

**Andhra Pradesh Dairy Development Cooperative Federation
limited (APDDCFL)**

EOI CUM BID DOCUMENT

FOR

**SELECTION OF FRANCHISEE FOR
MANUFACTURING AND MARKETING OF DAIRY**

PRODUCTS

UNDER "VIJAYA" BRAND

**PART II – DRAFT FRANCHISE
AGREEMENT**



DRAFT FRANCHISE AGREEMENT

This Franchise Agreement (this “**Agreement**”) is executed at [●] this the [●] day of ____, 2011 (“**Effective Date**”):

BY AND BETWEEN

Andhra Pradesh Dairy Development Co-operative Federation Limited, a federation of cooperative societies registered under the Andhra Pradesh Co-operative Societies Act, 1964, having its registered office at [●], and represented herein by its authorised signatory [●] (hereinafter referred to as the “**Franchisor**”, which expression shall, unless repugnant to the meaning and context, mean and include its successors-in-interest and assigns) of the **ONE PART**

AND

[●], a/an individual/company/partnership firm/sole proprietary concern (*include as applicable*), Indian citizen /registered under the Companies Act, 1956/registered under the Indian Partnership Act, 1932 (*include as applicable*), residing at [●]/having its registered office at/carrying on business at (*include as applicable*) [●], represented through its director/ authorized signatory, _____, son/wife of _____, aged about _____ years, (hereinafter referred to as “**Franchisee**”, which expression shall unless repugnant to the meaning and context, mean and include his/her/its successors-in-interest and permitted assigns) of the **OTHER PART**

The Franchisor and the Franchisee are hereinafter together referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS:

- A. The Franchisor, by an Expression of Interest and Bid Document dated [●] (“**EOI**”), invited bids from interested parties for selection of franchisees for manufacturing and marketing of milk and milk products under the “VIJAYA” brand for sale in selected regions of the country, being

Mumbai, Delhi, Kolkata, Bangalore, Chennai, Bhubaneswar and various regions of Andhra Pradesh.

- B. The Franchisee is engaged in the business of manufacture and/or marketing of dairy products and has submitted a bid in response to the EOI, which was successful and was accepted by the Franchisor. The Franchisor has issued a Letter of Award dated [●] bearing Number [●] to the Franchisee in this regard.
- C. The Parties seek to enter into this Agreement to confirm and record the terms and conditions under which the Franchise (as defined hereunder) shall be granted to the Franchisee and implemented by the Franchisee.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES HERETO AGREE AND THIS AGREEMENT WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings assigned to them below:
 - (a) “**Applicable Law**” means any applicable Indian law, statute, rule, regulation, ordinance, requirement, directions, guidelines, announcement or other binding action or requirement of any government; department, agency or instrumentality of any government thereof; departments, bodies, regulatory authorities, government authorities, any court or arbitral tribunal;
 - (b) “**Approvals**” mean permissions, consents, validations, confirmations, licenses, and other authorizations required to be obtained by the Franchisee from government and/or regulatory authorities in order to (i) manufacture and market the Products, (ii) establish or expand or operate the Manufacturing Plants, (iii) maintain labour and staff at the Manufacturing Plants and for marketing of the Products and (iv) carry on all other activities necessary or incidental to the implementation of the Franchise;
 - (c) “**Confidential Information**” shall have the meaning assigned to the term in Clause 19.3.
 - (d) “**Bank Guarantee**” shall have the meaning assigned to the term in Clause 10.1 (b).

- (e) “**Business Day**” means any day (other than a Saturday or Sunday) on which the banks at Hyderabad are open for transaction of normal business;
- (f) “**Disclosing Party**” shall have the meaning assigned to the term in Clause 19.1.
- (g) “**Dispute**” shall have the meaning assigned to the term in Clause 14.2.
- (h) “**EOI**” shall have the meaning assigned to the term in Recital A above;
- (i) “**Franchise**” means the license and authorisation given by the Franchisor to the Franchisee permitting the Franchisee to:
 - (1) manufacture the Products;
 - (2) market, sell and distribute the Products within the Territory;
 - (3) use the Trademarks, solely in relation to the manufacture and marketing of the Products.

during the Term, subject to the terms and conditions contained in this Agreement.

- (j) “**Franchise Documents**” means this Agreement, the EOI, the bid tendered by the Franchisee in response to the EOI, the joint bidding agreement dated [●] executed between the Franchisee and the letter of award issued by the Franchisor to the Franchisee.
- (k) “**Manufacturing Plants**” means the dairy product manufacturing plant or plants used by the Franchisee for the performance of its obligations under this Agreement;
- (l) “**Minimum Commitment**” shall mean the minimum amount of revenue required to be generated in any given calendar month by sales of Products by the Franchisee, as specified in **Annexure-3**.
- (m) “**Minimum Royalty**” shall mean the Royalty payable by the Franchisee to the Franchisor in a calendar month if the Minimum Commitment is achieved in that month.
- (n) “**Notice of Dispute**” shall have the meaning assigned to the term in Clause 14.2 (a).
- (o) “**Performance Security**” shall have the meaning assigned to the term in Clause 10.1.
- (p) “**Person**” means any person, corporation, partnership (general or limited), limited liability company, joint venture, association, co-operative federation, joint stock company, trust, governmental or any other statutory authority, or other business entity or organisation;

- (q) “**Products**” means the dairy products listed in **Annexure-2** hereto;
- (r) “**Royalty**” means the royalty payable by the Franchisee to the Franchisor under this Agreement in consideration of the grant of the Franchise, as more particularly described under Clause 8 and **Annexure-4**;
- (s) “**Term**” shall have the meaning assigned to the term in Clause 2.2.
- (t) “**Territory**” refers to the territory of the cities or regions specified in **Annexure-1** hereto;
- (u) “**Trademarks**” shall have the meaning assigned to the term in Clause 4.1 (a).

1.2 In this Agreement, unless the context otherwise requires, the following rules apply:

- (a) The singular includes the plural and *vice versa*.
- (b) A gender includes all genders.
- (c) A reference to a clause, annexure or schedule is a reference to a clause of, or an annexure or schedule to, this Agreement.
- (d) The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

2. APPOINTMENT AND TERM

2.1 The Franchisor hereby grants the Franchise to the Franchisee with effect from the Effective Date, subject to the terms and conditions of this Agreement and other Franchise Documents.

2.2 Unless terminated earlier by either Party in accordance with the terms of this Agreement, the Franchise and this Agreement shall remain in force till the expiry of a period of ten (10) years from the date of commencement of manufacture of Products by the Franchisee (the “**Term**”).

2.3 The Parties may agree to extend and renew the Term by mutual consent expressed in writing at least ninety (90) days prior to the expiry of the Term, on terms and conditions as may be mutually agreed to between the Parties. Nothing in this Agreement shall be construed as casting any obligation on the Franchisor to renew the Term.

3. OBLIGATIONS OF THE FRANCHISEE

3.1 In the event the Franchisee requires to establish a new Manufacturing Plant for the performance of its obligations under this Agreement, it shall:

- (a) procure land adequate for the Manufacturing Plant, either by outright purchase or on lease for a period of at least ten (10) years from the Effective Date, within a period of three (3) months from the Effective Date;
- (b) establish and commission the Manufacturing Plant within a period of one (1) year from the date that it procures the land and
- (c) carry out a trial manufacturing run and commence commercial production of the Products within a period of three (3) months from the date of commissioning of the Manufacturing Plant.

3.2 General Obligations of the Franchisee:

- (a) The Franchisee shall manufacture/produce and market the Products strictly in accordance with the (a) Standard Operating Procedures and specifications provided by the Franchisor from time to time, and (b) production and marketing schedules, set out in Part A and Part B respectively of **Annexure-3** to this Agreement.
- (b) The Franchisee shall use its best efforts to market the Products in the Territory at its cost and expense. The Franchisee shall sell and market the Products only within the Territory and shall ensure that the Products sold or distributed through its distribution network are provided only to consumers within the Territory. In no event shall the Franchisee market/sell/transfer or otherwise send Products (a) outside the Territory to any distributors, wholesalers, stockists, agents or representatives, or (b) with the knowledge that the Products will be sold/resold to end consumers outside the Territory.
- (c) The Franchisee shall establish a new Manufacturing Plant or dedicate spare or excess production lines in the Manufacturing Plants and/or expand its existing Manufacturing Plants, as the case may be, in accordance with instructions provided by the Franchisor to meet the production and marketing requirements and schedules set out in **Annexure-3**. The Franchisee shall be responsible for all investments, costs and expenses, including operating expenses, incurred in this regard and shall operate the Manufacturing Plants in accordance with specifications provided by the Franchisor from time to time. Any expansion of the Franchisee's existing Manufacturing Plant that is required for the Franchisee to perform its obligations under this Agreement shall be completed such that

the Manufacturing Plant is ready to commence operations within a period of six (6) months from the Effective Date.

- (d) The Franchisee shall comply with and ensure compliance with all Applicable Laws in relation to this Franchise. The Franchisee shall be responsible for obtaining and maintaining, at its cost, all necessary Approvals in this regard.
- (e) The Franchisee shall employ an adequate number of employees and staff to manufacture and market the Products in an efficient manner. The Franchisee will alone be responsible for payment of salaries, benefits and incentives to its employees and staff.
- (f) The Franchisee shall pay Royalty to the Franchisor in accordance with this Agreement, and specifically **Annexure-4** hereto.
- (g) In the event the Franchisee is a consortium of entities, each entity forming part of such consortium shall be jointly and severally responsible and liable to fulfill the obligations of the Franchisee under this Agreement.

3.3 Quality Control:

- (a) The Franchisee shall ensure that raw materials procured by it meet quality specifications provided by Franchisor from time to time. The Franchisee shall alone be responsible for the quality of such raw materials and acknowledges that the Franchisee will alone be liable to consumers under Applicable Laws including prevention of food adulteration laws or rules in all regions of the Territory.
- (b) The Franchisee shall maintain quality standards of the finished Products in accordance with Applicable Laws including the Prevention of Food Adulteration Act 1954, the Milk and Milk Product Order 1992 issued under the Essential Commodities Act, 1955, the Legal Metrology Act, 2009 and applicable rules passed under the Standards of Weights and Measures Act, 1976.
- (c) The Franchisee shall on or before a period of [●] from the Effective Date, obtain certifications in the form of ISO-9001 and IS-15000 certificates in respect of its business and the Manufacturing Plants. The Franchisee shall within such date also obtain a Hazard Analysis and Critical Control Points certificate from the Bureau of Indian Standards.
- (d) The Franchisee shall, in addition, comply with Standard Operating Procedures as set out in Part A of **Annexure-3**, and also with other operating and manufacturing standards as may be intimated to it by the Franchisor from time to time.

- (e) The Franchisee shall maintain insurance policies as may be directed by the Franchisor, valid throughout the Term, such as workmen's compensation insurance and comprehensive third party liability insurance, in such amounts as the Franchisor may direct.

4. OBLIGATIONS OF THE FRANCHISOR

4.1 The Franchisor shall perform the following obligations under this Agreement:

- (a) The Franchisor hereby grants the Franchisee the Franchise, *i.e.*, a license to manufacture and market the Products, only under the brand name "VIJAYA" and other brand names as may be intimated by the Franchisor to the Franchisee from time to time (together the "**Trademarks**") in the Territory in accordance with this Agreement.
- (b) The Franchisor may from time to time provide the Franchisee with operational and other guidelines for the implementation of the Franchise. The Franchisor may also provide technical support and co-operation to the Franchisee for customization, or expansion of the Manufacturing Plants and implementation of the Franchise.
- (c) The Franchisor may provide training to the staff and employees of the Franchisee in respect of manufacturing processes, quality control and marketing of the Products. The Franchisor may appoint quality control personnel who shall periodically inspect and approve raw materials used by the Franchisee, equipment and processes at the Manufacturing Plants, quality of the finished Products and packaging of the Products.
- (d) The Franchisor shall, at its discretion, carry out regular marketing and business promotion activities for the Products and the Trademarks, in the Territory.

5. WARRANTIES

5.1 The Franchisee warrants that:

- (a) it owns or has a right to use the Manufacturing Plants, shall continue to own or have the right to use the Manufacturing Plans throughout the Term and shall not establish additional Manufacturing Plants or close down any existing Manufacturing Plant without the prior written consent of the Franchisor and the land used for its Manufacturing Plants is not subject to any contractual, statutory or regulatory conditions that may affect the Franchisee's ability to use such land for the Manufacturing Plants;
- (b) it has and will continue to have the financial and infrastructural capability to manufacture Products in a number necessary to achieve the Minimum Commitment for every month during the Term and shall maintain the Manufacturing Plants in good condition throughout the Term;
- (c) it shall provide the Franchisor with details of its distribution network, including names and addresses of its distributors, and shall ensure that its distribution network is acceptable to the Franchisor, before commencement of manufacture of the Products and shall inform the Franchisor prior to appointing any new distributors or terminating the services of any distributor;
- (d) all of its representations and warranties in respect of its eligibility criteria made at the time of its bid pursuant to the EOI remain true and in full force and effect;
- (e) it shall carry out its obligations under this Agreement in accordance with good industry practice and in the best interests of the Franchisor and shall work diligently to promote the Products;
- (f) the execution, delivery and performance of this Agreement has been duly authorized by all requisite [corporate] action on its part and will not violate any provision of any Applicable Laws, or violate any provision of its constitutive documents or any indenture, agreement or instrument to which it is a party or by which it or its property may be bound or affected and this Agreement constitutes the legal, valid and binding obligations of the Franchisee, enforceable in accordance with its terms;
- (g) except as otherwise disclosed in writing to the Franchisor, it is not a party to any agreement, or any legal, administrative or arbitral proceeding or investigation, pending or threatened, which would adversely affect its ability to perform its obligations under this Agreement;

- (h) it is the holder of, or will obtain before commencement of its obligations hereunder, all required Approvals and will continue to validly hold such Approvals till the end of the Term.

5.2 The Franchisor warrants that:

- (a) it owns or has a right to use all intellectual property rights in the Trade Marks;
- (b) the execution, delivery and performance of this Agreement has been duly authorized by all requisite action on its part and will not violate any provision of any Applicable Laws, or violate any provision of its constitutive documents or any indenture, agreement or instrument to which it is a party or by which it or its property may be bound or affected and this Agreement constitutes the legal, valid and binding obligations of the Franchisee, enforceable in accordance with its terms.

6. PRODUCTS

6.1 The Products that are the subject matter of the Franchise under this Agreement are listed in **Annexure-2**.

6.2 The Franchisor may from time to time add new Products to **Annexure-2** in consultation with the Franchisee.

7. PRODUCTION AND MARKETING

7.1 The Franchisee shall implement the Franchise in accordance with the marketing and production schedules set out in **Annexure-3**.

7.2 The Franchisee shall ensure that it achieves the Minimum Commitment in every calendar month during the Term. The Franchisee shall be liable to pay extra Royalty in the event the Minimum Commitment is not fulfilled in any month and shall be entitled to incentives upon attaining specified target levels of sales, as more particularly described in **Annexure-3**. The Minimum Commitment may be amended by agreement of the Parties.

7.3 The Franchisor shall be entitled to direct the Franchisee to make changes to its infrastructure or the layout, processes or equipment of any Manufacturing Plant or to its distribution and marketing system and the Franchisee shall comply with such directions.

8. ROYALTY

8.1 In consideration of the Franchise granted to it, the Franchisee shall pay the Franchisor, Royalty as follows:

- (a) The Franchisee shall, during the Term, pay the Franchisor the Royalty, calculated on the basis of the formula set out in **Annexure-3**. The Royalty shall be payable on a monthly basis for each calendar month during the Term, and shall be paid on or before the [●] Business Day of the next calendar month.

9. TRADEMARKS, ADVERTISING, PACKAGING AND LABELLING OF PRODUCTS

9.1 Goodwill and Ownership in Trademarks

- (a) The Franchisee hereby agrees that it shall use the Trademarks only for the purpose of manufacture and marketing of the Products under this Agreement and strictly in accordance with the specifications and instructions of the Franchisor.
- (b) Any unauthorized use of the Trademarks by the Franchisee or any person acting on its behalf shall constitute a breach of this Agreement and an infringement of the Trademarks.
- (c) The Franchisee hereby acknowledges and agrees that all use of the Trademarks and any goodwill established by its use of the Trademarks will inure to the exclusive benefit of the Franchisor, and that this Agreement does not confer any goodwill or other interests in the Trademarks upon either the Franchisee or any of its employees, representatives or any person acting on its behalf.

9.2 Limitations on Use of Trademarks

- (a) The Franchisee agrees and undertakes to use the Trademarks as the sole identification mark on the Products and shall ensure that all Products carry the Trademarks assigned to them by the Franchisor. The Franchisee shall at all times identify itself as an independent manufacturer and marketer of the Product under license from the Franchisor.
- (b) The Franchisee agrees and undertakes not to use the Trademarks as part of any corporate or trade name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos and additional service marks that may be authorized by the Franchisor), or in any modified form. The Franchisee shall use the Trademarks only in relation to the Products and shall not use any Trademark in connection with the performance or sale of any services or products that are outside the scope of this Agreement or in any manner which falling outside the ambit of the rights granted under this Agreement.

- (c) The Franchisee shall not be permitted to use the Trademarks in its contracts or applications for any Approvals or any other documentation (other than on the packaging or advertisements of the Products), or in any manner that may imply that the Franchisor is responsible for any of obligations under such contracts or applications or other documents.
- (d) The Franchisee shall ensure that its use of the Trademarks is accompanied by such notices of trade and service mark registrations as the Franchisor may specify. The Franchisee shall adhere to all guidelines or instructions of the Franchisor in relation to the use of the Trademarks.
- (e) The Franchisee shall not permit any other Person to use the Trademarks or sub-license the use of the Trademarks in any manner.

9.3 Notification of Infringement of Trademarks

- (a) The Franchisee agrees that it shall not commit or permit the commission of any infringement of any Trademark. The Franchisee shall notify the Franchisor immediately upon coming to know of any use of the Trademarks by any other Person or of any apparent infringement of or challenge to the use of a Trademark, or any claim by any Person of any rights in any Trademark.
- (b) The Franchisor shall take such action as it deems fit and at its discretion in connection with any infringement, challenge or claim, of or to a Trademark and shall alone have the right to proceed with such action and shall exclusively control any litigation, compromise or settlement arising out of any alleged infringement, challenge or claim of or to a Trademark or otherwise relating to any Trademark.
- (c) The Franchisee shall co-operate with the Franchisor to arrest and mitigate any damage or loss that may be caused to the Franchisor as a result of any infringement, challenge or claim of or to a Trademark.

9.4 Discontinuance of Use of Trademarks

- (a) In the event the Franchisor is of the opinion, at its sole discretion, that it would be advisable to revise, modify or discontinue use of any Trademark and/or for the Product to be branded with any alternate, additional or substitute trade or service marks, the Franchisee shall comply with the Franchisor's directions to revise, modify or otherwise discontinue the use of such Trademark and/or use any alternate, additional or substitute trade or service marks.

9.5 Advertising

- (a) The Franchisee shall advertise the sale of the Products at its cost, independent of the Franchisor. The Franchisee shall at its own cost, comply with reasonable directions given by the Franchisor with regard to advertisements of the Products by the Franchisee from time to time. The Franchisee shall also co-operate with Franchisor and participate in advertising campaigns instituted by the Franchisor. For the sake of clarity, it is hereby confirmed that the Franchisor shall be the owner of all goodwill generated in respect of the Trademarks pursuant to such advertisements.
- (b) The Franchisee shall be responsible for complying with Applicable Laws and obtaining all necessary Approvals with regard to advertisement of Products.
- (c) All advertising campaigns or processes instituted by the Franchisee shall be subject to the prior written approval of the Franchisor. The Franchisor may by written notice to the Franchisee instruct the Franchisee to cease any specific advertisement or mode of advertisement or make changes to advertisements issued by the Franchisee, all at the Franchisee's cost.

9.6 Packaging and Labelling

- (a) The Franchisor shall provide directions and instructions to the Franchisee in respect of labeling, packaging and presentation of all Products. The Franchisee shall ensure that labeling, packaging and presentation of all Products manufactured and distributed, including depictions of the Trademarks, shall be strictly in accordance with the Franchisor's instructions in this regard. In the event the Franchisee wishes to use any different packaging or labeling or presentation, it shall provide details of such labels and packages or containers and presentations to the Franchisor and use such labels, packages and containers and presentations only after obtaining the Franchisor's consent in writing.
- (b) The Franchisee shall instruct all members of its distribution and supply chain that the packaging and labeling of the Products shall not be altered in any manner whatsoever, in respect of appearance or presentation, materials or manner of use. The Franchisee shall be liable for any actions of its distributors, wholesalers, stockists, agents or representatives that result in any alteration to the appearance, materials or use of labels or packages approved by the Franchisor for use with the Products and such actions by the Franchisee or its distributors, wholesalers, stockists, agents or representatives shall amount to a breach of this Agreement.

10. PERFORMANCE SECURITY

- 10.1 The Franchisee shall submit a performance security ("**Performance Security**") to the Franchisor to secure performance of its obligations under this Agreement. The Performance Security shall be for an amount of Rupees [●] (Rs. _____/-) and shall be submitted as follows:
- (a) Ten percent (10%) of the Performance Security shall be paid as a non-refundable deposit by cheque or demand draft in favour of the Franchisor and shall be used by the Franchisor for project development expenses, mobilization of Quality Control personnel and imparting training to the Franchisee's personnel.
 - (b) The balance ninety percent (90%) of the Performance Security shall be paid in the form of an unconditional bank guarantee ("**Bank Guarantee**") drawn on a nationalised bank or scheduled commercial bank recognised by the Reserve Bank of India, in Hyderabad, having a net worth of not less than Rupees Five Hundred Crores (Rs.500,00,00,000/-) as per the latest annual report of the bank. The Bank Guarantee shall remain valid from the date of submission till the end of a period of at least two (2) months after the expiry of the Term.
 - (c) If the Performance Security is to be paid in stages as described in Clause 10.4 (b) or Clause 10.4 (c), sub-clauses (a) and (b) of this Clause 10.1 shall apply to each stage of the Performance Security.
- 10.2 The Franchisor may encash the Bank Guarantee in whole or in part in the event of a breach by the Franchisee of its warranties or obligations under this Agreement or in the event any amount payable by the Franchisee to the Franchisor remains over due for more than [●] days. In the event of partial encashment of the Bank Guarantee, the Franchisee shall replenish the Bank Guarantee to the original amount of Rupees [●] (Rs. _____/-).
- 10.3 The format of the Bank Guarantee is provided in **Annexure-5** hereto.
- 10.4 The Performance Security amount shall be calculated in the following manner:
- (a) If the Franchisee has one or more Manufacturing Plants in operation as on the Effective Date that do not require expansion or augmentation, the Performance Security amount shall be equal to three (3) times the Minimum Royalty. The Performance Security shall be paid on or within one (1) Business Day of the Effective Date.
 - (b) If the Franchisee requires to augment or expand its Manufacturing Plant to commence operations under the Franchise, the Performance Security amount shall be equal to nine (9) times the Minimum Royalty. Two-thirds of the Performance Security shall be paid on or

within one (1) Business Day of the Effective Date and the balance one-third amount shall be paid on the date that the Manufacturing Plant commences commercial operation.

- (c) If the Franchisee requires to establish a new Manufacturing Plant to commence operations under the Franchise, the Performance Security amount shall be equal to eighteen (18) times the Minimum Royalty. One-half of the Performance Security shall be paid on or within one (1) Business Day of the Effective Date. One-third of the Performance Security shall be paid on or before the day that the Franchisee confirms in writing to the Franchisor that it has purchased or leased land for the establishment of a Manufacturing Plant. The balance one-sixth of the Performance Security shall be paid on or before the date that the Manufacturing Plant commences commercial operation.

11. INDEMNITY

11.1 The Franchisee shall indemnify, defend and hold harmless the Franchisor and the Franchisor's officers, employees and representatives from and against all liabilities, losses, damages, costs and expenses in relation to or arising out of:

- (a) any claims or actions brought in respect of the Products manufactured and/or marketed by the Franchisee, on any ground including on the basis of adulteration of the Products;
- (b) any claims or actions or proceedings instituted by any governmental or regulatory or judicial body as a result of the Franchisee's failure to comply with Applicable Laws including the failure to obtain or comply with the terms of, any Approvals;
- (c) any use of the Trademarks that is not in accordance with this Agreement, including claims of intellectual property rights infringement instituted by a third party as a result of such use;
- (d) any use of packages, labels or containers that have not been approved or permitted by the Franchisor, including claims of intellectual property rights infringement instituted by a third party as a result of such use;
- (e) any breach of any provision of any Franchise Document (including breach of any representation or warranty) by the Franchisee.
- (f) Any claim or action of any third party including on account of any breach committed by the Franchisee or any misrepresentation by the Franchisee to any third party; or
- (g) Anything done or omitted to be done through the negligence, default or misconduct of the Franchisee or of its officers, directors, employees or agents.

- 11.2 The Franchisee shall not compromise or settle any claim or make any admission fixing liability on the Franchisor without the consent of the Franchisor.
- 11.3 The Franchisee hereby agrees that in respect of all matters for which it has agreed to provide indemnity to the Franchisor under this Agreement, in case any actions, proceedings, prosecutions or claims arise or are made against the Franchisor, the Franchisee shall, forthwith upon notification thereof, implead itself in such action, proceeding, prosecution or claim as the case may be, and if such action, proceeding, prosecution or claim results in any liability, damage, demand, expense or attachment, the Franchisee shall directly and solely be liable for the same in the same manner as the Franchisor would have been liable in the absence of the indemnities set out hereunder.

12. AUDIT

- 12.1 The Franchisee shall provide monthly reports to the Franchisor every calendar month in respect of the manufacturing and marketing of the Products carried on by it. Such report shall be in a form prescribed by the Franchisor and shall contain at the least, the following information:
- (a) Details of the number of Products (in appropriate units) in each category manufactured during the month;
 - (b) Details of the number of Products (in appropriate units) in each category sold or distributed during the month;
 - (c) Details of the number of Products (in appropriate units) sold or distributed in each region of the Territory during the month including in such sub-divisions of each region as the Franchisor may request information on;
 - (d) Names and addresses of all distributors, wholesalers, stockists, agents, representatives and entities used by the Franchisee to sell, distribute, market or advertise the Products, in each region comprising the Territory.
- 12.2 The Franchisor shall be entitled to audit all records and books of account of the Franchisee for the purpose of ensuring its compliance with the terms of this Agreement and to reconcile the records with the monthly reports referred to above. The Franchisor may also audit or inspect the operations of the Manufacturing Plants. In addition, the Franchisor shall be entitled to conducting periodic reviews of the implementation of the Franchise and recommend business promotion plans and marketing strategies to the Franchisee.

- 12.3 The Franchisor may carry out such audit by itself or through an independent auditor once every six (6) months from the Effective Date. Such audits shall occur with reasonable notice and during normal business hours. Such audits shall be at the expense of the Franchisee, unless such audit determines a discrepancy of [●] percent (--%) or more in the reported manufacture and sales figures of the Franchisee, resulting in an underpayment to the Franchisor, in which case the Franchisee shall bear all costs of the audit, including the fees of third party auditors, and immediately pay to the Franchisor the sum of the discrepancy identified by the audit.
- 12.4 The Franchisor shall be entitled to set off any sums owed by it to the Franchisee against any sums payable by it to the Franchisee.

13. TERMINATION OF THE FRANCHISE

- 13.1 Either Party may terminate this Agreement by written notice immediately upon the occurrence of the following events:
- (a) In the event of an event of force majeure (as described under Clause 18) which prevents a Party from performing its obligations under this Agreement for a continuous period of ninety (90) Business Days or more, or
 - (b) If the other Party undergoes any manner of receivership or liquidation other than as a result of a *bona fide* restructuring of its business that does not cast any significant liabilities on that Party, becomes insolvent or enters into any compromise or settlement with its creditors or ceases or threatens to cease to carry on its business.
- 13.2 The Franchisor may terminate this Agreement by written notice immediately upon the occurrence of any of the following events:
- (a) If the Franchisee is in breach of its obligations, representations or warranties under any Franchise Document and fails to remedy such breach within thirty (30) days of its receipt of notice in this behalf from the Franchisor;
 - (b) In the event of change in control or ownership of the Franchisee without the prior written consent of the Franchisor;

- (c) If the Franchisee is involved in any conduct or performs any act which may, in the sole opinion of the Franchisor, adversely affect the reputation or goodwill of the Franchisor, its distribution network, or of any of its affiliates or business associates or may expose the Franchisor to any form of penal action or litigation or similar proceedings;
- (d) If the Franchisee assigns or sub-licenses or transfers or attempts to assign, sub-license or transfer any of its rights and/or obligations under this Agreement without the prior written consent of the Franchisor or commits any other breach of this Agreement that is not capable of cure within a period of thirty (30) days;
- (e) If the Franchisee fails to achieve the Minimum Commitment for a period of more than [●] months during the Term;
- (f) If the Franchisee fails to commence manufacture of the Products within the periods set out in Clauses 3.1 (c) or 3.2 (c) as applicable, and in the event the Manufacturing Plant is already in existence as on the Effective Date and does not need augmentation or expansion, within a period of not more than ninety (90) days from the Effective Date.

13.3 Explanation: In the event the Franchisee is a consortium of entities, any event as described above under Clauses 13.1 and 13.2 affecting any entity forming part of such consortium shall give a right of termination to the Franchisor under Clause 13.1 or Clause 13.2 as the case may be.

13.4 The Franchisee may terminate this Agreement by giving at least ninety (90) days notice to the Franchisor in the event the Franchisor commits a material breach of this Agreement and fails to cure such breach within a period of sixty (60) days from the date of receipt of a notice from the Franchisee requesting such cure.

13.5 Consequences of Termination:

- (a) Upon expiry of the Term or termination of this Agreement for any reason, the Franchisee shall:
 - (a) immediately cease manufacture and sale of the Products and cease representing or holding itself out as a franchisee in respect of the Products in any manner;
 - (b) immediately discontinue use of all Trademarks and of any materials, packages or labels bearing a Trademark or otherwise indicative of any association with the Franchisor;
 - (c) return immediately to the Franchisor, at the Franchisee's expense, all signs, display or advertising or promotional items and any training materials or other materials

used in connection with the operation of the Franchise provided to it by the Franchisor;

- (d) pay to the Franchisor forthwith (without any deduction or right of set-off) all Royalty or other sums of money which may be owed to the Franchisor (whether or not then due).
- (b) All obligations and liabilities of a Party that accrue or arise prior to the expiry of the Term or the date of termination of this Agreement shall continue unaffected.
- (c) The Franchisor shall have the option, but not the obligation, upon expiry of the Term or termination of the Agreement, to purchase all Products in stock with the Franchisee including labels, packages and containers, at a price that is to be mutually agreed upon between the Parties. In the event the Franchisor does not exercise this option, the Franchisee may continue sale of Products till its stock of Products existing as on the effective date of termination is disposed off and the terms of this Agreement shall apply to such sales.

14. GOVERNING LAW AND ARBITRATION

14.1 This Agreement shall be governed by the laws of India.

14.2 In the event of any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof ("**Dispute**"), the following actions shall be taken:

- (a) A Dispute will be deemed to have arisen when one Party serves on the other Party a notice stating the nature of the Dispute (a "**Notice of Dispute**");
- (b) Upon service of a Notice of Dispute upon a Party, the Parties will use reasonable efforts to resolve the Dispute through negotiations;
- (c) In the event the Parties are unable to resolve a Dispute through negotiations within thirty (30) Business Days of service of a Notice of Dispute, the Parties shall refer the Dispute to arbitration;
- (d) The arbitration proceedings shall be conducted in the English language and in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as may be amended from time to time. The venue of arbitration shall be Hyderabad, India. The arbitral tribunal shall consist of a single arbitrator who shall be mutually agreed upon by the Parties. In the event the Parties fail to agree upon a single arbitrator, the arbitral tribunal shall consist of

three arbitrators. Each Party shall nominate an arbitrator and the two arbitrators so nominated shall appoint a third arbitrator, who shall be the chairperson of the tribunal; and

- (e) The decision of the arbitral tribunal shall be binding upon the Parties and may be enforced in any court of competent jurisdiction.

- 14.3 Subject to Clause 14.2 above, the courts at Hyderabad shall have exclusive jurisdiction in respect of all Disputes.

15. NON-COMPETE AND NON-SOLICITATION

- 15.1 During the Term, the Franchisee shall not manufacture, sell, market or distribute products that are the same as any of the Products that are or become the subject of the Franchise on its own behalf or on behalf of anyone other than the Franchisor or as a franchisee for any entity other than the Franchisor.
- 15.2 Nothing in this Agreement shall be construed as restricting or limiting the Franchisor's right to appoint other franchisees, distributors, subcontractors or agents in respect of the manufacture, sale and distribution of the Products or products similar to the Products, in the Territory or outside the Territory.
- 15.3 The Franchisee acknowledges that the Franchisor's employees and agents are valuable resources of the Franchisor and that the Franchisor has invested substantial time and expense in training its employees and agents. During the Term, including any extensions thereof and for a period of two years thereafter, the Franchisee shall not contact or solicit any employee or agent of the Franchisor in any manner with a view to encouraging that employee or agent to terminate his employment or agency with the Franchisor or to breach that employee's or agent's agreement with or obligations to the Franchisor and shall not offer employment to any employees or agents of the Franchisor.

16. LIMITATION OF LIABILITY

- 16.1 In no event (including as a result of expiry of the Term, termination of the Agreement or refusal by the Franchisor to renew the Term) shall the Franchisor be liable to the Franchisee for any indirect, consequential or special damages under this Agreement or for any loss of business or profits, loss of revenue, loss of opportunity or loss of goodwill. The Franchisor's aggregate liability to the Franchisee under this Agreement shall not exceed an amount equal to three times the Minimum Royalty.

16.2 The Franchisor shall be entitled to encash, in part or full, any of the Bank Guarantees given as part of the Performance Security, in the event of any material breach of this Agreement by the Franchisee or in order to recover any sums due from the Franchisee.

17. NOTICES

17.1 Any notice required to be given under this Agreement shall be in writing and addressed in the case of each Party, to the addresses set out below:

Franchisor: [●]

Franchisee: [●]

17.2 Notices and communications shall be considered given or made:

- (a) where sent by hand or courier, upon receipt;
- (b) where sent by registered post, on the fifth Business Day following the date of posting;
- (c) where given by fax, twenty-four (24) hours after the time of successful transmission;
- (d) where sent by e-mail, within twenty-four (24) hours after the message has been sent to the intended recipient provided that the sender doesn't receive an automatic out of office reply and/or a message notifying the sender of delays with the delivery of the email in question.

18. FORCE MAJEURE

18.1 Neither Party shall be liable to the other in respect of anything which may constitute breach of this Agreement arising by reason of *force majeure*, namely circumstances beyond the reasonable control of such Party such as acts of God, terrorism, perils of the sea or air, fire, flood, drought, explosion, embargo, riots, civil commotion, provided that if any force majeure event continues for more than six months, either Party may terminate this Agreement immediately.

19. CONFIDENTIALITY

19.1 The Parties shall ensure that all Confidential Information disclosed by one Party (the "**Disclosing Party**") to the other in accordance with this Agreement or which may at any time until expiry or termination of this Agreement come into the other Party's knowledge, possession or control shall not be used for any purposes other than those required or

permitted by this Agreement, and shall remain confidential and shall not be disclosed to any third party.

19.2 The provisions of Clause 19.1 shall not apply to any Confidential Information:

- (a) previously authorised in writing by the Disclosing Party as capable of being disclosed to a third party under appropriate confidentiality provisions approved by the Disclosing Party;
- (b) which has become part of the public domain other than by reason of breach of this clause;
- (c) which is required by any governmental entity, or any applicable law or regulation, or the order of any court or competent authority, to be disclosed.

19.3 For the purpose of this Agreement “**Confidential Information**” shall mean all information belonging to a Party disclosed by that Party to the other, whether conveyed orally, in writing, in machine readable form or otherwise, including any and all proprietary, technical or business information (including without limitation, business, product, service or marketing plans, procedures or strategies, information relating to finances and information relating to customers or personnel) or information of a Party to which the other Party may gain access during the performance of this Agreement.

20. GENERAL

20.1 The Franchisee shall not be entitled to assign, sell, licence, transfer or otherwise deal with its rights and obligations under this Agreement to any third party without the prior written consent of the Franchisor.

20.2 If any provision of this Agreement is or becomes (whether or not pursuant to any judgment or otherwise) invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of any other provision shall not be affected or impaired in any way.

20.3 No waiver of any right under this Agreement by the Franchisor or the failure by Franchisor to exercise any remedy it may have in relation to a breach by the Franchisor of this Agreement, shall operate to prevent the Franchisor from exercising such right later, or from exercising such remedy later either for the same or another breach.

20.4 Each Party acknowledges that it is acting on its own behalf, as an independent contractor and not as an agent, representative, or employee of the other. Nothing in this Agreement and no

action taken by the Parties under this Agreement shall constitute, or be deemed to constitute, an agency, association or joint venture.

20.5 This Agreement (including the schedules to this Agreement) may only be varied by a document in writing signed by each of the Parties.

20.6 The Franchise Documents and any instructions provided by the Franchisor to the Franchisee under this Agreement alone constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. In the case of any conflict between any of the Franchise Documents, the following order of priority shall apply:

- (a) Instructions given by the Franchisor to the Franchisee pursuant to this Agreement
- (b) This Agreement
- (c) The Letter of Award
- (d) The bid tendered by the Franchisee in response to the EOI, except for such portions of the bid as have been specifically rejected by the Franchisor in writing.
- (e) The EOI

IN WITNESS WHEREOF, as of the Effective Date, an authorized representative of each Party has duly executed this Agreement.

SIGNED for and on behalf of

SIGNED for and on behalf of

Signed:

Signed:

Name:

Name:

Title:

Title:

Annexures to the Franchise Agreement:

1. Territory
2. Products
3. Part A - Standard Operating Procedures
Part B - Production and Marketing Schedules, Targets, Penalties and Incentives
4. Royalty