**AGREEMENT BETWEEN A FRANCHISOR AND FRANCHISEE GRANTING FRANCHISE RIGHTS WITH RIGHT TO APPOINT SUB FRANCHISES IN THE TERRITORY ALLOTTED**

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

**WHEREAS**

(1)The Franchiser is a well established and reputed multinational company operating in 35 countries of the world, doing the business of "Mc International" brand high quality food products of various countries;

(2) The Franchiser has, through its experience and extensive research, developed many famous food products which have become very popular in different countries of the world;

(3)As the Franchiser has not been able to operate itself from various countries of the world and appointed franchisees in various countries of the world to run the retail outlets to sell the famous food products of Mc International brand, so that the products of the Franchiser may be sold throughout the world;

(4)The Franchiser has prepared a manual named "Mc International Business Systems and Operations Manual" which contains the details of know-how and business system of the Franchiser, hereinafter called the "Manual", which is the sole property of the Franchiser. The said manual, inter alia contains the details of outlet lay out, staff uniform, requirement of staff of the outlet, job description of the staff of the outlet, training requirement of staff, standard of food products to be served in outlet, cleaning requirements, Menu of outlet, guidelines for fixing rates of items, complaints, grievance procedure, Equipments to be used in manufacturing products, opening hours, minimum stock requirements, etc.;

(5)The Franchiser is desirous to extend the sale of its food products to various other countries and it has negotiated with various Indian Entrepreneurs, who were interested to undertake Franchise business of the Franchiser. After negotiations, the Franchiser has decided to appoint the Franchisee as Franchisee for undertaking Franchise business in India;

(6)The Franchiser declares that it owns the registered and unregistered trade and service marks in U.S.A. and various other countries of the world and has not appointed any Franchisee to undertake the franchise business in Mc International food products in India;

(7)The Franchiser has intimated to the Franchisee that the market of Mc International food products in India will be developed by hard work, prompt and efficient, satisfactory and courteous service of the Franchisee, as there are variety of food products of different systems in India;

(8)The Franchiser has also advised the Franchisee that it has to exploit the big territory of India, and for that purpose has to appoint 50 franchisees within a period of 2 years from the date of execution of this agreement and it has to attain the target fixed for the franchise business in India within a period of 5 years;

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

**NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

In consideration of the Franchise and Management Service Fees hereinafter reserved and of the Franchisee's agreement hereinafter contained, the Franchiser hereby GRANTS to the Franchisee the exclusive right to carry on the business of Mc International Food Products with the trademark of the franchiser (hereinafter called the "said business") with the right to use in the said Business the designs, plans, systems, specifications, know how in the territory of India, (hereinafter called the "the territory").

(2) This agreement shall be subject to the provisions of clause....………below relating to termination of agreement, subsisting for a period of 15 years commencing on the……………..day of…………….. 2000. If the Franchisee regularly pays Franchise and Management Service Fees hereby reserved and observe and perform all the covenants and conditions of this agreement, the Franchiser shall on the written request of the Franchisee made three calendar months before the expiration of the term of this agreement grant to the Franchisee a renewed right to do the said franchise business for further term as may be desired by the Franchisee but not exceeding years from the expiration of the terms of this agreement on the terms and conditions mutually agreed to between the parties at the time of renewal

(3) The Franchisee shall pay to the Franchiser the lump sum of$ 1,00,000 as Franchise and Management Service fees as follows:

(i) $ 50,000 on the execution of these presents;

(ii) $ 25,000 after three months from the date of these presents;

(iii)$ 25,000 after six months from the date of these presents.

The Franchisee shall also pay a Franchisee fee at the rate of 10% of the total value of all invoices rendered by all the Franchisees during any accounting year. The Franchise fee shall be paid monthly by the Franchisee to the Franchiser on or before the 10th day of the month following the month to which the fee relates. The Franchisee shall not deduct or set off against any fee payable to the Franchiser any sums which the Franchisee considers to be due to him from the Franchiser entitled. In case of default in the payment of any sum in time, the Franchisee shall, without prejudice to any other remedy that the Franchiser may have under this agreement, or in law, pay interest @ 2% per month or part of the month on the amount of any sums due but not paid.

(4) The Franchisee hereby agrees and confirms that it will furnish to the Franchiser not later than 7 days after the end of each monthly accounting period, written detailed summary showing the aggregate and gross invoice value of all products sold by all the Franchisees during the accounting period with calculations of the fees. payable by the Franchisee in respect thereof together with a copy of each invoice rendered during the accounting period. The Franchisee will keep the accounts of all franchisees for a period of three years from the completion of the accounting year, for audit and inspection by the representatives of the Franchiser.

(5) The Franchisee hereby agrees that it shall, within four months after the end of the each financial year, furnish to the Franchiser a consolidated balance sheet and Profit and Loss account of all

franchisees in the territory certified by a Chartered Accountant relating to the franchise business.

(6) The Franchiser hereby undertakes that it will give training to the General Manager and other employees of the Franchisee in the operation of the said business. The training will be for a duration of 3 weeks and will be conducted at the place of the Franchisee. The Franchiser will also give training of the same duration to the General Managers and employees of the first ten sub franchisees appointed by the Franchisee. The training to General Managers and employees of the sub franchisees will be conducted at the Franchisee's place. The Franchisee will pay to the Franchiser (J) full salary of three weeks of the General Manager, Manager and Supervisor who will be deputed for imparting training for 3 weeks (h) return economy class air fares and all other travel expenses to and from and within the place of training (iii) Hotel expenses for stay of the Franchisor's trainers in three star hotel (iv) Fixed allowance @ $ 250 as halting allowance per day payable to all the trainers.

(7) The Franchiser hereby covenants with the Franchisee as follows:

(i) To provide the copy of the Manual with English translation thereof, the copyright of the same shall remain with the Franchiser;

(ii) To render advice relating to establishment and efficient operation of the said Business;

(iii) To render advice to the adaptation of the Business to the requirements of India;

(iv) To provide operational support for a period of 6 weeks from the commencement of the business by the Franchisee by deputing well qualified staff viz. One General Manager, One Supervisor and One Assistant Manager to assist the launching and efficient operation of the said business by the Franchisee:

Provided that the Franchisee shall pay the following amounts for the operational support

1. (a)                $ 10,00, as the payroll costs of the staff deputed attributable to the period of their visit to the Franchisee place,
2. (b)                Return Economy class air fares and other travel expenses to and from and within the said territory,
3. (c)                Payment of hotel bills for the staff deputed in 3 star Hotel,

(d) $ 300 as fixed halting allowance to each employee deputed per day;

(v) To supply the material for updating the Manual from time to time so that the Franchisee may get the benefit of improvements in the systems of the said business. However the copyright and ownership of the said Manual will continue to vest in the Franchiser

(vi) To supply the copies of all advertising materials of the products and business to be used in the said territory.

(vii) To depute General Manager two times in a year for a period of 15 days each time for the purpose of guiding and monitoring the standards of the Franchisee and sub franchisees

Provided that the Franchisee shall pay the following amounts to the Franchisor for the visit to be made by the General Manager

* 1. (a)                $ 5,000 as the payroll cost of the General Manager deputed attributable to the period of his visit to the Franchisee place,
  2. (b)                Return Economy class air fares and other travel expenses to and from and within the said territory,
  3. (c)                Payment of hotel bills for the General Manager deputed in 3 star Hotel,
  4. (d)                $ 300 as fixed halting allowance to the General Manager deputed per day.

(viii) On the written request and query, to give written advice about know how, business system, standard of raw material to be used, any equipment to be employed in the said business and any other matter relating to the said business;

(ix) To inform the Franchisee about the convening of seminars and meetings of Franchisees, well in advance, so that the franchisee may attend the said seminar and meetings at his own expenses without any payment of any charges or expenses to the Franchiser towards the expenses incurred by him for holding such seminars and meetings;

(x) To provide sufficient number of newsletters published in English/ Hindi language so that the same may be distributed to all the Franchisees;

(xi) Not to sell the equipment or material manufactured by it for use in the manufacture of food products to third parties in the territory;

(xii) Not to exploit the territory itself by opening its own outlets to do the franchise business to sell food products of Mc International brand or appoint any other Franchisee in the territory;

(8) The Franchisee hereby covenants with the Franchiser as follows:

(i)To invest sufficient money for the commencement and operation of the said business;

(ii) To obtain permissions from the Government of India, Reserve Bank of India and other statutory authorities for commencement of the said business in India immediately and in any event within a period of three months from the date of execution of this agreement;

(iii) To commence the said business within three months from the execution of these presents or within fifteen days from the date of receipt of all permissions from the Government and other statutory authorities, whichever is later;

(iv) To appoint 20 franchisees to undertake the said business diligently in the territory within a period of one year and 30 more franchisees in the second year of the business;

(v) To keep the know how, systems of the said business, provisions of the manual and any other secret and confidential information relating to the said business, which has come to its knowledge, confidential and secret and not to divulge the said information to any third party;

(vi) To obtain undertakings from all employees to keep the information of Franchisees business confidential at the time of joining service of franchise business and keep the said undertakings in record for the inspection of the Franchiser's representatives;

(vii) To comply with all statutory requirements applicable to the franchise business and to obtain proper licenses required for the operation of the business;

(viii) To use the Trademarks in the said business and maintain the standards of the products of the business as prescribed by the Franchiser;

(ix) Not to bring the trade mark, the said business or business system into disrepute by its actions;

(x) To deal with the customers of the franchisees fairly, honestly and with courtesy and to redress the customers complaints, if any, urgently;

(xi) To use the stationery and forms prescribed by the Franchisor for external use in connection with the said business;

(xii) Not to engage or involve directly or indirectly in any other business other than the said business without the written consent of the Franchiser;

(xiii) Not to use the know how or systems of the said business or any other information provided by the Franchisor for any purpose other than the Franchise business;

(xiv) To train its staff and sub franchisees in the operation of the said business in all its aspects so that the said business may be conducted satisfactorily and in accordance with the standards and specifications of the Franchiser;

(xv) Not to solicit customers from outside the Territory.

(9) The Franchisee will indemnify and keep the Franchiser indemnified against all claims, demands, actions, proceedings, losses, damages, recoveries, judgments, costs, charges and expenses which may be made, or brought or commenced against the Franchiser or which the Franchiser may or may have to bear, pay or suffer, directly or indirectly due to any act, default or omission by the Franchisee or any sub franchisee in conducting the said business.

(10) The Franchisee undertakes that it shall use its best endeavors in conduct of the said business and will appoint 20 sub franchisees within one year of execution of these presents and 30 further sub franchisees within the second year of the business in the said territory. The yearly target amount of invoice of each sub franchisee is Rs. 25,00,000 and the target amount for the second year of franchisee and the sub franchisees will be Rs. 15,00,00,000. If the franchisee will not be able to achieve its target in the second year, the Franchiser may within 90 day from the end of the second year, serve a notice in writing to the Franchisee terminating its right to open any future outlet other than ones in respect of which sub franchisee agreement has already been granted. In such a case, the Franchiser will be entitled to appoint Franchisee to operate outlets within the territory. However such action of the Franchiser will not affect the Franchisee's rights and obligations with respect to those outlets already opened or in the process of opening

(11) The Franchisee agrees that to maintain the identity and reputation of trade mark of the Franchiser, the Franchisee will establish and maintain a fund for advertising and promotion of the said business by crediting 1.5% of its gross turn over and of the sub franchisees to that account. The said fund shall be kept into a separate bank account in the name of ABC Franchisee's Advertising and Promotion Fund. The fund will be used for the advertisement of the franchise business including its trademark through the medium of Television, Magazines, Journals, Newspapers and holding public meetings to make the products of the business popular. The Franchiser may give directions about the manner in which the said advertising and promotion fund will be utilized. The Franchisee shall keep proper record of the fund. The material used for advertisement and promotion of the business and trade mark will be in accord with the style and form as directed by the Franchiser.

(12) The Franchisor and Franchisee agree that they will be registered as Registered User under the Trade Marks Act, 1999. The Franchisee confirms that it will hold the use of the Trade Mark for the benefit and as an agent of the Franchiser and will assign to the Franchiser any such rights therein which may accrue on the request of the Franchiser in this regard. The Franchisee undertakes that it will ensure that there is no infringement of trademark of the Franchiser in the said territory and if infringement of the trade mark comes to its notice, it shall take necessary steps to defend the trade marks. The franchisee shall inform the Franchiser about any suspected infringement of Trade Mark and steps taken by it in this regard. make an application to the Registrar of TradeMarks so that the Franchisee may

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

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

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

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

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

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

On the completion of the transfer or assignment of the said business by the Franchisee in favor of the transferee, the Franchisee shall assign all of its rights over all Sub Franchise agreements within the territory.



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

(i)If the Franchisee fails to commence the business within the period of three months from the date of these presents;

(ii)If the Franchisee fails to observe and perform any covenants, stipulations or obligations hereunder or commits a breach of any of the terms, conditions or provisions of this Agreement or its part to be observed or performed;

(iii)If the information or representations made by the Franchisee in the application form or supporting details proves to be incorrect in any material respect;

(iv)If the Franchisee passed any resolution for winding up or allows a petition for winding up presented before a Court against it or if a receiver or liquidator is appointed of the whole or part of the assets, properties or undertakings of the Franchisee or compounds, with or makes any composition with its creditors;

(v)If the Franchisee suffers any adverse material change affecting the financial position of the Franchisee or by any act or omission of the Franchisee, the Franchiser has reasonable grounds to apprehend breach of the terms and conditions of this agreement in future or that its right may be prejudiced or be in jeopardy;

(vi)If the Franchisee fails to pay, to submit any document or information required under this Agreement within 10 days following its due date;

(vii)If the Franchisee ceases or takes any steps to cease the business;

(vii)If by the act, omission or commission of the Franchisee, it is suspected by the Franchiser that any secret information, know how relating to the business has been disclosed by the Franchisee to the third parties and Franchisee cannot satisfy the Franchiser that his apprehension is untrue;

(viii)If the Franchisee challenges the validity of the Trade Marks of the Franchiser.

(ix)If the Franchisee commits default or neglect in maintaining the quality and standard of the products sold by it

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

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

(16) Upon termination of this agreement on the occurrence of any default as provided hereinabove, the Franchisee and Franchisor without prejudice to and in addition to their rights and obligations shall

take following actions:

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

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

(iii)The Franchisee shall make an application to the Registrar of TradeMarks for removal of his name as registered user of the Franchiser's trade mark in the Register of TradeMarks.

(iv)The Franchisee shall assign all his rights under this Agreement to the Franchiser or his nominee.

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

(17) In accordance with section 10 of the Power of Attorney Act, 1971, the Franchisee hereby appoints, nominates, constitutes and appoints the Franchiser its Attorney to take necessary action to ensure the compliance of the actions to be taken by the Franchisee under clause 15 of this Agreement.

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

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

(20) This agreement shall be governed and construed in all respects in accordance with the laws of India and any dispute or question regarding the interpretation of any clause or the rights, duties or liabilities of either party under this Agreement or otherwise in connection with this agreement, the matter in difference shall be referred to arbitration to the International Chamber of Commerce whose decision shall be final and binding on both the parties.

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

(22) The parties will obtain necessary permissions from the Governments of their countries or any authority for the execution of this agreement, operation of the business and the payment of Franchise and Management Service Fees or any payments payable in respect of this agreement and performance and observance of covenants and liabilities under this agreement

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

(24) All correspondence and notices under this agreement shall be in English and if there is any discrepancy between any document and any English version, the English version of the same shall be taken as final.

(25) The parties hereto agree that they shall not be responsible for failure to perform of their obligations under these presents due to force majeure, which shall include but not be limited to fire, flood, strike, labor strikes and disputes, embargo put by the government of the country of any party, shortage of labor, raw material, or any other reason of such party. If the circumstances leading to force majeure occur, the affected party shall give notice thereof to the other party. If the circumstances or event of force majeure continue for a period exceeding six months, either party may terminate this agreement



(26) This agreement shall be executed in duplicate. The original shall be retained by the Franchiser and the duplicate by the Franchisee

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

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

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

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

Signed and delivered by the within named

XYZ Co. PIc, the Franchiser by the hands

Of Shri……………….Managing

Director thereof in the presence of

1 .

2.

Signed and delivered by the within named

ABC Co. Ltd. the Franchisee by the hands of

Shri……………….Managing Director

Thereof in the presence of

1.

2.