

# FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is made and effective this [DATE],

**BETWEEN:** [YOUR COMPANY NAME] (the "Franchisor"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND:** [FRANCHISEE NAME] (the "Franchisee"), an individual with his main address located at OR a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS, Franchisor and certain of its Affiliates own, operate and franchise durian outlet called Mizhilian Musang King thorough out China which, among other things serve, sell and market Mizhilian Musang King to the general public; and

WHEREAS, Franchisor and certain of its Affiliates acquire, produce, license market and sell Mizhilian Musang King and its ancillary products (hereafter collectively referred as "PRODUCTS"; and

WHEREAS, Franchisee is willing to purchase on a per Location (the terms initially capitalized in this Agreement and not otherwise defined herein shall have the respective meanings set forth in Paragraph 18 of this Agreement) basis a specified number of the PRODUCTS; and

WHEREAS, Franchisor is willing to provide various marketing, advertising and promotional services and activities in support of Franchisee;

NOW, THEREFORE, based on the above premises and in consideration of the covenants and agreements contained herein, and intending to be legally bound, the parties agree hereto as follows:

## 1. AGREEMENT TERM

The term of this Agreement shall be for the period (the "Term"), commencing as of the date of this Agreement. Each year of the Term, as measured from the date of this Agreement, is a "Contract Year."

## 2. TERRITORY/BUSINESS LOCATION

- a) The territory for purposes of this Agreement with respect to Mizhilian Musang King and its ancillary products (collectively "Products") shall be [District], [City], People Republic of China, their territories and possessions (the "Territory"), except with respect to those Products for which Franchisee has only [DISTRICT] Distribution Rights, in which case, the Territory with respect to such Products shall be limited to [DISTRICT] and, if and to the extent Franchisor owns or controls such rights, to territories and possessions of [DISTRICT].
- b) Within 20 km radius from the location of the franchise outlet, there will not be other franchise of Products by other franchisees. In addition, the existing franchisee is given the first refusal option

to open another outlet within 50KM radius. Beyond 50 km radius, it will be on first come first served basis

- c) The Franchisee shall select and propose the business location and subject to approval by the Franchisor
- d) The exclusivity of the business location is confined only to the location as in 2 (b).

### **3. REVENUE SHARING**

Franchisee shall remit to Franchisor 5% of the revenue of its business in the form of Royalties. Payment of Royalties shall be made on the 5<sup>th</sup> days of each month.

### **4. FRANCHISOR COMMITMENTS**

Beginning as of the date of this Agreement for [NUMBER OF LOCATIONS] located in [COUNTRY] within [NUMBER] calendar months hereafter, and for Participating Franchises within [NUMBER] calendar months hereafter, Franchisee agrees as follows:

#### **4.1 Initial Cost and Purchasing**

The following purchasing requirements shall apply to all Locations and Participating Franchises

- a) an amount equivalent to Ringgit Malaysia Fifty Thousand (RM50,000) as security deposit upon signing of this Agreement and an amount equivalent to 6 months purchase
- b) subsequent the first six (6) month pursuant to to 4.1.A, a minimum purchase of 450 packets of Musang King durian of 400gram each

#### **4.2 Sale of Products**

- a) The retail outlets operated under this Franchise Agreement shall be restricted to the Mizhilian Musang King and its ancillary products.
- b) The Franchisee shall submit to Franchisor a list of products which are not within the scope of franchise Products for approval and can only start to display and sell after the approval letter is issued by the Franchisor.
- c) A penalty of RM50,000 is imposed if Franchisee found in breach of clause 4 (b). A continuous breach of the clause will result in termination of the Franchise.

#### **4.3 Payment**

The parties acknowledge and agree that if Franchisee fails to order 450 packets of 400 grams each required under Paragraph 4.1, Franchisee shall pay an amount equivalent to the differential between quantity ordered and the minimum quantity to Franchisor, as liquidated damages, an amount equal to for each unit which Franchisee failed to order. If Franchisor fails to deliver the number or units ordered by Franchisee under Paragraph 4.1, Franchisor shall pay to Franchisee, as liquidated damages, an amount equal to Ringgit Malaysia Ninety Three (RM93.00) for each packet which Franchisor failed to deliver. The parties hereto expressly agree and acknowledge that actual damages for purposes of this Subparagraph would be difficult to ascertain and that the amount set forth above represents the parties' reasonable estimate of such damages.

#### **4.4 Marketing**

With respect to advertising of Products, Franchisee agrees to consult with Franchisor and to keep Franchisor reasonably apprised of its marketing plans and activities and to comply with Franchisor's then-current customary marketing support policies and practices to the extent they are reasonable and practicable. Franchisor shall have the right to approve such plans, and Franchisee shall provide a timely opportunity for said approval by Franchisor. Franchisor shall exercise its approval rights in a timely and reasonable manner.

Should Franchisee fail to comply in good faith with its obligations under Paragraph 3.4, Franchisor shall be entitled to give written notice to Franchisee of such failure. In no event shall Franchisor be obligated to provide such advertising which it would otherwise have been obligated to provide during such time as Franchisor's obligations hereunder were suspended because of Franchisee's failure to fulfill its obligations under this Paragraph 3.4.

#### **4.5 Participating Franchises**

While Franchisee cannot guarantee that its Franchises will adopt the Agreement, Franchisee will use good faith commercially reasonable efforts to recommend adoption of the Agreement to its Franchises and anticipates a high level of adoption thereby. Franchisor hereby agrees that each Participating Franchise shall execute a letter agreement, which has been approved by Franchisee in form and substance, in favor of Franchisor, agreeing to be bound by the terms and conditions of this Agreement as if it were a party hereto (the "Participating Franchise"). Franchisee shall be liable for each Participating Franchise's performance of its financial obligations hereunder as if such Participating Franchise were a Location. Franchisor shall have the right to proceed against Franchisee for money only for any failure of a Participating Franchise to fully perform the financial terms and conditions of this Agreement. Participating Franchises shall be subject to the same terms and conditions under the Agreement as Locations, unless specifically designated otherwise. Implementation of the Agreement at the Franchise level and Franchise payments there under will be administered by Franchisor.

#### **4.6 Placement**

Franchisee shall exercise good faith commercially reasonable efforts to maximize revenue on the Products. At all times during the entire Revenue Sharing Period, Franchisee shall make available for sale at each Location all of the Products purchased for such Location.

#### **4.7 Packing and Shipping**

- a) Franchisor will be solely responsible for making PRODUCTS ready for Franchisee to serve the dish or distribute and for shipping the PRODUCT from its distribution center to Franchisee's Locations.
- b) Franchisee will be responsible to serve the Product to the customers by organizing with the side dishes prepared by the Franchisee.

#### **4.8 Returns/Exchanges**

The purchase requirements set forth in Paragraph 4.1 shall not be subject to any returns by Franchisee. Franchisor will exchange defective or damaged products. Defective products shall mean those that are mechanically defective, mispackaged, physically blemished or contain extraneous material. Franchisee shall report defective or damaged products to Franchisor promptly following discovery of such defect or damage.

#### **4.9 Location Count**

Franchisee will report to Franchisor on a calendar month basis the number of currently operating Locations, including Participating Franchises, non-participating Franchises, New Franchisor Locations and recently closed Locations.

#### **4.10 Demographic Information**

Franchisee will provide to Franchisor, on an ongoing basis, information regarding the demographic make-up generally of Franchisee customers.

### **5. COMMITMENTS**

#### **5.1 Marketing Support**

In lieu of specific marketing support programs such as rebate, co-op and MDF programs, and as payment for services and in consideration for the various other services and activities which Franchisee has agreed to perform hereunder for the benefit of Franchisor, such as sales and rental reporting functions, Franchisor agrees to credit on a per PRODUCTS basis (on the relevant invoice) Franchisee with marketing support funds ("Marketing Support Funds") in the amount of [SPECIFY] OR of in the amount of [SPECIFY PERCENTAGE] of the Purchase Price generated by PRODUCTS. Marketing Support Funds shall not be used to advertise, promote or otherwise market product not distributed by Franchisor. In addition to Marketing Support Funds, Franchisor shall continue to provide Franchisee with standard [IN-STORE/ON-LOCATION] point of purchase marketing materials as customarily utilized by Franchisor.

- A. Franchisee shall use all of the Marketing Support Funds to advertise in measured media PRODUCTS. With respect to said advertising of PRODUCTS, Franchisee agrees to consult with Franchisor and to keep Franchisor reasonably apprised of its marketing plans and activities and to comply with Franchisor then-current customary marketing support policies and practices to the extent that they are reasonable and practicable. Franchisor shall have the right to approve such plans, and Franchisee shall provide a timely opportunity for said approval by Franchisor. Franchisor shall exercise approval rights in a timely and reasonable manner.
- B. With respect to [SPECIFY PERCENTAGE] of the Marketing Support Funds, Franchisor and Franchisee shall jointly determine how said monies will be used to advertise, promote or otherwise market PRODUCTS.
- C. Franchisor shall use [SPECIFY PERCENTAGE] of the Marketing Support Funds for [IN-STORE/ON-LOCATION] PRODUCTS specific marketing and promotion.
- D. Should Franchisee fail to comply in good faith with its obligations under paragraphs 4.1 A, B and C, Franchisor shall be entitled to give written notice to Franchisee of such failure. If Franchisee fails to remedy such failure to Franchisor's satisfaction within [NUMBER] calendar days following receipt of such notice, Franchisor shall be relieved of its obligations to provide Marketing Support Funds, until such time as Franchisee complies in good faith with its obligations under this Paragraph 4.1 D. In no event shall Franchisee be entitled to receive Marketing Support Funds which would otherwise have accrued during such time as Franchisee's rights hereunder were suspended because of its failure to fulfill its obligations under this Paragraph 4.1 D.

### **6. ELECTRONIC REPORTING**

At no cost or expense to Franchisor, Franchisee will provide to Franchisor, electronically, daily access to all Franchisee PRODUCTS information along with weekly summaries, in such form as may be reasonably specified by Franchisor from time to time, of all performance information as to Franchisee's SALE of PRODUCTS, including, but not limited to, daily [SALES OR RENTAL] data, daily inventory and daily Revenue from each Location on a Location by Location, PRODUCTS by [LOCATION] basis.

## **7. REVIEW**

Within fourteen (14) calendar days following the end of each Contract Year, the parties shall meet and in good faith review the terms of this Agreement. Should no agreement be reached between the parties with respect to adjusting or amending the terms of the Agreement, the then current terms of the Agreement shall remain in full force and effect. Within the fourteen (14) calendar days following the end of the last month of the Term, either party may give two (2) month notice to terminate the Agreement. If such notice is given by either party, from such notification forward, Franchisee shall have no right or obligation to purchase additional PRODUCTS under this Agreement and Franchisor shall be relieved of any right or obligation to sell PRODUCTS to Franchisee under this Agreement.

## **8. TERMINATION**

The following transactions or occurrences shall constitute material events of default (each an "Event of Default") by the applicable party (the "defaulting party") hereunder such that, in addition to and without prejudice to or limiting any other rights and remedies available to the non-defaulting party at law or in equity the non-defaulting party may elect to immediately and prospectively terminate this Agreement at the sole discretion of the non-defaulting party by giving written notice thereof to the other party at any time after the occurrence of an Event of Default setting forth sufficient facts to establish the existence of such Event of Default.

### **8.1 Material Breach**

A material breach by a party of any material covenant, material warranty, or material representation contained herein, where such defaulting party fails to cure such breach within fourteen (14) calendar days after receipt of written notice thereof, or within such specific cure period as is expressly provided for elsewhere in this Agreement; or

### **8.2 Insolvency and/or Bankruptcy**

A party makes an attempt to make any arrangement for the benefit of creditors, or a voluntary or involuntary bankruptcy, insolvency or assignment for the benefit of creditors of a party or in the event any action or proceeding is instituted relating to any of the foregoing and the same is not dismissed within fourteen (14) calendar days after such institution; or

### **8.3 Failure to Make Payment**

A failure by either party to make payment of any monies payable pursuant to this Agreement, as and when payment is due. Except as otherwise provided herein, no termination of this Agreement for any reason shall relieve or discharge any party hereto from any duty, obligation or liability hereunder which was accrued as of the date of such termination.

### **8.4 Option to Purchase the Business**

In the event that the termination is due to the default is by the Franchisee, the Franchisor has the option to re-purchase the business at a price determined by an independent appraiser. The premium paid for the repurchase of the business shall not exceed the original franchise fee.

### **8.5 Restriction in engaging in a similar business**

In the event that the termination is due to the default is by the Franchisee, the Franchisee is restricted in engaging the similar business as spelled out in this Agreement.

### **8.5 Returns of trademarks, trade names and other identification symbols**

Upon termination of this Agreement for whatever reasons, the Franchisee shall returns to Franchisor and remove from its premises the trademarks, trade names and other identification symbols of Mizhilian Musang King.

## **9. PUBLIC DISCLOSURE AND CONFIDENTIALITY**

### **9.1 Public Disclosure**

Each party agrees that no press release or public announcement relating to the existence or terms of this Agreement (including within the context of a trade press or other interview or advertisement in any media) shall be issued without the express prior written approval of the other party hereto.

### **9.2 Confidential Information**

During the Term and for a period of [SPECIFY YEARS/MONTHS] thereafter, Franchisee and Franchisor shall hold, and shall cause each of their directors, officers, employees and agents to hold in confidence the terms of this Agreement (including the financial terms and provisions hereof and all information received pursuant to, or developed in accordance with, this Agreement) specifically including but not limited to the Franchisor. Franchisee and Franchisor hereby acknowledge and agree that all information contained in, relating to or furnished pursuant to this Agreement, not otherwise known to the public, is confidential and proprietary and is not to be disclosed to third parties without the prior written consent of both Franchisee and Franchisor. Neither Franchisee nor Franchisor shall disclose such information to any third party (other than to officers, directors, employees, attorneys, accountants and agents of Franchisee and Franchisor or the affiliates of either, who have a business reason to know or have access to such information, and only after each of whom agrees to being bound by this paragraph) except:

- a. To the extent necessary to comply with any Law or the valid order of a governmental agency or court of competent jurisdiction or as part of its normal reporting or review procedure to regulatory agencies or as required by the rules of any major stock exchange on which either party's stock may be listed; provided, however, that the party making such disclosure shall seek, and use reasonable efforts to obtain, confidential treatment of said information and shall promptly, to the greatest extent practicable, notify the other party in advance of such disclosure;
- b. As part of the normal reporting or review procedure by its parent Franchisee, its auditors and its attorneys;
- c. To the extent necessary to obtain appropriate insurance, to its insurance agent or carrier, that such agent or carrier agrees to the confidential treatment of such information; and
- d. To actual or potential successors in interest, provided, however, that such person or entity shall have first agreed in writing to the confidential treatment of such information.

## **10. NO RIGHT TO USE NAMES**

- a. Neither Franchisee nor Locations nor Participating Franchises shall acquire any right to use, nor shall use any copyrights, trademarks, characters or designs owned or controlled by Franchisor or any of its Affiliates, including without limitation, the names MIZHILIAN MUSANG KING ( or “米芝莲猫山王 “ in Chinese), alone or in conjunction with other words or names, in any advertising, publicity or promotion, either express or implied, without Franchisor's prior consent in each case, and in no case shall any Franchisee or Location advertising, publicity, or promotion, express or imply any endorsement of the same.

- b. Franchisee shall not acquire any right to use, nor shall use the name MIZHILIAN MUSANG KING ( or “米芝莲猫山王 “ in Chinese), alone or in conjunction with other words or names, or any copyrights, trademarks, characters or designs of the same in any advertising, publicity or promotion, either express or implied, without Franchisor's prior consent in each case, and in no case shall any Franchisee advertising, publicity, or promotion, express or imply any endorsement of the same.

## 11. ASSIGNMENT

This Agreement and the rights and licenses granted hereunder are personal and neither party shall have the right to sell, assign, transfer, mortgage, pledge nor hypothecate (each an "Assignment") any such rights or licenses in whole or in part without the prior written consent of the non-assigning party, nor will any of said rights or licenses be assigned or transferred to any third party by operation of law, including, without limitation, by merger or consolidation or otherwise; provided, however, that an Assignment pursuant to or resulting from a sale of all or substantially all of the assets or all or a majority of the equity of Franchisee to any Person or Persons or any other form of business combination, such that the Franchisee business as currently existing remains substantially intact, including, without limitation, a sale to the public, shall not require such consent so long as such Assignment is not to create competition to the PRODUCTS or is not to result in the leaking of trade secret. In the event that Franchisee or Franchisor assigns its rights or interest in or to this Agreement in whole or in part, the assigning party will nevertheless continue to remain fully and primarily responsible and liable to the other party for prompt, full, complete and faithful performance of all terms and conditions of this Agreement.

## 12. AUDIT RIGHTS

- a. During the Term and continuing until [SPECIFY] months following the date of expiration or earlier termination of this Agreement Franchisor may, audit the financial books, information systems and records of Franchisee as reasonably necessary to verify Franchisee's compliance with its obligations under this Agreement; provided, however, that
  - i. Such audit shall be at the sole cost and expense of Franchisor (unless such audit reveals that payments due to Franchisor for any [SPECIFY] month period were understated by more than [SPECIFY] percent, in which case, in addition to all other rights which Franchisor may have, Franchisee shall promptly reimburse Franchisor to the extent of its reasonable out-of-pocket costs of such audit);
  - ii. Franchisor may not audit more than twice per year (and no such audit shall continue for more than [NUMBER] calendar days from the date the auditors are given access to the applicable records), and
  - iii. Any such audit shall be conducted only during regular business hours and in such a manner as not unreasonably to interfere with the normal business activities of Franchisee.
- b. Franchisee shall keep and maintain complete and accurate books of account and records in connection with its obligations under this Agreement at its principal place of business until the date [SPECIFY] months following the date of rendering of the initial statement reflecting such records unless a legal action with regard thereto is commenced during such period.
- c. During the Term and continuing until [SPECIFY] months following the date of expiration or earlier termination of this Agreement, Franchisor may inspect and audit the books, records and store premises of Locations and Participating Franchises as reasonably necessary to verify compliance with this Agreement; provided, however, that

- d. Such audit shall be at the sole cost and expense of Franchisor (unless such audit reveals that payments due to Franchisor for any [NUMBER] month period were understated by more than [%], in which case, in addition to all other rights which Franchisor may have, Franchisee shall promptly reimburse Franchisor to the extent of its reasonable out-of-pocket costs of such audit), and (b) any such audit shall be conducted only during regular business hours and in such a manner as not unreasonably to interfere with the normal business activities of Location or Participating Franchises.

### **13. FRANCHISOR'S REPRESENTATIONS AND WARRANTIES**

Franchisor represents and warrants that:

- a. It is a corporation organized and existing under the laws of MALAYSIA with its principal place of business in Johor Bahru, Malaysia
- b. The undersigned has the full right, power and authority to sign this Agreement on behalf of Franchisor;
- c. The execution, delivery and performance of this Agreement does not and will not, violate any provisions of MALAYSIA articles or certificates of incorporation and bylaws, or any contract or other Agreement to which Franchisor is a party;
- d. There is no broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this Agreement, and no broker, finder, agent or intermediary who might be entitled to a fee, commission or any other payment upon the consummation of the transactions contemplated by this Agreement;
- e. This Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect, affecting the enforcement of creditors' rights in general and by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

### **14. FRANCHISEE'S REPRESENTATIONS AND WARRANTIES**

Franchisee represents and warrants that:

- a. It is a corporation organized and existing under the laws of the [SPECIFY COUNTRY AND/OR STATE/PROVINCE] with its principal place of business in the [SPECIFY COUNTRY];
- b. The undersigned has the full right, power and authority to sign this Agreement on behalf of Franchisee;
- c. There is no broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this Agreement, and no broker, finder, agent or intermediary who might be entitled to a fee, commission or any other payment upon the consummation of the transactions contemplated by this Agreement;
- d. This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Franchisee enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect, affecting the enforcement of creditors' rights in

general and by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

- e. The execution, delivery and performance of this Agreement does not, and will not, violate any provisions of Franchisee's articles or certificates of incorporation and bylaws, or any contract or other Agreement to which Franchisee is a party.

## **15. FORCE MAJEURE**

The duties and obligations of the parties hereunder may be suspended upon the occurrence and continuation of any "Event of Force Majeure" which inhibits or prevents performance hereunder, and for a reasonable start-up period thereafter. An "Event of Force Majeure" shall mean any act, cause, contingency or circumstance beyond the reasonable control of such party (whether or not reasonably foreseeable), including, without limitation, to the extent beyond the reasonable control of such party, any governmental action, nationalization, expropriation, confiscation, seizure, allocation, embargo, prohibition of import or export of goods or products, regulation, order or restriction (whether foreign, federal or state), war (whether or not declared), civil commotion, disobedience or unrest, insurrection, public strike, riot or revolution, lack or shortage of, or inability to obtain, any labor, machinery, materials, fuel, supplies or equipment from normal sources of supply, strike, work stoppage or slowdown, lockout or other labor dispute, fire, flood, earthquake, drought or other natural calamity, weather or damage or destruction to plants and/or equipment, commandeering of vessels or other carriers resulting from acts of God, or any other accident, condition, cause, contingency or circumstances including (without limitation, acts of God) within or without [COUNTRY]. Neither party shall, in any manner whatsoever, be liable or otherwise responsible for any delay or default in, or failure of, performance resulting from or arising out of or in connection with any Event of Force Majeure and no such delay, default in, or failure of, performance shall constitute a breach by either party hereunder. As soon as reasonably possible following the occurrence of an Event of Force Majeure, the affected party shall notify the other party, in writing, as to the date and nature of such Event of Force Majeure and the effects of same. If any Event of Force Majeure shall prevent the performance of a material obligation of either party hereunder, and if the same shall have continued for a period of longer than [SPECIFY] days, then either party hereto shall have the right to terminate this Agreement by written notice to the other party hereto.

## **16. INDEMNIFICATION**

Each party (the "Indemnifying Party") shall indemnify and hold the other party and its affiliates and their respective employees, officers, agents, attorneys, stockholders and directors, and their respective permitted successors, licensees and assigns (the "Indemnified Party(ies)") harmless from and against (and shall pay as incurred) any and all claims, proceedings, actions, damages, costs, expenses and other liabilities and losses (whether under a theory of strict liability, or otherwise) of whatsoever kind or nature ("Claim(s)") incurred by, or threatened, imposed or filed against, any Indemnified Party (including, without limitation, (a) actual and reasonable costs of defense, which shall include without limitation court costs and reasonable attorney and other reasonable expert and reasonable third party fees; and (b) to the extent permitted by Law, any fines, penalties and forfeitures) in connection with any proceedings against an Indemnified Party caused by any breach (or, with respect to third party claims only, alleged breach) by the Indemnifying Party of any representation, term, warranty or agreement hereunder. Neither party shall settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened Claim in respect of which the Indemnified Party is entitled to indemnification hereunder (whether or not the Indemnified Party is a party thereto), without the prior written consent of the other party hereto; provided, however, that the Indemnifying Party shall be entitled to settle any claim without the written consent of the Indemnified Party so long as such settlement only involves the payment of money by the Indemnifying Party and in no way affects any rights of the Indemnified Party.

## **17. REMEDIES**

No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and except as otherwise expressly provided for herein, each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise and no provision hereof shall be construed so as to limit any party's available remedies in the event of a breach by the other party hereto. The election of any one or more of such remedies by any of the parties hereto shall not constitute a waiver by such party of the right to pursue any other available remedies.

## **18. DEFINITIONS**

- A. "Affiliate" shall mean an entity in which either party has a controlling interest.
- B. "Franchise" shall mean all Franchisee Locations which Franchisee informs Franchisor are Franchises.
- C. "Laws" shall mean all international, federal, national, state, provincial, municipal or other laws, ordinances, orders, statutes, rules or regulations.
- D. "Location" shall mean any Location in [COUNTRY] or [COUNTRY], which, at any time during the Term of this Agreement, is wholly owned and/or operated by Franchisee, whether or not such Location is operated under the "Franchisee" trademarks. Should Franchisee undertake to own or operate outlets different than the outlets it has traditionally operated, such as by way of example, kiosks, carts, "Locations within a Location", "rack jobbing" operations or vending machines, the parties shall negotiate in good faith to agree upon terms for the inclusion of such retail outlets in this Agreement.
- E. "New Franchisee Location" shall mean a Location which Franchisee or any of its Franchisees or Affiliates first owns or operates after the commencement date of this Agreement, excluding Franchisee's acquisition of franchised Franchisee Locations.
- F. "Revenue Sharing Period" shall mean the period commencing on [SPECIFY DATE] and running through until the end of [SPECIFY PERIOD].

## **19. MISCELLANEOUS**

- A. This Agreement shall not constitute any partnership, joint venture or agency relationship between the parties hereto. The parties shall be considered independent contractors.
- B. This Agreement, together with the attached [EXHIBITS IF INCLUDED], embodies the entire understanding of the parties with respect to the subject matter hereof and may not be altered, amended or otherwise modified except by an instrument in writing executed by both parties.
- C. The headings in this Agreement are for convenience of reference only and shall not have any substantive effect.
- D. All rights and remedies granted to the parties hereunder are cumulative and are in addition to any other rights or remedies that the parties may have at law or in equity.
- E. Should any non-material provision of this Agreement be held to be void, invalid or inoperative, as a matter of law the remaining provisions hereof shall not be affected and shall continue in effect as though such unenforceable provision(s) have been deleted herefrom.

- F. Unless otherwise indicated, all dollar amounts referenced herein shall refer to and be paid in RINGGIT MALAYSIA.
- G. No waiver of any right under or breach of this Agreement shall be effective unless it is in writing and signed by the party to be charged.
- H. This Agreement shall be governed by and construed in accordance with the internal Laws of MALAYSIA, applicable to Agreements entered into and wholly performed therein. Franchisee hereby consents to and submits to the jurisdiction of the Franchisor and any action or suit under this Agreement may be brought in any Court with appropriate jurisdiction over the subject matter established.
- I. None of the provisions of this Agreement is intended for the benefit of or shall be enforceable by any third parties.
- J. This Agreement may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same Agreement.
- K. All notices shall be in writing and either personally delivered, mailed first-class mail (postage prepaid), sent by reputable overnight courier service (charges prepaid), or sent by transmittal by any electronic means whether now known or hereafter developed, including, but not limited to, email, facsimile, telex, or laser transmissions, able to be received by the party intended to receive notice, to the parties at the following addresses:

Franchisor Address:  
[YOUR COMPLETE ADDRESS]

Franchisee Address:  
[SPECIFY]

**20. GOVERNING LAW**

This Agreement shall be governed by, and construed under, the laws of MALAYSIA,

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FRANCHISOR

FRANCHISEE

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title