



INTELLECTUAL PROPERTY RIGHTS DESK
Italian Trade Commission - Seoul Office
Trade Promotion Section of the Italian Embassy

IP FRANCHISING AGREEMENTS IN THE REPUBLIC OF KOREA



Ministero dello Sviluppo Economico



ITALIA 
Italian Trade Commission



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IP Franchising Agreements in the Republic of Korea

Italian Intellectual Property Rights DESK



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Introduzione

La *Proprietà Intellettuale* è il diritto di proprietà su un bene immateriale, ovvero il diritto esclusivo di sfruttamento economico di un'invenzione. Più semplicemente, il diritto di paternità di un'idea, di un'invenzione, come pure di un processo produttivo innovativo ed originale e, con esso, il diritto ad essere protetti e salvaguardati da eventuali imitazioni.

Allo stesso tempo, un diritto di Proprietà Intellettuale può essere concesso in uso, ad esempio, attraverso *franchising agreements* ovvero per mezzo di appositi accordi di “affiliazione commerciale” che, se da un lato tutelano e mantengono inalterata la sfera dei diritti del titolare (*franchisor*), dall'altro disciplinano l'utilizzo del titolo da parte di un terzo legalmente autorizzato (*franchisee*).

Dopo il successo del report sugli “accordi di licenza” in tema di diritti di P.I. in Corea del Sud, questo nuovo lavoro è nato dal desiderio, da parte del Desk di Seoul, di fornire a tutti i soggetti potenzialmente interessati un primo strumento pratico, auspicabilmente utile, di indagine e di approfondimento. Ovverosia mettere a disposizione del lettore (non solo italiano), attraverso l'uso di una lingua veicolare come l'inglese, il quadro normativo di riferimento, vigente a livello di disposizioni legislative e regolamentari in materia di *franchising* in Corea, e completato da un modello di accordo di “affiliazione commerciale”.



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Con queste finalità, il Desk ha scambiato informazioni utilissime e si è avvalso della stretta collaborazione dell'Avv. Rana Lee e del Sig. James Huh, rispettivamente presidente e vice-presidente dello studio legale *EZ International Patent & Trademark Law Office*, che – assieme alla *patent attorney* Jeany Kim – hanno fornito il loro prezioso contributo, in particolare, nella ricostruzione normativa e nella evoluzione legislativa nazionale.

Soprattutto, l'idea di elaborare un rapporto sull'argomento è nata all'interno del Desk dalla precipua esigenza di porre le imprese italiane, interessate ad un mercato dalle elevate potenzialità come quello coreano, in condizione di utilizzare uno strumento agile e veloce, al tempo stesso arricchito da un esempio pratico di accordo di *franchising*, concretamente fruibile dalle aziende italiane, comunque e sempre adattabile caso per caso e con i dovuti accorgimenti attraverso l'immane supporto di uno studio legale di riferimento.

Ci auguriamo, pertanto, che il lettore possa trovare all'interno di questa pubblicazione utili spunti di riflessione per ulteriori approfondimenti ed eventuali applicazioni pratiche che ritenga opportuno compiere, sempre con il supporto imprescindibile del proprio legale di fiducia, in una materia dalle molteplici sfaccettature e di così grande attualità.

*Desk per la Tutela dei Diritti di Proprietà Intellettuale
Ufficio ICE di Seoul*



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1. Introduction

1-1. Definition of the franchising and IP franchise agreements

(1) Entire business system differentiated with using both “hard” and “soft” elements

The market condition is in transition from a Seller’s market to a Customer’s market so that the competition between sellers becomes keen and there is a need for differentiated strategies of distribution to attract buyers.

Franchising is an innovative and creative business method in distribution developed according to such background and needs in a market place.

Franchising is an entire business system to get and keep more and more customers, including both Hard elements such as products, designs, trademarks, and service marks, etc. and Soft elements such as marketing techniques.

Thus, Franchising is a distribution strategy which uses tangible assets including products (goods) and intangible assets including trademarks to successfully offer such a system.

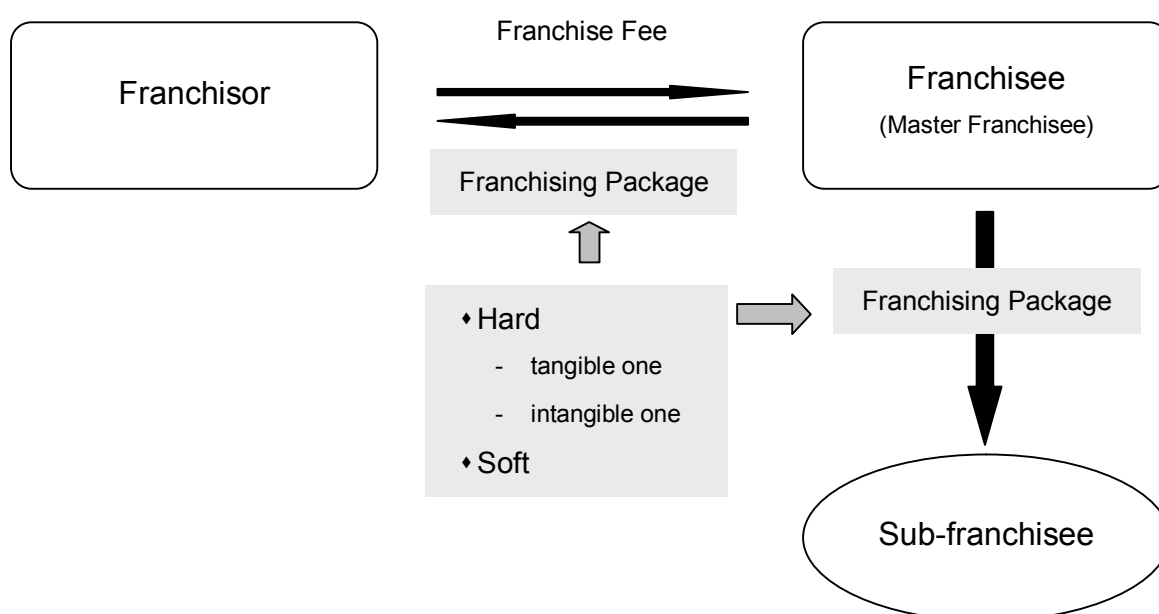
- Hard
 - Tangible Assets: products (including Intellectual Property such as patents), facilities and equipments, interiors, etc.
 - Intangible Assets: designs, trademarks, and service marks, etc.



- Soft
 - Guidebooks, manuals, and education documents, etc. for efficient sales, marketing strategies, techniques, operations and the like; and training and consulting, etc.

(2) Definition of franchising in Korea

"Franchising" is a business agreement between a franchisor and a franchisee. Franchising is an effective method of doing business, in which the franchisor allows for using of the same brands and images, provides an exclusive right of selling goods and services developed by the franchisor and supplies ongoing business management, marketing and education, etc to the franchisee and the franchisee pays for franchise fee to the franchisor, to expand its markets (Article 2(1) of the *Fair Franchise Transactions Act*).





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(3) Intellectual property franchising agreements

Franchising is a novel distinctive distribution method including intellectual properties (IP) such as trademarks, technical know-hows. The types of IP included or related to the franchising business are as follows:

- IP for inventing the produces and/or services to be franchised: patents, utility models, designs, copyrights, and know-hows, etc.
- IP for advertising and/or marketing the products and/or services to be franchised: trademarks and copyrights, etc.
- IP for providing and/or delivering the products and/or services to be franchised: copyrights and know-hows (education manuals, business manuals, etc), etc.
- IP for operating and/or managing the business to be franchised: information systems, know-hows, softwears, and copyrights including data base (DB) of client information, etc.

Since most of the franchise businesses are based on IPs in the 21st century, it is called as “IP Franchise”. Thus, the Franchise agreement is also called as “IP Franchising Agreement”.

1-2. Comparison IP franchising with other similar concept

(1) Difference between selling agency, joint venture and license

Selling Agency: The selling agency is an agent selling goods provided by the manufacturer in a particular geographic region. It is thus



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differentiated from franchising since it does not encompass control, instruction or sales strategy provided by the manufacturer.

Joint Venture: It is an agreement between parties which is limited to a particular purpose or venture or limited in time. Since each member of the joint venture is responsible for the total profits and taxed on the joint venture profits according to whatever business structure has been established for each party, it is different from franchising.

License Agreement: It is a business arrangement where the licensor via a right such as patents, trademarks, designs and the like allows such rights to another party. The license agreement is different from franchising since a Franchise agreement is a broader concept even including a license agreement, since it covers not only the right to use the licensed property but also technology know-hows or trade secrets which are necessary for business.



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(2) Modes of chain operation

	<i>Regular Chain</i>	<i>Voluntary Chain</i>	<i>Franchise Chain</i>
<i>Subject</i>	Head office	Individual enterprises (retail or wholesale business)	Franchisees
<i>Capital</i>	Head office (single capital)	Chain stores (independent)	Chain stores (independent)
<i>Operation</i>	Directly	Independently	Independently
<i>Contract</i>	None	For a part of business	For whole business
<i>Relationship with the head office</i>	Same	Voluntary community	Business idea community
<i>Royalty</i>	The sales of chain stores return to the head office	A fee to the head office	Royalty

1-3. Types of franchising and franchise agreement

(1) Types of franchises

1) Classification according to supplying content

Product Format Franchise

Manufactures control how retail stores distribute their products. Manufactures allow retailers to use their names and trademarks but provide little operational know-hows. Examples are auto dealers, gas stations, and beverage manufacturers, etc.



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Business Format Franchise

Business format franchise is a system for business expansion which the franchisor not only supplies an established business including its name and trademarks and materials but also assists the operation of business including education and training to the franchisee. In return, the franchisee pays fees and royalties.

Types of franchising

<i>Product distribution franchises</i>	<i>Business format franchises</i>
<ul style="list-style-type: none">- Manufacturer-dealer relationship selling products of the franchisor- Manufacturers allow retailers to use their names and trademarks but provide little operational system unlike business franchise	<ul style="list-style-type: none">- The franchisee sells goods and services of the franchisor under the same name of the franchisor and the operation of business is controlled by the franchisor- The franchisor provides training and education for marketing and manual to operate the business
Examples: soft drinks (Coca-Cola), auto dealers (Ford), gas stations (Texaco), etc.	Examples: fast foods (McDonald's), retail businesses (7-Eleven), service businesses (Jani-King), etc.
<ul style="list-style-type: none">▪ Product distribution franchise and business format franchise can be distinguished based on degree of the control of business by the franchisor.	

2) Classification according to distribution system

According to the distribution system, it can be divided in franchise between a manufacturer and a wholesaler, franchise between a manufacturer and a retailer, and franchise between a wholesaler and a retailer, etc.



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3) According to types of business

Franchise can be divided according to the types of business such as food business, wholesale/retail business or service business, etc.

4) Classification according to geographical (territorial) limit

- National Franchise
- International Franchise

(2) Types of franchise agreement according to the types of franchise

A franchise agreement is a legal document that covers rights and obligations on both Franchisor and Franchisee. Its terms, conditions and methods will vary widely depending on the type of business involved. However, because there are elements commonly found in every franchise agreement which is different from those for sales agency, joint venture and license, etc., each franchise agreement is made by changing some parts according to the type of franchises based thereon.

1-4. S.W.O.T. Analysis of franchising business

S.W.O.T analysis is a strategic planning method used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project or in a business venture. It involves specifying the objective of the business venture or project and identifying the internal and external factors that are favorable and unfavorable to achieving that objective, for example, how each strength can be used, how each weakness can be



improved, how each opportunity can be exploited and how each threat can be mitigated.

Since there should be a subject for the S.W.O.T analysis, one of family restaurants of which franchises have been widely distributed in Korea is used for the S.W.O.T analysis.

<p style="text-align: center;">S</p> <ul style="list-style-type: none">- High market share with building brand equity- Stable cash flow from a large enterprise (marketing available)- Distinctive Services	<p style="text-align: center;">W</p> <ul style="list-style-type: none">- Financial burden due to high price- Difficulty in management in a human resources and high labor charges because it is a labor-intensive business- High cost to rent with high location-dependency
<p style="text-align: center;">O</p> <ul style="list-style-type: none">- Changes in eating habits toward westernized and good quality- Increase in eating out due to being nuclear families- Possibility to spread to country sides since it is currently centralized in the metropolitan area	<p style="text-align: center;">T</p> <ul style="list-style-type: none">- Decreases in eating out due to recession- Cutthroat competition with increased competitors- Uncontrollable matter (mad cow diseases, etc.)

1-5. IP issues in franchising agreements

The distribution strategy by franchising is a distinctive marketing method which not only provides products or services but also uses IPs such as designs, trademarks and trade secrets, etc.

Thus, the most overlooked aspect of franchising is the Intellectual Property owned by the franchisor. The following is a list of some of the



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things that should be clearly and concisely defined in the franchise agreement:

- What are the terms and definitions related to the Intellectual Property?
- What are the types and scope, providing process and method, and using method of the Intellectual Property to be allowed for using and working to the franchisee by the franchisor?
- What are the amount, frequency and form of payment for using the Intellectual Property to be paid to franchisor by franchisee?
- What is the scope of right of Intellectual Property? Is the license exclusive or not? What happens if the IP under which the license is granted is refused, infringed, opposed, revoked or other? How will any disputes be resolved?
- Confidentiality obligation for the Intellectual Property of the franchisee: what happens if it is broken?

1-6. Structure and steps of franchising agreement

(1) Structure of franchising agreement

A franchise agreement is an arrangement which defines rights and obligations between franchisor and franchisee. It follows the same basic format of a general agreement, including title, preamble, body, ending and signatures of the parties. However, the franchise agreement can be one-sided since it is often prepared by the franchisor unlike the general agreement. Thus, many rules in the *Fair Franchise Transactions Act*



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have been enacted to regulate various aspects of franchising licenses and their terminations and the franchise agreement will be made not to violate thereto. For this purpose, it is necessary to understand the *Fair Franchise Transactions Act* more specifically. It will be described in detail in Chapter 3 with some samples of franchise agreements.

(2) Steps of franchise agreement

1) Contact with a franchisor

The potential franchisee contacts the franchisor and asks for the information disclosure statements about the company's background and history to the franchisor.

2) Review the Information disclosure statements

The potential franchisee will review and determine the financial capability, business plan, etc. of the company. The potential franchisee is allowed to review the information disclosure statements for 14 business days from the date it receives the information disclosure statements.

3) Franchise agreement

The franchisor will provide a document including a franchise agreement and special conditions one day before execution of the franchise agreement.

4) Review the franchise agreement

The potential franchisee will review if all essential matters are defined



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according to the *Fair Franchise Transactions Act* and all matters are corresponding to the information disclosure statements.

5) Execution of the franchise agreement

1-7. Status of franchise in the Republic of Korea

According to the survey for the actual conditions of franchising in 2008, it is presumed that the total sales in franchising business in Korea increased by 26.1% compared to that in 2005, especially highly increased in Food & Beverage business. Food and Beverage (F&B) franchising can be an easy-start up business since it requires a small starting capital, it does not require particular techniques because they are supplied from the franchisor, and it is trended to serve a single item through menu segmentation.

Sales in Franchising in Korea

<i>Types of Business</i>	<i>2002 (Trillion Korean Won)</i>	<i>2005 (Trillion Korean Won)</i>	<i>2008 (Trillion Korean Won)</i>	<i>Increase rate in 2008 to 2005 (%)</i>
<i>Food & Beverage</i>	11.18 (26.8%)	24.07 (39.3%)	40.17 (52.0%)	66.9
<i>Retail</i>	26.08 (62.5%)	34.13 (55.7%)	28.02 (36.2%)	-17.4
<i>Service</i>	4.43 (10.6%)	3.11 (5.0%)	9.12 (11.8%)	193
Total	41.69 (100%)	61.31 (100%)	77.31 (100%)	26.1

Source: Korea Franchise Association (2008)



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Number of Franchisors in Korea

<i>Types of Business</i>	<i>2002</i>	<i>2005</i>	<i>2008</i>	<i>Increase rate in 2008 to 2005 (%)</i>
<i>Food & Beverage</i>	559 (34.9%)	1,194 (54.0%)	1,523 (62.7%)	27.55
<i>Retail</i>	817 (51.0%)	515 (23.3%)	437 (19.6%)	-15.14
<i>Service</i>	224 (14.0%)	502 (22.7%)	466 (17.7%)	-7.17
Total	1,600 (100%)	2,211 (100%)	2,426 (100%)	9.72

Source: Korea Franchise Association (2008)

Number of Franchise in Korea

<i>Types of Business</i>	<i>2002</i>	<i>2005</i>	<i>2008</i>	<i>Increase rate in 2008 to 2005 (%)</i>
<i>Food & Beverage</i>	50,873 (42.5%)	141,992 (50.0%)	131,193 (53.9%)	-7.6
<i>Retail</i>	44,175 (7.0%)	87,511 (30.8%)	61,611 (20.6%)	-29.6
<i>Service</i>	24,575 (20.6%)	54,679 (19.2%)	64,470 (25.5%)	17.9
Total	119,623 (100%)	284,182 (100%)	257,274 (100%)	-9.5

Source: Korea Franchise Association (2008)



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2. Franchising start-up & operation system

2-1. Development of franchising operation system

(1) Basic business concepts

Franchise basic business concept is a business item for the franchising business. Before a company starts to franchise, it needs to thoroughly analyze and evaluate if the business concept is acceptable for a business model for franchising. The basic business concept should have at least the following requirements.

1) Prove of business concept

A model shop should be managed, and it should prove the possibility and profitability for the Basic Business concept. Further, through such proof, Franchisee may decide that the Basic Business concept will make enough profits in spite of payment of franchise fees and royalties.

2) Distinctive business concept

There should be a distinctive business concept, such as differentiated products, high brand images, designs, providing systems, business format, marketing and advertising strategies, etc. to attract potential franchisees to the franchise system of the company and for potential franchisees to be survived from fierce competition.

3) Easily understandable and acceptable business concept

There should be business concept and system which potential franchisees can completely understand and learn for a short period of



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time. When it is too complicated, there may be a limitation to spread the business marketplaces.

(2) Implementation of franchising package

Franchising package is a marketing system or a program which franchisor provides the right to market the goods or services according to the franchise agreement and franchisee pays therefor. That is, franchising is a package deal which includes the established standards of the business and a franchise fee. The franchise package must include the following 3 indications:

- ① association with a commercial symbol such as trademarks, service marks;
- ② a marketing plan, system, or know-hows developed by franchisor; and
- ③ training including ongoing training to control unified images of the franchising business.

Such a franchising package is described in more detail below.

Trademarks

A franchisor and a franchisee each is legally an independent business owner but has identical service marks or trademarks, appearances and staffs' uniforms. A service mark or trademark is an essential tool in business marketing to distinguish the company from competitors. Thus, allowing such service marks and trademarks to the franchisee is an important factor. The service mark is word, name or symbol that



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represents a service company or a service provided by a company that differentiates it from the competition and establishes it as unique in banking, shipping, food, advertising, hotel, education, information, construction, and communication business, etc.

The service mark is the face of a company since it identifies its services and distinguishes them from other services so that it informs consumers about the origin or source of a particular service.

System know-hows

The franchisor provides its developed information systems or know-hows for supporting business marketing and management assistance to the franchisee and builds proper business strategies to franchisees. Ongoing supporting of unified franchisor's brands, images, and goods and services differentiated from the competitors will give the established image of respectability to customers.

Ongoing training and support

The franchisor provides to franchisees training or education program to run and operate the business and guidelines and advices to keep the business at the same level of the franchisor, even further develop. The franchisor also needs to offer appropriate business consulting to franchisees. It is a part of teaching business and marketing skills.

Systemization of Franchise system

Franchise package factors provided by the franchisor to the franchisee can be divided in a marketing skill and a management skill. The



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franchise needs to systemize its franchise system for the franchisee to use its system know-hows in the business.

Important skills in the franchise system are as follows.

- Marketing skills: developing proper potential franchisees, developing goods, location analysis, analysis, constructing stores, merchandising, logistic, and sales promotion, etc.
- Management skills: operating franchises, supervising, training and education, management of franchise business, marketing information system, and financial, etc.

Know-hows

Franchisor provides know-how teaching how to operate franchise systems as one factor of the franchise package to franchisee. Know-how is intangible asset including information, knowledge, experience, intelligence, and tips, etc. Know-hows, which are the secret of franchise systems such as information needed for business management, manufacture, processing, sales and the like, are usually developed by franchisor and provided to franchisees.

Manual

Generally manual is a small reference book, a handbook (a guide), a pocket book and the like. The franchisor provides manuals including product control manual, manual for entertaining customers, manufacturing (processing) manual, etc. which allow proper running of franchise business.



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(3) Development of operational manual

The core of franchising is keeping the originality and unity. Manual in the franchise system is a reference tool to build a franchise business image and institutionalize the business marketing and operation system. It is a standardized frame to provide the maximum services to customers with accomplishing ideas, business strategies, marketing, policies, and operation methods of the franchisor.

Franchisor may improve the efficiency of business by updating the manual to ensure the growth of business, establish the identity of service marks, and strengthen the competitiveness and unity.

When a manual is written, it should be written in view of users clearly and concisely and it should define clearly the purpose of business which delivers the highest priority. Further, it should be written based on existing practices and be regularly updated as business is growing or according to market or working conditions. For this reason, it is counted that a franchisor having a manual written in detail to correspond to the business field is better rather than having just gingerbread trim.

(4) Promotion and selection of franchisees

1) Selection of franchisees

A franchisee is a manager to evolve the business model of a franchisor and make innovation. Thus, it is very important to select qualified franchisees.



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2) Advertising franchise

Advertising franchises can be made using various methods of franchising agency, internet, sponsoring local events through advertising medium such as TVs, radios, newspapers, magazines and so on, franchise salesmen, introducing sales, sending direct mails (DM), fax services, business demonstrations (presentations), exhibitions, attending conferences, using information materials, franchising agents and so on.

All kinds of information for establishing business can be easily obtained through internet or lectures with no charges in Korea.

It was not so difficult to recruit franchisees even though attending conferences or exhibitions was the only way in the past. It is apparent at present that the above-mentioned advertising methods can be combined for franchising business proximity.

3) Selection of franchisees

A franchisor selects potential franchisees by determining financial conditions, credit references, aptitude tests and the like.

(5) Developing & setting-up of the franchisor's organization

A system for franchisor and franchisee may vary with the purpose of business. However, here a general system for franchisor and its business is described and based on franchisor's organization, distribution and management.



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1) General process for developing a system for franchisor and its business

A statistic analysis must be conducted for an accurate prediction based on the franchisor's business concept and corresponding analyses to the business. Business strategies including financial and marketing strategies can be made based on this analysis. Then, branding strategy and marketing strategy for its growth will be followed. It should be also considered who the target customers are and franchising plans corresponding to those customers are at the same time. When the system is completed, detailed operations will be followed. For example, how are business locations selected based on what? How are products developed? What are strategies for pricing, distribution, organization, education (or training) and so on? It is definitely apparent that detailed guidelines be made in order to reduce the risk.

2) Detailed process for developing a system for franchisor and its business

Each factor mentioned above will be approached in a general way.

- a) Determining business concept;
- b) business analysis;
- c) statistic analysis;
- d) building business strategy;
- e) building financial strategy;
- f) building franchising plan;
- g) building branding strategy;



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- h) building marketing strategy;
- i) segmentation of the market, analysis each segmented market and selection of target markets;
- j) targeting;
- k) building strategy for managing customers;
- l) positioning;
- m) products (determining the basic business concept for products and directions to develop products based thereon);
- n) building pricing strategy;
- o) seeking for holding a dominant position among competitors through strategies of promotion, competition and distribution;
- p) operating systematic strategy;
- q) strategies for location and education and evaluation.

2-2. International franchising

(1) Master franchising

“Master franchising” and “sub-franchising” are used interchangeably but fundamentally have a difference. “Sub-franchising” is a form of franchising that allows the franchisee to buy the right from a franchising company to sub-franchise to the third party within a certain region. According to such agreement, the sub-franchisor has the right to sell franchise as an independent agent within a certain time of period and a certain territory.



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Master franchising and sub-franchising can be distinguished by the following matters.

First, who is the continuous supporter, franchisor or sub-franchisor? The first franchisor supports if it is master franchising but the sub-franchisor supports if it is sub-franchising.

Second, to whom does the franchisee pay franchise fee? The first franchisor receives franchise fee directly from the franchisee and the franchisor pays a part of the received fee to the master franchisor if it is master franchising, but the franchisee pays directly to the sub-franchisor and the sub-franchisor pays a part of the received fee to the franchisor according to the agreement if it is sub-franchising.

(2) Direct franchising

“Direct franchising” is an agreement between an original franchisor in a foreign country and a franchisee in Korea who has then the right to do business. The direct franchising has an advantage of removing the risk of company-owned only operation. On the other hand, it has a disadvantage of operating the business according to the procedures and restrictions set forth by the franchisor.

(3) Branch operation

A branch office is a business office which is controlled by its head office but is partially independent. It is different from a sales booth. The branch office has the following definitions: i) the business of a branch office



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can be independently assigned; ii) a manager for a branch office business can be elected and registered; and iii) it can be an independent unit to make decision of the effectiveness of commercial registration and if a branch office is not registered, registration of a head office cannot be used instead.

(4) Subsidiary company

When a company has more than 50% of shares of another company, the company obtains the right to control the other company. The company is referred to the parent company and the other company is referred to the subsidiary. In the *Commercial Law*, as long as the parent company owns more than 40% of shares of the competent company, it is a parent company of the competent company. In the parent/subsidiary relationship, the subsidiary is established and recognized by the parent and the parent company has to carry the subsidiary on its books (consolidated financial statements), as an independent corporation.

(5) Franchising joint venture

Joint venture is an investing method in foreign countries which describes an arrangement between 2 or more entities (whether corporate, individuals, or government) who agree to contribute to a common enterprise. Partners involved in the Joint venture save money and reduce risks through capital and resource sharing. Joint venture can be established in various ways. For example, it can be established newly or by obtaining a part of the ownership of a local subsidiary.



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(6) Company-owned only operation

Company-owned operation is a business office owned and operated directly by a franchising head office. The company-owned operation has an advantage of easy operation or management but possesses risk factors such as culture and laws of the country where a business office is opened should be studied.

2-3. Franchising business related laws in the Republic of Korea

Franchising business is considered as a commercial (business) transaction and thus the offer and sale of franchising is regulated by the *Commercial Law* and the *Civil Law*.

However, the franchising business is also regulated by not only *Monopoly Regulation and Fair Trade Act*, Intellectual Property rights, *Policy Regulation Act*, *Unfair Competition Prevention And Trade Secret Protection Act*, but also a complex concept combined with the interpretation and application of various laws of *Labor Law*, *Tax Law* and so on.

Therefore, for appropriate understanding of fair franchise transactions, it is apparent that various laws and regulations be based on the *Fair Franchise Transactions Act*. It will be discussed in detail in Chapter 3.



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3. Franchising policies and laws in the Republic of Korea

3-1. Main national policies and laws in the Republic of Korea

(1) Laws related to fairness in franchising trade

Laws are provided to establish fair trade of franchising, help the franchisor and franchisee achieve balanced growth in equal, complementing relations and prohibit unfair trade activities related to the franchising business, by stipulating basic regulations for the franchisor and franchisee. Details are described later.

(2) IP rights

1) Franchise and importance of IP rights

Every franchise business has a variety of trademarks displayed outside or where they are easily visible. IP rights collectively refer to the rights to all kinds of human intellectual creations, including trademarks, and to displaying such human intellectual creations.

The first thing to consider when organizing and opening a franchise system is trademarks. An aggressive trademark strategy is required with the increasing importance of brand power in sales growth.



IPR System

	<i>Protected Object</i>	<i>Protecting Means</i>
<i>Rights to Technical Creations</i>	Invention	<i>Patent Act</i>
	Utility model	<i>Utility Model Act</i>
	Designs	<i>Design Protection Act</i>
	Semiconductor IC and layout	<i>Semiconductor Layout Act</i>
	know-how	<i>Fair Trade Act</i>
	Software	<i>Copyright Act, Patent Act</i>
<i>Rights to Business Marks</i>	Trademarks, Service marks	<i>Trademark Act</i>
	Trade name	<i>Commercial Law</i>
	Anti-trust activity	<i>Anti-trust Law</i>
<i>Rights to Cultural And Artistic Creations</i>	Created works	<i>Copyright Act</i>

2) Trademark Act

2-1) Meaning of trademarks

Trademark is an identifying mark used by a person producing and/or selling a product to distinguish his product from products of other people. The *Trademark Act* aims to prevent any unfair competition that could be caused by misunderstanding or confusion of a trademark, to correct the business credibility of the trademark owner who is damaged by such confusion and to protect the traders and consumers of the product.



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2-2) Selection and registration of trademarks

As the trademark is a strong marketing means, it is important to select a trademark that can identify the trademark owner's product most effectively among the consumers and maximize his product image. To use such trademark exclusively, it is necessary to register the trademark in the KIPO. Most important conditions for trademark registration pursuant to the *Korean Trademark Act* are as follows:

- a) to be identifiable (Examples of unidentifiable trademarks: common names, common marks, descriptive trademarks, notable geographical indications, simple and common trademarks);
- b) no identical or similar prior trademark applications or registrations (visit www.kipris.or.kr to check for identical or similar trademark application or registration).

2-3) Procedures for trademark registration

- a) Overview;
- b) filing an application;
- c) formality examination;
- d) substantial examination;
- e) publication and pre-grant opposition;
- f) rejection, registration, appeal and trial;
- g) renewal.



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Patent attorneys can provide professional legal services, ranging from selecting a trademark and proper trademark classification to preparing and filing the application. In addition, patent attorneys can help applicants properly respond to the trademark examiner's objection and manage the trademark right once the trademark right is granted.

2-4) Licensing trademarks

The franchise industry uses a variety of symbols, which are used in signs, as various marks in the store and in advertisements. The franchise agreement has a provision specifying the marks to be licensed to the franchisee. If a mark has a registered trademark, such mark can be specified by the registration number, but if the mark can not have a registered trademark, the agreement may specify the mark as it is.

According to the *Korean Trademark Act*, the trademark license can be either an exclusive license or a non-exclusive license. Although an international master franchise can be an exclusive license, it is more common that the franchisee is given a non-exclusive license.

2-5) Stipulations of license in franchise agreement

When license is granted for use of a trademark, various conditions for using the trademark are discussed and agreed. Therefore, it is imperative that the franchise agreement includes provisions of prohibiting modification of the trademark, obligating the use of the trademark, prohibiting the use of the trademark for other purposes, obligating the licensee to notify any third-party infringement and so on.



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2-6) Management of trademarks and acquisition of domain name

The trademark must be managed as an intangible business asset. Not to mention the general management of trademark application and registration, the trademark must be managed as a part of the corporate asset for value enhancement. For instance, if the trademark name is negligibly left to be used as a product name by trade partners, the trademark may lose its own identity and exclusiveness. Therefore, use of the trademark must be carefully planned in accordance with the trademark strategy. Monitoring the KIPO's publication of trademark applications can be an effective way of preventing the registration of a similar trademark. If the legal right to the trademark owner's brand is infringed by a third party, it is necessary to proactively practice the trademark right.

It is also very important to preempt a domain name that is identical to the brand. As many services are supported on line, it is essential that the online brand and the offline brand be identical in order to prevent any confusion by consumers, to prevent any adversary third party from getting a free ride on the brand reputation and to maximize the business profits.

3) Know-how

3-1) Meaning of know-how

As an element of the franchise package provided to franchisee by franchisor, know-how discloses the secrets of how to utilize the



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franchise system. Know-how is an intangible asset in which information, knowledge, experience, wisdom and knack coexist.

The substance of a franchise is completely determined by know-how, and thus it is very important for both the franchisor and the franchisee to define the basic rules of know-how. The detailed rules of know-how are usually defined separately and are commonly referred to as a “manual.”

3-2) Defining know-how in franchise agreement

The franchise agreement must define various rights and obligations regarding the know-how, for example, the conditions of using know-how. These stipulations must include the ownership, confidentiality and obligations after the termination.

4) Patent Act and Utility Model Act

The patent (utility model) system aims to protect and encourage invention (utility model) and promote the use of invention (utility model) in order to contribute to the development of industry. In other words, the patent system protects the inventor by granting an exclusive property right, called the patent right, to the inventor and enforces the inventor to publish the invention to contribute to the development of industry through the use of the invention. The *Korean Patent Act* has adopted an examination system and a registration system. In case the franchise agreement includes the use of a patent right, it is essential that the agreement includes a provision regarding licensing of the patent right. For details, please refer to the section on the *Korean Trademark Act*.



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5) *Design Protection Act*

The *Korean Design Protection Act* defines a design as “any form, shape, color or a combination thereof of an article that arouses an aesthetic sense through visual cognition.” Articles that the Act defines to be highly affected by popularity and have a short lifecycle, for example, clothing, bedding, office stationery, wrapping paper, wrapping container, etc., are excluded from examination requirement, but other articles must be examined before registration. In case the franchise agreement includes the use of a design, it is essential that the agreement includes a provision regarding licensing of the design. For details, please refer to the section on the *Korean Trademark Act*.

6) *Copyright Act*

The *Korean Copyright Act* aims to contribute to the improvement and development of culture by protecting the rights of copyright holders and the rights to access copyrights and by promoting the fair use of created works. The created works refer to creations belonging to the literary, artistic or academic scope. Copyrights are generated without registration and examination. However, if a copyright is registered, the copyright holder can oppose a third party. In case the franchise agreement includes the use of a copyrighted work, it is essential that the agreement includes a provision regarding the use of the copyrighted work. For details, please refer to the section on the *Korean Trademark Act*.



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(3) Laws on anti-trust and fair trade

The current *Fair Trade Act* aims to promote creative corporate activities, protect the consumers and facilitate balanced national economy by promoting fair and free competition. The *Franchise Act* is a special law of the *Fair Trade Act*, and takes precedence over the *Fair Trade Act*. Any matter that is not stipulated in the *Franchise Act* shall be controlled by the *Fair Trade Act*. Some types of unfair trade activities, defined by the *Fair Trade Act*, are as follows:

- a) act that unfairly rejects any transaction or discriminates against a certain transacting partner;
- b) act designed to exclude competitors unfairly;
- c) act of unfairly coercing or inducing customers of competitors to deal with the enterprise in question;
- d) act of engaging in a trade with a transacting partner by unfairly taking advantage of its position in the business area;
- e) act of trading under terms and conditions that unfairly restrict or disrupt business activities;
- f) act of assisting a person with special interest or other companies by providing advanced payment, loans, manpower, real estate, stocks and bonds, or intellectual property or by making a transaction under substantially favorable terms;
- g) any act that threatens to impair fair trade other than those listed in Items 1~7.



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(4) Law on terms and regulations

Trade through terms and conditions is a new phenomenon appeared in the modern mass production/consumption society. As the terms and conditions have provided a number of useful features, the *Law on Terms and Regulations* has been legislated to invalidate any unfair provisions against good faith, and the “Commission for Examination of Terms and Conditions” is founded to recommend correction of provisions violating this law, thereby ensuring a literally free agreement to the economically weak.

(5) Unfair competition prevention and trade secret protection Act

Aimed to maintain healthy commercial trade orders by preventing commercial competition through unfair means, the *Unfair Competition Prevention and Trade Secret Protection Act* defines the scope unfair competition activities and the penalty for those who are engaged in unfair competition intentionally or by mistake. The key provisions are as follows:

- a) It is made easier for a person whose business profit suffered a loss due to an unfair competition or infringement of trade secret to claim damage more easily (Articles 14.2 and 14.3). For example, in case damage is claimed for unfair competition or infringement of trade secret, the amount of profit gained by the offender is presumed to be the amount damage entitled to the claimant.



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- b) A heavier penalty may be given to those who disclose to a third party a technical trade secret of a business while knowing that the technology will be or can be used in a foreign nation (Article 18.1).
- c) A current or former officer of a business shall be punished if he gains an unfair profit or discloses a trade secret related to a production technology that is peculiar to the business for the purpose causing damage to the business (Article 18.2).

(6) Other laws and regulations related franchise

In addition to the above laws, other laws and regulations related to franchise include the *Franchise Promotion Act*, *Labor Law*, *Fair Mark and Advertisement Act* and *Tax Law*. Since franchising belongs to a commercial activity, the franchising activity is also subject to the *Commercial Law* and the *Civil Law*.

3-2. Fair trade policy and guidelines on international franchising agreement

Sections 32 to 34.2 of Article 8 of the *Fair Trade Act* stipulate the examination of unfair international agreement.

The “Fair Trade Commission” had announced the guidelines for unfair trade activities in international agreement, pursuant to Article 32.2 of the *Fair Trade Act*, on April 21, 1997 but has then annulled the guidelines on August 20, 2009. Therefore, there is no guidelines for examining an unfair international franchise agreement, which used to be applied when



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a Korean business introduced a franchise system from a foreign business or individual.

3-3. Fair trade policy and guidelines on local franchising agreement

The *Fair Franchise Transactions Act* regulates business relations between franchisor and franchisee and ensures an independent business relationship on equal footing between them.

In the *Fair Franchise Transactions Act*, information disclosure statements, deposit of franchise fee, providing the franchise agreement before the contract, prohibition of unfair transactions and so on are enacted to ensure fair franchise transactions.

(1) Information disclosure statements

Information disclosure statement means a document in the form of a booklet that contains the business status of Franchisor, career background of its officers, liabilities of Franchise, condition of its operating activities, the education, training, guidance and control of the Franchisee, the termination of the Franchise Agreement, etc. (*Fair Franchise Transactions Act* art. 2(10))

1) Registration of Information Disclosure Statements

The franchisor has to submit an application to register information disclosure statements to the “Fair Trade Commission”.



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2) Obligation to Provide the Registered Information Disclosure Statements

The franchisor should provide the registered information disclosure statements to potential franchisees 14 business days (7 business days when franchisee is supported by a lawyer or franchise trade agent) before signing the contract.

(2) Deposit of franchise fee

Deposit of franchise fee is to guarantee the payment including initial payment and loyalty which franchisee pays to franchisor by depositing to a third organization provided in the law after signing the franchise agreement.

1) Scope of franchise fee to deposit

The scope of franchise fees to deposit by the franchisee is:

- a) money that the franchisee pays to the franchisor for initial payment (down payment), loyalty, franchising fee, or education fee for granting of franchise management rights permitting to use business marks and the support and education for its operating activities;
- b) money that the franchisee pays to the franchisor in order to guarantee its payment for sale of goods or compensation for damages, which is corresponding to the franchising fee if the franchisee made payment of the franchising fee before signing the contract.



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It shall not apply if the franchisee has the insurance contract for compensating for franchisee damage.

2) Payment of franchise deposits

The franchisor can request for the payment of franchise deposits to the head of the depository two (2) months later after the date of signing the contract or when the franchisee operates its business. Then, the head of the depository should pay franchise deposits to the franchisor within ten (10) days.

(3) Obligation of delivery franchise agreement

According to the *Fair Franchise Transactions Act* article 11(1), the franchisor shall deliver a franchise agreement to prospective franchisee prior to the date of its initial receipt of franchise fees (if the prospective franchisee deposited franchise deposits to the depository, the date is the first deposit date) or the date of signing the agreement.

This regulation is for the prospective franchisee to review and understand fully the franchise agreement before signing the contract.

(4) Moral Code related to Korean Franchise Association

Moral code relating to the “Korean Franchise Association” has been enacted for the members by themselves to observe it. More detail information will be found in the website of the “Korean Franchise Association”, <http://www.ikfa.or.kr>.



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3-4. Prohibition of unfair transaction and dispute resolution

(1) Unfair transaction

The *Fair Franchise Transactions Act* is to prevent any unfair transaction and the relating acts are as follows:

Prohibition on Unfair Transactions

The Franchisor shall neither engage in nor cause another business entity to engage in any of the following acts that may hinder fair franchise transactions.

1. Act of unfairly discontinuing the supply of goods or services to or refusing to supply such or support the operation activities of the Franchisee or significantly restricting the contents thereof.
2. Act of unfairly restricting or limiting the prices of goods or services dealt with by the Franchisee or its counterparts, area of transactions, or business activities.
3. Act of unfairly placing the Franchisee at a disadvantage by using the position of the Franchisor in transactions.
4. Act of establishing a directly managed store or a franchise store of the Franchisor or its subsidiaries engaged in the same business as that of the Franchisee in its business territory during the term of the franchise agreement in violation of such.
5. Act other than that falling under any of Items 1~4 and may hamper fair franchise transactions including the act of unfairly



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enticing the Franchisee of a competing Franchisor to deal with the Franchisor.

(2) Dispute resolution

Franchise disputes can be resolved by reconciliation of the parties involved or through the Franchise Trade Dispute Mediation Council of the *Korea Fair Trade Mediation Agency* (<http://www.kofair.or.kr>) or the *Korean Commercial Arbitration Board* (<http://www.kcab.or.kr>).

When a dispute does arise, reconciliation will be the best way to resolve any disagreement (dissatisfaction) between franchisor and franchisee who are supposed to have ongoing relationship, prior to escalation. Or the parties can be advised by experts such as the Franchise Trade Dispute Mediation Council to resolve franchise disputes.

4. Franchise agreement model forms

4-1. Basic forms of franchising agreement

Franchising agreement is a contract which governs the franchisor/franchisee relationship. Each franchising agreement will be different since it is made according to the characteristics of a franchising company. However, it should be made based on general matters and the *Fair Franchise Transactions Act* effected in Korea. Thus, it usually has common contents or general formats.

Franchise agreements are written to be generally more advantageous toward the franchisor. The franchise agreement cannot be free from the



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Policy Regulation Act and has generally a certain limitation since it is made based on the *Fair Franchise Transactions Act*, *Monopoly Regulations*, and *Policy Regulation Act*.

A general franchise agreement based on such factors is as follows:

(1) Title

There is generally a cover of a franchise agreement on the top of which title is written. The title may be named as agreement or contract but the body of the franchise agreement is the most important. Regardless of title, it is called as a franchise agreement.

(2) Preamble

A preamble is usually written in the beginning of a franchise agreement but not always needed to be. However, if it is written, it may be an important interpretive guideline with the body of the agreement. It is an introductory and explanatory statement that explains briefly the agreement's purpose. But sometimes, it explains the principles of an enterprise with more than two pages.

(3) Body

A franchise agreement is made after sufficient communications between the parties but, it is common for the parties to agree to the franchise agreement which is already made according to franchising basic formats. This franchise agreement is generally written in the form of regulations and such regulations are as follows:



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- a) definition;
- b) indication of franchise;
- c) indication of the contracting parties;
- d) business region;
- e) use of business marks;
- f) term of the contract;
- g) renewal of the contract;
- h) payment of franchise fee;
- i) deposit of franchise fee;
- j) supervising and request for correction;
- k) obligation of keeping secret;
- l) restriction on franchising competitor's business;
- m) being independence of the contracting party;
- n) location;
- o) construction for facilities including interior and kitchen;
- p) human resources;
- q) training/education and technology/technique transfer;
- r) procedure for approval;
- s) marketing guiding;
- t) standardization of business;
- u) operation of pos system and obligation of notice for important matters;
- v) order and management of goods;
- w) purchasing of own chain store;



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- x) responsibility for damaged goods;
- y) payment of fees;
- z) suspension of providing goods;
- aa) business hours;
- bb) following manuals;
- cc) clothing of employees;
- dd) advertising and sales promotion;
- ee) maintenance of equipments and facilities;
- ff) health control;
- gg) cancellation of the contract;
- hh) termination of the contract and follow-ups;
- ii) compensation for damages;
- jj) additional opening of franchise;
- kk) assignment of business;
- ll) succession of business;
- mm) effects and modifications (changes) of contract;
- nn) written notice;
- oo) refund of franchise fees;
- pp) having insurance;
- qq) dispute resolution and competent court;
- rr) having advise from experts;
- ss) special matters.



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(4) Others

A blank is made for signature executed by the both parties and appendix attached which defines business region, Intellectual Property allowed to use by the franchisee, standardization of business and sales price and so on.

4-2. Master franchise agreement

(1) Matters to be attended when a foreign franchise company wants to do business in Korea

A matter to be careful for a foreign company which wants to do franchise business in Korea is that according to the Korean practice a user (potential franchisee) should be a subject for an independent contract.

A franchise agreement further includes the restriction on places to buy materials, sales territory and sales price. The foreign company must review thoroughly if it conflicts with laws and regulations such as *Monopoly Regulations* to operate its franchise business.

The *Korean Fair Franchise Transactions Act* is a municipal law which affects the franchisor/franchisee relationship, addressed in Korea. Thus, it may not apply the contract between a foreign franchise company and a domestic franchisee. For example, if a foreign company founds a corporation, does franchise business and has franchise license, the *Korean Franchise Transactions Act* may apply. However, if a foreign company directly tries to have a franchise license, it may apply or not. Further, since it may be needed for approval with administrative offices



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for other laws such as *Trademark Law*, the foreign company should approach doing franchise business with enough knowledge. In addition, *Tax Law*, *Foreign Exchange Control Law*, *Labor Law*, restriction on royalty payment, obtaining real estate by a foreigner, restriction on sales territory, restriction on export/import, and so on will be studied prior to doing business.

(2) Master franchising agreement

1) Definition of sub-franchising and master franchising

In order to explain master franchising, sub-franchising has to be explained. Master franchising and sub-franchising are used interchangeably, but fundamentally have a difference. “Sub-franchising” is a form of franchising that allows the franchisee to buy the right from a franchising company to sub-franchise to a third party within a certain region. According to such agreement, the sub-franchisor has the right to sell franchise as an independent agent within a certain time of period and a certain territory.

Master franchising and sub-franchising can be distinguished by the following matters.

First, who is the continuous supporter, franchisor or sub-franchisor? The first franchisor supports if it is master franchising but the sub-franchisor supports if it is sub-franchising.



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Second, to whom does the franchisee pay franchise fee? The first franchisor receives franchise fee directly from the franchisee and the franchisor pays a part of the received fee to the master franchisor if it is master franchising but the franchisee pays directly to the sub-franchisor and the sub-franchisor pays a part of the received fee to the franchisor according to the agreement if it is sub-franchising.

2) Master franchising agreement

A master franchising agreement is between a foreign original franchisor and a franchisee addressed in Korea. Thus, the Basic forms of franchising agreement described above must include competent court and governing law for a case that a dispute does arise.

It may include *Tax Law*, *Foreign Exchange Control Law*, *Labor Law*, restriction on royalty payment, obtaining real estate by a foreigner, restriction on sales territory, restriction on export/import, and so on since it is a contract between a foreign company and a Korean company, if necessary.

The following is for the competent court and governing law.

2-1) Provision of competent court

Provision of competent court is an agreement between both parties to define a competent court for a case that a dispute does arise and has to be resolved through a lawsuit. The dispute can be solved by arbitration and in this case, it is needed to define for arbitration provision. Otherwise, the dispute will be solved in a lawsuit.



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2-2) *Provision of governing law*

It defines which country's law should be used for construction, validity and performance of the agreement shall be governed by both parties. Even though the agreement is made in detail, it is almost impossible not to cause problems in the interpretation of the agreement, its interpretation can be different depending on the applied law. Thus, it should be clearly defined for governing law in the agreement.

4-3. Direct & individual franchising agreement

(1) Definition of direct & individual franchising

Direct and individual franchising is an agreement between a foreign original franchisor and an independent subject who is a franchise user according to the Korean Law and provides the right to allow doing business to the individual. In this case, there is no strict standard for the franchising agreement. If the foreign original franchisor operates its business in Korea, the foreign original franchisor will be treated the same as the Korean franchisee so that it can operate the business under the *Fair Franchise Transactions Act* and *Monopoly Regulations, Policy Regulation Act* as well.

(2) Direct & Individual franchising agreement

Such agreements can be made based on BASIC FORMS OF FRANCHISING AGREEMENT since the foreign original franchisor is treated the same as the Korean franchisee and operates business according to the *Fair Franchise Transactions Act*.



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4-4. Local franchise agreement

(1) Entries to be made

- a) Matters related to the granting of rights to use the business marks;
- b) matters related to the status of the operating activities of the Franchisee;
- c) matters related to the education/training and management guidance of the Franchisee;
- d) matters related to payments including franchise fees;
- e) matters related to the establishment of business area;
- f) matters related to the term of a franchise agreement;
- g) matters related to business transfer;
- h) matters related to the causes of termination of a franchise agreement;
- i) matters related to the deposit of franchise fee and the insurance contract for compensating for franchisee damage;
- j) matters related to the case when a franchisee is provided with advise from lawyer or franchise trade agent for information disclosure statement;
- k) matters related to the conditions for requesting refund of franchise fees;
- l) matters related to the burden of maintenance and repairing of facilities and equipments of the franchisee and cost therefore;



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- m) matters related to the termination and cancellation of the contract;
- n) matters related to the reason to refuse renewal of the contract by the franchisor;
- o) matters related to the trade secrecy of the franchisor;
- p) matters related to the compensation of damages due to violation of the contract;
- q) matters related to the process for resolving a dispute between the franchisor and the franchisee.

(2) Legal relations

The parties of the franchise agreement have legal relations of receiving right and providing obligation therebetween. Obligations of franchisor and franchisee regulated under the *Fair Franchise Transactions Act* are as follows.

1) Items to be observed by franchisor

- a) Planning of business for the success of the Franchise;
- b) continuing efforts toward the quality control of goods or services and development of sales techniques);
- c) installation of shop facilities and supply of goods or services for the franchisee at reasonable price);
- d) education and training for the franchisee and its employees);
- e) continuing advice and support for the management and operating activities of the franchisee);



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- f) prohibition on the opening of a directly managed shop or a franchise business engaging in the same line of business as that of the franchisee within the business area of the franchisee during the term of the franchise agreement;
- g) efforts to resolve disputes through dialogue and negotiations with the franchisee.

2) items to be observed by the franchisee

- a) Exert efforts to maintain the uniformity of the franchise and good reputation of the franchisor;
- b) maintain inventory and display of goods in an appropriate manner in accordance with the franchisor's supply plan and consumer demand;
- c) comply with the adequate quality standards presented by the franchisor with regard to the goods or services;
- d) use the goods and services provided by the franchisor in case of failure to stock goods or services that meet the quality standards provided for in item 3;
- e) comply with the appropriate standards presented by the franchisor in relation to the facilities and exterior of the business place as well as the means of transport;
- f) consult with the franchisor prior to implementing any and all changes in the goods or services dealt with or in the operating activities;



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- g) maintain and provide the data necessary for unified business management and establishment of sales strategy by the franchisor, inclusive of but not limited to, accounting books on the purchase and sale of goods and services);
- h) provide to the officers, employees, or agents of the franchisor access to its business place for the checking and recording of its business status and data as set forth in item 7;
- i) prohibit any change in the location of its business or transfer of franchise management rights without the consent of the franchisor;
- j) prohibit any act of engaging in the same line of business as that of the franchisor during the term of the franchise agreement;
- k) prohibit the disclosure of sales techniques or trade secrets belonging to the franchisor;
- l) notify the franchisor of any infringement of intellectual property rights by a third party in relation to the business marks upon discovering such and extend appropriate cooperation to the franchisor in taking the necessary measures to prohibit such infringement.



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(3) Renewal & completion

1) Renewal

When the franchisee requests for renewal of the agreement within from 180 and 90 days before the agreement is terminated, the franchisor cannot refuse without any appropriate reason. The right of requesting for renewal of the franchisee shall be exercised within a period time of 10 years and less of the term of the franchise agreement including the first term of the agreement.

1) Completion

The franchise agreement shall be terminated with the termination of the duration. The franchise agreement is an ongoing relationship so that it can be cancelled. Thus, according to the *Fair Franchise Transactions Act*, reasons of cancellation of the agreement should be defined in the franchise agreement.

(4) A sample of franchise agreement

A sample of franchise agreement is attached in Appendix.



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APPENDIX



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SAMPLES OF FRANCHISING AGREEMENT

**“This sample Agreement is made with a virtual
『TRICOLORE RESTAURANT』 ”**

『TRICOLORE RESTAURANT』 FRANCHISE AGREEMENT

Date of providing Information Disclosure Statement	
Date of executing the Agreement	
Title of the Franchise	

TRICOLORE S.p.A.



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TRICOLORE FRANCHISE AGREEMENT

The Franchise agreement is made this _____ of _____, 2009 by and between the FRANCHISOR, TRICOLORE (hereinafter referred to as "A"), and FRANCHISEE (hereinafter referred to as "B") based on mutual confidence and the principle of mutual trust and sincerity. Both "A" and "B" shall have ongoing relationship based on understanding and trust to operate the Franchise successfully according to this Agreement.

In addition, franchising of 『TRICOLORE Restaurant』 of "A" is established based on the research and development for a long period of time and its Business Marks including trade names and trademarks, intellectual properties, and know-hows for novel methods-business methods shall not be infringed by any third party including "B".



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CHAPTER 1: GENERAL

Article 1 (Purpose)

This Agreement is to grant "B" the right to operate the Business (the Franchise) of 『TRICOLORE Restaurant』 of "A" as a Franchisee and regulate rights and obligations and terms and conditions between "A" and "B" to promote and enhance the development, operation and success of the Franchise.

Article 2 (Definition)

1. "Franchising (Franchise)" means that "A" grants "B" to use the trademarks, service marks, trade names, and associated symbols and logos (hereinafter referred as to "Business Marks") used in the operation of the Business of "A" according to the quality control Standards and Business Manuals of "A" and "A" also assists for the operation of the Business and in return, "B" pays Franchising Fees and admits to be guided by "A".
2. "Right to operate the Franchise" means the right granted to "B" to use Business Marks of "A" and to receive business ongoing supports and education-training from "A", to be provided with Products necessary to operate the Franchise from "A" and to operate the Franchise according to the Business Manuals of "A".
3. "Franchising Fee(s)" means Money that "B" pays to "A" in consideration of the participation in operating the Franchise with the use of Business Marks including the Intellectual Property of "A".



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4. "Manuals" mean materials which are used to efficiently operate the Business and developed and owned by "A" (including, without limitation, service development, operation, education Manuals and written materials).
5. "Employees of "B"" mean chefs, staffs and so on hired by "B".
6. "Products" mean all Products and equipments provided by "A" to "B" to operate the Franchise according to this Agreement.
7. "Items" mean items on menus to be prepared and sold to customers by "B".

Article 3 (Marking/Indication)

① The Franchise to be operated by "B" according to this Agreement is as follows.

<i>Name of the Franchise</i>	『TRICOLORE Restaurant』
<i>Address of the Franchise</i>	
<i>Size of the Franchise</i>	m ² (pyung)
<i>Title of the Franchise</i>	
<i>Registration No. of the Franchise</i>	

② "B" shall not change or amend Article 1 without a written approval of "A".

Article 4 (Scope of Grant in Use of Business Marks)

① "B" is granted to use the Business Marks, specified under Article 3 of this Agreement, in connection with the 『TRICOLORE Restaurant』 of



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"A" at the Business Territory.

② "B" is granted to operate the Business by using the Business Marks as provided under Article 1 and manufacturing and installing signs and interior facilities (which are specified by "A") within the Business Territory specified under Article 6.

③ "B" shall not damage or change the Business Marks attached in the Products, equipments, and facilities, etc., shall not use them beyond the purpose described in Article 1 and Article 2, and shall not transfer its right to a third party.

Article 5 (Changes of the Business Marks)

① "A" may change the Business Marks if necessary to promote or increase profits/benefits for both "A" and "B" or if inevitable and "B" should give full cooperation therefor.

② "B" shall change the Products, facilities and equipments, etc according to the discussed result with "A" when the Business Marks are changed according to Paragraph 1 of Article 4 of this Agreement.

Article 6 (Business Territory)

① "A" shall determine the Business Territory based on the business location which is specified under Paragraph 1 of Article 3 of this Agreement and indicate it in Map (drawings) which shall be attached herewith (Appendix II). "A" shall grant "B" the right to operate the Business within this Territory.

② The Business Territory provided under Paragraph 1 of Article 4 is based on the Business location.



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③ "A" shall not open a directly-managed shop of "A" or a franchise business engaging in a similar line of business to that of "B" which may harm the Business of "B" within the Business Territory of "B" specified under Paragraph 1 of Article 4.

④ "A" shall arrange the Business Territory of "B" in the event of the followings, despite the Paragraph 3 of Article 4:

1. development of the Business Territory; and
2. changes in existing markets due to railway, high-way, river, commercial area and so on.

⑤ When the Business Territory is rearranged due to the reasons provided in the foregoing Paragraph 4, "A" and "B" will discuss, provided that "A" shall provide objective documents, that show not causing losses in sales by the rearrangement of the Business Territory, to "B" and "B" shall not reject it without any justifiable reasons.

Article 7 (Term and Renewal)

① The Agreement shall become effective from the date of signing this Agreement and shall remain in full force for a period of two (2) years.

<i>Term</i>	_____, 20__ ~ _____, 20__
-------------	---------------------------

② "A" shall not refuse renewal of this Agreement without any justifiable reason when "B" requests therefore between 180 days and 90 days prior to the expiration of the Agreement, provided that it is not affected under any of the following circumstances:

1. if "B" fails to make the payment for Franchising Fees (royalties) or Product supplies according to the Agreement;
2. if "B" fails to perform its obligations according to the conditions



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and Business Manuals in the Agreement which are generally applied to other franchisees;

3. if "B" violates any matter provided under Article 37 of this Agreement; and
4. if "B" fails to perform any of the following Business standards of "A" which is considered as important Business formats to keep or improve the Business:
 - a. reserving franchises-equipments or obtaining qualification (requirements)/licenses-permissions needed to operate the Franchise of "B";
 - b. performing and following manufacturing procedures or service standards to keep or improve the quality of Products or services provided by "B";
 - c. protecting intellectual properties needed to operate the Franchise Business of "A"; and
 - d. obtaining education-training provided to franchisees including "B" by "A".

③ When "A" refuses the renewal of the Agreement as provided under Paragraph 2, "A" should notice reasons thereof in writing to "B" within 15 days from the receiving date of the request for renewal.

④ When "A" fails to provide such refusing reasons to "B" or fails to notice any amendment of the Agreement to "B" or any indication not to renew the Agreement in writing between one hundred eighty (180) days and ninety (90) days prior to the expiration date of the Agreement, the term of the Agreement shall be automatically extended under the same terms and conditions, provided that it is not applied if "B" provides sixty (60) day objection thereto before the expiration date of the



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Agreement or any failure or delay is caused by natural events to "A" or "B" or under the following circumstances:

1. if either "A" or "B" becomes a petition in bankruptcy-composition or for corporate reorganization or for any similar relief is filed;
2. if any bill or check issued by "A" or "B" is suspended; and
3. if "B" cannot operate the Business for its justifiable personal reason.

⑤ In case the Agreement is extended with the same terms and conditions as provided under Paragraph 4 the Franchise Fee shall be 1/2 of the first Franchise Fee and shall be paid to "A" within seven (7) days from the expiration date of the Agreement.

Article 8 (Initial Fee)

In consideration of all rights granted to "B" under this Agreement, "B" shall pay to "A" the Initial Fee _____ won (plus V.A.T) immediately after this Agreement as follows:

Initial Fee

Category		Fees	Refund condition	remark
Franchise Fees	Fee for the rights	₩ _____	according to the performance of obligations	VAT not included
	fees to use the Business Marks inducing trademarks			
Fees for education and training		₩ _____	extinctive fees	
Total		₩ _____		



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Article 9 (Security Deposit)

- ① "B" shall pay the Security Deposit (₩ _____) to "A" in consideration of the Products and materials such as Products and sales promotion materials, etc. to be provided by "A" or damages to be caused, to guarantee financial obligations, provided that the payment for Products shall be made at the following day from the date when the Products are delivered to "B" regardless of the payment of Security Deposit.
- ② In case that the Agreement is expired or terminated, "A" shall return the balance of the security deposit as provided under the foregoing Paragraph 1 to "B" after deducting all debts to "A" specified in the Agreement such as restoring to the former conditions, payments and so on at the time the processing fulfillment is completed after the end date of the Agreement as provided in Article 38.
- ③ When "A" refunds the balance of the security deposit to "B", any interest shall not be paid.
- ④ When "B" delays the payment to "A", "A" shall take the delayed payment from the security deposit as provided under the foregoing Paragraph 1 and "B" shall then make up that difference in the security deposit.
- ⑤ When the average monthly amount for the Products provided during the last 3 months is more than the amount provided under the foregoing Paragraph 1, "B" should pay the excessive amount upon "A"'s request to "A" in the name of the security deposit.
- ⑥ The payment of the excessive amount provided under the foregoing Paragraph 5 shall be made within fifteen (15) days from the receiving date thereof. If it is not made, supply of the Products and assistances



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provided by "A" according to this Agreement shall be discontinued.

Article 10 (Royalty)

"B" shall pay to "A" _____% of the total (net) sales.

Article 11 (Deposit of Franchise Fee)

① The following Franchise Fees shall be deposited to the third organization assigned by "A" to guarantee the Business of 『TRICOLORE Restaurant』 according to this Agreement.

<i>Category</i>	<i>Amount</i>
<i>Initial Fee in Article 8</i>	₩_____ (plus V.A.T)
<i>Security Deposit in Article 9</i>	₩_____ (plus V.A.T)
<i>Total</i>	₩_____ (plus V.A.T)

② When "B" fails to deposit the Franchise Fees provided under the foregoing Paragraph 1 within three (3) days from the effective date of this Agreement, this Agreement becomes ineffective, provided that the date shall be extended with the consent of "A" if such delay is caused by the reason reasonable by "B".

<i>Third organization</i>	Bank suggested by the third organization (city name, branch office)
<i>Account No.</i>	_____-_____-_____
<i>Name</i>	TRICOLORE Inc.



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Article 12 (Inspection and Request for Correction)

- ① "A" shall inspect guide, manage, and control the Franchise of "B" for unified and effective operation of the Business and if necessary, "A" shall request for corrections. Inspecting the Franchise includes whole operation of the Franchise including keeping standard recipes, standard quality controls, health conditions, quality controls, equipment or facility management, Products and raw subsidiary materials, etc.
- ② "B" shall operate the Franchise according to the Manuals and corresponding laws in this Agreement. When any punishment or administrative disposition is made due to violations from any associated organization, "B" should immediately inform to "A"
- ③ "B" shall allow "A" or a person designated by "A" to visit the Franchise during the business hours to check or inspect the maintenance of the Franchise as provided under the foregoing Paragraph 1 and 2.
- ④ "A" shall prepare inspection standards to check the Franchise as provided under the foregoing Paragraph 1 and the Franchise of "B" shall be inspected according to those standards.

Article 13 (Secrecy)

- ① "B" shall hold in confidence trade secrets and Business Manuals provided by "A" and shall not disclose them as prints, copies, and rents, etc.
- ② When failure in the performance of obligations provided under the foregoing Paragraph 1 is made by employees, families, other associated third parties of "B", "B" shall share the responsibility.
- ③ The obligation provided under the foregoing Paragraph 1 shall be



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maintained during the term of this Agreement and for a period of one (1) year thereafter.

④ When "B" fails to perform its obligations provided under the foregoing Paragraphs 1 to 3 and causes any damage on "A", "B" shall have civil/criminal liabilities.

Article 14 (Prohibition of Competitive Business)

① "B" shall not engage in a competitive business of "A" in the name of "B" itself (including family members in a direct line) or a third party during the term of this Agreement without the consent of "A".

② "B" shall not engage in a competitive business of "A" within the Business Territory identified under this Agreement for one (1) year after the termination or expiration of this Agreement.

③ When "B" inflict any damages on "A" by violating the provision provided under the foregoing Paragraphs 1 to 2, "B" shall have civil/criminal liabilities.

Article 15 (Independence of Contracting Party)

① "A" and "B" are each an independent business and "B" is not an agent or employee of "A". "B" shall not have any right to represent "A".

② "B" shall operate the Franchise of 『TRICOLORE Restaurant』 of this Agreement with its own responsibility and obligation and shall have a burden for any dispute with clients or any third party.

③ "B" shall not indicate as the franchise or branch of "A" nor use any Business Mark which can be misled by the third party not only during the term but also after the termination of this Agreement.

④ "B" shall agree that "A" does not have any responsibility including a



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financial obligation to a third party when "B" has any dispute with the third party during operating the Franchise.

⑤ "B" shall have a burden for the payment of all related expenses including all taxes, utility charges, etc. and if "A" pays for such expenses due to some inevitable circumstances, "B" has to pay that back immediately to "A".

⑥ "B" shall have an entire responsibility including hiring staffs as an employer to operate properly the Franchise and "A" shall have no responsibility for the relationship between "B" and its employees (staffs) and salaries, etc.

CHAPTER 2: OPENING AND OPERATION CONDITIONS

Article 16 (Location)

① "B" shall be granted to develop and select a Location and the "Third Organization" shall have the responsibility thereto.

② "A" may provide advices to "B" on district divisions, market fluctuations, neighborhoods, sales propensity according to types of business, and business territories of nearby franchised franchises, etc.

③ "B" shall make a final decision on a Location even if "A" may advise therefore and it shall be confirmed that the sales and profits can be changed according to capabilities of "B" or circumstances.

④ "B" shall have obligations to obtain every license, registration, authorization or other permission to operate the Franchise.



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Article 17 (Interior and Kitchen Equipments and Items)

- ① Before twenty (20) days prior to the opening of the Franchise, "B" shall complete interior design, signs, kitchen equipments and POS items, etc. to operate the Franchise, in accordance with "A" standards and specifications at its own expenses.
- ② "B" may ask "A" to conduct construction including interior design, signs and so on or may conduct by itself according to "A"'s standards and specifications to keep the unity and originality of "A"'s Business, provided that "A" may provide its subcontractors upon the request of "B" even if "B" conducts construction by itself.
- ③ In case of conducting construction as in a provisory clause of Paragraph 2, "B" shall contract directly with each subcontractor.
- ④ In case of conducting construction as in a provisory clause of Paragraph 2, "A" shall provide specifications and its fee shall be _____won (₩ _____).
- ⑤ "B" shall use the same kitchen equipments and materials which "A" specified, provided that "A" may provide its subcontractors or install by itself upon the request of "B".
- ⑥ When "A" installs the kitchen equipments and materials, "A" may control its own staffs for proper operations.
- ⑦ When "A" conducts construction as provided under the foregoing Paragraph 2 and 5, "A" shall provide after-sales services for 6 months with no charge, provided that "B" must be responsible for an after-sales service which is caused by careless use of a user even though it is within that 6 month period.



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Article 18 (Management of Employees)

- ① "B" shall hire and be exclusively responsible for its employees for the operation of the Franchise.
- ② Management regarding hiring, education, and supervising, etc. of employees provided under the foregoing Paragraph 1 shall follow the Manuals and specifications provided by "A".
- ③ "B" shall do its best to offer security and education to its employees to keep the unity and creativity of the Franchise and for ongoing development.

Article 19 (Education and Technology Transfer)

- ① Initial education-training shall be provided by "A" prior to the operation of the Franchise and additional education-training programs shall be provided on a regular or occasional basis.
- ② The initial education provided prior to the operation of the Franchise by "A" shall be education for services and operation Manuals necessary to operate the Franchise and "B" or its employees must attend such education programs.
- ③ "B" and the person designated by "A" to assume primary responsibility for managing the Franchise must attend and successfully complete the education-training programs provided by "A" at training facilities designated by "A" since technology transfer necessary to operate 『TRICOLORE Restaurant』 is also offered during the education-training program provided prior to the operation of the Franchise as provided under the foregoing Paragraph 2.
- ④ "A" may require the person who completed the education-training program provided under Paragraph 3 to pass tests, which determines if



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"B" and the person have been completely trained for the operation of the Franchise, after education-training and technology transfer program provided under the foregoing Paragraph 2 and 3 and "A" requests attending additional training when the result does not satisfy the standard rated by "A".

- ⑤ "B" must attend the training programs and seminars provided by "A" on a regular or occasional basis.
- ⑥ "B" may request to "A" to send a person for special education and training at "B"'s expense.

Article 20 (Registration Permission and Compliance)

- ① "B" shall obtain and keep, at "B"'s expense, any and all permits, licenses, registrations, consents, or certifications necessary for constructing or operating the Franchise according to this Agreement prior to the opening date of the Franchise.
- ② "B" shall operate the Franchise in compliance with all applicable laws and employment, tax, health and safety.
- ③ "B" shall forward all documentation necessary to obtain permits, licenses, registrations, consents, or certifications as provided under the foregoing Paragraph 1 to "A".
- ④ When "B" fails to perform its obligations provided under the foregoing Paragraphs 1, "B" shall have civil/criminal liabilities.

Article 21 (Opening Approval)

- ① "B" shall obtain "A"'s approval for opening the Franchise after performing all obligations for operating the Franchise according to this Agreement.



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② "A" may refuse or delay the approval of opening the Franchise at the event of following:

1. "B" does not completely prepare Products and other equipments specified in the Information Disclosure Statement from "A" or supplies designated by "A".
2. "B" does not hire enough employees so that it is considered to be difficult for proper operation of the Franchise.
3. "B" does not properly perform its obligations provided under Article 17 to Article 20.
4. "B" does not make prompt payment of all charges prior to the opening the Franchise.
5. It is difficult to open the Franchise due to the reason responsible by "B".

Article 22 (Management Guidance)

① "A" shall send a person in charge and offer management guidances of the following for an appropriate operation of the Franchise of "B":

1. MERCHANDIZING: ways to display to make the most of Products' characteristics and sales methods;
2. MARKET-RESEARCH: business strategies and tactics according to the analysis of characteristics of the Franchise and market trends;
3. SALES-PROMOTION: ways to promote and boost the Business;
4. ways to develop new customers and activate the Business; and
5. consultation regarding problems and difficulties caused from the operation of the Franchise.

② "B" shall fulfill faithfully the management guidances provided by "A",



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specified under the foregoing Paragraph 1.

③ "B" may request to "A" for a special management guidance at "B"'s expense.

Article 23 (Operation of POS System and Notice)

① "B" shall keep record the true and correct accounts relating to the operation of the Franchise.

② "B" shall keep the accounts for sales, expenses and financial status with respect to the POS System, operate the Franchise according to the Franchise system and standards provided by "A", and report such records to "A" in the standard form provided by "A".

③ "B" shall permit "A" or its authorized representatives to visit and inspect or check the documents and equipments for the purposes of examining the recode provided under the foregoing Paragraph 1.

④ "B" shall notice immediately to "A" if any dispute, relating to Business Marks and intellectual property approved to use by "A", is occurred or any legal claim by a third party is occurred.

Article 24 (Standardization of Business and Sales Cost)

① "B" shall comply with the standards and specifications and Manuals as presented by "A" for maintaining the unity and standardization of the Franchise and efforts to maintaining the brand name of "A".

② "B" shall comply with appropriate quality standards and recopy standards for Products and services of "A" and sale only the Products specified under Appendix IV not to ruin the unity and originality of the Franchises of "A" in this Agreement.

③ "B" shall offer for sales and sell all of the Products provided and



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identified by "A" to maintain the unity of brand names and originality of the Products of the Franchises of "A" in this Agreement and shall not perform an order and delivery business method which is against a take-out business method, provided that a group order is allowed upon the consent of "A".

④ "A" recommends the most appropriate price determined based on market fluctuations, consumer trends or other factors to "B", provided that "B" wants to change the price recommended by "A", "B" shall notice in writing in a prescribed form to and discuss with "A".

Article 25 (Order and Maintenance of Products)

① "B" shall be provided the following Products including the Products specified in Appendix V and the following from "A" or its authorized suppliers to maintain the unity and originality of 『TRICOLORE Restaurant』 brands and shall not purchase by itself without the consent of "A". "A" may change or add Products according to the business strategy and "B" must accept it:

1. products including products, which "A" supplies by preparing or purchasing, to maintain the unity and protect trademarks of "A";
2. products, which suppliers designated by "A" supplies, to maintain the unity and protect trademarks of "A";
3. supplies and fixtures, etc. on which the Business Mark of "A" is printed; and
4. other Products to be provided with discussion between "A" and "B".

② "B" shall order such Products specified under the foregoing Paragraph 1 during the business hours by predetermined procedures or



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Manuals including telephone, FAX, E-MAIL, internet, POS, and person-to-person, etc.

③ "A" shall supply the Products ordered as provided in the foregoing Paragraph 2 by a scheduled time and the time or method of receiving the Products can be changed upon an agreement between "A" and "B" if necessary.

④ Supplying the Products can be delayed or terminated by the following cases and "A" shall have no responsibility therefore :

1. natural disaster;
2. trade friction or sudden rise in price, etc.;
3. out of stock for more needs than normal supply;
4. pre-agreement between "A" and "B"; and
5. reasons considered as difficulty for normal supply according to the business practice.

⑤ "B" shall not supply the Products provided by "A" or its authorized suppliers to another franchised store or a third party who is in competitive business to "A".

⑥ "B" shall keep the Products at the most optimal condition till they are sold and immediately discard if the expiration date is passed or the product is deteriorated.

⑦ "B" shall be responsible in the event of infringing the *Food Sanitation Act* due to negligence of storage or handling of the Products provided by "A".

Article 26 (Payment)

① "B" shall make the payment for the product supplied by "A" or its authorized suppliers at the following date from the receiving date,



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provided that the payment can be delayed, but not more than 7 days, upon an agreement with "A".

② "A" or its authorized suppliers can discontinue supplying Products to "B" when "B" delays the payment twice or more without an agreement with "A" as provided under the foregoing Paragraph 1 or violate the provision provided by "A".

③ "B" shall pay interest on all past-due accounts at 24 percent to "A" when discontinuation of supplying Products is caused for the payment delay of "B" and the payment for the past-due accounts shall be made first for the interest and then for dated past-due accounts.

Article 27 (Site Selection and Development)

① "B" shall use and sell only the Products provided by "A" or its authorized suppliers to maintain the unity and protection of 『TRICOLORE Restaurant』 brands as specified under Paragraph 1 to 4 of Article 25.

② "B" shall purchase by itself at the event that "A" or its authorized suppliers cannot supply the Products despite of the provision of Paragraph 1 and in this case, the quality standards of "A" should apply to the Products to be purchased by "B".

③ "B" shall agree for "A" to inspect or check the quality of the Products purchased by "B" as provided under the provisory clause of Paragraph 2 upon the request of "A".

Article 28 (Defects in Products and Responsibility Scope)

① "B" shall notice immediately to "A" or its employees in written or words if there is any defect in the Products after the Products are



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delivered.

- ② "B" shall notice defects in the Products and request for exchange thereof as soon as those are found when the defect was not found immediately after delivery, but the request for such exchanges cannot be extended to 1 month or more and the Products, except the product having defects, should be kept without damages or deteriorations.
- ③ "B" shall not request for exchange or refund or compensation for damages when such defects are caused by negligence in its duty or any reason responsible by "B".
- ④ The supplier shall be responsible for defect in the Products but "B" shall be at the event of that such defects are caused by negligence in its duty or any reason responsible by "B".
- ⑤ "B" shall have responsibility for the Products provided by "A" as soon as it receives them and keeping them according to the Food *Sanitation Act* or its related regulations.

Article 29 (Discontinuation of Supplying Products)

- ① "A" discontinues supplying of Products to "B" after one (1) week of a prior written notice at the event of following, wherein "A" shall mention the conditions for reopening:
 1. if "B" violates the indication of the Franchise Marks as provided under Paragraph 2 of Article 3;
 2. if "B" violates the provision as provided under Article 4 and uses or changes the Business Marks without the consent of "A";
 3. if "B" refuses to use the Business Marks modified under Paragraph 2 of Article 5 without a justifiable reason;



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4. if "B" violates the provision for inspection and correction request as provided under Article 12;
 5. if "B" is lazy to perform the obligation specified under Article 19;
 6. if "B" violates the provision for the obligation such as notification of accounts and documents, etc. as provided under Article 23;
 7. if "B" violates the provision for the standardization of the Franchise as provided under Article 24;
 8. if "B" delays the payment for the Products as provided under Paragraph 1 of Article 2;
 9. if "B" closes the Franchised store without notice and violates the provision provided under Paragraph 1 to 4 of Article 30;
 10. if "B" violates the provision as provided under Article 31;
 11. if "B" violates the provision as provided under Article 33 and 34 and does not participate in advertising and marketing nor pay the expenses therefore;
 12. if "B" refuses replacement of equipments or following the agreement as provided under Article 35 without a justifiable reason; and
 13. if "B" violates the provision as provided under Article 36.
- ② "A" may immediately discontinue supplying Products when any of following events occurs:
1. "B" goes into bankruptcy;
 2. checks issued by "B" are bounced or suspended;
 3. "B" is not able to operate the Business due to natural disaster;
 4. "B" violates the obligation of being confidentiality provided under Article 13 and prohibition of competitive business provided under Article 14;



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5. "B" is claimed for administrative measure for the violation provided under Article 20; and
6. "B" purchases Products by itself or refuses quality inspection without any justifiable reason as provided under Article 25 and 27.

Article 30 (Business Hours)

- ① "B" shall open the Franchise 6 days or more per week and 26 days or more per month and shall not close without notice, except when "B" has a prior agreement with "A" for an inevitable reason.
- ② "A" shall request correction when "B" violates the provision as provided under the foregoing Paragraph 1, provided that "B" can rearrange the number of business days after the consent of "A" according to the situation of the Franchise.
- ③ "B" shall request in writing to "A" 7 days prior to the beginning date of closing the Franchise if it wants to close the Franchise with a justifiable reason as provided under a provisory clause of Paragraph 1.
- ④ "B" shall not close the Franchise more than 7 straight days even though the provision of Paragraph 3.

Article 31 (Uniform and Appearance)

- ① "B" shall cause all employees to wear uniforms designated by "A".
- ② "A" shall specify color, design and other appearances of uniforms in the Manuals and supply upon "B"'s request.
- ③ When "B" or its employees do not wear the designated uniform, "A" may request the correction therefore and "B" shall promptly execute.



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Article 32 (Manuals)

- ① In order to keep the unity and standardization, "B" agrees to operate its Business in accordance with the Manuals provided by "A".
- ② The Manuals remain "A"'s property and shall be taken all reasonable precautions in the Franchised store.
- ③ "B" agrees that changes in the Manuals may become necessary from time to time and agrees to accept such modifications, revisions and additions to the manuals.

Article 33 (Advertising)

- ① "B" agrees that "A" controls advertising for its brands and Products to promote the Franchise and plans for materials, media, time, and period, etc. of advertising or marketing.
- ② "A", "B" and other franchisees shall share the expenses for advertising the Business which is used for advertising according to Paragraph 1, "A" agrees to pay _____% and the Franchisees including "B" pay _____%, provided that the allotted ratio of "B" shall be made based on the total sales of "B" with respect to the total sales of the franchisees of the previous year of the year to advertise.
- ③ "A" shall notice a statement for advertising to each franchisee including "B" till the end of previous month of the month to advertise and "B" shall pay it within _____ days from the receiving date thereof.
- ④ "A" shall produce advertising materials such as production of media materials, whether for radio, television, newspapers or store level materials such as flyers, or posters, or for any other type of advertising or marketing use to maintain the unity and image of the brand and the payment therefore shall be made as provided under the foregoing



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Paragraph 2.

⑤ "B" may advertise the Franchise within its Business Territory and the extent approved by "A", with "A"'s prior approval at its own expenses.

Article 34 (Promotion)

① "A" may provide discounts, free gifts and sales events for nationwide or local marketing to promote sales.

② Sales promotion can be performed as joint sales promotion which is carried by all franchisees and independent sales promotion of "A" at a regular or occasional basis.

③ "A" shows advertising or marketing materials necessary to open the Franchise or during the operation and shall prepare and provide upon the request of "B".

④ "B" shall be responsible for the expenses of the discounted price or free gifts provided by itself and "A" shall be responsible for manufacturing fees for general pamphlets, flyers, and catalogs, etc.

⑤ "A" and "B" agree to share other marketing expenses which are not identified under the foregoing Paragraph 4. In this case, "A" must provide the statement of expenses in written to "B" and have approval by "B".

⑥ "B" may promote its sales at its expenses within its Business Territory, provided that "B" must have "A"'s prior approval for using pamphlets, flyers, and catalogs, etc., which are prepared by "B", to maintain the unity and image of 『TRICOLORE Restaurant』 brands and be responsible for the expenses therefore.



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Article 35 (Maintenance of Facilities and Equipments)

- ① "B" agrees to operate the Franchise as a clean, orderly and respectable place of business to improve the Business and brand image.
- ② "A" shall have the right for inspecting and examining whether the Business is operated in accordance with the foregoing Paragraph 1 and in the event of any deficiency or unsatisfactory condition is indicated, "A" will notify to correct or repair the deficiency.
- ③ Such deficiency or unsatisfactory condition shall be determined based on the Manuals and replacement or repair of the facilities or equipments shall be discussed with "B".
- ④ "A" and "B" shall discuss the replacement or repair and cost therefore and "B" shall be responsible for the cost therefore.

Article 36 (Health Control)

- ① "B" agrees to maintain the Products and operate the Franchise clean in accordance with the Manuals and standards of "A".
- ② "B" shall manage thoroughly the health control for "B" and its employees, not to violate the relating regulations.

CHAPTER 3: TERMINATION AND EXPIRATION

Article 37 (Termination)

- ① At any event of following, "A" shall give written notice that expresses default of any provision of this Agreement and asks to remedy it (them) to "B" and if "B" does not remedy the default within two (2) months after the written notice is given requesting to remedy the



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default, "A" shall terminate this Agreement, provided that "A" may selectively suspend or terminate supplying Products according to the degree of the default:

1. "B" operates the business by defaulting in the provision of Article 21 and does not open the Franchise after more than three (3) months from the date of signing of this Agreement by the reason responsible by "B";
2. "B" falls under any of Paragraph 1, 2, and 5 to 7 of Article 29;
3. "B" operates the business by defaulting in the provision of Paragraph 2 of Article 40;
4. "B" fails the provision of Article 41 or Article 42; and
5. "B" fails any provision of this Agreement by the reason responsible by "B".

② "B" shall terminate this Agreement at any of the following events according to the foregoing Paragraph 1:

1. "A" files for a bankruptcy procedure or a court protection, or corporate dissolution or any similar relief is commenced;
2. a bill or check issued by "A" is suspended;
3. "A" cannot operate the Business for natural disasters;
4. "A" does not supply Products unduly necessary to operate the Franchise in this Agreement; and
5. "A" causes damage to "B" by opening a directly-managed store or another franchise within the Business Territory of "B".

③ "A" shall terminate this Agreement immediately without notification at any of the following events:

1. any similar relief is filed;
2. a bill or check issued by "B" is suspended;



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3. "B" cannot operate the Business for natural disasters or its significant personal reason;
 4. "B" defames reputation and credit of "A" by spreading false facts against "A" or causes significant damages in the franchising business of "A" by draining trade secrets or important information of "A";
 5. "B" does not remedy the default within ten (10) days after the written notice is given requesting to remedy the default of any provision of this Agreement;
 6. "B" causes the same default twice (2) or more after the request from "A" to remedy the default provided under the foregoing Paragraph 1;
 7. "B" is punished for criminal penalty for an illegal act relating to the operation of the Franchise of this Agreement;
 8. "B" operates the Business in a way to cause significant harm against public health or safety; and
 9. "B" does not open the Franchise for straight seven (7) days or more without a justifiable reason.
- ④ If "B" wants to terminate this Agreement by "A"'s circumstances, except the reason caused under Paragraph 1 to 3, "B" must give a written notice to "A" ninety (90) days before. In this case, "B" shall compensate "A" for loss caused by the termination of this Agreement.

Article 38 (Termination and Its Effect)

Upon the termination, expiration, rejection of renewal of this Agreement, "B" shall immediately fulfill the followings:

- ① "B" shall immediately remove "A"'s Marks or any other mark



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distributed by "A";

② "B" shall be responsible for expenses to remove the Marks identified under Paragraph 1, except the termination or expiration is caused by the reason responsible by "A";

③ "B" shall immediately discontinue use of the trademarks, service marks and any other mark indicating "A"'s Business. In this case, "B" shall not request for returning Products, equipments and so on to "A" by reason of the termination of this Agreement.

④ "B" shall return manuals, documents, drawings, books, etc. provided by "A" to operate the Franchise;

⑤ "B" shall hold in confidence the business information, trade secrets or information about consumers to the competitive with "A" even after the termination or expiration of this Agreement.

⑥ "B" shall not act to pull down the reputation and brand image of "A" even after the termination or expiration of this Agreement.

⑦ "B" shall have civil/criminal liabilities for continuously using the Business Marks of "A" without the consent of "A" after the termination or expiration of this Agreement.

⑧ "B" may ask to "A" for refund or trade for full-paid Products or equipments provided by "A" at the time of termination of this Agreement.

Article 39 (Compensation)

① Upon the termination of this Agreement by the reason responsible by one party, that party shall compensate damages to the other party if there is any.

② Even though "A" and "B" come to an agreement for compensation for damages for a particular case, it shall apply only to this particular



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case if there is no particular circumstance but it does not cease the right to claim damages for other cases.

③ If "B" still has to make payment for royalty, products, compensation for damages and penalty, etc. to "A", an interest for any delayed payment shall be _____% per year if there is any particular condition.

Article 40 (Additional Opening of the Franchise)

① Principally one franchise 『TRICOLORE Restaurant』 to be licensed to "B" by "A" shall be franchised to one (1) franchisee but if "B" fulfills the obligation contained in this Agreement, "A" may allow opening an additional franchise which is a separated store from this Agreement to "B" upon "B"'s request.

② "B" shall not operate or open an identical or similar franchise to the Franchise of this Agreement without the procedure specified under Paragraph 1 or "A"'s approval, nor operate or open in a way of consignment to a third party or a person concerned.

CHAPTER 4: MISCELLANEOUS

Article 41 (Assignment)

① "B" shall not assign, sublease, consign the right to operate the Franchise of this Agreement to a third party or change the title of the representative.

② If "B" wants to assign or transfer Franchise Business under inevitable circumstances despite the provision of Paragraph 1, "B" must provide written request two (2) months before to "A".



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- ③ "A" shall provide its intention of either approval or refusal in written within thirty (30) days from the receiving date.
- ④ If "A" approves the request provided under Paragraph 3, "B" shall let an assignee contract the Franchise with "A" according to the procedure provided by "A" within one (1) month from the receiving date of approval from "A". "A" may withdraw the approval provided under Paragraph 3 if the period has passed.
- ⑤ "A" shall finally agree the assignment from "B" to the assignee at the time the assignee pays _____% of the initial fee specified under Article 8 and the security deposit in full specified under Article 9 to "A" and fulfills the obligations specified under Article 19 and Article 20.
- ⑥ Any assignment made without "A"'s approval shall be ineffective and "A" may terminate this Agreement with "B".
- ⑦ "B" shall be responsible for the whole cost such as loss or damages and legal costs generated by the assignment made without "A"'s approval.

Article 42 (Succession)

- ① "B"'s successor(s) must give "A" written notice of an intent to be succeeded the Franchise with documentary evidences within three (3) months from the beginning date of succession upon the death of "B" and obtain "A"'s approval.
- ② If the successor is more than one (1), the successor to be succeeded shall be particularly provided and notice it to "A" in written with documentary evidences.
- ③ The provision of procedure for the approval under Article 41 shall be applied for the succession procedure.



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④ The successor approved under Paragraph 1 shall agree to be bound by all the terms and conditions of this Agreement and also obtain the right of "B" provided by this Agreement.

⑤ If the successor of "B" is succeeded by the approval of "A", the initial fee under Article 8 and the security deposit under Article 9 shall be discharged but the successor shall complete the education-training programs as provided under Article 29 and training program and costs therefore shall be discussed between "A" and the successor of "B".

Article 43 (Effect and Amendment)

① This Agreement takes effect upon its acceptance and execution by "A" and "B", either "A" or "B" shall not claim argument different from this Agreement by any reason of prior negotiations, correspondences, understandings and agreements by word or in written between "A" and "B".

② This Agreement shall not be amended, modified, or altered without an agreement in written between "A" and "B".

③ If this Agreement is amended or modified, a new Agreement shall be made between "A" and "B".

④ If "A" wants to amend or modify this Agreement, it shall give "B" written notice thirty (30) days prior to the amendment and "B" must response thereto within thirty (30) days from the receiving date. It shall be considered to be agreed if there is no response.

⑤ This Agreement may be amended or modified under agreement between "A" and "B" after executing this Agreement at an event of the followings:



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1. revision or enactment of *Fair Franchise Transactions Act* or regulations related to Acts; and
2. amendment of business strategy to maintain the unity of the Franchise.

Article 44 (Written Notice)

- ① Any notice or communication relating to this Agreement between "A" and "B" shall be made in written if there is no particular provision.
- ② Any notice or communication which is not made in written as provided under Paragraph 1 shall be ineffective.

Article 45 (Refund of Franchise Fee)

- ① If this Agreement is terminated before the opening of the Franchise by the reason responsible by "B", "A" may refund the Franchise fee received from "B" as provided under Article 8, except costs for providing technology transfer and know-hows and extinctive expenses, and terminate this Agreement.
- ② If this Agreement is terminated before the opening of the Franchise by the reason responsible by "A", "A" may refund double the amount of the Franchise fee received from "B" as provided under Article 8, except costs for providing technology transfer and know-hows and extinctive expenses, and terminate this Agreement.
- ③ If "A" infringes the provision of Refund of Franchise Fee as provided under Article 10 of *Fair Franchise Transactions Act*, amount to be refunded shall be determined based on contracting process, statement of costs paid, period of the Franchise agreement, period of performance under this Agreement, degree of imputation and so on.



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Article 46 (Insurance)

- ① "A" may request to "B" to obtain insurance including comprehensive general liability insurance covering death, personal injury and property damage, worker's compensation insurance and fire covering insurance, etc. during the term of this Agreement.
- ② "B" shall select insurance company, types of insurance and insured party, etc. but satisfy the requirement specified under Paragraph 1.
- ③ If "B" wants to change insurance company, types of insurance and insured party, etc., it shall give "A" written notice of informing it one (1) month prior to the expiration of the insurance and submit a copy of new insurance certificate to "A".
- ④ If it is determined that the insurance coverage is not enough to cover the compensation of damages, "A" shall request to "A" to obtain an additional insurance. Even though there is no request by "A", "B"'s obligation for reparation shall not be discharged or transferred to "A".

Article 47 (Dispute Resolution and Jurisdiction)

- ① All disputes or differences in interpretation of this Agreement which may arise between "A" and "B" shall be settled through the laws relating hereto and the social common notion.
- ② In the event that dialogue and negotiations fail to result in a settlement, the parties agree to settle such disputes according to the *Franchise Transaction Dispute Conciliation Council of the Korea Fair Trade Mediation Agency*.
- ③ In the event that such disputes are not settled under the forgoing Paragraph 2, a litigation relating to this Agreement shall be held by the jurisdiction court which is located in the area of either "A" or "B".



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④ Any subject not specified under this Agreement shall be handled based on normal practice of general business transactions.

Article 48 (Advice of Attorney or Fair Trade Expert)

① "B" received Information Disclosure Statement on ____ of ____, 20__ from "A".

② "B" may have advice from attorneys or fair trade experts (hereinafter referred to as "C").

③ "B" confirms that it has been received the advice about the Information Disclosure Statement provided by "A" from "C" on ____ of ____, 20__.

"C"	<i>Fair trade expert</i>	
	<i>Attorney</i>	

④ "B" agrees to review the Information Disclosure Statement for seven (7) days which are shorten from fourteen (14) days provided according to *Fair Franchise Transactions Act*.

Article 49 (Special Matters)



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IN WITNESS WHEREOF, both "A" and "B" hereto have confirmed that the parties have reviewed thoroughly the content of Article 1 to Article 49 of this Agreement and have caused this Agreement to be executed by their duly officers or representatives on the day and year below and each shall keep one (1) copy of this Agreement.

_____ of _____, 20__

- BELOW -

[Parties of Agreement]

<i>"A" (Franchisor)</i>	TRICOLORE S.p.A.
<i>Registration No.</i>	000-00-00000
<i>Representative</i>	
<i>Address</i>	
<i>Address of Business</i>	

<i>"B" (Franchisee)</i>	
<i>Franchised Store</i>	『TRICOLORE Restaurant』
<i>Address</i>	
<i>Address of the Franchise</i>	



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APPENDIX 1.

Intellectual Property allowed to use to “B”

<i>Trademark</i>	
<i>Application No. of Service Mark</i>	
<i>Filing Date</i>	
<i>Designated Goods</i>	
<i>Applicant</i>	



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APPENDIX 2. Paragraph 1 of Article 6, “Business Territory”

Business Location



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APPENDIX 3. Paragraph 5 of Article 17, “Kitchen Equipments, etc.”

List of Kitchen Equipments

(unit: won(₩) plus VAT)

<i>No.</i>	<i>Description</i>	<i>Standard</i>	<i>Quantity</i>	<i>Supplier</i>	<i>Trade Method</i>	<i>Cost</i>
1						

List of Kitchen Equipments

(unit: won(₩) plus VAT)

<i>No.</i>	<i>Description</i>	<i>Dimension</i>	<i>Quantity</i>	<i>Cost</i>
1				
2				



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APPENDIX 4. Paragraph 2 of Article 24, "Standardization of Business and Sales Cost"

Products to be sold by "B" and their Price

<i>No.</i>	<i>Products</i>	<i>Price (unit: won(W))</i>	<i>Remarks</i>	<i>Method to be informed for price</i>
1				
2				



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APPENDIX 5. Paragraph 1 of Article 25, “Order and Maintenance of Products”

List of Materials and Products

(unit: won(₩) plus VAT)

<i>Trader name</i>	<i>Name of product</i>	<i>Unit</i>	<i>Quantity</i>	<i>Standard</i>	<i>Class</i>	<i>Initial quantity</i>
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ANNEXED LIST 1.

Obligations of "B" Before Opening the Franchise

(plus VAT)

<i>List</i>	<i>Cost</i>	<i>Remarks</i>
<i>Franchise Fee of Article 8</i>		
<i>Education-Training Fee before opening of Article 8</i>		
<i>Security Deposit of Article 9</i>		
<i>Cost for initial Products of APPENDIX 5</i>		
<i>Total</i>		



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ANNEXED LIST 2.

Obligations of "B" During the operation of the Franchise

(plus VAT)

<i>List</i>	<i>Cost</i>	<i>Remarks</i>
<i>Advertising Cost of Article 33</i>		
<i>Cost to use POS</i>		



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ANNEXED LIST 3.

Providers and Method of Payment

(Standard: 000 m², unit: won(₩) plus VAT)

<i>Category</i>	<i>Provider</i>	<i>Cost</i>	<i>Date to pay</i>	<i>Remarks</i>
<i>Initial Products</i>				
<i>Signs (including tint)</i>				
<i>Kitchen equipments and appliances</i>				
<i>Opening events</i>				
<i>Tables</i>				
<i>Interior</i>				
<i>Installation of POS</i>				
<i>Others</i>				
<i>Total</i>				



Ministero dello Sviluppo Economico



ITALIA 
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**이탈리아 지식재산권 사무소 · 이탈리아 무역공사 서울무역관
IPRs DESK at the Italian Trade Commission, Seoul Office**

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