Franchise agreement: retail business
Schedule 3  Press release
This agreement is dated [date] : 

Home Robots Limited, a company incorporated in the Republic of South Africa under company registration [number] [and] whose [ ] (" ")
and
DEF, whose address is [full address] (" ")

It is now agreed as follows:

1. Definitions

In this agreement, the following words shall have the following meanings, :


“Branded Supplies” means the consumable goods and semi-disposable goods listed in the Manual as Branded Supplies and provided .

“HR Undertaking” means the whole of the business carried on by the Company, part of which is intended .

“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.
“Franchise” means the arrangement for operation of the Franchise Business,

“Franchise Business” means the business, carried on under the brand name of the Company and is being

“Disclosure Documents” 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

“Franchise Fee” the sum payable by the Franchisee for the right and licence to operate a

“Franchise Premises” means the real property or premises occupied by the Franchisee for

“Franchise Service” means any service provided by the Franchise Business,

“Goods” means the [Home Robots], Branded Supplies

“Home Robots” means the entire product range of the Company,

"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,

“Know-how” means the body of knowledge and ideas
created by the Company and used in any

“Manual” means every manual and other document
intended to provide instruction or set policy on any

“Service Facility” means the premises at which the [Home Robots] will be

“Software” means the software which operates and
controls any [Home Robot] and all other
software used in

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

“Transferee” any person to whom the Franchisee wishes to
sell or charge or make some other voluntary

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
2.2. except where stated otherwise, any obligation of any person arising from this.

2.3. in this agreement references to a party include references to a person to whom those rights and obligations are transferred or pass as a result of .

2.4. the headings to the paragraphs and schedules (if any) of .

2.5. all money sums mentioned in this agreement are calculated net of VAT, which .

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

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 party, such cost calculated as, .

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 .

3. Warranties for authority

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

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 .

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 .
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.

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.

5. **Entire agreement**

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

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.

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

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

\[
[Enter \text{ list of docs and dates}]
\]

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 [ ]

6.2. The Franchisee will operate the Franchise from the Franchise Premises.
6.3. The Franchisee may use the [trade mark / trade name / copyright / Intellectual Property related 1.]

7. **Preparing the Franchise Premises**

After the signing of this agreement:

7.1. pay the Franchise Fee of [amount].

7.2. set in place all work necessary to prepare the Franchise Premises.

7.3. within [12] months of today, the Franchisee shall notify the Company that he.

7.4. within [14] days of receipt of that notice, the.

7.5. after inspection of the Franchise Premises, the Company shall notify the Franchisee either that they accept that he is ready to trade, or that.

7.6. if by the date [three] months after the inspection, the Franchise Premises remain in a condition unacceptable to the Company, then the Company shall give notice to the [ ].

7.7. if the Company terminates the Franchise under this paragraph, the Franchise Fee shall be retained by the.

8. **Early obligations of the Company**

After acceptance of completion of the Franchise Premises,

8.1. set up the Service Facility at the Franchise Premises, including all Branded Equipment and Branded Supplies required to service and repair the [Home Robots]. The cost of.

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8.2. provide to the Franchisee:

8.2.1 the Manual;

8.2.2 Disclosure Documents;

8.2.3 names of approved suppliers and draft contract forms;

8.2.4 an agreed stock of [Home Robots];

8.2.5 the stock of Branded Supplies listed 2 ;

8.2.6 draft budget, management accounts and book keeping system based on [the Software] which the Franchisee must ;

8.2.7 a [three year] marketing plan, to [ ] ;

8.2.8 advertising and marketing guide;

8.2.9 draft contract of employment of staff;

9. Initial Training

9.1. Within [28] days of signing this agreement, the Company will provide a minimum of [200] hours training in the [ / / ] .

9.2. The training will be provided free of charge at a location .

9.3. The Franchisee must pay for his travel and accommodation .

9.4. The Franchisee must complete the training to the level required by the Company. It is in ( ) .

9.5. The Company will provide training for employees or prospective employees of the Franchisee at [its head office / ].
10. **Ongoing Company provision**

During the operation:

10.1. supply [Home Robots] [28]

10.2. provide the Branded Supplies;

10.3. provide and maintain the Manual;

10.4. provide and maintain the Disclosure Document;

10.5. provide training for the employees of the Franchisee at cost [20,000];

10.6. recommend sources of non-

10.7. provide advice, to the extent it /

10.8. provide whatever marketing assistance

10.9. develop public relations and promotional

10.10. supervise advertising by the

---

11. **Franchisee payments**

11.1. By the tenth day of each month,[ ]
11.2. During a period of [60] days after opening the

11.3. During the operation of the Franchise, the Franchisee will spend

11.4. All advertising must be approved

12. Payment terms

12.1. All sums due under this agreement:

12.1.1 shall be made by the due date, failing which the Company may charge the

12.1.2 Interest shall be calculated and compounded monthly.

12.1.3 shall be paid in South African Rand

12.2. Payment for Goods shall be made

12.3. All Goods sold to the Franchisee

12.4. All payments to be made by [name] under this agreement shall be made in full

12.5. Payments shall be made without deductions. If the applicable law requires any tax or charge to
12.6. Any sum due under this agreement not expressed in Sterling shall be converted into sterling at

\[ \text{[ ]} \]

\[ \text{[ ]} \]

\]

13. **Right to Renewal**

13.1. The Franchisee may renew the Franchise

\[ \text{[ ]} \]

\[ \text{[ ]} \]

\]

13.1.1 gives written notice to

\)


13.1.2 has achieved the

\)


13.1.3 is not

\)


13.1.4 signs the then current version of the Franchise agreement of the Company, which may be different

\),

\),

\);


13.1.5 is not affected by any circumstance ( )


13.1.6 pays the renewal fee of [ZAR50000].

14. **Data Protection law Compliance**

The Manual and the operation of the Software require that ;
15. Franchisee’s undertakings

The Franchisee now undertakes to:

15.1. participate personally in the operation of the Franchise Business for at least [30] hours

15.2. make certain that every

15.3. make certain that the Franchise

15.4. comply in all respects with the procedures and

15.5. not conduct any aspect of

15.6. not do anything which may harm

15.7. employ suitably

15.8. maintain high standards of

15.9. to use only the Company’s

15.10. obtain and maintain all the licences,

15.11. maintain accounting, employment and other
15.12. make available to the Company

15.13. pay tax as due;

15.14. maintain a relationship with every

15.15. sell the [Home Robots]

15.16. at all times maintain stocks [ ]

15.17. always use his

15.18. allow access to any person authorised by the

15.19. at the request of the Company,

15.20. not incorporate or change the

15.21. not use any business name of

15.22. conduct the Franchise

15.23. not sell, transfer, sublicense, or assign this

15.24. provide for assessment by the

15.25. each shareholder in a corporate Franchisee, who signs
16. **Exclusive purchase arrangements**

The Franchisee will not buy from any supplier except the Company.

17. **Transfer on death of Franchisee**

17.1. In the event of the death of the Franchisee, the franchise

17.2. A Close Relative of the deceased Franchisee may take over the Franchise provided he is qualified

17.3. No transfer fee shall be payable to

17.4. The grant of a new franchise will be

17.5. A transfer to any other person shall be

17.6. If the quality of management of the Franchise Business is reduced in the judgement of the ,

18. **Company’s right of pre-emption**

18.1. The procedure set
18.2. If and whenever the Franchisee wishes to assign, sub-contract,

18.3. The Franchisee must give notice in writing to the Company,

18.3.1 the name of Transferee;
18.3.2 information relating to the Transferee of the

18.3.3 the proposed transfer price,
18.3.4 a draft

18.4. The Company may make

18.5. All of the information given to the Company (""")

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

18.7. If the Company elects not to buy

18.7.1 the Transferee is
18.7.2 the Transferee is
18.7.3 the Transferee is disqualified by his or its failure

18.8. If the Company so

18.9. If the Company elects to buy the Franchise Business, completion shall

18.10. If the Company elects:

18.10.1 the Franchisee is free to

18.10.2 the Franchisee may not change any

18.10.3 the Company shall not object to

18.10.4 on completion of the transfer, the Franchisee shall procure that the Transferee simultaneously enters

18.10.5 the Company shall co-operate fully and

18.10.6 if the sale to the Transferee does not proceed, the Franchisee may not

18.11. If the Company has the right to buy the Franchise Business in circumstances where
18.11.1 the Franchise Business is a going concern.

18.11.2 the sale is at

18.11.3 the buyer must employ staff

18.11.4 the buyer must himself

18.12. There shall be deducted from the purchase price payable by the

19. Terms for transfer to a third party

19.1. A transfer to a third party who

19.1.1 the transferee must meet

19.1.2 the Transferee signing

19.1.3 payment to the Company of a contribution to the cost

19.1.4 payment to the Company

19.1.5 payment to the

19.2. If a transfer does not proceed, the
19.3. The transfer must be completed within [12] weeks of the

20. Franchise operated by a partnership

20.1. If the Franchisee wishes to enter into

20.1.1 the new partner (or, if a

20.1.2 the Transferee signing

20.1.3 payment to the Company of a contribution to the cost

20.1.4 payment to the Company

20.1.5 payment to the

20.2. in the event of any of:

20.2.1 the death of one of the partners,

20.2.2 the purported or actual

20.2.3 the bankruptcy or proven insolvency of a partner;

20.3. the partner(s) remaining may

20.3.1 give notice of their wish

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20.3.2 obtain the approval of the Company to

20.3.3 sign a new franchise agreement in

20.3.4 pay the Company a contribution to the cost of providing assessment,

[ 500,000 ].

20.4. The Company

20.5. If the surviving partner(s) wishes to introduce a new partner,

20.6. If such an application is made, the Company will not refuse it unreasonably, nor make

20.7. Each of the partners now undertakes to report to

21. Franchise operated by a company

21.1. The following terms apply if the

21.1.1 becomes insolvent; or

21.1.2 is the subject of

21.1.3 transfers or charges, or attempts
21.1.4 is subject to

21.1.5 is subject to

the Franchise shall terminate automatically

21.2. The Company shall not object unreasonably to a change

21.3. If the shareholders in the Franchisee propose a change which does, in

21.3.1 The Company approving a person who is a shareholder and

21.3.2 The signing of a new

21.3.3 Payment to the Company of a fee calculated as the proportion of ZAR[100, 000]

21.3.4 If and so far as the Company requires in its

21.4. If the Franchise terminates, the Company shall have a right to
22. Insurance

22.1. The Franchisee will obtain and maintain an insurance

22.2. The Franchisee shall keep the Goods insured to

22.3. The Franchisee will pay all the premiums

22.4. The Franchisee will ensure that the terms

22.5. The Company’s interest will be noted

22.6. The insurance policy will stipulate that the

22.7. If, when the Company asks, the Franchisee fails to deliver to

23. Risk and retention of title

23.1. The Company shall deliver the

23.2. In spite of delivery having

23.2.1 the Franchisee

23.2.2 no other sums
23.3. Until property in the Goods passes to

23.4. The Franchisee shall store the Goods (at no cost to

23.5. Notwithstanding that any of the Goods remain the property of the Company

23.6. Any sale or dealing shall be a sale or use of

23.7. Until property in the Goods passes from the Company the entire proceeds of sale of the

23.8. The Company shall be entitled to recover the price charged for the

23.9. If the Company asks

23.10. If, when asked, the Franchisee fails to return the

23.11. The Franchisee shall not pledge or in any way charge by way of security for any indebtedness any
23.12. While ever the Company has title

23.12.1 title to

23.12.2 the Franchisee shall hold such products as

23.12.3 all the Company’s rights in relation to ( )

24. Intellectual Property

The Franchisee agrees with the Company:

24.1.

24.2.

24.3.

24.4.

24.5.

24.6.

24.7.

24.8.
24.9.  

24.10.  

24.11.  

25.  New Intellectual Property  

25.1.  

25.1.1  

25.1.2  

25.1.3  

25.2.  

25.3.  

25.4.  

26.  Intellectual Property / Software  

27. Automatic or immediate termination

27.1. the other party is declared or becomes insolvent;

27.2. 

27.3. 

27.4. , , , , 

27.5. , , 

27.6. 

27.7. 

28. Termination by the Company on notice

28.1. 

[30]
29. **Consequences of termination**

Upon termination of this agreement for any reason:

29.1.

29.2.

29.3.

29.3.1 have access to the Franchise Premises;
29.3.2

;

29.3.3

;

29.3.4

;

29.3.5  take a transfer of any other leased asset.

29.4.

.

29.5.

,

,

;

29.6.

.

29.7.

,

.

29.8.  The Franchisee undertakes with the Company:

29.8.1

(  ) (  )

;

29.8.2

[  ]

(  )

;

29.8.3

( )
30. Confidentiality

30.1. The Franchisee agrees and undertakes that he will:

30.1.1 ;

30.1.2 [ / ]

30.1.3 );

30.1.3 )

30.2. :

30.2.1 , ,

30.2.2 /

30.3. This paragraph does not apply to disclosure:

30.3.1

30.3.2

30.3.3

30.3.4

30.4. [ ]
31. Confidentiality of Know-how

The Franchisee agrees:

31.1. 

31.2. 

31.3. 

31.4. 

31.5. 

31.6. 

31.7. 

31.8. 

31.9. 

31.10. 

31.11.  

32. **Time is of the essence**  

32.1.  

32.2.  

33. **Limitation of liability**  

33.1.  

33.2.  

33.2.1 indirect or consequential loss; or  

33.2.2  

34. **Limitation of liability for defects**  

34.1.  

[ ] [ ] ;
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

35.2.

35.3.

35.4.

36. **Irrevocable power of attorney**

36.1.

36.2.

36.3. [14]
37. Indemnity

37.1.

37.1.1

37.1.2

37.1.3
37.2.

, ,

37.3.

, ,

37.3.1

; 

37.3.2

;

37.4.

.

37.5.

, , 

, , , , , 000 [ 

38. Damages not adequate

, 

, [ ] 

, 

, [ / 

] .

39. Uncontrollable events
40. Miscellaneous matters

40.1.

40.2.

40.3.

40.4.

40.5.

40.6.

40.7.

40.8.

40.9.
40.10.

It shall be deemed to have been delivered:

72

24

40.11.

40.12.

40.13.
OR

[ ]

For, and on behalf of [ ]

print name

For, and on behalf of [ ]

print name
Schedule 1  Intellectual Property
Schedule 2

Branded Supplies
Schedule 3

Press release
Explanatory notes:

Franchise agreement: retail 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

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”

2. The Franchise Premises: we have assumed that either the company has no direct interest in the Franchise Premises, or, more likely, that the franchise operates

3. This document has been drawn on the assumption that the franchisee is an individual. If your franchisee is a company, it

4. Traditionally, South African franchise arrangements have not been subject to specific regulation. From 31 March 2011, the Consumer Protection Act, 2008 (CPA) and its regulations substantially changed the manner in which South African law regulates franchise arrangements. The legislation devotes several pages to the rights and duties of franchisors and franchisees, the

5. The CPA has introduced a couple of new formalities for all franchise agreements, including that they must be in writing, written in plain and

6. The CPA has also introduced a cooling-off period, i.e. the right of every franchisee to cancel a franchise agreement without cost or penalty within 10 business days after signing the agreement, by giving written notice to the franchisor. Every franchise agreement must now contain the exact text of this cooling-off provision (i.e. the text of section 7(2) of)
7. The CPA regulations contain a number of clauses which must be contained in each franchise agreement, as well as providing for terms and conditions that will be void.

8. The CPA regulations also list the kind of information which must be disclosed to each prospective franchisee (in the form of a "disclosure document") at least 14 days prior to entering into a franchise agreement. The minimum specified information that must be contained in the disclosure document includes a viability statement relating to the franchisor’s net profit and turnover, and a list of current franchisees. If adopted, this

9. As a result of these changes, it is advisable for clients to review their existing franchise agreements and disclosure documents as soon as possible, and to ensure that all franchise arrangements

10. The CPA oblige franchisors to provide franchisees with a disclosure document at least 14 days prior to entering into a franchise agreement. The minimum specified information that must be contained in the disclosure document includes a viability statement relating to the franchisor’s net profit and turnover, and a list of current franchisees. If adopted, this

**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

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 VAT can be deleted for commercial transactions, when VAT is assumed to be due. The last item covers future litigation, when

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

4. **Relationship of parties**

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

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

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

7. **Preparing the Franchise Premises**

   You need a procedure whereby the franchisee has time to buy or lease, then set up the franchise premises. He will want to be sure he has the franchise agreement in place before he spends money on the premises. We suggest

8. **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

9. **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
10. **Ongoing Company provision**

This depends entirely on what you want to provide. Avoid

11. **Franchisee 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 ZAR10000 an hour but he may not charge you an extra “ZAR1000 an hour

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

What the Franchisee pays and for what services

12. **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

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

13. **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

14. **Data Protection law compliance**
South Africa does not have an omnibus data protection law. Instead, in the Republic of South Africa have three statutes that contain some ( ).

Both the company and franchisees are likely to be data .

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

15. Franchisee’s undertakings

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

16. Exclusive purchase arrangements

Paragraph is very clear.

17. Transfer on death of franchisee

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.

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

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.

18. **Company’s right of pre-emption**

Paragraph is very clear.

19. **Terms for transfer to a third party**

We have provided a simple procedure, largely.

20. **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.

21. **Franchise operated by a company**

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

22. **Insurance**

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

23. **Risk and retention of title**

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
24. **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

Trademarks are registrable in the Republic of Ireland 1993

If someone effectively steals your brand by dressing up his goods or services like

To succeed in a passing off

25. **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

26. **Intellectual property / software**

This paragraph is about controlling the use of software provided by

27. **Automatic or immediate termination**
These provisions are reasonable and work both ways.

28. **Termination by the company on notice**

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

29. **Consequences of termination**

These are

You should know however that the Consumer Protection Act South Africa may restrict your ability to impose

30. **Confidentiality**

We have included this paragraph because every business has many secrets which

Remember to tie

31. **Confidentiality of Know-how**

Know-how is the term we use to describe all those “ways you do things”: (}
32. **Time is of the essence**

   This is a legal term which prevents a

33. **Limitation of liability**

   This is a simple and sensible provision to limit your total liability. In the

34. **Limitation of liability for defects**

   This paragraph should be considered with

35. **Publicity / announcements**

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

36. **Irrevocable power of attorney**

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

37. **Indemnity**

   This is a two-
38. **Damages not adequate**
   A judge will usually try to award money damages

39. **Uncontrollable events**
   Often referred to as “force .”

40. **Miscellaneous matters**
   A number of points

**End of notes**