

Information & Instructions: Management and license agreement to manage day to day operations of a business

PREVIEW

1. The form that follows is to be used by an owner who is a franchisee of the product named in the agreement and who desires to obtain the services of an agent to manage the day to day operations of the business.

Form: Management and license agreement

MANAGEMENT AND LICENSE AGREEMENT

State of Texas
County of _____

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This Agreement is made by and between [name] ("Contractor"), and [name] ("Owner").
This Agreement is made on _____.

Owner is the Franchisee of [name of Franchisor], located at [address]. Owner is engaged in [describe type of business], ("Franchise"), the business being located [address of franchise]. Owner wishes to obtain the services of Contractor to operate and manage the day to day operation of the Franchise. Contractor desires to obtain a license to operate the Franchise from Owner for and on the behalf of Owner and to market the products sold under Owner's Franchise(s) for use. In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, and for good and valuable consideration, the parties hereby agree as follows:

THIS DOCUMENT

I. DEFINITIONS

- 1.1 Owner is identified as [name].
- 1.2 Contractor is identified as [name].
- 1.3 Independent Contractor means the Contractor covered by this Agreement. The Contractor is not considered an employee of Owner.
- 1.4 Franchise means [name and address of Owner's business].
- 1.5 Franchisor means [name and address of Franchisor].
- 1.6 Net Profits means the monies received from the business or sale of [describe product or service] minus the expenses as defined in paragraph 4.7 of this Agreement.

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2. SCOPE OF AGREEMENT AND LIMITATIONS OF AUTHORITY

2.1 PURPOSE The purpose of this Agreement is to allow Contractor to manage, operate and develop Owner's Business. Contractor is entitled to a commission as

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provided for hereunder on the business obtained by Contractor in Contractor's capacity as Manager of Franchise.

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a. Contractor, as an Independent Contractor, is hereby appointed to sell on an exclusive basis, certain products. Contractor is authorized to make representations only on behalf of Contractor and is not entitled to bind or represent Owner.

b. Contractor is hereby empowered to hire a Sales Director for the Franchise. Contractor is thus empowered to:

i. Appoint Sales Managers as Contractor deems

necessary;

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ii. Formulate sales and business marketing plans,

iii. Coordinate activities and functions of Franchise.

c. The parties appoint [name] as Sales Manager for Franchise.

d. It is expressly agreed that Contractor's authority is limited to the promotion, sales and management of the Franchise and Owner's Board of Directors shall make the final decisions regarding any major business decisions or organic changes that may have a significant economic or business affect on owner's Franchise.

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2.2 Contractor has no authority to act for or on behalf of Owner except as provided for in this Agreement; no other authority, power or use is granted or implied.

2.3 Contractor may not make, revise, alter, or otherwise diverge from the terms, conditions, prices, or policies of Owner.

2.4 Contractor may not incur any debt, obligation, expense, or liability of any kind against Owner without Owner's express written permission.

2.5 Contractor may not receive any money owed to Owner without Owner's express written permission.

THANK YOU

2.6 Any and all funds collected by Contractor from the operation of the Franchise hereunder shall be delivered to Owner. Contractor may not withhold any funds from Owner in the event of a dispute, offset, counterclaim, or other grievance between the parties or third persons.

2.7 Contractor agrees to indemnify and hold Owner harmless for any losses of money which Contractor receives and Owner shall not be responsible for the loss, shortage or destruction of the money.

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2.8 Contractor agrees to comply with all local, state, federal, and Foreign laws and regulations applicable to the transactions between Contractor and its customers, Owner, or third parties involved in this Agreement.

a. Contractor represents that Contractor is properly licensed to perform the duties contained in this Agreement. Contractor agrees to maintain the license during the term of this Agreement and agrees to notify Owner if Contractor's license is revoked or suspended during the term of this Agreement.

b. Contractor agrees to notify Owner of any complaints or suits filed against Contractor.

2.9 Owner is not responsible or liable for any misrepresentations, errors, omissions of any kind, negligence, carelessness, or other problems or disputes that Contractor may cause or be involved in or that may otherwise arise during the term of this Agreement.

2.10 Contractor agrees to hold harmless, indemnify, and protect Owner for any problems, disputes, or other contingencies that arise as a result of Contractor's performance of this Agreement. Contractor agrees to pay for the costs of defending any actions, claims, trials, etc. that may arise as result of this Agreement; the indemnification includes the costs of Owner's attorney's fees.

2.11 Contractor agrees to maintain separate records, separate insurance, and separate accounts from those maintained by Owner in the performance of this Agreement.

a. Contractor shall maintain a comprehensive system of just and true books of account in which shall be entered fully and accurately each and every transaction with respect to the operation of the Franchise. Such records, accounts and books shall be maintained either at the office of Contractor, or at such other place as Owner and Contractor shall mutually determine, and each party shall at all reasonable times have access to such records, accounts, and books. Such records, accounts, and books shall be kept on a calendar year basis and on such method of accounting as the owner may direct. Such books may be audited by a certified public accountant selected by Owner at the close of each such year and/or at such other times as Owner may direct. The cost of any such audit shall be borne by Owner.

b. On or before the [for example: fifteenth (15th)] day of each month, Contractor shall render to Owner a monthly statement of receipts and disbursements with respect to the management of the Franchise together with receipted vouchers remitting to Owner any balance shown to be due in such disbursements. Such receipted vouchers shall include the compensation earned by Contractor pursuant to the provisions set forth in this Agreement.

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c. Contractor shall also execute and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel and operation of the business.

d. Contractor shall remit to Owner Owner's share of the profit on or before the [for example: fifteenth (15th)] day of each month.

2.12 The pricing, the setting of discounts if any, and the establishment of sales and credit policies shall be in accordance with Owner's policies and shall be subject to change at any time by Owner. Contractor shall not deviate from prices established by Owner unless authorized to do so by Owner in writing prior to such deviation. If Owner has no such rules, Contractor shall have the authority to set the prices, terms and conditions.

2.15 All orders will be taken in the name of the Franchise and will be subject to acceptance by Owner, and Contractor shall make no representations to the contrary.

3. DUTIES OF CONTRACTOR AND TERM OF AGREEMENT

3.1 TERM: The term of this Agreement shall be _____ years from the date the instrument is signed by all of the parties.

3.2 If, after the term of the Agreement has expired, the parties continue to do business together as if this Agreement were still in effect, the practices constitute a renewal of the Agreement until one of the parties notifies the other in writing of the termination of this Agreement. The termination letter must give 30 days notice to the other party.

3.3 TERMINATION is by agreement on thirty (30) days written notice, pursuant to provision 3.2 above, or immediately upon the breach of this Agreement by Contractor.

A breach of this Agreement includes, but is not limited to, a violation of the policies and rules of Owner, breach of the non-competition clause off this Agreement, the making of a misrepresentation or false statement by Contractor, nonperformance of Contractor's duties, death of Contractor, the occurrence of a conflict of interest between Contractor and Owner, or the filing of bankruptcy for or on behalf of Contractor.

a. This Agreement shall terminate if Owner sells its Franchise. Owner agrees to offer to Contractor a First Right of Refusal for a period of ten (10) days prior to the sale of the Franchise to a third party. Transfer of the stock in Owner's Corporation does not constitute a sale or termination of this Agreement.

b. This Agreement is subject to the following conditions and shall terminate immediately if Contractor does not generate a gross profit of \$[Amount] during the first year of this Agreement. During the second year, total gross profit of \$[Amount] must be generated. A total gross

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profit of \$[Amount] must be generated in the third year and each successive year thereafter.

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3.4 DUTIES. Contractor agrees to solicit, find, and obtain customers and to market the products of the Franchise owned by Owner.

a. Contractor agrees to devote Contractor's full time, energy and attention to the duties specified in this Agreement.

b. Contractor shall submit the names, addresses and telephone numbers of prospects identified by Contractor to Owner or submit monthly reports to Owner which show the status of Contractor's efforts.

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c. Contractor agrees to complete all reports, forms, or other necessary work required by Owner for the performance of this Agreement. A determination of the work necessary to perform this Agreement shall be in Owner's sole discretion.

d. Contractor agrees to provide prompt, courteous, efficient, and professional efforts to promote the sale of the items covered under this Agreement.

4. COMPENSATION

4.1 In consideration for Contractor's efforts, Owner agrees to pay to Contractor a commission of the net proceeds paid for the sale of [describe product].

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4.2 The commission schedule is _____ percent (____%) of the net profits.

4.3 Contractor agrees to pay to Owner the remaining monies (minus Contractor's ____% commission) owed to Owner in a timely manner, once a month, for the monies received from purchasers of the Franchise's products.

4.4 All monies paid to Contractor from the sale of [product] or any other business of Franchise shall be placed into a trust account, held by Contractor. From the account, Contractor shall distribute the commissions owed to Owner and the commissions owed to Contractor.

THANK YOU

4.5 Contractor is responsible for payment of all State, Federal, Foreign, or local taxes, including income tax, withholding tax, social security tax, or pension contributions, on the funds distributed to Contractor or Contractor's employees by Owner or from sale of the Franchise.

4.6 Owner is not responsible for payment of taxes or penalties applicable to no payment to Contractor of taxes.

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4.7 Contractor is responsible for payment of any and all insurance premiums, including errors and omissions policies, medical policies, life policies that it may need or offer for its employees.

4.8 It is recognized by the parties to this Agreement that Contractor, in connection with the services to be performed by Contractor pursuant to the terms of this Agreement, will be obliged to spend money for travel, entertainment of customers, automobile insurance, telephone, and similar business expenses. Owner shall not reimburse Contractor for business expenses incurred by him in connection with the performance of this Agreement.

4.9 To determine the net profit of the Franchise, Contractor may deduct the reasonable and necessary business expenses from the gross profit generated by the Franchise, subject to the following limitation:

- a. Expenses shall not exceed _____ percent (___%) of the gross profit of the Business for the first year of this Agreement.
- b. Expenses shall not exceed _____ percent (___%) of the gross profit in the second and succeeding years of this Agreement.
- c. All expenses incurred by Contractor to be deducted from the gross profit must be approved by Owner's Board of Directors.
- d. The expenses incurred shall not exceed the customary or ordinary cost of the expenses in the areas incurred.
- e. Contractor shall not deduct expenses which are fully or partially attributed to businesses or endeavors that do not pertain to the sale of the Franchise covered under this Agreement.

5. NON-COMPETITION PROVISIONS

5.1 The parties hereto agree that the covenants, agreements and restrictions (hereinafter "this covenant") contained herein are necessary to protect the business goodwill, business interests and proprietary rights of _____ and that the parties hereto have independently discussed, reviewed and had the opportunity of legal counsel to consider this agreement and now hereby agree and stipulate to the following:

a. This covenant is an integral part of an enforceable agreement [an employment agreement] and the covenants contained herein were made at the time this agreement was consummated by the parties hereto.

b. This covenant is fair and reasonable in its:

- i. geographical area;

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ii. length of time; and

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iii. scope of activity being restrained.

5.2 Restrictive Covenants. Contractor expressly agrees that while this Agreement is in effect, and for a period of two years following termination of this Agreement, Contractor will not directly or indirectly as an employee, agent, proprietor, partner, broker, stockbroker, stockholder, officer, director, or otherwise use special knowledge or training or divulge trade secrets to any person or to any competitive business that would compete directly or indirectly with the owner's business without prior consent of Owner.

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a. Contractor further expressly agrees that he will not use for Contractor's own benefit or disclose to any person confidential information of Owner of any kind or character learned while acting as a Contractor of Owner, without the prior written consent of Owner.

b. The agreements contained in this Agreement on the part of Contractor shall be construed as agreements independent of any other provisions of this Agreement, and the existence of any claim or cause of action of Contractor against Owner, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Owner of the agreements contained in this article.

5.3 Property Rights of Owner. All customer lists, all records of the accounts of customers, and any other records and books relating in any manner whatsoever to the customers and prospective customers of Owner shall be the exclusive property of Owner.

All such books, records and catalogs shall be immediately returned by Contractor to Owner upon the termination of this Agreement. Contractor shall also return to Owner any and all identification cards, credit cards, business documents, or other documents, if any, to Owner upon the termination of this Agreement.

5.4 Soliciting Customers After Termination of This Agreement. Contractor shall not for a period of one (1) year immediately following the termination of this Agreement, regardless of the reasons or cause for such termination and regardless of the party causing such termination, either directly or indirectly:

a. Make known to any person, firm or corporation the names and addresses of any of the customers of Owner or any other information pertaining to them; or

b. Call on, solicit, or take away, or attempt to call on, solicit, or take away any of the customers of Owner on whom Contractor called or with whom Contractor became acquainted during the term of the Agreement either for Contractor or for any other person, firm, or corporation.

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6. OPTION TO PURCHASE
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6.1 In addition to the First Right of Refusal referred to above, Contractor may purchase Owner's Business under the following terms:

- a. [describe terms].
- b. [describe alternate terms, if any].
- c. Should Contractor decide to exercise any of the above listed options, Contractor will pay any Transfer Fees required to complete the transaction.

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7. GENERAL AND ADMINISTRATIVE PROVISIONS

7.1 PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

7.2 ASSIGNMENT. Contractor shall have no right to transfer or assign Contractor's interest in this Agreement without the prior written consent of Owner.

7.3 CORPORATE AUTHORITY. If any party is a legal entity (partnership, corporation and/or trust), such party represents to the other that this Agreement, the transaction contemplated in this Agreement, and the execution and delivery hereof, have been duly authorized by all necessary partnership, corporate or trust proceedings and actions, including without limitation, action on the part of the directors, if the party is a corporation. Certified copies of any such corporate or other resolutions authorizing this transaction shall be delivered at Execution.

7.4 TIME LIMITS. Time is of the essence in this Agreement and all time limits shall be strictly construed and rigidly enforced.

7.5 NO WAIVER. The failure or delay in the enforcement of the rights detailed in this Agreement by Owner shall not constitute a waiver of those rights or be considered a basis for estoppel. Owner may exercise its rights under this Agreement despite the delay or failure to enforce those rights.

7.6 DISPUTE OR CONTEST. In the unlikely event that a dispute occurs or an action in law or equity arises out of the operation, construction, or interpretation of this Agreement, Contractor shall bear the expense of the attorney's fees and costs incurred by Owner in the action.

7.7 PARAGRAPH HEADINGS. The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect whatever.

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7.8 USE OF PRONOUNS. The use of the neuter singular pronoun to refer to any Party described in this Agreement shall be deemed proper reference whether the Party is an individual, a partnership, a corporation, or group of two or more individuals, partnerships or corporations. The grammatical changes required to make the provisions of this Agreement applicable to corporations, partnerships, individuals, or groups of individuals, or to females as well as males shall in all instances be assumed as though in each case fully expressed.

7.9 TEXAS LAW. This Agreement shall be subject to and governed by the laws of the State of Texas. Any and all obligations or payments are due and payable in, [Name of County] County, Texas.

7.10 SEVERABILITY. If any provision of this Agreement shall for any reason be held violative of any applicable law, and so much of the Agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provisions in this Agreement, which other provisions shall remain in full force and effect unless removal of the invalid provision destroys the legitimate purposes of this Agreement, in which event this Agreement shall be canceled.

7.11 ENTIRE AGREEMENT. This Agreement represents the entire agreement by and between the Parties except as otherwise provided in this Agreement, and it may not be changed except by written amendment duly executed by all parties.

7.12 NOTICES. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if mailed from within the United States by first class mail, postage prepaid, and addressed as follows:

If to Contractor: [name and address]

If to Owner: [name and address]

A party may change the address for notice by giving notice of such change to the other party in writing.

Signed, accepted and agreed to on _____ by the undersigned parties who hereby acknowledge that they have read and understood this Agreement and the attachments hereto, hereby execute this legal document voluntarily and of their own free will.

Owner: [name of owner]

By: _____
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Contractor: [name of contractor]

PREVIEW

By: _____

State of Texas

County of _____

This instrument was acknowledged before me on _____ by

_____.

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Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]

THIS DOCUMENT

THANK YOU

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