted] [12] [redacted].

17.11. If the Company has the right to buy the Franchise Business in circumstances where [redacted], [redacted]

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[redacted]:

17.11.1 the Franchise Business is a going concern.

17.11.2 the sale is at [redacted].

17.11.3 the buyer must employ staff [redacted].

17.11.4 the buyer must himself [redacted].

17.12. There shall be deducted from the purchase price payable by the [redacted].

18. Terms for transfer to a third party

18.1. A transfer to a third party who [redacted], [redacted]:

18.1.1 the Transferee must meet [redacted].

18.1.2 the Transferee signing [redacted]-[redacted].

18.1.3 payment to the Company of a contribution to the cost [redacted], [redacted] $ [[redacted]].

18.1.4 payment to the Company [redacted] $ [50 , 000].

18.1.5 payment to the [redacted].

18.2. If a transfer does not proceed, the [redacted].

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18.3. The transfer must be completed within [12] weeks of the [redacted]. [redacted], [redacted].

19. Franchise operated by a partnership

19.1. If the Franchisee wishes to enter into [redacted], [redacted]:

19.1.1 the new partner (or, if a [redacted], [redacted]) [redacted].

19.1.2 the Transferee signing [redacted] - [redacted].

19.1.3 payment to the Company of a contribution to the cost [redacted], [redacted] $ [[redacted]].

19.1.4 payment to the Company [redacted] $ [50 , 000].

19.1.5 payment to the [redacted].

19.2. In the event of any of:

19.2.1 the death of one of the partners,

19.2.2 the purported or actual [redacted];

19.2.3 the bankruptcy or proven insolvency of a partner;

the partner(s) remaining may [redacted]. [redacted], [redacted]:

19.2.4 give notice of their wish [redacted] [60] [redacted];

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19.2.5 obtain the approval of the Company to [redacted];

19.2.6 sign a new franchise agreement in [redacted];

19.2.7 pay the Company a contribution to the cost of providing assessment, [redacted], [redacted], [redacted] $ [50 , 000].

19.3. The Company [redacted].

19.4. If the surviving partner(s) wishes to introduce a new partner, [redacted].

19.5. If such an application is made, the Company will not refuse it unreasonably, nor make [redacted]. [redacted], [redacted].

19.6. Each of the partners now undertakes to report to [redacted], [redacted].

20. Franchise operated by a company

20.1. The following terms apply if the [redacted]. [redacted]:

20.1.1 becomes insolvent; or

20.1.2 is the subject of [redacted]; [redacted]

20.1.3 transfers or charges, or attempts [redacted], [redacted]; [redacted]

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20.1.4 is subject to [redacted]; [redacted]

20.1.5 is subject to [redacted],

20.2. The Franchise shall terminate automatically [redacted].

20.3. The Company shall not object unreasonably to a change [redacted].

20.4. If the shareholders in the Franchisee propose a change which does, in [redacted], [redacted], [redacted]:

20.4.1 The Company approving a person who is a shareholder and [redacted], [redacted];

20.4.2 The signing of a new [redacted].

20.4.3 Payment to the Company of a fee calculated as the proportion of $ [10, 000] [redacted], [redacted] ([redacted]) [redacted].

20.4.4 If and so far as the Company requires in its [redacted], [redacted].

20.5. If the Franchise terminates, the Company shall have a right to [redacted], [redacted].

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21. Insurance

21.1. The Franchisee will obtain and maintain an insurance [redacted].

21.2. The Franchisee shall keep the Goods insured to [redacted].

21.3. The Franchisee will pay all the premiums [redacted].

21.4. The Franchisee will ensure that the terms [redacted].

21.5. The Company's interest will be noted [redacted].

21.6. The insurance policy will stipulate that the [redacted] [15] [redacted].

21.7. If, when the Company asks, the Franchisee fails to deliver to [redacted], [redacted].

22. Risk and retention of title

22.1. The Company shall deliver the Goods, [[redacted]] [redacted], [redacted] [[redacted]].

22.2. In spite of delivery having [redacted], [redacted]:

22.2.1 the Franchisee [redacted]; [redacted]

22.2.2 no other sums [redacted].

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22.3. Until property in the Goods passes to [redacted].

22.4. The Franchisee shall store the Goods (at no cost to [redacted]) [redacted].

22.5. Notwithstanding that any of the Goods remain the property of the Company [redacted].

22.6. Any sale or dealing shall be a sale or use of [redacted], [redacted].

22.7. Until property in the Goods passes from the Company the entire proceeds of sale of the [redacted].

22.8. The Company shall be entitled to recover the price charged for the [redacted]. [redacted], [redacted].

22.9. If the Company asks [redacted].

22.10. If, when asked, the Franchisee fails to return the [redacted], [redacted]. [redacted], [redacted].

22.11. The Franchisee shall not pledge or in any way charge by way of security for any indebtedness any [redacted]. [redacted], [redacted]. [redacted].

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22.12. While ever the Company has title [redacted], [redacted]:

22.12.1 title to [redacted];

22.12.2 the Franchisee shall hold such products as [redacted].

22.12.3 all the Company's rights in relation to [redacted] ([redacted]) [redacted].

23. Intellectual Property

The Franchisee agrees with the Company:

23.1. not to cause anything which [redacted].

23.2. to notify the [redacted];

23.3. to take such reasonable action as the [redacted];

23.4. to mark the Goods [and [redacted]] [[redacted]] [redacted];

23.5. to compensate the Company for any [redacted];

23.6. to indemnify the Company for [redacted];

23.7. on the expiry or termination of this [redacted];

23.8. not to tamper with any [redacted];

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23.9. [redacted];

23.10. [redacted];

23.11. [redacted][[redacted]][redacted][[redacted]][redacted].

24. New Intellectual Property

24.1. [redacted],[redacted].[redacted]:

24.1.1 [redacted];

24.1.2 [redacted];

24.1.3 [redacted].

24.2. [redacted].

24.3. [redacted].

25. Intellectual Property / Software

[redacted]:

25.1. [redacted][[redacted]][redacted][[redacted]][redacted];

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25.2. [redacted] [[redacted]] [redacted] [[redacted]] [redacted];

25.3. [redacted];

25.4. [redacted] [[redacted]] [redacted];

25.5. [redacted] [[redacted]] [redacted] [[redacted]] [[redacted]];

25.6. [redacted] [[redacted]];

25.7. [redacted]-[redacted];

25.8. [redacted] [[redacted]] [redacted];

25.9. [redacted];

25.10. [redacted], [redacted];

25.11. [redacted], [redacted];

25.12. [redacted]-[redacted]-[redacted];

25.13. [redacted].

26. Termination by the Company on notice

[redacted] “[redacted]”. [redacted]

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[redacted], [redacted], [redacted] [30] [redacted], [redacted]. [redacted]:

26.1. [redacted].

26.2. [redacted], [redacted], [redacted]-[redacted].

26.3. [redacted].

26.4. [redacted].

26.5. [redacted].

26.6. [redacted], [redacted].

26.7. [redacted] [30] [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

26.8. [redacted].

27. Automatic or immediate termination

[redacted], [redacted]:

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27.1. [redacted];

27.2. [redacted];

27.3. declared or becomes insolvent;

27.4. [redacted].

27.5. [redacted].

27.6. [redacted]; [redacted].

28. Consequences of termination

Upon termination of this agreement for any reason:

28.1. [redacted].

28.2. [redacted], [redacted];

28.3. [redacted]:

28.3.1 have access to the Franchise Premises;

28.3.2 [redacted];

28.3.3 [redacted];

28.3.4 [redacted], [redacted];

28.3.5 take a transfer of any other leased asset.

28.4. [redacted], [redacted].

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28.5. [redacted], [redacted], [redacted];

28.6. [redacted].

28.7. [redacted], [redacted].

28.8. the Franchisee undertakes with the Company:

28.8.1 [redacted]([redacted])[redacted]([redacted])[redacted];

28.8.2 [redacted][[redacted]][redacted]([redacted])[redacted];

28.8.3 [redacted]([redacted])[redacted].

29. Confidentiality

29.1. The Franchisee agrees and undertakes that he will:

29.1.1 [redacted];

29.1.2 [redacted][[redacted]/[redacted]][redacted]([redacted]);

29.1.3 [redacted]([redacted])[redacted].

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29.2. [redacted]:

29.2.1 [redacted], [redacted], [redacted][[redacted]. . . .]

29.2.2 [redacted]/[redacted].

29.3. This paragraph does not apply to disclosure:

29.3.1 [redacted].

29.3.2 [redacted].

29.3.3 [redacted].

29.3.4 [redacted].

29.4. [redacted][[redacted]] [redacted], [redacted].

30. Cooling off period

30.1. [redacted]:

30.1.1 entering into the agreement; or

30.1.2 [redacted]([redacted])[redacted].

30.2. [redacted], [redacted], [redacted] 14 [redacted], [redacted]([redacted])[redacted]

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[redacted]:

30.3. [redacted], [redacted], [redacted].

31. Confidentiality of Know-how

The Franchisee agrees:

31.1. [redacted]-[redacted] ([redacted]) [redacted];

31.2. [redacted]-[redacted].

31.3. [redacted]-[redacted];

31.4. [redacted]-[redacted];

31.5. [redacted]-[redacted];

31.6. [redacted]-[redacted];

31.7. [redacted]-[redacted].

31.8. [redacted]-[redacted];

31.9. [redacted], [redacted], [redacted];

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31.10. [redacted][[redacted]][redacted][[redacted]][redacted][[redacted]][redacted];

32. Time is of the essence

32.1. [redacted].[redacted].

32.2. [[redacted]][redacted][[redacted]][redacted],[redacted].

33. Limitation of liability

33.1. [redacted],[redacted],[redacted],[redacted],[redacted],[redacted],[redacted] [$ 100 , 000 ([redacted])].

33.2. [redacted],[redacted]:

33.2.1 indirect or consequential loss; or

33.2.2 [redacted],[redacted],[redacted].

34. Limitation of liability for defects

34.1. [redacted][1][redacted];

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34.2. [redacted], [redacted].

34.3. [redacted], [redacted], [redacted].

35. Publicity / Announcements

35.1. Neither party shall:

35.1.1 make any public announcement; or

35.1.2 disclose any information; or

35.1.3 [redacted];

[redacted].

35.2. [redacted].

35.3. [redacted] 3, [redacted].

36. Irrevocable power of attorney

36.1. [redacted], [redacted].

36.2. [redacted], [redacted], [redacted].

36.3. [redacted] [14] [redacted]. [redacted]

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[redacted]
.

36.4. [redacted], [redacted], [redacted]
[redacted].

36.5. [redacted], [redacted]
[redacted].

36.6. [redacted]
[redacted].

36.7. [redacted]
[redacted].

36.8. [redacted]
[redacted]
.

37. Indemnity

37.1. [redacted], [redacted]
[redacted]:

37.1.1 [redacted], [redacted], [redacted], [redacted]
[redacted].

37.1.2 [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted];

37.1.3 [redacted]
[redacted][redacted][redacted][redacted]
[redacted]

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37.2. [redacted], [redacted].

37.3. [redacted], [redacted], [redacted], [redacted]:

37.3.1 [redacted], [redacted], [redacted], [redacted];

37.3.2 [redacted];

37.4. [redacted].

37.5. [redacted] [[redacted]] [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] [$ 500 , 000 [[redacted]]].

38. Damages not adequate

[redacted], [redacted], [redacted] [[redacted]] [redacted], [redacted], [redacted], [redacted] [[redacted] / [redacted]] [redacted].

39. Uncontrollable events

[redacted]

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[redacted], [redacted].

40. Miscellaneous matters

40.1. [redacted].

40.2. [redacted].

40.3. [redacted].

40.4. [redacted].

40.5. [redacted].

40.6. [redacted].

40.7. [redacted].

40.8. [redacted].

40.9. [redacted].

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[redacted].

40.10. [redacted]-[redacted].

It shall be deemed to have been delivered:

> [redacted]: [redacted];
>
> [redacted]: [redacted] 72 [redacted];
>
> [redacted]: [redacted] 24 [redacted];
>
> [redacted]-[redacted]-[redacted]: [redacted] 24 [redacted]-[redacted]. [[redacted]-[redacted]. [redacted], [redacted]]

40.11. [redacted], [redacted].

40.12. [redacted].

40.13. [redacted], [redacted]. [redacted].

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■■■■■■■■/■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■
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For, and on behalf of [ ]

print name

For, and on behalf of [ ]

print name

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Schedule 1 Intellectual Property

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Schedule 2 Branded Supplies

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Schedule 3 Press release

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Explanatory notes:

Franchise agreement: service business

General notes

1. Although all matters relating to the management, operation and structure of a company are regulated by statute, this agreement is comparatively unregulated. It is therefore [redacted].

   However, franchise arrangements are watched by many organisations and critics. If you want your franchising business to be a success, you should keep the deal fair in the eyes of the World. The starting point for this agreement should therefore be a “wish list” [redacted]. [redacted], [redacted]!

   We advise that you do not add greatly to the detail of the franchise arrangements. It is certain that you will need to change them from time to time. Keep this document to the [redacted].

2. This is estimated to cover about half the franchised outlets [redacted].

   Government announced that the self-regulation of franchising in New Zealand was working and he gave much credit to the FANZ and concluded that no franchising legislation was required "at this time". That left the door open for the future but current expert opinion is that no franchising legislation is required in New Zealand because there is sufficient legislation at present [redacted] – [redacted] 1986 [redacted] 1979 .

3. The FANZ has rules together with a code of practice and a code of ethics. All members of the FANZ agree to comply with the rules and both codes but it [redacted].

4. The Code of Practice also insists members offer a ’cooling off’ clause. This requires all franchise agreements to contain a minimum seven day period from the date of the agreement during which a franchisee may change their mind and terminate the purchase. The cooling-off period does not apply to term renewals or re-sales by franchisees. 1If the franchisor is a member of the FANZ then it is required to have a cooling off period of 7 days in [redacted]. [redacted]

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[redacted].

5. The Franchise Premises: we have assumed that either the company has no direct interest in the Franchise Premises, or, more likely, that the franchise branch operates from property held under a lease to the franchisor and sub-let to the franchisee. In that [redacted].

Paragraph specific notes

Notes relating to a particular paragraph

1. Definitions

Check very carefully to be sure they apply exactly to your proposals. You should first decide on the contents of the document, then return to check what definitions are needed and [redacted].

We have had difficulty in deciding on the most appropriate references to the main business on the one hand and the franchisee's business ion the other hand. Use of the word "business" may be confusing. We have chosen "Central Undertaking" simply to make the [redacted].

You may not require a reference to software. Most businesses will use some software which is tailored to some extent, if [redacted].

We have defined the manual as any number of documents. What it means is all of the documents you provide as [redacted].

We have allowed for some information to be in schedules to the agreement. You can add to the schedules, change or delete [redacted].

2. Interpretation

We advise you to leave all these in place because they tie in to important points in the way a judge would interpret the agreement. The point on GST can be deleted for commercial transactions, when GST is assumed to be due. The last item covers future litigation, when [redacted].

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3. **Warranties for authority**

The franchisor will already have made enquiries, but it is useful to have the Franchisee personally confirm these important points, so that he is liable [redacted]..

4. **Relationship of parties**

Leave this provision in place. Every employer is required to comply with New Zealand anti-discrimination laws, which prevent discrimination on grounds of sex, race, sexual orientation, disability, religion and age. In practice, the courts are [redacted], [redacted].

5. **Entire agreement**

In law, the Franchisee has signed to the Manual (which may be contained in several documents) in the form in which it is at the date of signing. There is provision in the agreement for his accepting changes, but since he will not have signed to them, they will [redacted]. [redacted], [redacted]!

6. **Grant of franchise**

The start date may be in the future. The possibility to terminate depends on the franchise you are offering. Clearly, you cannot terminate on a whim when your Franchisee has spent large sums in setting up and may have taken a lease of [redacted]. [redacted].

Termination may be an issue. A Franchisee does not want to be working for ten years, only to have to hand his business back to you. You will have your own aspirations and reasons for your decision so enter whatever period is appropriate or no date at all. If there is no termination date [redacted] “[redacted]” [redacted], [redacted].

7. **Early obligations of the company**

It will be necessary to think this through and list the items which may cause worry to the Franchisee if not included. Do not go [redacted]. [redacted].

8. **Initial training**

Training is important. It is also a matter widely discussed in books and articles. So the agreement should cover this issue if only to satisfy the worries

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of the Franchisee. We have used it as [redacted].

9. **Ongoing Company provision**

This depends entirely on what you want to provide. Avoid committing to over-detailed obligations [redacted].

10. **Franchise fees and other payments**

There is no law restricting what a franchisor can charge for what service or in what circumstances. Basic common law is that a fee or charge should reflect no “penalty”. So your solicitor can charge you $1000 an hour but he may not charge you an extra “$10 an hour [redacted]”. [redacted]. [redacted]. [redacted]-[redacted], [redacted].

We take the view that it is best to state specific sums, even if they are later eroded by inflation. [redacted].

What the Franchisee pays and for what services [redacted].

11. **Payment terms**

The interest provision is useful to promote fast payment. The rate and cumulating period are for negotiation, but you should remember that the period of cumulation is [redacted]. ([redacted] " [redacted] ").

12. **Right to renewal**

Only you can decide the framework of your franchise offer and set the terms for renewal and transfer. We have provided example terms based on an initial term of five years. This gives you the opportunity to change [redacted]. [redacted], [redacted].

13. **Data Protection law compliance**

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The Privacy Act regulates the processing of personal information. It applies to the ‘processing’ of ‘personal data’. That is widely defined, so that almost any business operating in the New Zealand that holds information about individuals, whether [redacted], [redacted], [redacted]. [redacted] ‘[redacted]. [redacted].

Both the company and franchisees are likely to be data [redacted], [redacted].

It is therefore important that you identify the extent to which each of the company and the franchisee [redacted]. [redacted].

14. Franchisee’s undertakings

Most of these points will be covered in detail in your manual. But is a good idea [redacted]. [redacted].

15. Exclusive purchase arrangements

We assume you will wish to control the materials / ingredients closely. We have placed this short item in its own [redacted], [redacted].

16. Transfer on death of franchisee

This is the first of several paragraphs dealing with changes of [redacted]. [redacted].

17. Company’s right of pre-[redacted]

This is a difficult area. This is one where there may be legal provisions preventing you from taking back a flourishing business at an under value. It is important that you think through how you want your franchise to operate and set down each step carefully. On the one hand you need to avoid making the provisions obviously draconian, which would be bad for your brand and your expansion plans. [redacted], [redacted]. [redacted], [redacted], [redacted]. [redacted]

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[redacted], [redacted].

The structure we propose in this and the following paragraphs is for the Company to have a right to buy the franchise back at market value. Later, we provide for transfer payments and other charges to be deducted, so that effectively, the Company may pay a [redacted]. [redacted]. [redacted], [redacted], [redacted].

The terms we have set out in this document are flexible [redacted].

If you start with a sole owner, we advise you to leave in place the three alternative "entities" for the Franchisee. Later he may wish to incorporate [redacted]. [redacted], [redacted].

18. Terms for transfer to a third party

We have provided a simple procedure, largely [redacted].

19. Franchise operated by a partnership

We do not intend that you should delete this paragraph simply because you franchisee is not in a partnership now. If [redacted]. [redacted].

20. Franchise operated by a company

Even if the franchisee is a company, the directors may wish to join another in a joint [redacted]. [redacted], [redacted], [redacted].

21. Insurance

The extent to which you require the franchisee to insure will depend on the requirements of [redacted].

22. Risk and retention of title

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This is a very full provision to provide maximum protection for the company in the event of bankruptcy or administration of the franchisee. The provisions are based on Personal Property [redacted] 1999 . [redacted] , [redacted] .

.

23. Intellectual property

As you can see from the definition, IP is a big subject. Some IP is easy to identify and even to value. Much is not considered at all - until someone else [redacted] . [redacted] . [redacted] , [redacted] .

Trademarks are registrable in the New Zealand under the Trade Marks Act 2002 in specific classes. [redacted] . [redacted] “ [redacted] ”.

If someone effectively steals your brand by dressing up his goods or services like yours, you may have a cause of action in the tort of “passing off”. [redacted] . [redacted] .

To succeed in a passing off [redacted] , [redacted] , [redacted] , [redacted] .

24. New intellectual property

Franchisees can be in a position to “create” new IP, for example by thinking up a new recipe or a better employee routine [redacted] . [redacted] . [redacted] . [redacted] .

25. Intellectual property / software

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This paragraph is about controlling the use of software provided by [redacted]. [redacted], [redacted].

26. Termination by the company on notice

We have written this paragraph in strong terms to give you the legal strength you will want. [redacted], [redacted]. [redacted], [redacted].

27. Automatic or immediate termination

These provisions are reasonable and work both ways. [redacted], [redacted].

28. Consequences of termination

These are [redacted]. [redacted].

You should know however that the Commerce Act New Zealand may restrict your ability to impose restraints [redacted]. [redacted], [redacted]-[redacted]. [redacted], [redacted], [redacted].

29. Confidentiality

We have included this paragraph because every business has many secrets which [redacted]. [redacted] “[redacted]” [redacted].

Remember to tie [redacted].

30. Cooling off period

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Usually when you buy things the contract is final. You do not have the right to return goods and exchange them or get a refund simply because you have changed your [redacted]. [redacted]-[redacted]. [redacted], [redacted], [redacted]. [redacted]. [redacted].

31. Confidentiality of Know-how

Know-how is the term we use to describe all those "ways you do things": [redacted], [redacted], [redacted]. [redacted]. [redacted], [redacted]. ([redacted]).

32. Time is of the essence

This is a legal term which prevents a [redacted]. [redacted]!

33. Limitation of liability

This is a simple and sensible provision to limit your total liability. In the [redacted], [redacted]. [redacted], [redacted]. [redacted].

34. Limitation of liability for defects

This paragraph should be considered with [redacted]. [redacted], [redacted].

35. Publicity / announcements

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This provision is concerned about publicity relating to this agreement. You [redacted]. [redacted].

36. Irrevocable power of attorney

This is a very powerful provision. It creates a power of attorney. That means, in the circumstances set down, [redacted], [redacted]. [redacted], [redacted], [redacted].

37. Indemnity

This is a two-[redacted]. [redacted].

38. Damages not adequate

A judge will usually try to award money damages [redacted]. [redacted], [redacted].

39. Uncontrollable events

Often referred to as “force [redacted]”. [redacted].

40. Miscellaneous matters

A number of points [redacted].

There are many ways to settle a dispute. But an action in court is the least desirable because it takes a long [redacted]. [redacted]”. [redacted].

End of notes

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