

AGREEMENT BETWEEN A FRANCHISEE AND SUB-FRANCHISEE GRANTING FRANCHISE RIGHTS FOR A TERRITORY

THIS AGREEMENT made at.....on the..... day of 2000 between XYZ registered office at.....Mumbai, hereinafter called Company Ltd., a company incorporated under the Companies Act, 1956 and having its "the Franchisee" (which expression unless it be repugnant to the context or meaning thereof be deemed to mean and includes its successors and assigns) of the ONE PART and ABC Company Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at..... Hereinafter called "the Sub Franchisee" (which expression unless it be repugnant to the context or meaning thereof be deemed to mean and includes its successors and assigns) of the OTHER PART.

WHEREAS

(1) M/s.....Plc, which is a company incorporated under the.....Act of USA and having its registered office atUSA is a well established and reputed multinational company operating in 35 countries of the world, doing the business of "Mc International" brand high quality food products of various countries.

(2) The said M/s.....Plc has, through its experience and extensive research, developed many famous food products which have been very popular in different countries of the world.

(3) By a Franchise Agreement made at.....onday of..... 2000 between M/sFranchiser of the one part and M/s XYZ Co. Ltd. of the other part and referred to as the Franchisee herein, the Franchiser has granted the right to undertake franchise business throughout the territory of India with the right to appoint sub-franchisees within the territory to exploit the same on the terms and conditions laid down in the said agreement datedThe said agreement dated is annexed to this agreement and marked as Annexure I

(4) The Franchisee is desirous to appoint sub-franchisees for the sale of food products of the Franchiser in various parts of the country. It has negotiated with various Entrepreneurs, who were interested to undertake Franchise business of the Franchiser in the territory of Delhi. After negotiations, the Franchisee has decided to appoint the Sub Franchisee as Franchisee for undertaking Franchise business in territory of Delhi.

(5) The Franchisee declares that it has not appointed any Franchisee to undertake the franchise business in Mc International food products in the said territory, hereinafter called "the Business"

(6) The Franchiser has intimated to the Franchisee that the market of Mc International food products in Delhi will be developed by hard work, prompt and efficient, satisfactory and courteous service of the Sub-Franchisee, as there are variety of food products of different systems in India and there are various outlets of fast food in the said territory.

(7) The Sub-franchisee has no experience in dealing with food products, but he has the experience of business of different products and has sufficient finance for undertaking the franchise business in India and it has also assured the Franchiser to develop the Franchise business in India.

(8) The Sub-franchisee has acquired the ownership of Shop No.in..... Marketing Complex, Connaught Place, New Delhi hereinafter called the said premises, where the Sub Franchisee has to open outlet for the franchise business.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

(1)The Franchisee hereby grants to the Sub-Franchisee the right to carry on the Franchise Business, subject to the terms and conditions of this Agreement in the Premises.

(2) Subject to clause.....of this agreement relating to termination, this Agreement will subsist for a period of 5 years commencing on the.....day of.....2000.

(3) The Franchise with the authorization of proprietor of the Trade Mark, authorizes the sub-franchisee to use the trade marks solely for the purpose of the Business in the territory in accordance with the instructions and directions of the Franchiser and the Franchisee. The Sub-Franchisee will not do anything which may damage or prejudice the goodwill or reputation of the Trade Mark. The Sub-Franchisee will also ensure that no third party infringes the Trade Mark of the Franchiser in the territory and if he comes to know about the infringement of the Trade Mark, the Sub-Franchisee shall promptly inform the Franchisee and the Franchiser about the same in writing.

(4) The Franchisee shall provide the following services to the Sub-Franchisee

- (a) Arrange comprehensive training through the trainers of the Franchiser in the commencement and operation of the Business. The said training will be for a period of 2 weeks and at the place of the Franchisee and the sub-franchisee has to depute its Manager to the Franchisee place for training at its own expenses. The sub franchisee will have to pay Rs.50,000 towards his contribution for the training expenses to be paid to the Franchiser;
- (b) To provide the copy of the Manual published by the Franchiser containing the lay out of the outlet, staffing requirement of outlet, Staff job description, Service standards, Standard of quality of the products to be sold at outlet, staff uniform, cleaning routines, Menu of the outlet, system of the business, technical know-how and other relevant information relating to conduct of the said Business;
- (c) To provide help and guidance in establishment, and efficient operation of the Business;
- (d) To give update information received from the Franchiser containing the improvement or alterations in the Manual and Business system or the products to be serviced at the outlet;
- (e) To furnish all material for advertising and promotion of the Business received from the Franchiser and prepared by the Franchisee himself in India for use;
- (f) To furnish newsletters received from the Franchiser containing the development of the Business, position of the Franchise business in International market and other information useful for the franchise business;
- (g) To provide guidance or help on the written request in the matters of management, finance and promotion of the Business;
- (h) To provide such continuing assistance, advice and guidance to the sub-franchisee as the franchisee considers reasonable and necessary for the efficient functioning of the Business.

(5) The Sub-Franchisee shall pay to the Franchisee the amounts as specified below:

- (i) A sum of Rs. 10,00,000 on the execution of these presents;
- (ii) Monthly Franchisee fee at the rate of 12% of the total value of all invoices rendered by the sub-franchisee without deduction of any taxes, expenses, commissions, or other charges or debits whatsoever will be payable monthly before the 7th day of the month following the month to which the fee relates;
- (iii) Sum @ 2% of the previous month's gross turnover towards contribution to Fund for Advertising and Promotion.

(6) In order to maintain uniformity and standards of the Business throughout the world and keep the reputation and prestige of the Trade Marks of the Franchiser, the Sub-Franchisee undertakes to the Franchisee as under:

- (i) To ensure that there are sufficient funds for the operation of the Business under this Agreement;
- (ii) To commence the Business within one month of these presents;
- (ii) To use the Marks in the Business and to maintain the high standards associated with the Marks;
- (iv) To keep confidential the manual, methods and system of the Business and information relating to method of operation, advertisement, present or policies of the Franchiser or any other information relating to the operation of the Franchiser;
- (v) To obtain a signed confidentiality undertaking from all its employees at the time of their joining service of the sub-franchisee in the form set out in Annexure II enclosed herewith;
- (vi) To obtain licences, permissions from the State Government, local or statutory authority to commence and operate the Business and to keep the said licences and permissions in force;
- (vii) To comply with all statutes, bye laws and other regulations prescribed by the Government of India, State Government, local or statutory authority from time to time relating to the conduct of the Business;
- (viii) To refer the enquiry received about the Business to the Franchisee or the concerned sub-franchisee regarding the supply of franchise products to locations out of the Territory;
- (ix) To use the stationery and forms as prescribed by the Franchisee in connection with the Business for external use;
- (x) Not to be engaged directly or indirectly in any similar business which may compete with the Business or any part of it in the Territory or in any other area where it may compete with any other franchisee or sub-franchisee;
- (xi) Not to solicit customers from outside the Territory
- (xii) To carry on the Business from the Premises only;
- (xiii) To obtain insurance policy in the joint names of the Franchisee and the Sub-Franchisee against loss or damages by fire, earthquake, flood, cyclone, etc. with an insurance. The Sub-Franchisee shall also take insurance policy against all liability (including product liability) of the Sub-Franchisee and the Franchisee and to the SubFranchisee's employees or to the members of the public. The Franchisee shall keep the insurance policies in force during the term of the business and will not do or omit to do or be done or permit or suffer any act, deed or thing which might or could prejudicially vitiate or affect any such insurance;
- (xiv) The Sub-Franchisee will indemnify and keep the Franchiser and Franchisee indemnified against all claims, demands, actions, proceedings, losses, damages, recoveries, judgments, costs, charges and expenses which may be made, or brought or commenced against the Franchiser or the Franchisee or which the Franchiser or

- the Franchisee may or may have to bear, pay or suffer, directly or indirectly due to any act, default or omission by the Sub-Franchisee in conducting the said Business;
- (xv) To state in all correspondence and literature the fact that the SubFranchisee is an Independent Sub-Franchisee of the Franchiser or the Franchisee and in no other way connected with it;
 - (xvi) To use his best endeavours and hard work in the conduct of the Business and to carry on the Business diligently and in a manner in all material respects to the satisfaction of the Franchisee and in accordance with the requirements and standards of the Franchiser

(7) The Auditors, inspectors or authorized representatives of the Franchisee and Franchiser will be authorized to inspect and audit the books of account and all supporting vouchers, bills, documents of the sub-franchisee relating to the Franchise business at any time and for that purpose the sub-franchisee will permit the auditors and authorized representatives of Franchisee and Franchiser to enter its premises and co-operate with them and furnish to them all documents, accounts, vouchers, etc. as required by them. If after the audit or inspection of the accounts, it is pointed out by the Auditor of the Franchisee or Franchiser that the accounting of the sub-franchisee relating to the calculation of the franchise fee and/or any other financial matter is not correct, the Sub-Franchisee will rectify the said defect in the accounts and if any amount towards franchise fee has been sent less earlier, the balance amount will be sent to the Franchisee within a period of fifteen days from the receipt of audit report along with interest @ 2% per month or part of the month.

(8) The authorized representatives of the Franchisee and Franchiser will be authorized to visit the Premises at all reasonable times for the purpose of checking the quality of the products supplied by the Business and the manner in which the Business is being carried on and of inspecting the material and equipment being used in connection with the Business. If after the inspection, the said authorized representatives point out some shortcoming or defect in the quality or standard of the products supplied and the system, etc., the Sub Franchisee shall promptly rectify the same and report the compliance to the Franchisee or Franchiser as the case may be.

(9) The Sub-Franchisee shall maintain proper books of account relating to the Business with supporting vouchers, invoices and documents and preserve the same for a period of three months after the end of financial year to which it relates. The Sub-Franchisee shall also furnish the annual Balance Sheet and Profit & Loss Account within thirty days after the end of each financial year with a certificate from the Auditor as to the turnover during such period calculated in accordance with this Agreement.

(10) The Sub-Franchisee hereby agrees that it shall not have the right to assign or transfer its rights and obligations under this Agreement to any third party without the written consent of the Franchisee in writing. In case the Sub-Franchisee proposes to assign or transfer its rights and obligations under this agreement, it shall make a proposal for such assignment or transfer along with the details of the business history and experience of the proposed transferee or assignee, copy of the proposed transferee's written offer to purchase the said business from the Sub-Franchisee and any further information which the Franchisee may reasonably require. The Franchisee will give its consent for the transfer or assignment, provided the following conditions are fulfilled:

- (i) The proposed transferee or assignee meets the standards as required by the Franchisee and Franchiser about business experience, financial status and ability. The

proposed transferee or assignee should be able to undertake the franchise business efficiently and diligently and willing to execute an agreement with the Franchisee for a period of not less than five years commencing on the date of the transfer or assignment of the said business.

(ii) The Franchisee may instead of giving its consent for transfer or assignment of the said business, may opt to purchase the said business or get the said business transferred in favour of its nominee for the same amount and on the same terms as those set out in the offer of the transferee. The Franchisee may exercise such option by giving a notice in writing to the Sub-Franchisee within one month from the date of receipt of the proposal from the Sub-Franchisee.

(iii) If the Franchisee does not opt for purchase the said business or get the said business transferred in favour of its nominee, it will give its consent for transfer of the said business in favour of proposed transferee and on such consent being given, the proposed transferee shall deposit thirty per cent of the consideration amount with the Franchisee and shall pay the balance 70% of consideration amount to the Franchisee upon completion of the transfer. Thereafter the Franchisee shall pay the consideration amount received from the transferee after deducting the amount of any unpaid obligations of the Sub-Franchisee to the Franchisee within ten days from the date of completion of the transfer of the business.

(11) The Franchisee shall be entitled to terminate this Agreement upon occurrence of any event of default specified below:

- (i) If the Sub-Franchisee fails to commence the business within the period of one month from the date of these presents;
- (ii) If the Sub-Franchisee fails to observe and perform any covenants, stipulations or obligations hereunder or commits a breach of any of the terms, conditions or provisions of this Agreement or its part to be observed or performed;
- (iii) If the information or representations made by the Sub-Franchisee in the application form or supporting details proves to be incorrect in any material respect
- (iv) If the Sub-Franchisee passed any resolution for winding up or allows a petition for winding up presented before a Court against it or if a receiver or liquidator is appointed of the whole or part of the assets, properties or undertakings of the Sub-Franchisee or compounds, with or makes any composition with its creditors;
- (v) If the Sub-Franchisee suffers any adverse material change affecting the financial position of the Sub-Franchisee or by any act or omission of the Sub-Franchisee, the Franchisee has reasonable grounds to apprehend breach of the terms and conditions of this agreement in future or that its right may be prejudiced or be in jeopardy.
- (vi) If the Sub-Franchisee fails to pay, to submit any document or information required under this Agreement within 10 days following its due date;
- (vii) If the Sub-Franchisee ceases or take any steps to cease the business;
- (viii) If by the, act, omission or commission of the Sub-Franchisee, it is suspected by the Franchisee that any secret information, knowhow relating to the business has been disclosed by the Sub-Franchisee to the third parties and Sub-Franchisee cannot satisfy the Franchisee that his apprehension is untrue;
- (ix) If the Sub-Franchisee challenges the validity of the Trade Marks of the Franchiser or Franchisee.
- (x) (x) If the Sub-Franchisee commits default or neglect in maintaining the quality and standard of the products sold by it:

Provided that in the case of default or neglect affecting the quality or standard of the food products to be sold in outlet of SubFranchisee, the Franchisee shall serve a notice to the SubFranchisee for rectification of the default or neglect, and if default continues beyond 48 hours from the time of the written notice, the Franchisee may terminate this Agreement:

Provided further that in the case of default or neglect of any other nature, the Franchisee shall have the right to terminate this agreement if default continues beyond ten days from the time of the written notice.

(12) Upon termination of this agreement on the occurrence of any default as provided hereinabove, the Sub-Franchisee and Franchisee without prejudice to and in addition to their rights and obligations shall take following actions:

(i)The Sub-Franchisee shall stop doing the said franchise business and to make use of the Trade Marks of the Franchisee and will return the copy of the Manual along with translated copies thereof, service specifications, book of instructions regarding book keeping and accounting procedure and all documents, stationery, material for advertisement and promotion, signs and other items owned by the Franchisee and in the possession of the Sub-Franchisee and in case of default by the Sub-Franchisee, the Franchisee shall be entitled to enter upon the premises of the Sub-Franchisee to take possession of the manual, stationery, and other material and goods from the Sub-Franchisee.

(ii) The Sub-Franchisee shall pay all sums due at or after the date of termination to the Franchisee without any deduction or set off, within a period of seven days of the termination and if any sum is found to be payable to the Franchisee, the Sub-Franchisee shall pay the said sum to the Franchiser without any deduction or set off.

(iii)The Sub-Franchisee shall assign all his rights under this Agreement to the Franchisee or his nominee

(iv)After termination of this agreement, the Sub-Franchisee shall not for one year, directly or indirectly do the business similar to the franchise business or otherwise compete or assist anybody to compete with the Franchisee or any other Sub-Franchisee appointed in the territory. The Sub-Franchisee shall not solicit the customers of the Franchiser or of any sub-Franchisee appointed by the Franchisee in the territory.

(v)In accordance with section 10 of the Power of Attorney Act, 1971, the Sub-Franchisee hereby appoints, nominates, constitutes and appoints the Franchisee its Attorney to take necessary action to ensure the compliance of the actions to be taken by the Sub Franchisee under this clause of this Agreement.

(13) Any relaxation, forbearance, delay or indulgence on the part of the Franchisee in enforcing any of the terms and conditions of this agreement or the granting of time by the Franchisee to the Sub Franchisee shall not prejudice, affect or restrict the rights of the Franchisee hereunder nor shall any waiver by the Franchisee of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.

(14) The Sub-Franchisee shall within one week from the date of commencement of business, take insurance policy in the joint names of the Franchisee and the Sub-Franchisee against loss or damages by fire, earthquake, flood, cyclone, etc., with an insurance. The Sub Franchisee shall also take insurance policy against all liability (including product liability) of the

Sub-Franchisee and the Franchisee and to the Sub-Franchisee's employees or to the members of the public. The Sub Franchisee shall keep the insurance policies in force during the term of the business and will not do or omit to do or be done or permit or suffer any act, deed or thing which might or could prejudicially vitiate or affect any such insurance. The Sub-Franchisee shall deposit the insurance policies and receipts for the premia paid with the Franchisee within fourteen days from the commencement of the business. In case the Sub-Franchisee fails to insure as provided above, the Franchisee may take insurance policies and may recover the premium paid from the Sub-Franchisee without prejudice to the other rights of the Franchiser in respect of such default. In the event of any claim arising under such insurance, the Sub-Franchisee shall intimate the Franchisee about the same and comply with all instructions of the Franchisee in connection therewith and to take steps, actions and proceedings as may be necessary and if so required by the Franchisee receive any monies, payable in respect thereof for and on behalf of and in trust for the Franchisee and deliver the same to the Franchisee upon receipt thereof without claiming any part thereof on any account whatsoever. Notwithstanding anything contained hereinabove, the Franchisee may at its option agree that any insurance proceeds received under the insurance policy may be applied in making good the damages or in replacing the goods or equipments or any item thereof by other similar goods or equipments to which the terms of this agreement shall apply.

(15) This agreement shall be governed and construed in all respects in accordance with the laws of India and any dispute or question regarding the interpretation of any clause or the rights, duties or liabilities of either party under this Agreement or otherwise in connection with this agreement, the matter in difference shall be referred to an arbitrator appointed by the Indian Council of Arbitration, New Delhi and the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification thereof shall be applicable to such reference. The award of Arbitrator shall be final and binding on both the parties.

(16) The validity and interpretation of and the legal effect to be accorded to all provisions of this agreement shall be determined and applied according to the laws of India.

(17) This agreement may be amended only by a writing signed by the duly authorized representatives of both parties and specifically the referring to itself as amendment to this agreement.

(18) Notices and other communications under this agreement shall be in writing addressed as indicated in the description of the parties herein or as either party may request in writing and the effective date of each is the date of its prepaid deposit in the mail for dispatch by air or such service properly addressed. Any notice sent by cable, telex or facsimile shall be deemed to have been served on the next day following the date of dispatch thereof.

(19) It is hereby agreed by and between the parties hereto that this Agreement is subject to the provisions of the Agreement dated executed between M/splc, Franchiser of the One part and M/s.....Co Ltd., the Franchisee of the other part and referred to as the Franchisee herein. The Sub-Franchisee undertakes that it will comply with the terms and conditions of the said agreement and will not do anything which will be violation of the terms and conditions of the said agreement.

(20) The parties hereto agree that they shall not be responsible for failure to perform their obligations under these presents due to force majeure, which shall include but not be limited to fire, flood, strike, labour strikes and disputes, embargo put by the government of the country of any party, shortage of labour, raw-material, or any other reason of such party. If the

circumstances leading to force majeure occur, the affected party shall give notice thereof to the other party. If the circumstances or event of force majeure continue for a period exceeding six months, either party may terminate this agreement.

(21) This agreement shall be executed in triplicate. The original shall be retained by the Franchisee, duplicate by the Sub-Franchisee and triplicate by the Franchiser.

(22) The stamp duty and all other expenses in respect of this agreement, duplicate and triplicate thereof shall be borne and paid by the Sub-Franchisee.

(23) All prior agreements or arrangements whether oral or written between the parties or relating to the conduct of franchise business shall be deemed to be cancelled and superseded by this agreement.

(24) The headings of the clauses of this agreement are meant only for convenience of reference and shall not in any way be taken into account in the interpretation of these presents

(25) If any clause contained in this Agreement or any part thereof is declared or become unenforceable, invalid or illegal due to any reason whatsoever, the other terms, conditions and provisions of this Agreement shall remain in full force and effect as if this Agreement has been executed without the offending clause appearing herein. In such case if the sub-Franchisee is of the opinion that exclusion of such clause adversely affects either his right to receive the payment of fees to the franchisee or the franchisee's marks and know-how methods of the Business, then the Franchisee may terminate this agreement by giving a notice of thirty days to the sub-franchisee.

IN WITNESS WHEREOF the parties hereto have executed these presents and duplicate copy thereof on the day and year hereinabove written

Signed and delivered by the within named XYZ Co. Ltd., the Franchisee by the hands of Shri Managing
Director thereof in the presence of

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Signed and delivered by the within named ABC Co. Ltd. the Sub-Franchisee by the hands of Shri Managing Director Thereof in the presence of

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