

Commercial Contract

PREPARED FOOD FRANCHISE AGREEMENT



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

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INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. *Creating a Conducive Environment*; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. *Cluster/Sector Development*; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. *Enhancing Access to Business Development Services*; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewellery, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

2. ROLE OF SMEDA LEGAL SERVICES CELL

The Legal Services Cell (LSC) is a part of Business Development Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world. LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs, Service Providers, Companies and Firms with information pertaining to requisite format and content of a business to business commercial contract. Entrepreneurs interested in enhancing their understanding about the nature and form of Agreement for prepared food franchise can also use the document.

3. DISCLAIMER

Form of this document and the contents therein are provided only for general information purpose and on an "as is" basis without any warranties of any kind. Use of this document is at the user's sole risk. SMEDA assumes no responsibility for the accuracy or completeness of this document, its form and any of the information provided therein and shall not be liable for any damages arising from its uses.

PREPARED FOOD FRANCHISE AGREEMENT

This franchise agreement is made at _____ on this _____ day of April 2008

BETWEEN

_____ (**give name of the company / firm**) owners and proprietors of prepared food chain namely “_____” (**give name of the business**) having principle place of business at _____ (**give address**) (hereinafter referred as “**Franchiser**” which expression shall mean and include its successors and assigns) of the One Part

AND

Mr. _____ proprietor of _____ (**give name of his business**) having its place of business at _____ (**address**) (hereinafter “**Franchisee**” which expression shall mean and include its successors and assigns) of the Second Part.

WHEREAS

- i. Franchiser is the originator, creator and owner of a retail food sale system known as “_____” (**give name of the business**). This system includes special design of a building, specifically designed equipment and signs, equipment layout plans, food formulas, inventory and book keeping system and a schedule of business policies and practices and is referred herein as the franchise system. This franchise system is currently being used and advertised in _____ cities of Pakistan.
- ii. Franchiser has developed and use, and continue to use and control the usage of, in connection with the franchise system and business of its franchises, proprietary interests, trade marks, service marks, and trade names including “_____” (**give name of business such as “Chicken Dabu”**) which is registered with the registrar of Trade Marks and Patents Pakistan at Karachi under registration No. _____ and copy no. _____.

AND WHEREAS

- A. Franchisee is desirous of acquiring a license to adopt and use the franchise system including but not limited to trade marks, service marks and trade name in the conduct

of business at a specified location and for a specified period under the supervision and in accordance with the service standards approved by Franchiser.

- B. Franchisee understands the significance and importance of Franchiser's uniform and high standards of quality, cleanliness, appearance and service to the value of franchise system and the necessity of conducting franchise system in conformity with the franchise system and in accordance with such standards and specifications.

NOW THEREFORE in consideration of and with mutual covenants set forth herein below, the franchiser and the franchisee agree as follows:

1. GRANT OF FRANCHISE

1. Franchiser hereby grants to the franchisee license to use, adopt and operate during the period and on the terms and conditions stipulated in this agreement, the franchise system including the names, symbols and trade mark associated with the franchiser's name on the following address:

Store No. _____

Address: _____

2. The Franchiser hereby specifically undertakes that it shall not, while this agreement is in force, conduct similar operation or grant a similar franchise to any other person, within _____ area of premises of the franchisee.
3. Franchisee shall use the name of the franchiser and the trademarks associated with the name in the sale of _____ (**give name of the foods to be sold**) and franchisee's place of business for such sales shall be known only as " _____ " (**give name of the business being franchised**).

2. PERIOD OF FRANCHISE

This agreement shall continue for a period of _____ years from the date of its signing unless terminated earlier in accordance with the stipulations set forth hereinafter in clause 12.

3. RENEWAL / EXTENTION

On expiry of the term set forth herein above, this agreement shall be extendable for another _____ years period with mutual consent and on the same terms and conditions as stipulated herein.

4. CONSTRUCTION OF BUILDING

- a) Franchiser shall start construction of the building at the site mentioned above within _____ days from the date of the signing of this agreement. The investment made on the purchase and construction of the franchise location shall exclusively be made by the franchisee at its own risk and costs.
- b) Franchisee agrees to construct, on the selected location, a standard franchise system building in accordance with the plans, drawings and specifications furnished by Franchiser.
- c) Franchiser shall make periodic inspections of the construction at the franchise site to determine if there has been compliance with the franchise system plans and specifications.

5. PAYMENTS SCHEDULE

- A. **FRANCHISE LICENSE FEE:** Franchisee shall make payment of Rs. _____/- to Franchiser against Franchise license in the following manner:
- Rs. _____ being 20% of the total amount shall be paid at the time of execution of this agreement.
 - Remaining unpaid balance shall be paid prior to attendance by Franchisee, or Franchisee's designated representative, at Franchiser's training course on running the operations of the Franchise, or _____ days prior to the scheduled opening of the franchise operation, whichever date is earlier.
- B. **PROMOTIONAL ADVERTISING FEE:** Franchisee shall pay a non-refundable fee of Rs. _____ to Franchiser for pre-opening promotion and advertising of the franchise. In addition Franchisee shall pay a non-refundable fee of Rs. _____ every month in advertising and promotional fund of franchiser for the continuous promotion and advertisement of franchise product.
- C. **TRAINING FEE:** License Fee includes the fee for training of staff of Franchisee for operation of the franchise operation.

D. **SERVICES CHARGES:** Franchisee, so long as this agreement is in force, shall pay a sum equal to _____% of the gross sales (which includes amounts paid other than sales tax or any other duty or tax) to the Franchiser as non-refundable service charges.

6. INSPECTION OF BOOKS OF ACCOUNTS

Franchisee shall always keep open books and records pertaining to sale and purchase for daily inspection thereof by Franchiser and shall never refuse for the same.

7. TRAINING AND SUPERVISION

Franchisee shall, prior to opening of franchise business, attend franchiser's store management training at a place designated by Franchiser.

Franchiser shall train the staff of Franchisee, furnish operations manuals and make recommendations to the Franchisee for smooth running of franchise operations.

8. SUPPLY/SALE OF FOOD PRODUCTS AND OTHER EQUIPMENT

- I. The equipment for final processing of food products to be installed at the franchised premises shall be purchased and installed by the Franchiser.
- II. Franchiser shall, at all reasonable times, ensure smooth and consistent supply of food products to Franchisee.
- III. Franchisee shall maintain at all times a sufficient supply/stock of approved products with it.
- IV. Franchisee shall purchase all food product supplies against advance payment thereof at prescribed rates.
- V. Franchisee shall offer for sale only those products which have been specifically approved and designated in writing by Franchiser.

9. TRADE SECRETS

Franchisee and all its employees shall not divulge any business information, whether written or oral, received from Franchiser except to store employees to whom such information will be restricted only to the operation of the franchise.

10. HEALTH STANDARDS AND INSPECTION

Franchisee shall maintain the business premises and all equipment, fixtures and facilities in a manner required by law and conform with franchiser's standards of health, cleanliness and neatness. Franchisee agrees to allow franchiser, at any reasonable time, the privilege of complete inspection of franchisee's business premises.

11. MANAGEMENT AND PERSONEL STANDARDS

- A. Management Method: Franchisee shall adopt and use Franchiser's management system, as well as Franchiser's standards in respect of product preparation, merchandising, employee recruitment, training equipment and facility maintenance and sanitation.
- B. Personnel: Franchisee shall hire and supervise efficient, competent and courteous operators and employees for the conduct of business and shall pay their wages, commission and other compensation with no liability on the part of Franchiser.
- C. Regional Meetings: Franchisee or the manager thereof shall, at Franchisee's expense, attend at least one national or regional meeting each year, originated by Franchiser for and on behalf of Franchise operators for the purposes of introducing and adopting new methods and programs in store operation, training, management, sales and sales promotion programmes.

12. TERMINATION

- (a) This agreement shall be terminable by either of the parties subject to at least two months notice in writing.
- (b) Notwithstanding and Without prejudice to the preceding clause (a) if at any time Franchisee commits default under the terms of this agreement and the said default is

not cured within _____ days after receipt of written notice to cure from Franchiser, then, in addition to any other remedies at law or equity, Franchiser may immediately terminate this agreement. Termination under these circumstances shall become effective immediately on the date of receipt, by franchisee, of a written notice of termination.

13. RIGHTS/DUTIES ON TERMINATION AND EXPIRATION OF AGREEMENT

On termination and or expiration of this agreement:

- 1) Franchiser shall be entitled and the Franchisee shall be liable to promptly pay all sums owing or accrued under the agreement prior to termination and or expiration. These sums shall include any damages, costs, and expenses incurred by Franchiser by reason of default on the part of Franchisee.
- 2) Franchisee shall immediately cease to use by advertising or in any manner whatsoever, any methods associated with the name “_____” (**give franchise business name**) any or all of the proprietary marks and names and any other trade secrets, confidential information, operating manuals, slogans, signs, symbols, or device forming part of the franchise system or otherwise used in connection with the conduct of franchise operation.

14. TRANSFER/TRANSMISSION OF FRANCHISE

Franchisee’s rights in the franchise are transferable only as follows:

- a) On franchisee’s death, the rights of franchisee in the franchise may pass to franchisee’s next of kin or legatees, provided the next of kin or legatees agree in writing satisfactory to Franchiser to assume franchisee’s obligations under this agreement.
- b) Franchisee may sell the franchise to a natural and or assign/transfer all rights thereunder to a corporation with the consent of the Franchiser and subject to settlement of all the liabilities unto the Franchiser.

15. SERVICE OF NOTICE

All Notices by either party to the other shall be sent by registered mail to the receiving parties at the address set forth above or at such other address as that party may have designated in writing.

16. DUTIES OF FRANCHISER

The Franchiser shall:

- Assist the Franchisee in all the matters pertaining to pre-opening, opening and initial conduct of Franchise operations according to requirements of the franchise system.
- Provide operating procedures to assist Franchisee in developing financial record and controls, production methods, personnel policies and approved sources of supply.
- Provide continuous consultation to Franchisee in all areas of marketing, management, merchandising and general business operations.
- Review all proposed advertising and promotional materials prepared by Franchisee for use in local advertising.
- Revise and update all the operating manuals containing the standards, specifications, procedures and techniques of franchise system.
- Administer the advertisement and sales promotion fund for the continuous promotion and advertisement of its food products.

17. FRANCHISEE AS INDEPENDENT CONTRACTOR

No clause under this agreement does constitute, declare and or assimilate Franchisee an agent, legal representative, joint venturer, partner, employee or servant of franchiser for any purposes whatsoever. Franchisee shall be an independent contractor for all intents and purposes and is in no way authorized to make or enter into any contract, agreement, warranty or representation on behalf of Franchiser. The parties hereby agree unequivocally that this agreement does not and will not create any fiduciary relationship between Franchiser and Franchisee.

18. LIABILITY FOR BREACH

In case of any breach, failure or default to comply with any of the provisions of this agreement, by the Franchisee, and which remains uncured for the period requisite under the agreement, Franchisee shall be liable and shall pay to the Franchiser all the damages, costs, compensation and expenses including but not limited to reasonable legal attorneys fees that may be incurred by Franchiser as a result of such breach, failure or default.

19. ENTIRE AGREEMENT

This agreement, the documents referred therein and each clause thereof shall be the entire, full and complete agreement between Franchiser and Franchisee concerning its subject matter. There are no valid or binding representations, agreements, covenants, inducement or promises, oral or otherwise, between the parties that are not embodied in this agreement. No amendment, change or variance from this agreement shall be binding on either party unless executed in writing.

20. INDEMNITY

Franchiser shall not be liable for any overt or covert act, deed or omission done in good faith under and in pursuance to this agreement and or any clause thereof.

21. APPLICABLE LAW

This agreement shall be interpreted, construed, governed and implemented by and under the laws of Pakistan for the time being in force.

IN WITNESS WHEREOF the parties have executed this agreement on the date as mentioned above.

Franchiser

Signature

Franchiser

Signature

WITNESSES

- 1. _____
- 2. _____