



# FRANCHISE DISCLOSURE DOCUMENT

**MELT N DIP FRANCHISING, LLC**  
**4620 Forest Ave**  
**Brookfield, IL 60513**  
**(708)581-4905**

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MELT N DIP FRANCHISING, LLC  
AN ILLINOIS LIMITED LIABILITY COMPANY  
DBA

MELT N DIP

**4620 Forest Ave.  
Brookfield, IL 60513**

708-581-4905  
franchise@meltndip.com  
www.meltndip.com

You will operate a business selling restaurant, food, and catering services. You will provide these services to both individuals and businesses, operating under the Marks and using the System.

The total investment necessary to begin operation of a Melt N Dip franchise is \$351,700 to \$518,600. This includes \$60,000 to \$70,000 that must be paid to the franchisor or its affiliate.

This disclosure document summarizes certain provisions of Your franchise agreement and other information in plain English. Read this document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before You can sign a binding agreement with or make any payment to the franchisor or an affiliate in connection with the proposed franchise sale. Note, however, that no government agency has verified the information contained in this document.

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Melt N Dip Franchising, 4620 Forest Ave., Brookfield, IL 60531

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue NW, Washington, DC 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

ISSUING DATE: April 30, 2023

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit C.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Attachment A includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Melt n Dip business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Melt n Dip franchisee?</b>	Item 20 or Exhibit C lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in the attached Exhibit F.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

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### Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in New York. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in New York than in your own state.
2. **Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.
3. **Short Operating History.** The Franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

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## **Item 1. THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

### **Definitions.**

The Franchisor is Melt n Dip Franchising, LLC. To simplify this Franchise Disclosure Document, "We" means Melt n Dip Franchising, LLC d.b.a. Melt n Dip, the franchisor. Sometimes "Our" or "Us" refers to Melt n Dip, when appropriate. "You" means the person who buys the franchise. If You are a legal entity, "You" includes all owners of any equity interest in the entity. "Licensed Business" means the business You will operate under the Franchise Agreement, offering and selling restaurant, food, and event catering services operating under Our Marks and following Our System.

### **Our Predecessors and Affiliates**

Melt n Dip Services, Inc. is our predecessor and is an affiliate.

### **Our Names.**

We do business under our corporate name, Melt n Dip Franchising and the name "Melt n Dip." We do not do business under any other name.

### **Our Address and Agent for Service.**

Our principal business address is 4620 Forest Ave., Brookfield, IL 60513. Our agent for service of process is Khalid Habbib, Melt n Dip Franchising, LLC, at 4620 Forest Ave., Brookfield, IL 60513. The principal business address of our affiliate and of our predecessor is 9824 Industrial Drive, Unit F. Bridgeview, IL 60455.

### **Our Business Form.**

We are an Illinois limited liability company, organized January 5, 2021.

### **Our Business and Franchises Offered.**

Under the franchise we offer, You will operate a business doing restaurant, food, and event catering services. This service is typically provided as a restaurant, or for banquets, conventions, and weddings. Any event where all who attend are provided with food and drinks. You will provide these services to both individuals and businesses, operating under the Marks and using the System.

The market for Melt n Dip is primarily the general public and specifically that segment that seeks to purchase restaurant, food, and event catering services. You will compete with other national, regional and local restaurant, food, and event catering service businesses, generally in well-developed markets. Your Licensed Business may operate in close proximity to major competitors. Some competitors will offer many goods and services that are the same as or similar to those You offer.

## Prior Business Experience

Our affiliate, Melt n Dip, has operated a business similar to the business you will be operating since June 1, 2020 in Bridgeview, and also operates a restaurant in Niles, Illinois and has operated Melt n Dip restaurants before converting them to franchises in Willowbrook, IL, and Dearborn Heights, Michigan.

### Laws Affecting Your Licensed Business

In most states you will have to obtain and maintain a health permit. Some may require a specialty permit or license. Although qualifications for such licenses vary from state to state, you may have to pass a knowledge test and background test and obtain insurance and a bond.

There are many federal, state and local regulations specific to the operation of a restaurant, food, and event catering services business. You will also be subject to state and local licensing laws, codes and regulations, particularly as they relate to the operation of a restaurant, food, and event catering service business. For certain services within restaurant, food, and event catering services, you are subject to federal, state, and local restaurant, food, and event catering laws and requirements. There may be other laws applicable to the business and we urge you to make further inquiries about these laws. The nature and amount of regulation could change rapidly relating to this business. You should consult a lawyer with experience dealing with restaurant, food, and event catering services issues to be sure you are familiar with the current statutes and regulations that might apply within your territory.

There are, of course, statutes and regulations that are common to all businesses, including those governing health and labor issues, zoning and safety. You should obtain a complete copy of the relevant statutes and regulations of the Federal government and of Your state and discuss them with Your attorney. You should also investigate applicable county and city ordinances and regulations.

### Market and Competition.

The general market for restaurants featuring crepes, ice cream and healthy smoothies is relatively well-established. However, there are very few restaurants that feature crepes. This is a new market. You will serve the general public, and will compete with a variety of businesses, including locally owned to regional, national and chain restaurants, some of which may be franchise systems. Our competitors have longer operating histories than we do. The restaurant business is highly competitive based on price, service, restaurant location, food quality, and is subject to fluctuations in consumer tastes, economic conditions, population and traffic patterns. The ability of each Melt n Dip Restaurant to compete depends on its location, ingress and egress, signage, parking, service, employee attitudes, overhead, changing local market and economic conditions and many other factors both within and outside your control.

## Item 2. Business Experience

Mr. Saed M. Khattab is the Director, President & CEO responsible for operating and managing corporate Melt n Dip stores and franchisees. Mr. Khattab has 11 years of experience working with restaurants and the last 9 years exclusively with Melt n Dip restaurants.

Mr. Khalid Habbab, is the General Manager responsible for operating and managing corporate Melt n Dip stores and franchisees. Mr. Habbab has 6 years of experience working in restaurants and the last 4 years exclusively with Melt n Dip restaurants.

### **Item 3. Litigation**

No litigation is required to be disclosed in this item.

### **Item 4. Bankruptcy**

No bankruptcy is required to be disclosed in this item.

### **Item 5. Initial Fees**

#### **Initial Fee.**

The Initial Franchise Fee for the Melt n Dip franchise is forty-five thousand dollars (\$45,000.00). The initial franchise fee is uniformly charged for all franchises currently being offered.

#### **Payment of Initial Fee.**

The \$45,000 franchise fee is due and payable to Us at the execution of the franchise agreement except if a deferral or escrow is required by a certain State Regulatory Body, such as in Illinois.

#### **Other Initial Fees.**

Before starting your Franchised Business, you must purchase inventory and supplies required to open your restaurant. This amount will be \$7,500 to \$15,000 depending on how much you buy from us and how much you buy from other suppliers. Except as provided below, you may purchase all or some of the inventory and supplies from us, as described in more detail in Item 8. The inventory and supplies will include food items, paper products, cups, and other branded items. The amount charged for this Package is uniformly charged all franchisees and is nonrefundable.

#### **Refund of Initial Franchise Fee.**

. After We have approved Your Application, We will not refund the Initial Franchise Fee except if, through no fault of You, We determine that You have not successfully completed the initial training. If that happens, We will refund one-half of the Initial Fee. We will determine whether You have successfully completed the initial training based upon knowledge test results and Our observations of Your ability to use the knowledge effectively.

### **Item 6. Other Fees**

Type of fee	Amount	Due Date	Remarks
<b>Royalty Fee<sup>1</sup></b>	5% of Gross Revenues, per week, See Note A.	Payable weekly by Electronic Funds Transfer. Funds must be in Your designated bank account in time so that We can obtain them by Tuesday of the week following the week for which You pay the Royalty Fee.	Gross Revenues includes the full price of all goods and services You sell, whether or not You have received cash or other consideration. The only thing not included in Gross Revenues is taxes or fees You are required to collect on behalf of the government. Gross Revenues are calculated at the time You sell the goods or services, without regard to when You receive or <u>expect to receive payment</u> .
<b>Software License Fee</b>	\$600/month + tax	Monthly maintenance fee	
<b>Local Marketing</b>	2% of Gross Revenues See Note B.	Monthly	We will deduct 2% of your gross sales You must spend at least 2% of Gross Revenues (but not less than \$1,500 per month) on local and cooperative marketing.
<b>Additional Training<sup>1</sup></b>	Approximately \$1,200 per person. In addition, You are solely responsible for all compensation, salaries, benefits and travel-related expenses for Yourself or any employees. See Note C.	In advance of the training program(s)	You and Your <b>FSS</b> , must complete the initial training (cost included in the Initial Fee for first 2 persons trained) and certain additional training at Your cost. If You obtain a new or replacement manager or <b>FSS</b> , You will be responsible for the cost of initial training for that person after We have trained three people for You.
<b>Transfer<sup>1</sup></b>	\$7,500	Before completing transfer	Payable only if You sell Your franchise or any part of Your business. Fee is \$500 if You transfer to a corporation or other entity with the same identical ownership and control.
<b>Audit (3% or more under reporting)<sup>1</sup></b>	\$3,000.00 fine, plus the cost of the audit plus the amount of the underpayment	Immediately upon billing	Payable only if an audit reveals that You have under reported Gross Revenues by 3 percent or more.
<b>Renewal<sup>1</sup></b>	Up to 2/3 of the then-current Initial Fee	Before consummating Renewal	

Type of fee	Amount	Due Date	Remarks
<b>Supplies &amp; Equipment</b>		When You purchase items from Us or Our affiliate(s)	Some items (for example, those bearing the Marks) may be available only from Us or an affiliate. You will buy products and services necessary to operate your Store from Melt n Dip Franchising, LLC or its affiliates, designated and approved vendors whose items and services meet Melt n Dip standards, and specifications and/or other suppliers to the industry. Prices depend on supplier and item/service involved We or the affiliate would expect to realize a profit on any such sales. You may elect to purchase other items from or through Us or an affiliate, in which case We or Our affiliate will generally realize a profit on the sale. The majority of these purchase will be food related items on a weekly or biweekly basis.

1. These fees are imposed by and are payable to Us. All fees are non-refundable. The fees are uniformly imposed upon all franchisees.

Notes Regarding Other Fees:

**Note A. Royalty Fees**

You will pay a weekly Royalty Fee. You will pay by electronic funds transfer. We may, upon 30 days prior written notice, require You to pay Royalties by check, pre-authorized check, electronic funds transfer or similar mechanism. We may, upon notice, require You to pay Your Royalty Fees on a different periodic basis.

**Note B. Local Marketing Fees**

We will deduct 2% of your Gross Revenues from your account via ACH and spend it on local marketing and advertising. We may, upon notice, require You to pay Your spend money marketing and advertising on a different periodic basis than monthly. The franchisor can verify your account to see if you have been spending money on advertising. You may spend additional funds on your own marketing.

**Note C. Training Expense.**

Initially, You must have two full-time people working the business. One must be responsible for business operations and management; the other must be, at all times, a Certified Melt n Dip Food Service Specialist (FSS). Both of you must successfully complete our initial training program. We will decide whether You and Your FSS successfully complete the initial training program based upon knowledge test results and our observations of Your ability to use the knowledge effectively.

During your franchise term, We will provide initial training to You and up to three additional persons as part of your Initial Fee. After the initial training, You must bear the cost of training additional FSSs or managers. In all cases, You are solely responsible for all salaries, compensation, benefits, travel and related expenses for trainees.

We may require You or Your FSS(s) to attend additional training at a location We determine. Generally, You must pay Our usual fee(s) for mandatory training. In any event, You are solely responsible for all salaries, compensation, benefits and travel related expenses of trainees.

We may provide or make available training materials and equipment for You or Your employees and may charge a fee. All training materials are Trade Secrets. You must require any of Your employees to successfully complete any training program(s) if We designate them as mandatory.

## Item 7. Estimated Initial Investment

	LOW AMOUNT	HIGH AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM MADE
Initial Fee (Note A)	\$45,000	\$45,000	Lump-sum via Check or Wire	At the execution of the franchise agreement except if a deferral or escrow is required by a certain State Regulatory Body, such as in Illinois.	Us
Travel & Living Expenses While Attending Initial Training	\$2,500	\$4,000	As Incurred	Before, During & After Training	Vendors, Airlines, Hotels, Car Rental Companies, etc.
Architect's Fee (Note B)	\$5,000	\$7000	As agreed with Landlord or Mortgage Lender	As Arranged	Landlord or Mortgage Lender
Rent & Security Deposit	\$10,000	\$20,000	As agreed with Landlord	As Arranged	Landlord
Leasehold Improvements (Note C)	\$150,000	\$200,000	As Incurred	As Arranged	Landlord, Lender or Contractor(s) and Vendors
Equipment (Note D)	\$75,000	\$125,000	As Incurred	As Arranged	Vendors, Leasing Cos or Lender

	<b>LOW AMOUNT</b>	<b>HIGH AMOUNT</b>	<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM MADE</b>
Furniture, Office Equipment & Software	\$25,000	\$40,000	As Incurred	As Arranged	Vendors, Leasing Cos or Lender
Signs	\$5000	\$10,000	As Arranged	As Arranged	Vendors, Leasing Cos or Lender
Licenses	\$200	\$600	Lump Sum	Before Opening	State, County, City
Insurance (Note G)	\$1,500	\$2,000	As Arranged	Monthly, quarterly or annually, as Arranged	Insurance Companies
Legal Fees (Note H)	\$1,500	\$5,000	As Incurred	As Incurred	Your Lawyer
Opening Inventory of Supplies	\$15,000	\$25,000	As Arranged	As Arranged	Us and Vendors
Additional Funds (3 months) (Note I)	\$15,000	\$30,000	As Incurred	As Incurred	Employees, Vendors, Utilities, Taxing Agencies, Etc.
Miscellaneous Opening Costs (Note J)	\$1,000	\$5,000	As Incurred	As Incurred	Vendors, Suppliers, Utilities, Tradesmen, Deposits etc.
<b>Total</b>	<b>\$351,700</b>	<b>\$518,600</b>			

### **Notes Regarding Initial Investment:**

#### **Note A: Initial Fee.**

The Initial Fee shall be paid at the execution of the franchise agreement, except if a State Regulatory body requires a deferral or escrow. See Exhibit G, State Law Addendum.

#### **Note B: Architect's Fee.**

You must obtain and maintain an appropriately zoned 2000 to 3000 square foot restaurant space that meets our requirements. If you already lease or own Premises, you should review your lease or purchase documents to evaluate the cost of real estate rental. If you do not have a location or even if you do have a location, you normally will require the assistance of a local architect to obtain a building permit for your leasehold improvements. Architecture fees generally range from \$4,500 to \$5,500 but could be higher in a metropolitan area

## Note C: Leasehold Improvements

You must make certain modifications and leasehold improvements to your Store's premises according to Melt n Dip standards. Melt n Dip must approve all plans and specifications. Melt n Dip estimates that leasehold improvement costs, including architectural fees, will be between \$150,000 and \$200,000 for a 2,000 to 3,000 square foot store, depending upon the store's exact size, its geographic location, if your landlord assumes some of the build-out costs in the form of either cash or free rent, the cost of construction materials such as steel, drywall, and flooring, and structural components and overall condition of the premises (e.g. "vanilla shell" or "grey box"). These figures are estimates only and your costs may be lower or higher. In some areas (e.g. certain major metropolitan areas) your costs could be significantly higher. You should use these estimates as a guide and investigate actual costs in your area. Our estimate does not include the cost of a licensed architect and general contractor. Leasehold improvements do not include exterior costs. These estimates do not include extraordinary costs such as developing in a historical property or architects costs (see Note B above).

The cost could be higher if you or your landlord request changes from the standard design and materials.

If you already lease or own your own premises, You should review your lease or purchase documents to evaluate the cost of real estate leasehold improvements. If not, lease situations will vary in rental amounts, lease terms, amount of space required, and tenant improvements required. Size, configuration and landlord requirements will be major factors in cost. Some landlords finance leasehold improvements by amortizing them over the lease term and charging a higher rental amount to cover the cost. You should attempt to determine Your costs and financing options before deciding on your premises.

Even if You are taking over or continuing in an existing Melt n Dip premises or another existing facility, We may require that you remodel, redecorate or make other changes to the premises to comply

with our specifications, at your cost. You must maintain the premises, at your expense, including furniture, fixtures, interior and exterior paint and landscaping, in accordance with the our specifications.

## Note D: Equipment.

If You are buying a fully equipped outlet from us the cost of mandatory equipment will be within this range. If You purchase from another franchisee or if you elect to acquire your mandatory equipment from other sources, it may cost more. We are not obligated to offer your business on a fully equipped basis.

The cost of equipment could vary widely depending primarily upon your circumstances. Some new franchisees will have existing businesses and will already have some of the equipment they will need. This may or may not be your situation. However, even if you have an existing Melt n Dip business that is fully equipped, you may need additional or different equipment if you are expanding your operations or to comply with our standards. There are factors beyond our control that could cause you to invest more in equipment.

If you lease the equipment, that may increase your monthly fixed expenses. If you borrow money to purchase the equipment, that may increase your monthly fixed expenses.

You must lease or purchase, as arranged by you, the following: prep tables, dining area tables and chairs. The fixtures you will need include décor accessories, wallpaper and lights. This

estimate includes the cost of equipment: hot holding unit, char broiler, hood and ventilation, flat top grill, fire suppression system, refrigerators, sandwich station refrigerator, soda fountain and range, walk-in cooler, walk-in freezer, Gelato display case and chocolate fountain, milkshake machine, juicer, espresso machine, coffee grinder, shelving, microwave, camera system, small wares, and dishwasher (can be leased).

Also needed: TVs 55 - 65 inches, Beverage Refrigerator, Water Refrigerator, Chest Freezer for storage, Turkish Coffee Machine, Under Counter Ice Maker, Countertop Freezer 2 door 62", Food heater, Heat Dispenser Pump, Countertop food warmer, worktop stainless steel table, Prep refrigerator 48", Prep refrigerator 72", Oven, Crepe Grills, working Freezer, one door refrigerator, Produce Sink, 3 compartment Sink, Deli Case Refrigerator, Hobart Mixer 30 Quart, Shelves over the sink, Surround System, Entrance Poles & Ropes, Open Sign, Bathroom Hand Dryers, Electrical Outdoor Store Sign, Hand Sink, Dipping well for ice cream scoops, and a Safe. Our estimates assume that all furnishings and equipment will be purchased, not leased.

#### Note E: Insurance.

We require You to purchase and maintain, at Your expense, throughout the term of this Agreement commercial general liability insurance, including bodily injury, property damage, personal injury, advertising injury, non-owned automobile, loss of business income, and broad form contractual coverage for liability assumed under this Agreement. Such insurance shall be on an occurrence basis and shall consist of combined single limit coverage of at least one million dollars per occurrence/two million dollars annual aggregate. You must purchase and maintain professional liability (errors and omissions) insurance and contractor's pollution liability insurance. You must purchase and maintain worker's compensation and employer's liability insurance with a reputable insurer acceptable to Us or with a state agency. You must provide Us with one or more certificates of insurance evidencing such coverages and naming Us as an additional insured as to each applicable policy. Such certificate(s) of insurance shall provide that the coverages under the respective policy(ies) may not be modified (except to increase coverage) or canceled until at least thirty (30) days prior written notice of such cancellation or modification has been given to Us. Upon Our request You must provide Us with a true copy of any insurance policy, including all endorsements. Every insurance policy must provide that coverage is primary/non-contributory. Every insurance policy must be with an insurance company that meets Our criteria as set forth in the Manual.

Keeping in mind that the price of insurance has varied widely in recent years, you should obtain a price quotation from Your insurance agent or broker and rely solely upon our estimate in planning to purchase the Franchise. Workers Compensation and employers liability insurance are extra and you should obtain prices from your state agencies or your insurance agent or broker.

The estimate of \$1,500 to \$2,000 is for an annual premium. These premiums can be paid monthly, quarterly or annual depending on what you arrange.

#### Note F: Legal.

Because of the variability of attorney's fees, this is, at best, an estimate. You should check with Your attorney or with several knowledgeable attorneys to determine the actual range of fees before signing the Franchise Agreement. You may need an attorney to assist and advise You in setting up Your business organization and reviewing contract documents. This estimate does not include any ongoing needs for legal services in connection with relationships with customers or vendors. Depending upon Your experience and staffing, You may also need accounting services, which might be extra. You should consult Your accountant for an estimate of fees. This estimate does not include accounting or consulting services.

## Note G: Additional Funds.

This estimates Your initial startup expenses. You may have to use some of these additional funds to pay for Our Management Assistance if you request from us extraordinary management or support services during the early stages of your Licensed Business. In addition, these estimates include payroll costs and various service costs such as utilities. These estimates do not include owner compensation or return on investment.

We relied on our experience in opening our 3 corporate-owned Melt n Dip restaurants, 2 in the Chicago area and 1 in Dearborn, Michigan when preparing these estimates. We relied on the 9 years of experience by Mr. Saed M. Khattab who is the Director, President & CEO, and Mr. Kahlid Habbab, General Manager of Melt n Dip Franchising, LLC, who has worked the last 4 years exclusively with Melt n Dip restaurants. They both have experience starting and operating Melt n Dip restaurants. We relied on their combined experience to compile this Additional Funds. This amount is the minimum recommended for your first three months of operations. The amount of working capital needed will depend on the time necessary to achieve cash flow to cover operating expenses. Shortfalls of capital may arise from independent factors such as labor shortages, delays in construction or delivery and installation of leasehold improvements and equipment, or possible recession. If you begin operating your restaurant with inadequate cash, you may experience a total loss of your investment. This category includes estimated payroll, utilities, vendor, advertising, promotion, and similar costs during the initial phase of a new restaurant, which we estimate will be three months, but we have not included or factored in any sales revenue your restaurant may have generated during this period. Your costs will depend on factors such as how much you follow our system and procedures, the local market for purchasing food products, the prevailing wage rate, competition, and the sales level reached during the initial period.

## Note H. Miscellaneous Costs.

This estimate is for a reserve to cover incidental unexpected costs. You may want to reserve more.

## No Refunds.

We will not refund any of the payments You make except as provided in Item 5, above.

## Item 8. Restrictions on Sources of Products and Services

You must purchase from Us or a supplier We approve certain equipment, supplies and inventory necessary to start or operate the Licensed Business. You must purchase from us or one of our approved suppliers all of your food and paper products except milk and fruit.

Franchisees are prohibited from selling any items or products that contain alcohol or pork derivatives.

As to other equipment, supplies and inventory, ou may purchase them from the vendor(s) of Your choice, but the item(s) must meet Our specifications. We issue specifications in writing and incorporate them in the Manual. These specifications include quality, accuracy, preparation, installation, application, delivery, performance, design and appearance. In some instances, You must purchase items that comply with Our reasonable subjective determination of whether they meet the standards and comport with the Melt n Dip image. If We have not provided specifications, You may purchase any items that reasonably meet the requirements of the Licensed Business.

In some locations, We will offer franchised Melt n Dip businesses on a fully equipped basis only. In that case, You must purchase the equipment and the initial inventory from Us or an affiliate or approved vendor. Your cost of equipment and initial inventory will be not more than Our cost for the items on a delivered and installed basis plus a reasonable margin of profit.

You must purchase from Us or a vendor We approve all items used to start or operate Your business that contain or bear the Marks. We and Our affiliate, Melt n Dip, Inc. are currently the only approved vendors for the initial equipment package. The cost of the equipment (furniture, fixtures and restaurant equipment) is outlined above in Item 7 under "Equipment" and Note D. We do not sell any of this.

The cost of the "inventory of supplies" is mainly food items and paper products that you will need to open your restaurant' you will buy these supplies from us. This amount will be \$7,500 to \$15,000 depending on how much you buy from us and how much you buy from other approved suppliers We or our designated vendor(s) will make a wholesale profit consistent with industry standards. All items that You purchase from approved suppliers must meet Our specifications. This includes advertising and marketing materials, forms, and promotional items. In addition, You must purchase the signs used to identify the Licensed Business(s) and Premises from a vendor we approve.

We publish a list of approved vendors and order procedures in the Manual. We may approve other vendors if You request it in writing or if a vendor requests it and if the vendor demonstrates to Our satisfaction that it is financially stable and can provide product(s) or service(s) that meet Our specifications and that are consistent with Our image. We may charge a reasonable fee to cover Our costs in evaluating a proposed vendor. We will give you a good faith estimate of our cost of evaluating a proposed vendor within a reasonable time after you make the request, but before we begin the evaluation process. We will normally make Our decision within sixty days. We reserve the right to disapprove any previously approved vendor whose performance falls below Our standards. We will make any approvals of new vendors or revoke approval of vendors in writing and will incorporate Our decision in the Manual.

During the fiscal year covered by Our Audited Financial Statements (EXHIBIT A), neither We nor our affiliate derived any revenue from vendors based on required purchases or leases by franchisees made in accordance with Our specifications.

Please review Item 11 for information regarding computer hardware and software You must purchase or license NCR software.

We may negotiate purchase arrangements with suppliers for Your benefit in the future. Except as described in this Item, We do not currently provide any material benefits to You based upon Your use of designated or approved sources except that You know that We have confidence that the designated or approved vendor can perform to Our specifications. No officer of Melt n Dip Franchising, LLC owns any interest in a supplier. We will supply our franchisees our criteria for approving our suppliers. We estimate that you will purchase 75% of your inventory and Equipment from us initially to open your restaurant, and then 75% of required food items and paper products from us on an ongoing basis. No suppliers compensate us when you purchase equipment, food items or inventory from them.

We do not have any purchasing or distribution cooperatives.

We estimate that Your purchases of goods and services from Melt N Dip Franchise, LLC will represent approximately 75% of Your overall purchases in opening and operating the Licensed Business.

## Item 9. Franchisee's Obligations

This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligation obligations in these agreements and in other items of this disclosure document.

Obligation	Section in Franchise Agreement	Item in Franchise Disclosure Document
a. Site selection and acquisition/lease	Articles 1, 6, 9, 12, 15, 17, Exhibits A, B, & E  Exhibit H (if applicable)	Items 5, 8, 9, 11, 12, & 17  Attachment B, Exhibits A, B & E  Attachment B, Exhibit H (if applicable)
b. Pre-opening purchases/leases	Articles 1, 6, 7, & 8 Exhibits A, B, C & D  Exhibit H (if applicable)	Items 5, 6, 7, 8, 9 & 17  Attachment B, Exhibits A, B, C & D  Attachment B, Exhibit H (if applicable)
c. Site development and other pre-opening requirements	Articles 1, 2, 4, 6, 7, 8, 11, 15 & 17, Exhibits A, B, C & D  Exhibit H (if applicable)	Items 5, 6, 9, 11, 12 & 17  Attachment B, Exhibits A, B, C & D  Attachment B, Exhibit H (if applicable)
d. Initial and ongoing training	Articles 1, 4, 5, 6, 7, 9, 11, 12, 13, 15 & 20	Items 5, 6, 7, 8, 9, 11, 14, 15 & 17
e. Opening	Articles 1, 2, 4, 6, 7, 8, 11, 12, 19, Exhibits A, B, C, D, E, F, G, H (if applicable), I & K	Items 5, 6, 7, 8, 9, 11, 12, 16, 17, 22, Attachment B, Exhibits A, B, C, D, E, F, G, H (if applicable) I & K
f. Fees	Articles 2, 3, 4, 5, 7, 9, 11, 12, 17, 18, 20 & Exhibit G; Exhibit L (if applicable)	Items 5, 6, 7, 8, 9, 10, 17, Attachment B, Exhibit G; Attachment B, Exhibit L (if applicable)
g. Compliance with standards and policies/Operating Manual	Articles 1, 2, 3, 4, 5, 6, 7, 11, 12, 13 & 15 & Exhibits C & D	Items 8, 9, 12, 13, 16, 17, Attachment B, Exhibits C & D

Obligation	Section in Franchise Agreement	Item in Franchise Disclosure Document
h. Trademarks and proprietary information	Articles 1, 2, 5, 6, 7, 11, 15, 16, 17, 18 (if applicable) & Exhibits A, B, D, F, G, I & L (if applicable)	Items 1, 2, 8, 9, 11, 12, 13, 14, 16, 17, Attachment B, Exhibits A, B, D, F, G, I & L (if applicable)
i. Restrictions on products/services	Articles 1 & 7 & Exhibit D	Items 1, 8, 9, 12, 13, 14, 16 & 17 & Attachment B, Exhibit D
j. Warranty and customer service requirements	Articles 1, 2, 3, 4, 5, 7, 8 & 15,	Items 1, 8, 9, 12, 13, 14, 15, 16 & 17
k. Territorial development and sales quotas	None	None
l. Ongoing product/service purchases	Articles 4, 5, 7 & 15, Exhibits C & D	Items 6, 8, 9, 16, & 17, Attachment B, Exhibits C & D
m. Maintenance, appearance and remodeling requirements	Articles 1, 6, 7, 9, 11, 12, 15, 16 & 17, Exhibits A, C & D	Items 6, 7, 9, 13, 15, 16 & 17, Attachment B, Exhibits A, C & D
n. Insurance	Articles 8 & 15	Items 7, 9 & 17
o. Marketing	Articles 1, 2, 3, 6, 7, & 15	Items 7, 8, 9, 13, 14, 16, 17 & 18
p. Indemnification	Articles 8, 11 & 15	Items 7, 9 & 17
q. Owner's participation/management/staffing	Articles 4, 5, 7, 11, 13, 15 & 17, Exhibits G & I	Items 7, 8, 9, 12, 13, 15, 16, & 17, Attachment B, Exhibits G & I
r. Records/reports	Articles 3, 7, 8, 12 & 15	Items 8, 9, 15 & 17
s. Inspections/audits	Articles 3, 7, & 15	Items 6, 8, 9, 16 & 17
t. Transfer	Articles 1, 6, 7, 11, 12, 13, 14, 15, 16, 17 & 18 (if applicable)	Items 6, 9, 13, 14 & 17
u. Renewal	Articles 9, 10 & 15	Items 6, 9 & 17
v. Post-termination obligations	Articles 5, 8, 10, 13, 14, 15, 16, 17 & 18 (if applicable)	Items 6, 9, 13, 14 & 17
w. Non-competition covenants	Articles 1, 5, 7, 11, 15, 16 17 & 18 (if applicable)	Items 9, 13, 14 & 17
x. Dispute resolution	Article 19	Items 9 & 17

## Item 10. Financing

We do not offer direct or indirect financing. We do not guarantee any of your loans notes, leases, or obligations.

## Item 11. Franchisor's Assistance, Advertising, Computer Systems and Training

### Pre-opening Obligations.

**Except as listed below, the Franchisor is not required to provide you with any assistance.**

Before You open Your Licensed Business, We will:

1. License you to use our Marks and System in connection with your Licensed Business (Franchise Agreement - Article 1.04);
2. Designate Your Territory (Franchise Agreement - Article 1.02);
3. Review and approve or disapprove Your selected business Premises (Franchise Agreement – Section 6.01 1 ) as follows:
  - a. You are responsible for securing a location. For your location, we provide building specifications for your real property space, we review your design plans, and we provide branding specifications for you (Section IV of the Franchise Agreement). Although We will provide you with any information We have about available locations, you should independently evaluate the proposed location. We do not own Premises and rent them to you. We approve the Site for your Franchised Business.
  - b. You are responsible for complying with all local ordinances and building permits and to obtain any required permits.
  - c. We require You to maintain and repair the Premises and equipment. We may require You to replace equipment to comply with Our current specifications and image every three years.
  - d. You must obtain and install the required equipment, signs, fixtures and supplies from approved suppliers. Please refer to Item 8 for more information.
  - e. The factors We will consider in reviewing any proposed site will be unique to that site. However, we will generally consider such factors as: demographics of the surrounding area; the type of nearby development; zoning; physical characteristics of the proposed site; the status of nearby competition; the economics of the proposed site; and access issues. No one factor or combination of factors will be determinative in every case.
  - f. In some cases, we will offer franchises on a fully equipped basis and You will purchase the Premises and equipment at Our installed and delivered cost plus a reasonable profit.
  - g. If you do not secure a location that We can reasonably approve within 180 days (or any extension We agree to) You will forfeit Your Initial Fee. We are interested in locations, not forfeitures, so if You are making a reasonably diligent effort to secure a good location, We would ordinarily expect to agree to reasonable extensions. We expect you to communicate with us about your efforts.

4. Loan You one or more operations manuals ("the Manual") (Franchise Agreement - Article 1); and
5. We provide you with the standards, specifications, and a list of designated and approved suppliers for all décor, equipment, signs, fixtures, opening inventory, supplies, products, and other materials you will need to operate the franchised business. (Section 6.04 of the Franchise Agreement).
6. We provide a listing of all products and services that your Franchised Business may offer (Franchise Agreement Section 1.04).
7. Provide initial training for You and one manager, if applicable, as follows:

Subject	Time Begun	Instructional Material	Hours of Classroom Training*	Hours of On The Job Training*	Location
Orientation to Melt n Dip	Before Opening	Manual, Lecture, Slides	1	NA	Bridgeview, IL
Objectives of Melt n Dip	Before Opening	Manual, Lecture, Slides	1	NA	Bridgeview, IL
New Office Development	Before Opening	Manual, Lecture, Slides	2	NA	Bridgeview, IL
Service Overview	Before Opening	Manual, Lecture, Slides	21	NA	Bridgeview, IL
Operations	Before Opening	Manual, Lecture, Slides	6	21	Bridgeview, IL
Support Systems & Computer Systems	Before Opening	Manual, Lecture, Slides	12	NA	Bridgeview, IL
Sales	Before Opening	Manual, Lecture, Slides	6	NA	Bridgeview, IL
Marketing & Advertising	Before Opening	Manual, Lecture, Slides	4	NA	Bridgeview, IL
People Management	Before Opening	Manual, Lecture, Slides	1	NA	Bridgeview, IL
Tours/Vendor Introduction	Before Opening	Manual, Lecture, Slides	1	NA	Bridgeview, IL

Subject	Time Begun	Instructional Material	Hours of Classroom Training*	Hours of On The Job Training*	Location
Certification Testing, Graduation & Send-off	Before Opening	Manual, Lecture, Slides	4	NA	Bridgeview, IL

\* All times are approximate and We may adjust them based upon Your experience and rate of learning. Although the person(s) indicated will coordinate and be responsible for training, they may bring in other appropriate persons to actually conduct the training or some portion of it.

Our instructors for training shall be Saed M. Khattab, President & CEO. Mr. Khattab has 11 years of experience working with restaurants and the last 9 years exclusively with Melt n Dip restaurants.

The other trainer will be Mr. Khalid Habbab who has 6 years of experience working in restaurants and the last 4 years exclusively with Melt n Dip restaurants.

We do not charge for the initial training for You or Your FSS (initial training for a total of three people is included in Your Initial Fee), but You must pay the travel and living expenses for You and Your employee(s). All training occurs at Our Bridgeview, IL training center or as designated by the Franchisor, and at one or more operating Melt n Dip business(es). Please refer to Item 2 for information regarding the experience of the training instructors. You and Your **FSS** must successfully complete the initial training program. We will decide whether You successfully complete the initial training program based upon knowledge test results and Our observations of Your ability to use the knowledge effectively.

**Obligations after opening. We will:**

1. Take any actions We deem appropriate to protect or defend the Marks or System (Franchise Agreement - Article 1);

2. Loan You one or more operations manuals ("the Manual"), which contains specifications and mandatory and suggested standards and procedures. This manual is confidential and remains Our property. We will modify this manual, but the modifications will not alter Your status and rights under the Franchise Agreement. (Franchise Agreement - Article 1). Attachment D includes a copy of the Manual's table of contents . The Manual currently contains approximately 74 pages.

3. Manage any Local Marketing Fees. You must provide a monthly accounting for how you spent your advertising dollars. (Franchise Agreement – Article 2)

4. Collect and manage funds received as rebates, discounts and allowances from vendors you do business with (Franchise Agreement – Article 2); and

5. Provide a periodic training program for Your manager(s) and for certain other employees, at Our regular charge for the training (Franchise Agreement - Articles 4). Please refer to Item 6 for information regarding the frequency and number of training programs We may require You to participate in.

After You open the Licensed Business, We expect to be in regular contact with You to discuss Your operation of the Licensed Business and to generally be of assistance. We plan to provide additional on-going training for You and Your manager(s) and employees at Our usual charges. The Agreement does not obligate Us to provide such services, however.

## Advertising

Local Advertising: We will deduct 2% of your gross revenues monthly and do advertising for you. We will do your main advertising and marketing, but you can also do additional advertising and marketing if you wish. . You may use your own marketing materials, but we must approve all advertising before you use it. Any advertising that you propose to use that has either not been prepared by us or has not been approved by us in the immediately preceding 12-month period must be submitted to us for our approval before you may use it. We will have 15 days after receipt of all materials to approve or disapprove of the proposed advertising materials. Unless we provide our specific approval of the proposed advertising materials, the materials are deemed not approved. Any materials you submit to us for our review will become our property, and there will be no restriction on our use or distribution of these materials.. We reserve the right to require you to include certain language in your local advertising, such as "Franchises Available" and our Website address and telephone number.

We do not have a national marketing program at this time and will not charge you a national marketing fee or to conduct a marketing program. Also, we do not have an Advertising Fund.

We do not have any advertising cooperatives so there is no requirement to participate in any such group.

Because We are new, We have no basis for providing information about how We spent any marketing funds during the last year. Any marketing funds not used during any one year remain in the marketing fund(s) for the next year. For more detail about the marketing programs, please review Items 6..

## Time To Open

The typical length of time between when You sign the Agreement or pay the initial franchise fee and the time when Your Licensed Business opens will generally be three to six months. The factors affecting this length of time include the time necessary for You to obtain Premises and equipment, schedule Your initial training, and hire and train any necessary employees. There may be unusual circumstances in which, because of delays, construction schedules and other events beyond Our control it takes longer than six months. On the other hand, it could be less than three months especially if you are taking over an existing restaurant.

## Training

Before opening Your Licensed Business, You and Your FSS, must successfully complete Our initial training program. We will conduct this training at our headquarters in Brookfield, IL, at your Restaurant and/or at another location we designate ("HQ Initial Training"). We will conduct this training at least quarterly. We will decide whether You successfully complete the initial training program based upon knowledge test results and Our observations of Your ability to use the knowledge effectively. We will ordinarily schedule the initial training program so that You will complete the pre-opening portions no more than 60 days before the scheduled opening of Your Licensed Business. You are responsible for all salaries, compensation and travel related expenses of persons receiving training, both initial training and on-going training. For further information regarding expenses related to the initial training, please review again Item 6.

Our Initial Training program is conducted in Bridgeview, Illinois, by our Saed Khattab or Khalid Habbab, whose biographical information is in Item 2. Each of our instructors has at least 5 years of experience relevant to the subject being taught, and at least 3 years of experience with us and/or our affiliate. We reserve the right to make changes in our training staff as we deem necessary and advisable without prior notice. We will provide instructors and training materials for the Initial Training of 3 trainees at no charge to you. The instructional materials used in the Initial Training consists of our Manual, marketing and promotion materials, and any other materials that we believe will be beneficial to our franchisees in the training process.

We may provide additional training programs at reasonable times and at locations selected by us during the term of the Franchise Agreement and will host national conventions at times and locations selected by us. You must attend the national convention. We may require attendance at other additional training programs. You must pay for all travel, lodging, and other costs of attending training and the national convention. We may charge a reasonable per diem fee for other training programs.

You are encouraged to schedule your training as soon as possible after executing the Franchise Agreement. We will not be liable for your costs or expenses if we terminate the Franchise Agreement because mandatory training is not completed to our satisfaction.

#### Computer Software

We require You to use certain computer equipment and software. Currently we are using NCR software. You may select any computer hardware that meets or exceeds Our current minimum requirements. You are responsible to maintain and repair Your hardware and to update or upgrade Your software. We may recommend or require additional hardware. We may require You to purchase specified point of sale or register equipment and software and/or portable hand-held devices. We currently require You to use the following computer hardware and software:

Notes:

1. We do not provide any support for computer hardware, "Proprietary Software" or NCR software operated on computer systems. The Melt n Dip Database and Melt n Dip Report are, collectively the "Proprietary Software". As report preparation and processing software and office management programs become more sophisticated, you may need to upgrade or supplement hardware and related items. You must upgrade your computers, modems and printers and purchase any additional equipment we specify to accommodate our software, or to improve the overall effectiveness and competitiveness of your business. We do not expect these upgrades to exceed \$3,000 per full time **FSS** used by you in any 24 month period.
2. The Melt n Dip Database is proprietary business management software. We are not obligated to provide support or upgrades to this program or its replacement program. If upgrades or support for this program are required, this will be provided by the vendor at an additional cost.
3. The Melt n Dip Report is a proprietary software program that allows FSSs to collect data while performing inspections and generate **service** reports. The Melt n Dip Report is typically operated on laptop or desktop computers. If you are acquiring your first franchise we will not charge you for your initial license fee for the Melt n Dip Report. New releases or Updates of the software may be provided at an additional cost.
4. Via our proprietary software, we have access to the information and data generated described above. There are no contractual limitations on our rights to access the information and data.
5. We require that You enter into a maintenance agreement with NCR Software for maintenance and updates. We have no contractual obligation to provide support for the software or hardware. The current annual cost of NCR software and the hardware required to operate it is about \$4,500 to purchase the equipment and \$7,200 plus tax for the the software which can be paid 1/12<sup>th</sup> (on a monthly basis). This initial \$4,500 equipment fee is included in the Furniture, Office Equipment & Software costs in Item 7 above. You are obligated by the Franchise Agreement to install and use any upgrades and updates that We may designate as mandatory. There are no limits on the frequency or cost of such upgrades or updates.

6. We currently require Cable, DSL or Fiber Optic Internet connection that is always on. We require You to have a static IP address—it is required for the security system. We recommend that You obtain your Internet access from a major supplier.
7. We do not require you to use Microsoft software, Adobe Software, Intuit Software, or other 3rd party vendors of required software programs. We have no contract with Microsoft or with any hardware manufacturer to provide You with service or support.
8. Although We require You to have a computer with a network interface card that will run the required software, We do not impose additional technical requirements at this time except that Your computers must be less than one year old at the time You begin using it in the Licensed Business. We may, in the future, impose additional requirements on new or replacement computer hardware. Based upon current market prices, You should be able to obtain an adequate new computer for less than \$2,500.00, including monitor, keyboard, mouse, printer and other peripheral devices. This \$2,500 expense is included in Table 7 under Furniture, Office Equipment & Software. You must install and use upgrades and replacement equipment when We require it, which We may do at any time. There is no contractual limit on how much an upgrade would cost.

## **Item 12. Exclusive Territory – 7 miles**

We will grant you an exclusive geographic territory ("Territory") , a 7-mile ring from your restaurant, which we will describe in Exhibit B to the Franchise Agreement. If You are not in breach of the Agreement, We will not locate or open a competitive business under the Marks and using the System in Your Territory, either company-owned or franchised, during the term of the Agreement. You are permitted to operate the Franchised Business only at one location and only within Your Territory. There are no restrictions on where customers may come from. You may only engage in direct marketing within your Territory, except with our prior approval or through a Regional Marketing Cooperative.

The Agreement excludes certain sites from Your Territory, even though they may be located within the boundaries of Your Territory. Exclusions are: Home shows, trade fairs, exhibitions and online product sales of related industry equipment. We, or a person We designate, may directly or indirectly sell and distribute goods and services at those locations, including the same goods and services You offer and may use the Marks, without paying You or any other franchisee. In addition, We may offer products and services under the same or a different trade name or trademark, including within Your Territory through alternative distribution methods, including through independent retail outlets, catalogs, mail order and through electronic media, including television, radio, the "internet" and through other new or emerging commercial technological media without paying You or any other franchisee. You may not market your goods and services over the Internet or through other alternative distribution methods without our prior written approval.

You may not engage in sales through alternative distribution channels or the Internet without Our prior written approval. We are not required to give You such approval. (Franchise Agreement – Article 1)

The Agreement permits Us to modify the boundaries and size of Your Territory if the population of Your territory increases by fifty percent or more from the estimated population at the time You sign the Agreement. If a modification reduces the size of Your Territory, and You are in full compliance with the Agreement, You will have a sixty day first right of refusal to license and

operate another Melt n Dip franchise in the newly created territory. If a modification reduces the size of the territory of more than one franchisee, the affected franchisees will have rights of refusal in the order of the amounts of population severed from each territory; but if more than one territory is reduced by approximately the same percentage, then the affected franchisees will receive rights of refusal in the order of their seniority as Melt n Dip franchisees in the affected territories.

In determining the original size and boundaries of Your Territory, We will consider demographic and other factors that We deem appropriate, including the number of people living within the logical market area, the number and size of competitors, traffic patterns, the competitive situation, natural determinants, and economic data. We will not necessarily give any single factor or combination of factors controlling weight. Your Territory will not be identical to that of any other franchise and You must make Your decision whether to purchase the franchise based upon Your knowledge of Your proposed Territory.

If you are in full compliance with the Agreement and with the Manual, we may permit you to acquire expansion territory. An expansion territory is adjacent territory that We have not assigned to another franchisee. The current price of such expansion territory is \$0.10 per person residing in the expanded territory based upon currently available governmental demographic data. The purchase price for expansion territory is payable, in full, when You sign an addendum for the expansion territory. We will determine the minimum and maximum size and configuration of an expansion territory and may impose reasonable conditions, including, but not limited to the opening of a satellite office in the expansion territory.

Except as described above, We and Our affiliate(s) will not establish other franchised or company-owned Melt n Dip offices within Your Territory. Except as described above, We will not alter Your Territory. Your continued Territory rights are not affected by your sales volume, market penetration or any other contingency. We do not have plans to operate or franchise a business under a different trademark that sells or will sell goods or services similar to those of the franchisee.

You may not relocate your restaurant to a new site without Melt n Dips' prior written consent, which we may grant or deny as it deems best. Whether or not Melt n Dip allows relocation depends on what is in the Store's and the system's best interests. Factors include, for example, the proposed area, its proximity to other Stores, whether you are complying with your Franchise Agreement, whether you properly de-identify the old location, lease obligations, and how long it will take you to open at the new location. If we permit you to relocate, you will not pay a new initial franchise fee but you must pay our relocation fee of \$1,000.

You are not granted any other options, rights of first refusal or similar rights to acquire additional territories or franchises under the Franchise Agreement.

### **Item 13. Trademarks**

We give You the right to use the name "Melt n Dip," and other trade names, trademarks, service marks, trade dress and logos We currently use or which We may adopt or approve (the "Marks") in the Licensed Business. You must follow Our rules when You use the Marks. You may only use the Marks exactly as We specify. You may not use any of the Marks in connection with the offer or sale of any unauthorized product or service.

We own the right to use the name and service mark "Melt n Dip" and we have a federal registration for our principal service mark, Melt n Dip. Our service mark is on the Principal Register of the United States Patent and Trademark Office (USPTO). Our registration date is September 28, 2021, and our identification number is 6,500,650. We have filed all of the required affidavits. We have not renewed our mark yet.

We also have filed for a service mark, "SATISFY YOUR SPIRIT" on December 15, 2020. Our service mark was approved and is on the Principal Register of the United States Patent and Trademark Office (USPTO). Our registration date is November 2, 2021, and our identification number is 6543969. We have filed all of the required affidavits. We have not renewed our mark yet.

There are no presently active determinations of the Patent Office, the Trade Mark Administrator of any state or any court, any pending interference, opposition or cancellation proceeding or any pending material litigation involving the Marks that is relevant to Your ability to use the Marks in connection with the Licensed Business.

There are no agreements that significantly limit Our rights to use or license You to use the Marks in any manner material to the Licensed Business.

You must inform Us if You become aware of any misuse or misappropriation of the Marks or anything confusingly similar. You may not start any litigation relating to the wrongful use of the Marks without Our prior written approval. We may take whatever action We deem appropriate to protect or defend the Marks or System, but We need not take any action.

If a third party sues You claiming that You are infringing the trademark or trade name of the third party by using the Marks, You must inform Us immediately. We will indemnify You as to that claim only and have the right to control the litigation.

It may become necessary in Our sole discretion, because of trademark litigation, a decision of the Patent and Trademark Office, or otherwise, to change the Marks. In that event, You must immediately adopt the new or revised Marks and Our maximum liability, including for any purported goodwill, is to reimburse You for the actual out-of-pocket costs of changing the principal signs identifying Your Premises.

We do not know of any person claiming or having superior rights to any of the Marks or of any infringing uses of the Marks that could materially affect Your use of the Marks.

#### **Item 14. Patents, Copyrights and Proprietary Information**

We do not currently own any rights to, or licenses in, any patent or copyright that is material to the franchise system. We have copyrighted and will continue to copyright the Manual and revisions of all Manuals and Handbooks and construction plans loaned to You, and all training materials We provide or sell to You and Your employees. We have not registered any copyrights, but may in the future.

The Manual(s), the contents of each, and certain other information We will provide to You, including certain recipes and annual reports on marketing funds expenditures, if required, are all confidential trade secrets. All information We provide to You or which You develop in the course of performing under the Franchise Agreement which is not generally available to the public and which a competitor might find valuable are trade secrets. If we designate something as a "Trade Secret", You must treat it as a Trade Secret whether or not it would otherwise meet any definition of "Trade Secret". You are responsible for protecting all trade secrets and You cannot transfer them or sell them to anyone at any time. You must require **FSS(s)** and other employees who have access to Trade Secrets to comply with Your obligations under the Franchise Agreement to protect Our Trade Secrets.

Melt n Dip does not have any material determination of the United States Patent and Trademark Office, the United States Copyright Office, or a court regarding a patent or copyright. Melt n Dip does not have an agreement to limit the use of a copyright. Melt n Dip does not know of any infringing uses that could materially affect your use of any copyrighted material.

While Melt n Dip has no contractual obligation to defend you against or indemnify you for a third-party copyright infringement claim (whether you bring it to Melt n Dip's attention or Melt n Dip

independently learns about it), Melt n Dip intends to hold you harmless from this type of claim if you used the copyrighted materials in compliance with the Franchise Agreement. Melt n Dip intends to protect its copyrights to the extent they are material to the Melt n Dip system. Melt n Dip may control all litigation involving its copyrights.

### **Item 15. Obligation to Participate in the Operation of the Franchised Business**

You must either devote Your full time and effort to managing and operating the Licensed Business or delegate its management or operation to a responsible person. You must reserve and exercise ultimate authority and responsibility over operation and management of the Licensed Business. If You delegate management and operation to a manager, the manager must first successfully complete Our initial training program within sixty days after assuming the role of manager. If You are a corporation or other entity, each owner must personally guaranty the Agreement and the entity must designate a competent manager. We do not require the designated manager to be an equity owner of the franchised business. You must, at all times, employ at least one **FSS**. You must require each manager and employee to whom You disclose our trade secrets to be subject to the trade secrets section of the Franchise Agreement (Franchise Agreement – Article 5). You must require every manager and employee with access to trade secrets to sign a confidentiality agreement. The current form of confidentiality agreement is Exhibit I to the Franchise Agreement.

### **Item 16. Restrictions on What the Franchisee May Sell**

You may offer for sale only products and services We approve. Franchisee is prohibited from selling any item or product that contains alcohol, pork, or pork derivatives. The Franchise License will be revoked for failure to abide by these terms. You must offer restaurant, food, and you may offer event catering services under Our Marks and following Our System and of a type, quality and variety consistent with the Melt n Dip image. You must obtain Your supplies and equipment from suppliers We select or approve. You are obligated to purchase products from Us including but not limited to: Crepe Mix, Waffle Mix, Chocolate, Gelato, Éclairs, and paper products we designate. You must use only scientific testing laboratories that We select or approve. We have sole discretion in determining what constitutes the Melt n Dip image. The image is constantly evolving as markets change and evolve. You may not engage in sales through alternative distribution channels or the Internet without Our prior written approval. We are not required to give You such approval.

We may change the System or any part of the System at any time, and as changed it will remain the System. We own any improvements or changes in the System whether We, You or other franchisees develop them and have the right to adopt and perfect such improvements or changes without compensating You. If We modify the System, You must, at Your own expense, adopt and use the modification(s) as if they were part of the System at the time You signed the Agreement. There are no restrictions on Our right to modify the types of goods and services You will offer except that We will remain primarily a seller of **restaurant, food, and event catering services**. If you do catering, you must report these sales as well.

## Item 17. Renewal, Termination, Transfer and Dispute Resolution

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

	Provision	Section in Franchise Agreement	Summary
a.	Term of the Franchise	Article 1	10 years.
b.	Renewal or extension of the term	Article 9	If You are in good standing and We continue the franchise system in Your area, We may permit You to renew for another term under the then-current agreement, which may be materially different than the agreement We are now offering.
c.	Requirements for You to renew or extend	Article 9	Be in good standing with Us, sign new agreement, update or replace Restaurants and equipment, retain Premises, give 12 months notice and pay a fee of not more than 2/3 of the then-current Initial Fee.  You may be asked to sign a contract with materially different terms and conditions than your original contract, except the boundaries of your territory will remain the same and the fees on renewal will not be greater than the fees that we then impose on similarly situated renewing franchisees
d.	Termination by You	Article 18	At any time; upon 90 days notice; no cause required; sign agreement including general release; and pay fee depending upon whether You want Us to waive the post-term non-compete agreement. For a higher fee, We will agree to not compete with You for a period of time in any territory You had at the time of Termination. See Article 18 and Exhibit L to the Franchise Agreement.
e.	Termination by Franchisor without cause	None	

	Provision	Section in Franchise Agreement	Summary
f.	Termination by Franchisor with cause	Article 15	We may terminate only for cause. We may, in lieu of terminating your franchise, terminate your territorial rights and leave your franchise in full force and effect; however, terminating Your territorial rights does not limit Our rights thereafter to terminate your franchise for the same or a different cause.
g.	"Cause" defined--defaults which can be cured	Article 15	You have 72 hours to cure: failure to pay Us or Our affiliate or another Melt n Dip franchisee; unauthorized assignment; abandonment (even if unintentional); You become insolvent; failure to pay any taxes before delinquent; sublicensing of Marks; impasse among owners of Franchise; refusal to permit an audit; violation of any law or rule (including any health codes, rules or regulations); conviction of a felony; failure to operate properly using the Marks; unethical or dishonest business dealings; failure to maintain insurance; failure to timely deliver estoppel certificate; or termination of any other agreement between You and Us for cause. You have 30 days to cure any breach of the Agreement for which the Agreement does not specify a shorter period. You sell pork-related products
h.	"Cause" defined--defaults which cannot be cured	Article 15	Non-curable defaults: repeated defaults, even if cured; You are adjudged bankrupt; assignment for benefit of creditors; abandonment of business; convicted or plead guilty to violating law relating to Licensed Business.

	Provision	Section in Franchise Agreement	Summary
i.	Your obligations on termination/nonrenewal	Articles 16 & 17	No further use of Marks, telephone numbers, telephone listings, computer software, trade secrets or the Manual; certain notification obligations; payment of sums due to Us; We have option to lease or assume lease for Your Premises; sign document(s) to transfer telephone numbers; continuing royalties on pending sales, if any; and We have option to purchase any part of Your business assets. If We elect to assume Your lease and to operate a Melt n Dip business from Your Premises, You must cooperate in a changeover procedure, including notifying the landlord of the change of tenant, conducting an inventory, permitting Us to use Your furniture, fixtures and equipment for up to 60 days, and permitting Us to communicate directly with Your employees, vendors and customers in order to facilitate a smooth transition.
j.	Assignment of contract by Franchisor	Articles 12, 14 & 21	No restriction on Our right to assign except that if Our assignee assumes all of Our obligations to You then We are free of further liability to You.
k.	"Transfer" by You--definition	Articles 11, 12, 13 & 14	Includes any assignment, transfer, sale, sublease or encumbrance of the Agreement, the Franchise, the assets of Your business, the Premises, or of any ownership interest in the Franchisee if You are a corporation, partnership or limited liability company or other form of Entity.
l.	Franchisor's approval of transfer by franchisee	Articles 11, 12, 13 & 14	Franchisor has the right to approve or disapprove all transfers.

	Provision	Section in Franchise Agreement	Summary
m.	Conditions for Franchisor's approval of transfer	Articles 11, 12, 13 & 14	You are current in all fees to Us; You are not in material breach of the Agreement; You have paid all debts of Your business; new Franchisee signs release of claims against Us for representations You made; You sign a mutual termination and release of the Agreement; We receive transfer fee (\$7500); new Franchisee signs the then-current form of Agreement (except preserving Your financial terms for balance of Your term); new Franchisee qualifies; new Franchisee successfully completes initial training program; new Franchisee obtains rights to Your Premises lease, if applicable; and We receive 30 day right of first refusal. The fee to transfer to an entity with identical ownership is \$500.
n.	Franchisor's right of first refusal to acquire Your business	Article 12 & 17	We may match any offer for Your business.
o.	Franchisor's option to purchase Your business	Article 17	On termination, We may purchase any part of Your business at the fair market value of the tangible personal property purchased.
p.	Your death or disability	Articles 12 & 13	Your heirs or personal representative must, within 90 days, either (i) request the right to continue to operate the business, subject to Article 13 of the Agreement except that no transfer fee will be payable, or (ii) sell the Licensed Business to a third party, subject to Article 13 of the Agreement. If We deny a request to continue to operate the business, the 90 days to sell begins on the date of Our denial. The same applies if You become disabled as defined in Article 14 of the Agreement.
q.	Non-competition covenants during the term of the franchise	Article 16	No involvement in any competing business anywhere.

	Provision	Section in Franchise Agreement	Summary
r.	Non-competition covenants after the franchise is terminated or expires	Articles 16 & 18 (if applicable)	For 24 months, You must not compete with Us within 20 miles of the boundaries of Your Territory, solicit or divert any of Our customers or vendors or customers or vendors of any other franchisee, disclose any trade secrets, or solicit or hire any of Our employees, former employees or franchisees. For 24 months, You will not be employed by or in business with any person or entity that does any of those things.
s.	Modification of the agreement	Article 21	Only by written agreement; We may modify Manual at any time.
t.	Integration/merger clause	Article 21	Only the terms of the Agreement are binding (subject to state law). Any other promises or agreements may not be enforceable. Notwithstanding the foregoing, nothing in any agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.
u.	Dispute resolution by arbitration or mediation	Article 19	Except for actions for the sole purpose of collecting unpaid monies, including franchise fees, royalties or Marketing Fees or to enforce trademark or trade secret rights and covenants against competition, We will settle all disputes with You by Arbitration, which will only occur after the parties try informally to resolve the dispute and participate in mediation.
v.	Choice of forum	Articles 19 & 21	Litigation or arbitration must be in the state of <b>Illinois</b> .
w.	Choice of law	Article 21	The law of the state where Your Licensed Business is located applies.

## Item 18. Public Figures

We do not currently use any public figure to promote Our franchise.

## Item 19. Financial Performance Representations

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Melt n Dip, 4820 Forest Ave., Brookfield, IL 60531, phone number (708) 275-5839, the Federal Trade Commission, and the appropriate state regulatory agencies.

## Item 20. Outlets and Franchisee Information

Table No. 1  
Systemwide Outlet Summary

Outlet Type	2022	2021	2020
Franchised	6	0	0
Company-Owned	2	3	2
Outlets at the Start of the Year	3	2	2
Outlets at the End of the Year	6	3	2
Net Change	3	1	2

Table No. 2  
Transfers of Outlets from Franchisees to New Owners (other than the Franchisor) - 2022

State	Year	Number of Transfers
0	0	0

**Table No. 3**  
Status of Franchised Outlets - 2022

State	Year	Outlets at Start of Year	Outlets Opened	Terminated	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
IL	2020	1	0	0	0	0	0	0
IL	2021	2	0	0	0	0	0	0
IL	2022	2	2	0	0	0	0	4
MI	2021	0	1	0	0	0	0	1
MI	2022	1	0	0	0	0	0	1
WI	2022	0	0	0	0	0	0	0

**Table No. 4**  
Status of Company-Owned Outlets

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year

**Table No. 5**  
Projected Openings As of December 31, 2023

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet In The Next Fiscal Year	Projected New Company-Owned Outlet In The Next Fiscal Year
IL	1	2	0
MI	0	0	0
FL	1	1	0
IN	0	1	0
GA	0	1	0
TX	0	1	0

There are no current franchisees and we have not sold any franchises as of the issuance date. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last three fiscal years, we have not had any franchisees sign confidentiality provisions that would restrict their ability to speak openly about their experience with Melt n Dip.

There are no trademark-specific organizations formed by our franchisees that are associated with Melt n Dip.

## **Item 21. Financial Statements**

Attachment A contains Our Unaudited Balance sheet dated December 31, 2022, for the period then ending December 31, 2022. Our fiscal year ends on December 31.

## **Item 22. Contracts**

We urge You to read all of the contracts and agreements carefully. This Franchise Disclosure Document cannot possibly contain all of the terms of the various agreements. It is important that You understand all of those terms. We have attached the following contracts and agreements:

Attachment B - Franchise Agreement

with:

- Exhibit A, Location of Licensed Business;
- Exhibit B, Territory;
- Exhibit C, Required Equipment;
- Exhibit D, Items Pursuant to Specifications
- Exhibit E, Lease Conditional Assignment Agreement
- Exhibit F, Assignment of Telephone Numbers
- Exhibit G, Personal Guaranty
- Exhibit H, Master Lease (if applicable)
- Exhibit I, Trade Secrets and Confidentiality Agreement
- Exhibit J, Mutual Termination and Release Agreement
- Exhibit K, Consent, Waiver and Release for Training
- Exhibit L, Release from Continuing Obligations
- Exhibit M, Confidentiality Agreement—Additional Information

## **Item 23. Receipt**

A receipt for this Franchise Disclosure Document is attached at the end of this document. You must remove one copy, sign it and return it to Us.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.

**ATTACHMENT A - Financial Statements**  
**PROFIT AND LOSS JANUARY THROUGH DECEMBER 2022**

R.A & ASSOCIATES  
 ACCOUNTANTS, CONSULTANTS, TRANSLATORS

11:04 AM  
 05/31/23  
 Accrual Basis

Melt N Dip Franchising LLC  
 Profit & Loss  
 January through December 2022

	<u>Jan - Dec 22</u>
Ordinary Income/Expense	
Income	
Sales	1,075,015.84
Total Income	1,075,015.84
Cost of Goods Sold	
Beginning Inventory	0.00
Ending Inventory	-277,633.00
Food Purchases	1,108,325.00
Total COGS	830,692.00
Gross Profit	244,323.84
Expense	
Accounting	1,200.00
Advertising and Promotion	29,150.00
Alarm & Security	1,500.00
Bank Service Charges	3,520.00
Car & Truck Expenses	59,852.00
Depreciation Expense	191,315.00
Equipment Rental	7,350.00
Insurance Expense	13,499.00
Internet Expense	3,000.02
Laundry & Cleaning	5,612.00
Legal & Professional	1,450.00
Office Supplies	5,396.00
Phone	1,440.00
Printing	5,936.00
Rent Expense	114,900.00
Repairs and Maintenance	46,112.00
Salaries & Wages	27,975.00
Software	5,400.00
Taxes & Licenses	4,374.30
Uniforms	4,500.00
Utilities	40,590.02
Waste Removal	6,150.00
Total Expense	579,721.34
Net Ordinary Income	-335,397.50
Net Income	-335,397.50

I, Raed Alkhani as an enrolled agent with license no. EA 00106624, after a thorough review of the bank statements, I certify that the Income Statement above reflects the most correct and accurate income and expenses for MELT N DIP Franchising LLC.

If anyone has any questions, please feel free to contact me at the address and phone no. on this cover letter.

Sincerely,

RAED ALKHANI



5/30/2023

R. A & ASSOCIATES, INC  
 7667 W. 95th Street  
 Suite 105  
 Hickory Hills, IL 60457  
 USA

7667 W. 95th Street Suite 105 Hickory Hills, IL 60457 Phone: (708) 945-0798 Fax: (708) 5751986  
 raandassociates@att.net

**BALANCE SHEET AS OF DECEMBER 31, 2022**

**R.A & ASSOCIATES  
ACCOUNTANTS, CONSULTANTS, TRANSLATORS**

**Melt N Dip Franchising LLC  
BALANCE SHEET AS OF 12/31/2022**

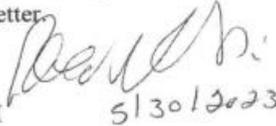
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
CASH IN HAND	597,545	
ACCOUNT RECEIVABLES	173,811	
OTHER RECEIVABLES	0	
ENDING INVENTORY	277,633	
<b>TOTAL CURRENT ASSETS</b>		<b>1,048,989</b>
<b>FIXED ASSETS</b>		
CONSTRUCTION & DECORATION	925,000	
(CONSTRUCTION & DECORATION ACCUMELATED DEP.)	(65,000)	260,000
EQUIPMENTS	546,200	
(EQUIPMENTS ACCUMELATED DEP.)	(109,240)	436,960
FURNITURE & FIXTURES	85,375	
(FURNITURE & FIXTURES ACCUMELATED DEP.)	(17,075)	68,300
<b>NET FIXED ASSETS</b>		<b>765,260</b>
<b>OTHER ASSETS</b>		
	0	
<b>TOTAL ASSETS</b>		<b>1,814,249</b>
<b>LIABILITIES</b>		
<b>CURRENT LIABILITIES</b>		
ACCOUNTS PAYABLE	87,601	
OTHER CURRENT LIABILITIES	6,712	
<b>TOTAL LIABILITIES</b>		<b>94,313</b>
<b>NON CURRENT LIABILITIES</b>		
INSTALLMNTS	0	
LOAN	0	
		0
<b>EQUITY</b>		
PARTNERS ACCOUNTS	2,055,334	
RETAINED EARNINGS ( LOSS )	(335,396)	
<b>TOTAL EQUITY</b>		<b>1,719,936</b>
<b>TOTAL LIABILITIES AND EQUITY</b>		<b>1,814,249</b>

I, Raed Alkhani as an enrolled agent with license no. EA 00106624, after a thorough review of the bank statements, I certify that the Balance Sheet above reflects the most correct and accurate assets and liabilities for MELT N DIP Franchising LLC.

If anyone has any questions, please feel free to contact me at the address and phone no. on this cover letter.

Sincerely,

RAED ALKHANI



5/30/2023

R. A & ASSOCIATES, INC  
7667 W. 95th Street  
Suite 105  
Hickory Hills, IL 60457  
USA

7667 W. 95th Street Suite 105 Hickory Hills, IL 60457 Phone: (708) 945-0798 Fax: (708) 5751986  
raandassociates@att.net

## **ATTACHMENT B - Franchise Agreement**

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**FRANCHISE AGREEMENT**

Franchise Agreement No.: \_\_\_\_\_

DATED: \_\_\_\_\_ ("Effective Date")

BETWEEN: **Melt n Dip Franchising, LLC** ("Franchisor")

AND: \_\_\_\_\_ ("Franchisee")

\_\_\_\_\_

\_\_\_\_\_

**TERRITORY:**

\_\_\_\_\_

**RECITALS**

WHEREAS Franchisor has developed a unique system for identifying, operating and marketing a fast casual restaurant business offering **restaurant** operating under the Marks and using the System (hereinafter the "System");

WHEREAS Franchisor owns the trade name "**Melt n Dip**" and related logos and marks and trade dress as more fully described in this Agreement (hereinafter the "Marks");

WHEREAS, as between Franchisor and Franchisee, Franchisor is the sole and exclusive owner of all goodwill associated with and to become associated with the Marks, the value of which Franchisee acknowledges;

WHEREAS Franchisee recognizes the advantages and value of the System and Marks and desires to obtain a license for a "**Melt n Dip**" business (hereinafter the "Licensed Business");

WHEREAS Franchisee recognizes the necessity and value of maintaining high standards and uniformity of appearance, image, products, services and customer relations in conformity with the System as Franchisor may reasonably modify it from time to time;

WHEREAS Franchisee is aware of the risks, business and otherwise, associated with owning an **Melt n Dip** Licensed Business and has independently evaluated those risks without relying upon any representations from Franchisor or Franchisor's agents regarding revenues, profits or probability of success, excepting only those representations and accompanying cautions contained in Franchisor's Franchise Disclosure Document—revenues, profits or probability of success being affected primarily by factors beyond Franchisor's control, including Franchisee's skill, personality, diligence and dedication and general regional or local economic or demographic conditions; and

WHEREAS, Franchisor, in reliance upon Franchisee's representations, is willing to provide certain training and other services and to grant a license, but only on the terms of this Agreement, which terms Franchisee understands and accepts and both parties acknowledge to be reasonable and material;

NOW THEREFORE, for and in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, and each party fully intending to be legally bound hereby, Franchisor and Franchisee mutually agree as follows:

## **Article 1 - License And System**

### *1.01 Grant Of License.*

1.01.01 Subject to the terms and conditions of this Agreement, Franchisor grants to Franchisee a non-exclusive license to operate one (1) office using the System and Marks for a period of ten (10) years from and after the Effective Date of this Agreement, said office to be located only at the location specified in Exhibit A hereto, or at such other location within the Territory as Franchisor may approve in writing. Franchisee, based upon Franchisee's own research and knowledge, shall select a location within 180 days after signing this Agreement and that location shall be accurately stated in Exhibit A. Notwithstanding anything herein to the contrary, if the Licensed Business is to be located upon real property subject to a master lease under which Franchisor or a related company is the primary lessee, this Agreement shall terminate without further notice upon the earlier termination or expiration of the current term of any applicable master lease for the Premises. Franchisor is under no obligation to extend or exercise any option to extend any master lease. If a master lease is involved, a copy of the master lease is attached as Exhibit H to this Agreement. If there is no master lease, this Agreement shall terminate upon expiration or termination of Franchisee's lease (a) upon Franchisee's written election; or (b) upon Franchisor's election if Franchisee does not obtain an acceptable lease at an approved location at least (90) days before expiration of Franchisee's lease. Franchisee shall not move Franchisee's Premises without Franchisor's prior written approval. Subject to Franchisee complying with applicable laws and ordinances, Franchisee may operate the Licensed Business, in whole or in part, from Franchisee's residence, provided Franchisee's residence is within Franchisee's Territory.

### *1.02 Location And Territory.*

1.02.01 Except as specifically permitted by this Agreement, Franchisee's **Melt n Dip** office shall be the only **Melt n Dip** office to operate within the geographical territory described in Exhibit B hereto (the "Territory"). Franchisor will not locate or open a competitive **Melt n Dip** office in the Territory, either company-owned or franchised, during the term of this Agreement, so long as Franchisee is not in breach of this Agreement. However, there shall be no geographic restrictions upon where customers may come from for any **Melt n Dip** office, company-owned or franchised. Franchisee shall not distribute or publish advertising or otherwise market outside Franchisee's territory except in compliance with this Agreement and the Manual.

1.02.02 Exclusions from Territory. The following, and any substantially similar locations, shall be excluded from Franchisee's **Melt n Dip** Territory: Home shows, trade fairs, exhibitions and online product sales of related industry equipment. As to such excluded locations, Franchisor shall have the right, directly or indirectly, to sell and distribute goods and services, including those normally offered by Franchisee and using the Marks, without compensation to Franchisee or any other franchisee(s). Franchisor may, directly, indirectly, or through a franchisee or licensee offer products and services under the same or a different trade name or trademark, including within Franchisee's Territory through alternative distribution methods, including through catalogs, mail order, independent retail outlets, and through electronic media, including television, radio, the "Internet" and through other new or emerging commercial technological media. Franchisor shall have no obligation to share any revenues from alternative distribution activities with Franchisee. Without limiting the foregoing, Franchisee shall not, without Franchisor's prior written approval, which

approval may be withheld for any reason whatsoever, use the Marks or any part of the Marks or anything similar to the Marks as part of a domain name or in any other manner in connection with any commerce on the Internet or similar media. Franchisee shall not use the Marks in or market through alternative distribution methods without Franchisor's prior written approval, which approval may be withheld for any reason whatsoever.

1.02.03 Modifications of Territory. The parties agree that the estimated population of the Territory contained in Exhibit B is a reasonable estimate of the population of the Territory based upon available governmental data. In the event the population of the Territory increases by fifty percent (50%) or more from the estimated population contained in Exhibit B, based upon reliable governmental data (United States Bureau of the Census or successor if in the United States), Franchisor shall have the option of dividing Franchisee's Territory and creating a new Territory, which may include portion(s) of the territories of other franchisees. If, at the time Franchisor exercises the option to modify Franchisee's Territory, Franchisee is in full compliance with all of the terms of this Agreement and has had no notices of default within the prior twelve calendar months, then Franchisee shall have a sixty (60) day first right of refusal to license and operate another **Melt n Dip** office in the newly created territory. If Franchisor's modification of Territory boundaries reduces the size of more than one franchisee's Territory, the franchisees shall receive rights of refusal in the order of the percent(s) of population severed from their respective territories as determined by Franchisor. If the territories of two or more franchisees are reduced by substantially equal percentages of population, the franchisees will receive rights of refusal in the order in which they executed their original franchise agreements for the affected territories.

1.02.04 Expansion Territory. Subject to Franchisor's prior written approval, if Franchisee is in full compliance with this Agreement and the Manual, Franchisee may be permitted to acquire additional adjacent territory that has not been assigned to another franchisee. The price of such expansion territory shall be \$0.10 per person residing in the expanded territory based upon currently available governmental demographic data. The purchase price for expansion territory is payable, in full, upon the signing of an addendum granting the expansion territory to Franchisee. Franchisor, in its sole discretion shall determine the minimum and maximum size and configuration of an expansion territory and may impose reasonable conditions, including, but not limited to the opening of a satellite office in the expansion territory.

#### *1.03 Licensed Business.*

1.03.01 The term "Licensed Business" means a business in which the Franchisee engages in the business of **restaurant, food, and event catering services**. Franchisee will provide these services to both individuals and businesses, operating under the Marks and using the System (hereinafter the "System"). Franchisor shall have the right to add or delete or change product and service offerings at any time and Franchisee agrees to comply with such changes.

#### *1.04 System And Marks.*

1.04.01 Franchisee agrees to operate the Licensed Business only according to the System and only under the Marks pursuant to the Manual. Franchisee acknowledges that Franchisor owns all rights to the System and the Marks and Franchisee has only such rights as this Agreement grants. For purposes of this Agreement, the "System" includes the rights and obligations set forth in this Agreement, the Operating Manual furnished to the Franchisee as amended from time to time, Franchisor's name, training, formulas, methods of operation, reputation, advertising, system and similar benefits pursuant to which the Franchisee operates the Licensed Business. Franchisor's unique trade dress is part of the Marks Franchisee shall offer and sell all products and services, and only those products and services authorized by Franchisor and specified in the Operating Manual or as designated in writing by Franchisor. Franchisor may unilaterally add and delete products or services to or from the Permitted Products and Services at any time. Franchisor may also designate any products or services as optional.

1.04.02 Unless otherwise first approved by Franchisor in writing or unless otherwise required by applicable law, Franchisee agrees to do business only under the name "**Melt n Dip**". Franchisee shall not use the Marks in any manner not specifically approved by Franchisor, including, without limitation, as part of any domain name or other address on any portion of the Internet or any new medium, including as part of any meta tag(s) or similar use.

1.04.03 Franchisee shall immediately notify Franchisor, in writing, if Franchisee learns of any attempt by any person to infringe the Marks or to wrongfully appropriate the System or any part of it. Franchisor may, in its sole discretion, take whatever action it deems appropriate to protect or defend the Marks or System but is not obligated to take any action whatsoever. Franchisee agrees to fully cooperate with Franchisor in any action anticipated by or taken by or on behalf of Franchisor. Franchisee understands that it may become necessary, in Franchisor's sole discretion, to change, totally or in part, the Marks, as a result of litigation or otherwise. In that event, Franchisee agrees to immediately adopt the new or revised Marks, and Franchisor's maximum liability, including for any purported goodwill, shall be to reimburse Franchisee the actual out-of-pocket costs of changing the principal signs identifying the Premises.

1.04.04 Franchisor may change the System or any part of the System at any time, and as changed it shall remain the System pursuant to this Agreement. Franchisor shall own any improvements or changes in the System whether developed by Franchisor, by Franchisee or by other franchisee(s) and shall have the right to adopt and perfect such improvements or changes without compensation to Franchisee or other franchisees. If Franchisor modifies the System, Franchisee shall, at Franchisee's own expense except to the extent specifically provided in this Agreement, adopt and use such modification(s) as if it were part of the System at the time of execution of this Agreement.

1.04.05 Franchisee agrees to operate no other business whatsoever, including coin-operated devices, in or about the Premises of the Licensed Business or otherwise in connection with the System or Marks without first obtaining Franchisor's written approval; provided that, Franchisee may provide any service(s) or product(s) permitted according to the Manual. Franchisee acknowledges that Franchisor owns, in connection with the Marks, all goodwill associated with or to become associated with the telephone numbers and telephone listings and agrees to execute an Assignment of Telephone Numbers in the form of Exhibit F, attached.

#### *1.05 Manual.*

Franchisor agrees to loan to Franchisee during the term of this Agreement one or more operations manuals (the "Manual"), together with such updates and modifications as Franchisor may from time to time provide to Franchisee. Franchisor may make any changes or modifications in the Manual as in Franchisor's sole judgment are desirable. Franchisee agrees that if there should, at any time, be a discrepancy between the terms of Franchisee's copy of the Manual and the master copy maintained in Franchisor's offices, the terms of the master copy shall prevail. Franchisee agrees, at all times, to conform to the Manual in all respects including to obtain any equipment, fixtures, personnel or technology necessary to do so. The Manual is and shall at all times remain the property of Franchisor and shall be returned to Franchisor upon expiration, termination or nonrenewal of this Agreement for any reason. Franchisee agrees not to make it available to or permit another to make any copies of the Manual or any portion thereof without Franchisor's prior written consent. Franchisee acknowledges and agrees that the fair value of the Manual is at least Ten Thousand Dollars (\$10,000.00).

## **Article 2 - Franchise Fees And Advertising**

#### *2.01 Initial Fee.*

The Initial Fee for the **Melt n Dip** Franchise is Forty-Five Thousand Dollars (\$45,000.00). The Initial Fee shall be paid as outlined in Exhibit B-1.

The Initial Fee is not refundable for any reason except if through no fault of Franchisee, Franchisor determines that Franchisee has not successfully completed the initial training, in which case

Franchisor will refund one half of the Initial Fee. If Franchisee acquires an existing **Melt n Dip** business from Franchisor in connection with this franchise, Franchisee will pay the fair market going concern value of the assets purchased pursuant to a separate asset purchase and sale agreement to be negotiated, in addition to the Initial Fee. If the parties are unable to reach an agreement on the purchase and sale of assets within ninety days following the date of this Agreement, either party may terminate this Agreement by giving not less than ten business days notice to the other. Termination shall be pursuant to the terms of Articles 17 and 18.

#### *2.02 Royalties.*

Franchisee shall pay to Franchisor a monthly royalty in an amount equal to five percent (5%) of Gross Revenues payable without setoff. The royalties are payable weekly by Electronic Funds Transfer. Funds must be in Franchisee's designated bank account in time so that Franchisor can obtain them on or before close of business on Tuesday of the week following the week on which the Royalties are based. Franchisor may, upon thirty (30) days prior written notice require Franchisee to pay Royalties by check, pre-authorized check, electronic funds transfer or other mechanism or to pay on a different periodic basis. If Franchisee owns more than one **Melt n Dip** franchise, Franchisee shall report and pay royalties for each franchise independently, unless otherwise directed by Franchisor.

#### *2.03 Local Marketing Fee.*

2.03.01 We will deduct 2% per month from your account weekly and do advertising and marketing for you. . Franchisee may spend additional money on advertising at their own cost on top of what the franchisor spends. . Franchisee agrees to report its advertising to Franchisor monthly by the 15<sup>th</sup> of the following month.

2.03.03 Franchisor shall have no duty to conduct any national marketing program and if Franchisor does conduct a program, Franchisor makes no representations or warranties regarding the nature of the marketing to be conducted or about how it will affect Franchisee's revenue.

#### *2.04 Management Assistance.*

In the event Franchisee requests Franchisor to provide extraordinary management or support services at Franchisee's location or in Franchisee's Territory Franchisee shall pay Franchisor's usual fee for such extraordinary services, which shall be due and payable no later than the second date for payment of royalties following the date of the services. All such extraordinary services shall be arranged as provided in the Manual.

#### *2.05 Gross Revenues.*

The term "Gross Revenues" shall mean the full the price of all goods and services sold by Franchisee from or relating to the Licensed Business, whether or not Franchisee has received cash or other consideration. The only thing not included in Gross Revenues is taxes or fees Franchisee is required to collect on behalf of the government and which Franchisee actually remits. Gross Revenues are calculated at the time Franchisee sells the goods or services, without regard to when the Franchisee receives or expects to receive cash or other consideration therefore.

#### *2.06 Local Cooperative Marketing.*

2.06.01 Local Marketing. In addition to complying with any specific marketing requirements of Franchisor, Franchisee shall place and pay for such other marketing as Franchisee deems necessary and appropriate. Franchisee shall be responsible to assure that all marketing so placed complies with the Manual and serves to enhance and not detract from or harm the Marks and the goodwill attached and to become attached thereto. Franchisee shall promptly send to Franchisor copies of all marketing copy and media used. In the event Franchisor deems any advertisement or marketing technique to be not in compliance with this paragraph, Franchisee shall, immediately upon receipt of a written notice from Franchisor, cease using the subject advertisement or marketing technique and shall thereafter fully comply with this paragraph. If Franchisee violates

this paragraph more than two times in any twelve month period, Franchisor may, in addition to all other remedies available pursuant to this Agreement, require Franchisee to obtain prior written approval of copy and marketing technique for all or certain categories of marketing.

2.06.02 Local Marketing Cooperative. If there are two or more **Melt n Dip** franchisees in a marketing area, as determined by Franchisor, the franchisees may form a Local Marketing Cooperative and Franchisee shall participate in said cooperative and shall contribute such sums thereto as may be assessed by a majority vote of the cooperative. No Local Marketing Cooperative shall make assessments, of more than 2% of Gross Revenues. Each Local Marketing Cooperative shall be organized and operate as specified in the Manual. Participation in a local marketing cooperative will satisfy the franchisees monthly requirement.

#### *2.07 Grand Opening.*

Franchisee shall, within six months after the date that Franchisee is open for business, publicize and conduct a grand opening consistent with Franchisor's guidelines. The grand opening shall be appropriate for Franchisee's territory, location, community, competitive environment and similar factors.

#### *2.08 Rebates, Discounts and Allowances.*

Franchisee authorizes Franchisor to collect all available rebates, discounts and allowances (RDA) from vendors or others with whom Franchisee does business, provided that, in Franchisor's reasonable business judgment, it is appropriate to collect them. Franchisor shall place all collected RDAs in either the National Marketing fund or in a separate account and shall apply all such funds for purposes of subsidizing the cost of franchisee conventions, meetings and incentive programs. Franchisee authorizes Franchisor to commingle Franchisee's RDA funds with those received on account of business conducted by other franchisees. Franchisor is authorized to pay from the collected RDA funds any taxes and assessments payable on account of having received the funds and a reasonable portion of the administrative and marketing costs of securing, managing and disbursing such funds. Franchisor will provide an un-audited annual accounting as to the aggregate amount of RDA funds collected and their use and application by general category, which accounting will be prepared within ninety days following the end of Franchisor's fiscal year and will be provided to Franchisee upon written request. Franchisee acknowledges and agrees that each such accounting is a Trade Secret and shall be treated as such according to this Agreement. Except as herein specifically provided, Franchisee waives all compliance with the Uniform Trust Accounting Act and related or similar laws to the broadest extent permitted by law.

### **Article 3 - Reports And Audits**

#### *3.01 Records And Reports.*

Franchisee shall at all times maintain true and accurate business records in the manner specified by Franchisor. Franchisee shall, on a weekly basis or at such other intervals as specified by Franchisor, provide Franchisor with such report(s), in the form(s) specified by Franchisor, as Franchisor may require, and at such times as Franchisor may require, including, but not limited to, reports of Gross Revenues, reports of business expenses and overhead, customer information, copies of detailed purchase invoices, number and type of transactions, identity of vendors, the amount of marketing expenditures, detailed records of marketing expenditures, copies of inspection reports, and weekly or monthly sales summary. By submitting any reports to Franchisor, Franchisee is certifying that they are true and correct. Within ninety (90) days following the end of each calendar year, Franchisee shall provide Franchisor with a copy of Franchisee's balance sheet and an income and expense statement for the year. At the time they are filed, Franchisee shall provide Franchisor with copies of Franchisee's federal income tax return(s) and state and local excise tax returns, if applicable, together with all exhibits and schedules thereto and all amendments thereafter. Franchisor is authorized to rely upon such reports and financial documents and to disclose them to governmental authorities as and if properly requested.

Franchisor may use data from the reports and financial documents in composite or statistical form for any purpose in Franchisor's sole discretion. Franchisor is authorized to obtain or verify the information and reports described herein by electronic means from Franchisee's computer(s), at any time, without prior notice, at Franchisor's sole election. Franchisee shall retain all business records for at least five (5) years or such longer period of time as may be required by applicable law

### *3.02 Failure to Report.*

If Franchisee fails, for any reason, to timely deliver to Franchisor any required report with all required information, Franchisor is authorized, without further notice, to assess Royalties and Local Marketing Fees for each relevant week and effect an electronic funds or other transfer of such funds calculated as the greater of (a) Franchisee's average weekly Royalties and Local Marketing Fees over the prior twelve months or (b) the average weekly Royalties and Local Marketing Fees of all similar franchisees within Franchisee's region as defined by Franchisor. Franchisee hereby authorizes Franchisee's bank to make such transfers upon Franchisor's request. No action taken under this sub-paragraph shall constitute a cure of any breach by Franchisee, an election of remedies by Franchisor or act, in any way, to limit Franchisee's liability to pay fees under this Agreement.

### *3.03 Audits And Inspections.*

Franchisor shall have the right, at any time, to enter the Premises (either physically or electronically) for purposes of auditing the accuracy of reports submitted and to otherwise verify compliance with the terms and conditions of this Agreement. Should any audit or inspection reveal that Franchisee has underreported the amount of Gross Revenues, Franchisee shall immediately pay to Franchisor the additional amount of royalties and other fees payable on account of the underreporting, plus interest thereon at the rate of one and one-half percent per month, but not more than the maximum interest allowed by applicable law. If an audit or inspection reveals that Franchisee has underreported Gross Revenues by three (3) percent or more for any week, then Franchisee shall also pay, immediately, the cost of the audit or inspection. In all other cases, Franchisor shall bear the entire cost of the audit or inspection, including incidental costs. Should Franchisee at any time cause an audit to be made of Franchisee's Licensed Business, Franchisee shall cause a copy of the report of said audit to be delivered to Franchisor without any cost or expense to Franchisor.

### *3.04 Contact With Others.*

Franchisor shall have the right, in Franchisor's sole discretion and without further notice to Franchisee or to any other person or entity, to contact any of Franchisee's customers, landlord, accountant, vendors, or other persons within Franchisee's Territory or otherwise for the purpose of verifying the accuracy of any information submitted by Franchisee, for quality assurance or for any other purpose not inconsistent with this Agreement.

## **Article 4 - Training**

### *4.01 Initial Training.*

4.01.01 As a condition subsequent to this Agreement, Franchisee and up to two employees of franchisee, if applicable, shall successfully complete Franchisor's initial training program. The initial training program will be approximately 40 to 80 hours in length and shall be conducted at such location(s) as Franchisor specifies. The initial training may be conducted, in whole or in part, in an existing **Melt n Dip** Licensed Business owned by Franchisor, an affiliate of Franchisor or another franchisee. Franchisee and Franchisee's manager, if applicable, will be required to execute a consent, waiver and release in the form of Exhibit K before beginning training, relieving Franchisor or other franchisees who might be involved in the training of liability for wages, benefits, and for injury, damages or harm that might occur while training in the facilities of Franchisor or another franchisee. Franchisee shall be responsible for all salaries, compensation, benefits, and living and travel expenses of trainees. After the initial training, Franchisor will be available for such

reasonable consultation as Franchisor deems appropriate. Franchisor reserves to itself the exclusive right to determine whether Franchisee and other trainees have satisfactorily completed the training program. If Franchisee and Franchisee's designated manager, if applicable, do not satisfactorily complete the initial training program, Franchisor may terminate this Agreement. Franchisee acknowledges that such failure to satisfactorily complete the initial training program is grounds for termination of this Agreement.

#### *4.02 Manager Training.*

At all times, Franchisee or Franchisee's manager in charge of operating the Licensed Business shall be an individual who has successfully completed Franchisor's manager training program and who otherwise meets Franchisor's manager criteria. Any new manager shall successfully complete Franchisor's manager training program within 60 days after assuming the role of manager. Unless otherwise agreed in writing by Franchisor, Franchisee or Franchisee's manager(s) shall bear the reasonable cost of training additional managers after the first manager trained. In all cases, Franchisee shall be solely responsible for any salaries, compensation, benefits and living and travel expenses of trainees. Ideally managers should have at least 1 to 2 years of food service experience.

#### *4.03 Employee Training.*

At all times, Franchisee shall employ only persons who have successfully completed Franchisor's training program. Franchisee shall pay Franchisor's or a third party's usual fee(s) for such mandatory training. Franchisee shall, in any event, be solely responsible for all salaries, compensation, benefits, and living and travel expenses of trainees.

#### *4.04 Subsequent Training.*

Franchisor may require Franchisee and Franchisee's manager and employees to complete additional training at a location determined in Franchisor's sole discretion. Franchisee shall pay Franchisor's usual fee(s) for such mandatory training. Franchisee shall, in any event, be solely responsible for all salaries, compensation, benefits, and living and travel expenses of trainees.

#### *4.05 Training Materials.*

Franchisor may, from time to time, provide or make available to Franchisee training materials and equipment for providing training for Franchisee's manager(s) and employees. Franchisor may charge a reasonable fee for such materials and equipment. Franchisee agrees that all such materials are Trade Secrets pursuant to this Agreement. Franchisee agrees to require all of its managers and employees, as applicable, to successfully complete any such training program(s) if Franchisor designates them as mandatory.

#### *4.05 No Warranty of Success.*

Franchisor's determination that Franchisee or Franchisee's employee(s) have successfully completed any training shall not be a warranty or representation that the person can or will successfully operate the Licensed Business or any aspect thereof.

## **Article 5 - Trade Secrets And Confidentiality**

Franchisee will have access during the course of this Agreement to trade secrets that are the property of Franchisor. Trade Secrets include, but are not limited to, the System, the Manual, formulas, methods, customer lists and related information, vendor and pricing lists and policies, the Training, and other programs, techniques and policies as they may be developed by Franchisor from time to time. Franchisee acknowledges that the Trade Secrets derive independent economic value from not being generally known to, and not readily ascertainable by proper means by, other persons who could obtain economic value from their disclosure or use. Franchisee agrees to not disclose or in any way make available to any unauthorized person(s) any Trade Secret(s) or any information regarding any Trade Secret(s) or any proprietary information made available to

Franchisee by Franchisor. Franchisee shall hold all such information in complete confidence. Franchisee will not disclose any Trade Secrets whatsoever to any person(s) not employed by or under contract with Franchisee. Franchisee will disclose Trade Secrets only to those employees and agents of Franchisee with a legitimate need to know, each of whom Franchisee warrants will be subject to this article. Franchisee shall cause every manager and every employee who has access to Trade Secrets to sign a Confidentiality and Nondisclosure Agreement in the form prescribed by Franchisor, the current form of which is Exhibit I hereto. Franchisee agrees that Franchisor shall have sole discretion in determining what items or information are Trade Secrets and that any items or information designated Trade Secrets by Franchisor in the Manual or otherwise in writing shall be treated as Trade Secrets under this Agreement whether or not such items or information would be trade secrets under any other applicable legal or other definition(s), including any applicable statutes. In addition to all other remedies available to Franchisor, upon proof of violation of this Article by Franchisee, Franchisee agrees that Franchisor shall be entitled to liquidated damages in an amount equal to the greater of: (a) the sum of the average weekly Royalty Fees and the average weekly National Marketing Fees paid or payable by Franchisee during the preceding twelve months, multiplied by the number of weeks, or portion thereof, during which Franchisee was in violation of this Article or (b) one hundred percent of the gross revenues received or receivable by Franchisee or any transferee of any Trade Secrets during every day, or portion thereof, during which Franchisee was in violation of this Article. Franchisee acknowledges and agrees that, in the event of Franchisee's violation of this Article, proof of actual damages would be difficult and that the formula for calculating liquidated damages contained herein is a reasonable estimate of what actual damages would be. The foregoing formula does not result in a penalty.

## **Article 6 - Pre-Opening Obligations**

### *6.01 Premises And Lease.*

6.01.01 Franchisee shall be solely responsible for selecting the location for the Licensed Business that complies with the Manual (hereinafter "the Premises"). Franchisee, within 180 days after signing this Agreement, shall select a location, subject to Franchisor's approval. Franchisor will attempt to provide to Franchisee any information in its possession regarding the Premises, proposed Premises and any known alternative Premises within Franchisee's Territory. Such information is provided by Franchisor without warranty as to its accuracy or completeness or otherwise. Franchisor has no special expertise in such matters. Franchisee shall not sign a lease, sub-lease or other obligation until after Franchisee has received Franchisor's approval of the Premises and lease or sub-lease in writing, which approval shall be deemed to have been given if Franchisor has not notified Franchisee within ten (10) business days following Franchisor's receipt from Franchisee of a copy of the proposed lease or sub-lease and such other information about the proposed Premises as Franchisor may require. Approval of the Premises or the lease or sub-lease by Franchisor does not constitute a representation or warranty by Franchisor that the Premises will be good and does not constitute a legal or other opinion as to any term of the lease or sub-lease. Franchisor may, in Franchisor's discretion, condition approval upon execution of the Lease Conditional Assignment Agreement by Franchisee and Franchisee's landlord in the form of Exhibit E, attached. If Franchisee fails to select an approved location within 180 days, Franchisor shall have the option of terminating this Agreement. Franchisee acknowledges and agrees that failure to select an approved location within 180 days is cause for Termination of this Agreement. Notwithstanding Franchisor's right to terminate for failure to select an approved location within 180 days, Franchisor will reasonably extend the selection period if Franchisee has made best efforts to select a location and for valid reasons has been unsuccessful.

6.01.02 If Franchisee requests Franchisor to send a person to Franchisee's Territory to assist in identifying, selecting or negotiating the terms of a lease or purchase of or otherwise in connection with Franchisee's selection of Premises, upon Franchisor's request, Franchisee shall arrange for appropriate transportation, hotels and meals and reasonable expenses not to exceed the current

per diem rate for federal employees all at Franchisee's expense. Except for the per diem allowance, Franchisee shall pay such expenses directly to the transportation and other providers.

6.01.03 In some instances, Franchisor may have already entered into a master lease for the Premises. In such event, Franchisee shall execute a sublease or assignment agreement, as appropriate, subject to the same terms and conditions as the master lease. The sublease or assignment may provide that Franchisee shall pay rent and other obligations directly to the master landlord.

#### *6.02 Specifications.*

Franchisee's Licensed Business shall operate only from Premises meeting Franchisor's specifications, including appropriate office and warehouse space. Franchisee understands and agrees that, although all **Melt n Dip** offices will follow a consistent theme, the details of their design will differ in many cases, based upon location requirements, landlord requests, and unique features of the community. Franchisor will consider Franchisee's requests for features for Franchisee's office, but is not obligated to follow those requests. Franchisee shall be obligated to update the design of Franchisee's office at Franchisee's expense not more than once every three years. Franchisee may change or update the design of Franchisee's office, subject to Franchisor's prior written approval, at any time, at Franchisee's expense. If Franchisor approves any changes in the plans or designs at Franchisee's request (or to comply with governmental codes, rules or ordinances), Franchisor shall own all rights to such plans as modified without further compensation to Franchisee or any other person. Franchisee shall sign and obtain signatures of necessary third parties on any documents requested by Franchisor to transfer any and all copyrights or other proprietary interests of any person in and to such modified plans or designs.

#### *6.03 Appearance Of Premises.*

Franchisee acknowledges that every **Melt n Dip** office will be required to have identical decor, color schemes and layout. Franchisee agrees to accept Franchisor's subjective evaluation as to what would keep the Premises in compliance with Franchisor's standards. Franchisee agrees, at Franchisee's sole cost and expense, to maintain the Premises, including, but not limited to equipment, displays, fixtures, and interior and exterior decor in accordance Franchisor's standards throughout the term of this Agreement

#### *6.04 Required Equipment*

Franchisee shall acquire install and use, at Franchisee's sole expense the Required Equipment. The current list of Required Equipment is contained in Exhibit C. Franchisee understands that the specific list of Required Equipment may be different for Franchisee's Licensed Business than for other franchisees or company-owned offices on account of differences in the Premises, lease terms, demographics or otherwise and that Franchisor shall have the right to modify the list of Required Equipment in the Manual or otherwise in writing. All Required Equipment shall meet or exceed Franchisor's specifications. Franchisee shall purchase the Required Equipment only from vendors approved by Franchisor.

## **Article 7 - Operation Of Licensed Business**

#### *7.01 Independent Contractor.*

Each party to this Agreement is and shall remain an independent contractor and shall control the manner and means of operation of its respective business and shall exercise complete control over and responsibility for all labor relations and the conduct of its agents and employees. Neither party shall be considered or held out to be agent(s), joint venturers, partners or employee(s) of the other, except as specifically authorized by this Agreement. Neither party shall negotiate or enter into any agreement or incur any liability in the name of or on behalf of the other unless, and to the extent, specifically authorized by this Agreement. Franchisee shall prominently display signs at all times in the manner specified by Franchisor, indicating the name of the Franchisee and stating that the

Licensed Business is independently owned and operated. Franchisee's business forms that bear the Marks shall contain Franchisee's name and a statement that the Licensed Business is independently owned and operated in such form as Franchisor may specify.

#### *7.02 Personal Participation.*

Throughout the term of this Agreement, Franchisee shall either devote Franchisee's full time and effort to actively managing the Licensed Business or delegate its management to a responsible person. Notwithstanding any delegation of authority hereunder, Franchisee shall reserve and exercise ultimate authority and responsibility with respect to the operation and management of the Licensed Business. If Franchisee employs a manager to run the day to day operations, the manager shall be required to attend and successfully complete Franchisor's training program prior to taking over full day-to-day responsibilities, at Franchisee's sole cost and expense (except for Franchisee's first manager whom Franchisor will train at no additional charge to Franchisee for the training—but Franchisee shall be solely responsible for all travel and living costs of trainees). Franchisee shall devote such time and effort to the Licensed Business as Franchisee determines, but shall reserve and exercise ultimate authority and responsibility with respect to the operation and management of the Licensed Business.

#### *7.03 Retail Prices.*

Franchisor may recommend prices and pricing strategies for products and services. Franchisee is obligated to follow such price recommendations to the extent such obligation is consistent with applicable law and is otherwise solely responsible for establishing franchisee's own retail prices at such levels as franchisee deems appropriate.

#### *7.04 Compliance With Laws.*

Franchisee shall be solely responsible, at Franchisee's sole cost and expense, for obtaining and maintaining all necessary or required permits and licenses in order to operate the Licensed Business. Franchisee is solely responsible for strictly complying with each and every law, ordinance and regulation applicable to the Licensed Business, including, but not limited to, licensing, health, safety, environmental, consumer and labor regulations. Franchisee shall timely pay all applicable taxes as they come due but may challenge the amount or applicability thereof; provided, that Franchisee hereby agrees to indemnify, hold harmless and defend Franchisor from any and all liabilities for taxes based upon Franchisee's operations.

#### *7.05 Franchisee Business Operation.*

Franchisee understands and acknowledges that every detail of the System and of the operation of the Licensed Business is important to Franchisee, Franchisor and other **Melt n Dip** franchisees in order to maintain and further develop high and uniform operating standards, to increase the demand for goods and services sold by Franchisor and all franchisees, to enhance the image of Franchisor and the Marks, and to protect Franchisor's reputation and goodwill. Therefore, Franchisee agrees that:

7.05.01 Compliance with Manual. Franchisee shall operate the Licensed Business in conformity with such uniform methods, standards and specifications as Franchisor may prescribe, in the Manual or otherwise, to insure that the highest degree of quality and service is uniformly maintained. Franchisee shall acquire and maintain, at all times, all equipment and software required by Franchisor for operation of the Licensed Business. Franchisee shall offer all of the goods and services designated by Franchisor and no others without the written consent of Franchisor, which consent Franchisor may withhold for any reason. Franchisee shall assure that all telephone calls are answered live in compliance with the Manual.

7.05.02 Image. Franchisee shall, at all times, work to protect and enhance Franchisor's image and, specifically, shall maintain employees or workers in the Licensed Business whose appearance, attire, attitude, reputation and demeanor are consistent with Franchisor's image. Franchisee acknowledges and agrees that Franchisor shall have sole discretion in determining

what constitutes Franchisor's image, and further acknowledges that said image is constantly evolving as markets change and evolve.

7.05.03 Business Dealings. Franchisee shall not, at any time, engage in any business dealings in relation with the Licensed Business or the Franchise which are unethical, dishonest or otherwise could cause harm to the Marks, Franchisor, the goodwill associated with the Marks, or to any customer or vendor of Franchisee.

7.05.04 Maintenance. Franchisee shall, at Franchisee's sole cost and expense, maintain the Premises, inside and out, in the highest degree of sanitation, repair and condition, and in connection therewith shall make such additions, alterations, repairs and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including without limitation, such periodic cleaning, repainting, repairs to impaired equipment and replacement of obsolete signs and equipment as Franchisor may reasonably direct. Franchisee shall maintain all landscaping and other outside areas of the premises in an attractive and clean condition.

7.05.05 Refurbishing. At Franchisor's request, which shall not be more often than once every three (3) years, Franchisee shall replace or update the Premises at Franchisee's sole expense, to conform to the design, trade dress, color schemes and presentation of the Marks consistent with Franchisor's then-current image, including, without limitation, such internal changes and redecoration and such modifications to existing equipment as may be necessary in Franchisor's sole judgment.

7.05.06 Advisory Committees. Franchisee shall participate, at Franchisee's sole expense, in local, regional and national franchisee advisory committees or councils if established or sanctioned by Franchisor.

#### *7.06 Restrictions On Sources Of Products And Services.*

7.06.01 Specifications. As to all equipment, fixtures, supplies and inventory ("Items") necessary to operate the Licensed Business, except as otherwise specified herein, Franchisee may purchase them from the vendor of Franchisee's choice, but the Item(s) must meet Franchisor's specifications, if any. The current list of Items subject to specifications is included as Exhibit D. Franchisor reserves the right to change the list of Items that Franchisee must purchase in accordance with specifications. Franchisor reserves the right to require Franchisee to purchase only from suppliers that Franchisor has approved.

7.06.02 Items Bearing Marks and Proprietary Items. Franchisee shall purchase only from Franchisor or a supplier approved by Franchisor all Items used to start or operate the Licensed Business that contain or bear the Marks or that are proprietary to Franchisor. In addition, Franchisee shall purchase from a supplier approved by Franchisor, all signs used to identify the Licensed Business.

7.06.03 Other Suppliers. Franchisor will approve other suppliers of non-proprietary items if Franchisee or the supplier request the approval in writing and if the supplier demonstrates to the satisfaction of Franchisor that it is financially capable and can provide Item(s) or service(s) that meet Franchisor's standards and that it is willing and able to protect Franchisor's proprietary information. Franchisor may charge a reasonable fee to cover its costs in evaluating a proposed supplier. Franchisor will normally make its decision within thirty days after it receives all of the requested information and any requested samples. Franchisor reserves the right to withdraw approval of any supplier whose performance falls below Franchisor's standards.

7.06.04 Unspecified Products. Franchisee may obtain any Item used in the Licensed Business that Franchisee is not required to purchase in accordance with specifications or from an approved supplier from any source, so long as the Item is consistent with Franchisor's image. Should Franchisor later publish specifications or require use of an approved supplier, Franchisee shall comply with that requirement.

7.06.05 Inventory. Franchisee shall, at all times, maintain a sufficient inventory of Items so that the Licensed Business can operate at maximum capacity.

7.06.06 Training and Other Services. Certain services may be available to Franchisee only through Franchisor or an affiliate, including mandatory training. Franchisee will be required to pay the usual price for any of these services, unless otherwise provided in this Agreement.

7.06.07 Proprietary Items. Proprietary Items are Items that contain one or more unique characteristics or ingredients which are either not known to the general public or which are subject to protection as intellectual property or Trade Secrets, and can include packaging, trademarks or containers. Patented or patentable Items are Proprietary Items. Franchisor or its Affiliate(s) may develop Proprietary Items. Franchisor or an Affiliate will (i) manufacture, supply and sell Proprietary Items to franchisees of Franchisor, and/or (ii) disclose the formulae for and methods of preparation of the Proprietary Items to one or more supplier(s) who will be authorized by Franchisor to manufacture Proprietary Items to Franchisor's precise specifications and sell Proprietary Items to franchisees of Franchisor and/or (iii) license Franchisee to use them pursuant to this Agreement. If required, Franchisee shall purchase and use Proprietary Items from Franchisor or from supplier(s) so authorized by Franchisor. Franchisor or its Affiliate(s) will derive revenue and profits from Franchisee's purchases of any Proprietary Items. Franchisor or its Affiliate(s) may distribute Proprietary Items through alternative channels of distribution, including near Franchisee's location.

7.06.08 Proprietary Software. Franchisee will need to purchase NCR software who will license you to use their proprietary software. The Software, and any additions or modifications or further developments are and will be Trade Secrets of Franchisor. Franchisee shall comply with Franchisor's requirements and specifications regarding the Software. Franchisor may require Franchisee to sign a separate license agreement for some software. Franchisor or its Affiliate(s) may distribute Proprietary Software through alternative channels of distribution, including near Franchisee's location and to competitors of Franchisee.

#### *7.07 Minimum Hours.*

The dates and hours of operation may not be the same for all Licensed Businesses or all franchisees, even in the same general area, because of local conditions.

#### *7.08 Signs.*

Franchisee agrees to obtain, install and maintain on the Premises and on certain vehicles used in the Licensed Business, appropriate signs bearing the Marks as specified by Franchisor. Any deviation from the required signage shall be subject to Franchisor's prior written approval.

#### *7.09 Computer System.*

Franchisee shall purchase specified computer hardware and software ("Computer System") currently "NCR", for use in operation of the Licensed Business as required by Franchisor. In addition, Franchisee may be required, from time to time, to purchase replacement hardware or software or software upgrades, all of which Franchisee shall install and use as required by Franchisor, including, without limitation, point of sale and communications software and hardware. If required, Franchisee will install and maintain and use, at Franchisee's expense, a dedicated telephone or other data line or transmission facility as specified by Franchisor. Franchisee may obtain a Computer System and related components and services from any source as long as the equipment, software and service meets or exceeds Franchisor's specifications. Franchisee shall be solely responsible for maintenance, repair and replacement of the Computer System. Without limiting the applicability of this paragraph, Franchisee shall, at all times, use and maintain the software as required by Franchisor. Franchisee shall not block or attempt to block or limit Franchisor's access, including electronically, to any data or programs contained on Franchisee's Computer System and Franchisee shall maintain information relating to the Licensed Business only on the Computer System(s) to which Franchisor has access.

#### *7.10 Communications Equipment and Systems.*

Franchisee shall purchase and use in the Licensed Business communications equipment or systems and service as required by Franchisor and shall update or replace such equipment, systems and service as required, but Franchisor will not require replacement more than once per year. Except as otherwise required or permitted by this Agreement or by applicable law, Franchisee shall use only the communications systems designated by Franchisor in communicating with Franchisor and other franchisees relating to the Licensed Business. Franchisor shall have a proprietary interest in all communications made through any communications systems maintained or provided by Franchisor. Franchisee acknowledges that the provisions of this paragraph 7.10 are reasonable and necessary and beneficial to the **Melt n Dip** franchise system. Franchisee shall monitor and respond to all communications in a timely manner as specified in the Manual.

Franchisee agree to install 8-12 cameras including one in the kitchen, cash register, line of production, etc. and provide Franchisor access to said cameras. However, Franchisee shall not install any cameras in any rest rooms, changing rooms or any area or any place where a person can reasonably expect privacy.

#### *7.11 Equipment Maintenance.*

Franchisee shall be solely responsible, at Franchisee's cost and expense, for maintaining, repairing, and replacing, when appropriate, all equipment required, recommended or permitted pursuant to this Agreement.

#### *7.12 Warranties.*

Franchisee shall not represent to any customer or the public that Franchisor provides any warranty as to the quality of any product or service, unless Franchisor has specifically authorized such warranty in writing. If Franchisee offers any warranties, they shall be in writing and shall clearly state, both in the warranty and in any promotional or advertising materials, that the warranty is available and will be honored only by Franchisee. Franchisee hereby indemnifies, holds harmless and agrees to defend Franchisor, its related companies and all other **Melt n Dip** franchisees from any and all claims of whatever nature arising from any such additional warranties made by Franchisee. Franchisee shall participate in and comply with any warranty program that Franchisor may adopt from time to time.

#### *7.13 No Pirating Of Personnel.*

During the term of this Agreement and for a period of two (2) years following Termination or Nonrenewal of this Agreement for any reason whatsoever, Franchisee shall not: (a) induce, or attempt to induce any employee of Franchisor, an Affiliate or of any other franchisee to leave their current employer; (b) without the prior written approval of Franchisor (which may be conditioned upon the prior written approval of another franchisee and other proper conditions) hire or associate or offer to hire or associate any employee of Franchisor, an Affiliate, or of any other franchisee; or (c) without the prior written approval of Franchisor (which may be conditioned upon the prior written approval of another franchisee and other proper conditions) hire or associate or offer to hire or associate any former employee of Franchisor, an Affiliate, or of any other franchisee, who has, voluntarily or otherwise terminated his or her relationship with Franchisor, an Affiliate, or any other franchisee during the prior eighteen (18) calendar months. The terms of this paragraph 7.13 shall survive termination or nonrenewal of this Agreement for any reason. Any waivers of this paragraph 7.13 must be in writing and signed by the Franchisor.

#### *7.14 Marketing.*

Franchisee shall, at all times, comply with the Manual in all advertising, including, but not limited to using exclusively Franchisor's toll free number (if they obtain one) when required. Franchisee shall not use television, radio or Internet advertising unless in full compliance with the Manual.

#### *7.15 Leads and Service Area.*

Except as specifically permitted by the Manual, Franchisee shall not engage in marketing outside of Franchisee's Territory. There are no restrictions on where Franchisee may provide services, provided Franchisee is in full compliance with all applicable laws, ordinances and regulations, for customers who may contact Franchisee directly. Franchisor shall make a reasonable effort to channel calls received on its toll free number(s) (if they obtain one) to the franchisee in the territory where the customer needs services. Franchisor may adopt and follow non-discriminatory policies for distributing calls and leads if Franchisee does not respond or perform in compliance with the Manual which may result in another franchisee being permitted to perform work in Franchisee's Territory.

#### *7.16 New Developments.*

Franchisor shall be the sole and exclusive owner of all new developments, including inventions, methods, products, ideas, formulas, research results, equipment, and otherwise, that Franchisee develops or has any role in developing that relate to the Licensed Business. Franchisee shall immediately disclose any and all such new developments to Franchisor and shall execute any documents necessary, in Franchisor's opinion, to consummate the transfer of all ownership rights therein. The mutual covenants of this Agreement are sufficient consideration for such transfers. Franchisor shall not, otherwise, be required to compensate Franchisee for such new developments.

#### *7.17 Staffing Requirements.*

Franchisee shall, at all times, comply with the minimum staffing requirements specified in the Manual, which shall be not less than one business manager and one **Melt n Dip** Technician. Each technician shall, at all times, meet or exceed the qualifications set forth in the Manual.

## **Article 8 - Indemnity And Insurance**

#### *8.01 Indemnity.*

Franchisee shall defend, hold harmless and indemnify Franchisor, its officers, directors, shareholders, agents, employees, landlords and related companies from any and all losses, claims, damages, liabilities, or expenses of any kind or nature, including fines, penalties, interest, attorneys' fees, and all other types of costs or expenses, arising directly or indirectly from the acts or omissions (whether or not negligent or wrongful) of Franchisee or of any of Franchisee's manager(s), employees or agents in connection with the performance or breach of any obligation under this Agreement. Franchisor shall indemnify and hold harmless Franchisee, its officers, directors and shareholders from any losses, claims, damages, liabilities or expenses of any kind or nature, arising from the wrongful acts or omissions of Franchisor in connection with the performance or breach of any obligation under this Agreement.

#### *8.02 Insurance.*

Franchisee shall purchase and maintain, at Franchisee's expense, throughout the term of this Agreement commercial general liability insurance, including bodily injury, property damage, personal injury, advertising injury, non-owned automobile, loss of business income, and broad form contractual coverage for liability assumed under this Agreement. Such insurance shall be on an occurrence basis and shall consist of combined single limit coverage of at least one million dollars per occurrence/two million dollars annual aggregate. Franchisee shall purchase and maintain professional liability (errors and omissions) insurance with coverage of at least \$1,000,000 per occurrence/annual aggregate. Franchisee shall purchase and maintain worker's compensation and employer's liability insurance with a reputable insurer acceptable to Franchisor or with a state agency. Franchisee shall provide Franchisor with one or more certificates of insurance evidencing such coverage's and naming Franchisor as an additional insured as to each applicable policy. Such certificate(s) of insurance shall provide that the coverage's under the respective policy(ies) may not be modified (except to increase coverage) or canceled until at least thirty (30) days prior written notice of such cancellation or modification has been given to Franchisor. Upon request by Franchisor, Franchisee shall provide Franchisor with a true copy of any insurance policy, including

all endorsements. Every insurance policy of Franchisee required by this Agreement shall provide that coverage is primary/non-contributory. Every insurance policy shall be with an insurance company that meets Franchisor's criteria as set forth in the Manual.

## **Article 9 - Renewal**

### *9.01 Conditions Of Renewal.*

After expiration of the term of this Agreement, if Franchisor has made a business decision, in Franchisor's sole discretion, to continue the **Melt n Dip** Franchise System in Franchisee's area, Franchisee will be permitted to renew Franchisee's Franchise Agreement, but only upon the following terms and conditions:

9.01.01 Franchisee must be current in payment of all fees and charges to Franchisor and any of its related companies and must not have made more than two late payments within the last three years for which Franchisor gave written notice(s) of breach, which notice(s) were not withdrawn by Franchisor;

9.01.02 Franchisee must not be in material breach of this Agreement or of any other agreement between Franchisor and Franchisee and must have substantially complied with the operating standards and other criteria contained in the Manual or otherwise communicated in writing by Franchisor;

9.01.03 Franchisee shall pay a renewal fee as established at the time by Franchisor, but which shall be not more than two thirds of the then-current Initial Fee, payable in full at the time of execution of the Franchise Agreement referred to in sub-paragraph 9.01.04;

9.01.04 Franchisee shall execute the then current form of Franchise Agreement, which may differ in material ways that are not reasonably foreseeable at this time, but may include material differences in territorial boundaries and economic terms, including the amount of royalties and National Marketing Fees or entirely new categories of fees or mandatory expense;

9.01.05 Franchisee must maintain possession of the Premises identified in Exhibit A for the renewal term or obtain substitute premises approved by Franchisor;

9.01.06 Franchisee, at Franchisee's sole cost and expense, shall remodel or refurbish the Premises and otherwise modernize and renovate the Premises, signs and equipment to be consistent with the then current image of the System and to meet Franchisor's then current specifications;

9.01.07 Franchisee shall give written Notice to Franchisor at least thirteen months, but not more than eighteen months, prior to the end of the term of this Agreement of Franchisee's desire to renew; and

9.01.08 Franchisee must not, during the preceding term, have engaged in any business dealings in relation with the Licensed Business or the Franchisee which are unethical, dishonest or otherwise could cause harm to the Marks, Franchisor, any other franchisee, the goodwill associated with the Marks, or to any customer, client or vendor of Franchisee, Franchisor or of another franchisee.

## **Article 10 - Continuation**

If, following the termination or expiration of this Agreement for any reason, whether voluntary or involuntary, Franchisee continues to operate the Licensed Business or occupy the Premises with the express or implied consent of Franchisor, but without a renewal franchise agreement, such continuation shall constitute a month-to-month extension of this Agreement and shall be terminable by either party upon the lesser of (a) thirty (30) days written notice or (b) such shorter notice by Franchisor as would otherwise be applicable in a termination for cause. Franchisee acknowledges and agrees that such continuation shall be good cause for termination of this Agreement. Both

parties shall continue to be subject to all terms of this Agreement during any such continuation period.

## **Article 11 - Entity Franchisee**

### *11.01 Entity Definition.*

An "Entity" is any form of business organization except for a sole proprietorship and includes all kinds of corporations, limited liability companies, limited partnerships and general partnerships and any other form of business organization involving either multiple equity owners or which attempts to provide limited liability.

### *11.02 Founding Document Restriction.*

If Franchisee is an Entity or becomes an Entity or if Franchisee transfers Franchisee's interest under this Agreement or any interest in the Licensed Business to an Entity, the founding document(s) of the Entity must provide as follows:

This [insert type of Entity] shall not enter into any agreement or undertaking which would, directly or indirectly, limit any of the rights or obligations of the [insert type of Entity] or of any owner of the [insert type of entity] under the **Melt n Dip** Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_. Any such agreement or undertaking is void.

### *11.03 Liability Of Owner(s).*

Every owner of an equity or other interest in any Entity franchisee (and any individual person who is an owner of an Entity which owns any equity interest in any Entity franchisees) shall personally guaranty this Agreement. Any change in or addition of equity or other owner(s) shall be subject to the Assignment and Death and Incapacity provisions of this Agreement.

### *11.04 Restriction On Certificates Of Ownership.*

Each and every document, if any, issued by any Entity franchisee evidencing ownership of an equity or other interest in the Entity must provide as follows:

Ownership of this [insert type of Entity] is restricted and cannot be transferred, assigned, sold or encumbered except in strict compliance with the **Melt n Dip** Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_. Any other transfer or attempted transfer is void.

### *11.05 Additional Requirements Of Entity Franchisee.*

Franchisee shall, upon Franchisor's request, provide Franchisor or its designee with true copies of such of Franchisee's Entity records and documents as Franchisor shall designate. An Entity Franchisee shall, at all times, have one individual person who shall be the designated principal who shall have authority to act on behalf of the Entity in all respects under this Agreement. The designated principal shall be the individual who is responsible for assuring compliance by the Entity with all of the terms of this Agreement. Notwithstanding the requirement of a designated principal, Franchisor shall be entitled to rely upon the acts or words of any principal, employee or agent of an Entity Franchisee whom Franchisor understands to be acting or speaking on behalf of the Entity.

## **Article 12 - Assignment Or Transfer**

### *12.01 Prior Consent.*

Franchisee shall not assign, transfer, sell, sublease, sublicense or encumber (hereinafter collectively referred to as "Assign" or "Assignment"), in whole or in part this Agreement, the Franchisee, the Licensed Business, any option or first right of refusal relating to this Agreement, the Franchisee or the Licensed Business, the assets of the Licensed Business or the leasehold of

the Licensed Business or represent to any person that such an Assignment has been made without Franchisor's prior written approval. For purposes of this Paragraph 12.01, the terms "Assign" or "Assignment" shall include any assignment, transfer, sale or encumbrance of any shares of stock of a Franchisee that is a corporation, any partnership interest of a Franchisee that is a partnership, any membership interest of a Franchisee that is a limited liability company, and any equity or ownership interest or rights in any other form of entity. Any attempted Assignment without Franchisor's prior written consent shall be void and a breach of this Agreement.

*12.02 Conditions Of Assignment.*

***RIGHT OF FIRST REFUSAL. SHOULD FRANCHISEE WISH TO SELL HIS FRANCHISE, HE MUST FIRST OFFER IT TO THE FRANCHISOR FIRST, BEFORE TRYING TO SELL IT TO SOMEONE ELSE.***

As preconditions for obtaining Franchisor's consent to an Assignment, at least the following terms and conditions must be met:

12.02.01 Franchisee must be current in payment of all fees and charges to Franchisor and any of its related companies;

12.02.02 Franchisee must not be in material breach of this Agreement or of any other agreement between Franchisor and Franchisee;

12.02.03 Franchisee must have paid in full all debts in connection with the Licensed Business;

12.02.04 The assignee must have agreed to assume all of the obligations of the Licensed Business;

12.02.05 The assignee must execute a disclosure form containing a waiver and release of any claim against Franchisor for any amount(s) paid to, or representation(s) made by Franchisee or any omission by Franchisee to disclose facts, material or otherwise;

12.02.06 Franchisee must execute, at Franchisor's option, a mutual termination of this Agreement and a general release, or an assignment of this Agreement and a general release, and an agreement to defend, hold harmless and indemnify Franchisor from any claim by the assignee in form specified by Franchisor, the current version(s) of which are attached as Exhibit J;

12.02.07 The assignee must pay to Franchisor a Transfer Fee in the amount of Seven Thousand, Five Hundred Dollars (\$7,500) and execute, at Franchisor's option, the then current form of Franchise Agreement or an assumption of this Agreement (in any event providing for the same royalty and National Marketing Fees as contained herein, for the balance of the term hereof);

12.02.08 The assignee must, in the sole opinion of Franchisor, successfully complete the then current initial training program at the assignee's sole cost and expense;

12.02.09 The assignee must have met the then current standards of Franchisor for experience, financial strength, reputation and character required of new or renewal Franchisees;

12.02.10 The assignee must obtain such approvals as may be required to assume occupancy and possession and the continuing obligations relating to the lease or possession of the Premises, unless a new location has been approved in writing by Franchisor; and

12.02.11 Franchisor must have been given at least thirty (30) business days written first right of refusal by Franchisee, upon the same terms as those agreed upon by Franchisee with any proposed assignee; provided, however, Franchisor may substitute cash of equivalent value for any non-cash term. In the event Franchisor waives or fails to exercise its right of first refusal, if Franchisee thereafter agrees to accept a revised offer, regardless of the nature of the revision, Franchisor shall have a new right of first refusal hereunder on the new terms.

*12.03 Assignment To An Entity.*

Notwithstanding the foregoing, if Franchisee is an individual, Franchisee may assign this Agreement to an Entity, as defined in Article 11, formed under the laws of the state where the Licensed Business is located, which is wholly owned by Franchisee; provided that the individual Franchisee shall first provide written notice of the assignment to Franchisor and shall personally guarantee the performance of this Agreement. If Franchisee is an Entity, Franchisee may assign this Agreement to another Entity, formed under the laws of the state where the Licensed Business is located, of the same or different form, which has exactly the same ownership, including percentages of ownership as Franchisee; provided that each of the individual equity or other owners of the new Entity shall personally guarantee the performance of the Agreement. The personal guarantee shall be in the form of Exhibit G hereto. No assignment under this paragraph shall change or limit the liability of any person or entity under this Agreement. Franchisee shall pay to Franchisor a processing fee of five hundred dollars (\$500.00) for an assignment pursuant to this paragraph 12.03.

#### *12.04 Approval Process.*

Franchisor may use its own discretion in approving or rejecting prospective transferees in the same manner as if it was approving or rejecting any other new prospective franchisee, taking into consideration such factors as their financial ability, character, business reputation, experience and capability to conduct the type of business involved. The approval of one Assignment does not obligate Franchisor to approve any other or subsequent Assignment. If Franchisee is an Entity, notwithstanding any statute or agreement to the contrary, the addition, withdrawal or expulsion of any equity or other owner or the transfer, encumbrance or assignment of any equity or ownership or control interest of any equity or other owner or the dissolution or reorganization of the Entity for any reason is subject to the same considerations as any other Assignment.

#### *12.05 Transfer By Franchisor.*

There shall be no restriction upon Franchisor's right to encumber, transfer or assign this Agreement or the System. Following such a transfer or assignment, Franchisor shall have no further obligation or liability to Franchisee hereunder or otherwise so long as the assignee or transferee agrees to assume all of Franchisor's liabilities and obligations to Franchisee. Upon Franchisor's request, Franchisee shall execute and deliver a certificate to Franchisor, as described in Paragraph 21.05, in connection with an anticipated transfer or financing procedure by Franchisor. Franchisee agrees to accept any transferee of Franchisor, including any sub-franchisor and perform for such transferee the same as for Franchisor.

#### *12.06 No Sublicensing.*

Franchisee shall not, directly or indirectly, sublicense or attempt to sublicense the Marks or the System or any part thereof to any person or entity for any purpose. Any attempted or purported sublicense shall be void.

## **Article 13 - Death Or Incapacity**

#### *13.01 Alternatives Upon Death Or Incapacity.*

In the event of the death or incapacity of an individual franchisee, or of any individual equity or other owner of an Entity franchisee, the heirs, beneficiaries, devisees or legal representatives of said individual shall, within ninety (90) days of such event:

13.01.01 Apply to Franchisor for the right to continue to operate the franchise and the Licensed Business for the duration of the term of this Agreement and any renewals hereof, which right to continue to operate will be granted upon the fulfillment of all of the conditions set forth in Article 12 of this Agreement (except that no transfer fee shall be required); or

13.01.02 Sell, transfer or convey Franchisee's interest to a third party in compliance with the provisions of Article 12 of this Agreement; provided, however, in the event a proper and timely application for the right to continue to operate has been made and rejected, the ninety (90) days to

sell, transfer or convey shall be computed from the date of said rejection. For purposes of this paragraph, Franchisor's silence on an application to continue to operate through the ninety (90) days following the event of death or incapacity shall be deemed a rejection made on the last day of such period.

#### *13.02 Effect Of Failure To Comply.*

In the event of the death or incapacity of an individual franchisee, or any owner of an equity or other interest in an Entity franchisee where the provisions of this Article have not been fulfilled within the time provided, all rights granted to Franchisee under this Agreement shall, at the option of Franchisor, terminate and the parties shall proceed according to and have the rights provided for in Articles 17 and 18.

#### *13.03 Incapacity Defined.*

For purposes of this Agreement, "incapacity" is the inability of Franchisee to operate or oversee the operation of the Licensed Business on a regular basis and in the usual manner by reason of any continuing physical, mental or emotional disability, chemical dependency or other similar limitation which has continued or will more likely than not continue for a period of 60 consecutive days or more. Franchisee shall advise Franchisor in writing, immediately, upon receipt of advice from any physician or other professional that Franchisee or a principal of an Entity franchisee has an incapacity. However, Franchisee's failure or inability to advise Franchisor of Franchisee's incapacity shall not limit Franchisor's rights under this sub-paragraph. Any dispute as to the existence of an incapacity as defined herein shall be resolved by majority decision of three (3) licensed medical physicians practicing in the state in which the Licensed Business is located, with each party selecting one (1) physician, and the two (2) physicians so designated selecting the third physician. The determination of the majority of the three (3) physicians shall be binding upon the parties and all costs of making said determination shall be borne by the party against whom it is made. Notwithstanding the foregoing, if any insurance company pays to the Franchisee or Franchisee's Entity any disability benefits for 60 consecutive days, or more, of disability, the Franchisor may regard that as conclusive evidence of incapacity.

### **Article 14 - Successors And Assigns**

This Agreement shall bind and inure to the benefit of the successors, permitted transferees and assigns, personal representatives, heirs and legatees of the parties hereto.

### **Article 15 - Termination**

Franchisor may terminate this Agreement as follows:

15.01 Franchisor may terminate this Agreement upon at least thirty days notice and opportunity to cure (or longer if required by law) if Franchisee is in breach of any term of this Agreement or of any other agreement between Franchisee and Franchisor or any affiliate of Franchisor.

15.02 Franchisor may terminate this Agreement upon at least 72 hours notice and opportunity to cure (or longer if required by law) for occurrence of any one or more of the following events (each of which Franchisee acknowledges is good cause for termination and a material breach of this Agreement), notwithstanding that Franchisor may have the option to give a longer notice and cure period pursuant to other provisions of this Agreement:

- i. Franchisee fails to pay or deposit when due, and in the manner prescribed by Franchisor, any moneys owed to Franchisor or any of its related companies or to another **Melt n Dip** franchisee;
- ii. Franchisee files a voluntary petition in bankruptcy or has an involuntary petition filed against Franchisee, Franchisee makes an assignment for the benefit of creditors, or a receiver or trustee is appointed;

iii. Franchisee violates or attempts to violate any of the Assignment provisions of this Agreement;

iv. Franchisee vacates, deserts, or otherwise abandons all or any substantial portion of the Premises or equipment, or abandons the Licensed Business for more than 24 hours (whether or not Franchisee intends to abandon);

v. Franchisee sublicenses or attempts to sublicense the Marks or the System in violation of this Agreement;

vi. Franchisee is an Entity and an impasse exists between equity or other owners or there is any change in the ownership of any interest in the Entity without having first complied with the provisions of this Agreement;

vii. Franchisee fails to timely permit any audit or inspection by or on behalf of Franchisor;

viii. Franchisee violates or fails to comply with any law, rule, regulation, ordinance or order relating to the operation of the Licensed Business (including any health codes, rules or regulations) or fails to obtain and continue any license, permit or bond necessary, in Franchisor's opinion, for Franchisee's operation of the Licensed Business;

ix. Franchisee is convicted of or pleads guilty or "Nolo Contendere" to any felony;

x. Franchisee fails to operate the Licensed Business under the Marks or fails to properly display the Marks at all times in full compliance with this Agreement and the Manual;

xi. Franchisee engages in any business dealings in relation with the Franchise, the Licensed Business or the Franchisee which are unethical, dishonest or otherwise could cause harm to the Marks, the System, Franchisor, other franchisees, the goodwill associated with the Marks, or to any customer, client or vendor of Franchisee or any other franchisee or the Franchisor;

xii. Franchisee fails or refuses to timely execute and deliver a truthful certificate pursuant to paragraph 21.05;

xiii. Franchisee fails to maintain insurance or workers compensation coverage; or

xiv. Any other agreement, including any other Franchise Agreement to which Franchisee is a party, between Franchisee and Franchisor or between Franchisee and any of Franchisor's related companies is terminated for cause.

15.03 Franchisor may terminate this Agreement without giving notice or opportunity to cure upon occurrence of any one or more of the following events (each of which Franchisee acknowledges is good cause for termination and a material breach of this Agreement), notwithstanding that Franchisor may have the option to give a longer notice and a cure period pursuant to other provisions of this Agreement:

i. Upon three willful and material breaches of the same term of this Agreement occurring within a twelve-month period;

ii. Franchisee is adjudicated a bankrupt or insolvent;

iii. Franchisee makes an assignment for the benefit of creditors or similar disposition of the assets of the Licensed Business;

iv. Franchisee voluntarily abandons the Licensed Business; or

v. Franchisee is convicted of or pleads guilty or no contest to a charge of violating any law relating to the Licensed Business.

15.04 Notwithstanding any right of Franchisor to terminate this Agreement, pursuant to this Agreement or otherwise, Franchisor may, in Franchisor's sole discretion, elect to not terminate this Agreement and to, in lieu thereof, impose limitations on Franchisee, including, but not limited to, revocation of Franchisee's Territorial rights, and revocation of Franchisee's rights to acquire or offer

and sell certain products and services. Franchisor's election to not terminate this Agreement pursuant to this paragraph shall not constitute an election of remedies and Franchisor may, thereafter, terminate this Agreement on account of the same or any other event(s) of default as set forth herein.

## **Article 16 - Competition With Franchisor**

### *16.01 Competing Business Activities During Term.*

During the term of this Agreement, Franchisee shall not engage, directly or indirectly, either personally or as an employee, partner, member, manager, franchisor, franchisee, agent, consultant, shareholder, director, officer, advisor or otherwise, in any other business the same as or similar to that defined under "Licensed Business" herein or which is or would directly or indirectly compete with the Licensed Business or otherwise with the business of Franchisor or with any other franchisee of Franchisor. This prohibition includes, but is not limited to, any business offering and selling restaurant, food, and event catering services. Franchisee shall not operate any other business from the Premises. Franchisee shall not use nor permit to be used any Trade Secret(s) of Franchisor or the Marks or anything resembling the Marks in connection with any other business, whether or not such other business is owned, controlled by or associated with Franchisee.

### *16.02 Competing Business Activities After Term.*

16.02.01 Franchisee covenants and agrees that, for a period of twenty-four (24) months following the effective date of any termination, expiration or non-renewal ("the Termination Date"), Franchisee will not, individually or together with another, directly or indirectly, on its own behalf or on behalf of or through any other person, sole proprietorship, or Entity, do any of the following:

a. Compete with Franchisor or any franchisee of Franchisor within a twenty mile radius of the boundary of Franchisee's designated Territory, as it existed immediately before the Termination Date, in the operation of any business offering and selling **restaurant, food, and event catering services**, or any aspect of such Licensed Business as it exists on the Termination Date, or any business substantially similar thereto or tending to compete for the same customers as Franchisor or its Franchisees ("Prohibited Activities);

b. Solicit, take away, or divert, and/or influence or attempt to influence any customers, franchisees, vendors, clients, and/or patrons of Franchisor or of any franchisee of Franchisor, which customers, franchisees, vendors, clients, and/or patrons were served by Franchisor or a franchisee of Franchisor at any time during the four (4) years preceding the Termination Date, to transfer or divert their business or patronage from Franchisor or Franchisor's franchisee(s) to any other person or Entity engaged in the Prohibited Activities or anything similar to the Licensed Business;

c. Solicit or attempt to hire any person who was an employee of Franchisor or of any other franchisee of Franchisor during the one (1) year period ending on the Termination Date, or attempt to influence any such person to terminate his employment with Franchisor or Franchisor's franchisee(s).

16.02.02 Franchisee covenants and agrees that, at no time will Franchisee, directly or indirectly, disclose or cause or permit to be disclosed, sell, or otherwise transfer to any party other than Franchisor, including, but not limited to, a person or Entity, for or not for consideration, the Trade Secrets, or any part thereof;

16.02.03 Franchisee covenants and agrees that, for a period of twenty-four (24) months from the Termination Date, Franchisee will not, individually or together with another, directly or indirectly, through others or on its own behalf, hold any ownership or have a financial or other interest in, be employed by, or otherwise have any ownership or management relationship with, any person or Entity, either as principal, broker, member, agent, stockholder of any class, or as a partner, officer, director, trustee, franchisee, franchisor, employee, consultant, lender, guarantor, member of a board of directors or board of trustees, or in any other capacity, which does any of the following:

a. Competes with Franchisor or any franchisee of Franchisor;

b. Solicits, takes away, or diverts, and/or influences or attempts to influence any customers, clients, franchisees, vendors, and/or patrons of Franchisor or of any other franchisee of Franchisor, which customers, clients, franchisees, vendors, and/or patrons were served by Franchisor or any franchisee of Franchisor at any time during the four (4) years preceding the Termination Date, to transfer or divert their business or patronage from Franchisor or any other franchisee to any other person or Entity engaged in the Prohibited Activities or anything similar to the Licensed Business;

c. Solicits or attempts to hire any person who was an employee of Franchisor or of any other franchisee of Franchisor during the two (2) year period ending on the Termination Date, or attempts to influence any such person to terminate his employment with Franchisor or any franchisee of Franchisor.

16.02.04 Franchisee covenants and agrees that, at no time will Franchisee, directly or indirectly, through others or on its own behalf, hold any ownership or have a financial or other interest in, be employed by, or otherwise have any ownership or management relationship with, any person or Entity, either as principal, broker, agent, stockholder of any class, or as a member, partner, officer, director, trustee, franchisee, Franchisor, employee, consultant, lender, guarantor, member of a board of directors or board of trustees, or in any other capacity, which, discloses or causes to be disclosed, sells, or otherwise transfers to any party other than Franchisor, including, but not limited to, a person, sole proprietorship, partnership, joint venture, firm, limited liability company, corporation, trust, or other Entity, for or not for consideration, the Trade Secrets, or any part thereof;

16.02.05 Franchisee acknowledges and agrees that the periods of time of this covenant and the geographical areas of restriction imposed by this covenant are fair and reasonable and are reasonably required for the protection of Franchisor and its franchisees. Franchisee would desire at least this same protection against competitive activities by another former franchisee whose franchise agreement was either expired, terminated or non-renewed. Franchisee agrees that, in the event a court or arbitrator should determine any part of this covenant to be excessively broad, unenforceable, and/or invalid, the remaining parts hereof shall nevertheless continue to be valid and enforceable as though the invalid portions were not a part hereof. Franchisee further agrees that, in the event that any of the provisions of this Agreement relating to the geographic area of restriction or the periods of time of the covenants shall be deemed to exceed the maximum area or periods of time which a court of competent jurisdiction would deem enforceable, the geographic area or periods of time shall, without further action on the part of any person, be deemed to be modified, amended and/or limited, to the maximum geographic area or time periods which a court of competent jurisdiction would deem valid and enforceable in any jurisdiction in which such court shall be convened. Any such modification shall apply only in the jurisdiction of the deciding court or in the state where the arbitrator made the decision.

16.02.06 It shall not be a violation of this Article for Franchisee to have or maintain a passive investment in stock of any publicly traded corporation, provided said stock holdings shall not exceed five percent (5%) of the issued and outstanding stock of such corporation.

16.02.07 For purposes of this Agreement, all references to Franchisor shall be deemed to include: (a) any corporation or entity which acquires all, or substantially all, of the assets of Franchisor, whether by statutory merger or otherwise, (b) any corporation, partnership, or other entity directly or indirectly controlled by or under common control with Franchisor or its successor, and (c) any sub-franchisor or other assignee of Franchisor.

16.02.08 Franchisee agrees that it would be extremely difficult to prove with certainty the exact amount of damages caused to Franchisor by a violation of this Article 16 by Franchisee and therefore, Franchisee agrees that, upon proof that Franchisee violated this Article 16, Franchisor shall be entitled to liquidated damages in an amount calculated by multiplying the amount of gross revenues generated by Franchisee or a third party that benefited from the violation during the period

of breach and multiplying it by 1.5. Franchisee acknowledges that this results in a reasonable estimate of what Franchisor's actual damages would be and is not a penalty.

16.02.09 Franchisee agrees that any violation of the covenants contained in this Article will cause irreparable harm to Franchisor and its other franchisees and may, as a matter of course, be restrained by process issued out of a court of competent jurisdiction, in addition to any other remedies provided by law. In the event of any action for a temporary or permanent injunction to enforce this Covenant, Franchisee hereby waives any requirement of a bond to the extent that any bond would exceed one hundred dollars. The substantially prevailing party in any such enforcement action shall be entitled to recover their attorneys fees and costs incurred therein in addition to any and all other remedies.

16.02.10 Nothing in this Article 16 shall obligate Franchisor to take action to enforce this or any other covenant against competition against any other franchisee or former franchisee. Nothing in this Article 16 shall entitle Franchisee to take any action to enforce this or any other covenant against competition against any other franchisee or former franchisee.

16.02.11 The terms of this Article 16 shall survive the termination or expiration of this Agreement for any reason.

## **Article 17 - Effect Of Termination**

### *17.01 Loss Of Rights.*

After the Termination Date, Franchisee shall have no further rights to use, in any manner, the System, the Marks, anything similar to the Marks, the telephone numbers, the telephone listings, any proprietary computer software, any trade secrets or the Manual. Franchisee shall immediately notify such persons as Franchisor shall reasonably require of Franchisee's loss of rights thereto. All sums of money due from Franchisee to Franchisor or to any other **Melt n Dip** franchisee as of the Termination Date shall become immediately due and payable. As between the parties hereto, whether or not a Lease Conditional Assignment Agreement has been signed, Franchisor or Franchisor's designee shall have the option, exercisable within sixty (60) days, to assume the lease for the Premises. If Franchisor elects to assume the lease for the Premises, pursuant to the Lease Conditional Assignment Agreement or otherwise, Franchisee agrees to cooperate in the transfer, to execute any documents which may be required for Franchisor or Franchisor's designee to assume the lease, and to otherwise take no actions which would interfere with the ability of Franchisor or it's designee to assume the said lease. Franchisee specifically agrees to execute such document(s) as may be necessary to transfer the telephone number(s) to Franchisor or Franchisor's designee. In the event Franchisee or any owner or affiliate of Franchisee owns the Premises, Franchisee agrees that Franchisor shall have the option to lease the Premises at fair market value for a term of up to ten (10) years, at Franchisor's election, such option exercisable by Franchisor within sixty (60) days following the Termination Date.

### *17.02 Change Of Identity.*

After the Termination Date, Franchisee shall immediately refrain from holding itself out to the public in any way as a Franchisee or affiliate of Franchisor or as a former Franchisee or affiliate of Franchisor. If directed by Franchisor, Franchisee shall, at Franchisee's sole cost and expense, make or cause to be made such changes in signs, telephone numbers, buildings or structures as Franchisor may direct to distinguish the Premises from its former appearance and from other **Melt n Dip** franchisees. If Franchisee fails to make such changes within ten (10) calendar days, then Franchisor shall have the right to enter upon the Premises, without liability for trespass or otherwise, and to make or cause to be made such changes at the expense of Franchisee, which expenses shall be paid by Franchisee upon demand. Franchisee shall immediately file the appropriate forms to abandon or withdraw any assumed name certificate or to change the name of its corporation or partnership to eliminate any reference to the System or the Marks. If Franchisee fails or refuses to cooperate with Franchisor, Franchisee hereby appoints Franchisor as its Attorney in Fact to

complete the changeover. Franchisee shall immediately return to Franchisor the Manual, Trade Secrets, bulletins, instruction sheets, software, forms, Marks, designs, signs, printed matter and other material containing any part of the System or the Marks together with all copies thereof (including electronic or digital copies) that are or have been within Franchisee's custody or control.

#### *17.03 Changeover Procedure.*

Upon termination of this Agreement, either by expiration, non-renewal, or otherwise, if Franchisor or Franchisor's designee has indicated its intention to assume Franchisee's lease for the Premises and to operate an **Melt n Dip** business from that location, the parties agree to cooperate in the changeover of the Licensed Business to Franchisor, including by taking the steps set forth herein. If Franchisee fails or refuses to cooperate with Franchisor, Franchisee hereby appoints Franchisor as its Attorney in Fact to complete the changeover. In such case, the parties shall: notify the landlord of the change of tenancy pursuant to the Lease Conditional Assignment Agreement or otherwise and Franchisor shall be entitled to take control of the Premises, including by changing the locks; terminate vendor accounts at Franchisor's option; conduct an inventory of all equipment, fixtures, tenant improvements, supplies and inventory (if Franchisee elects to not participate in the inventory, Franchisor's inventory shall be presumed accurate and complete); Franchisor shall have the right to use Franchisee's equipment, furniture, fixtures and related items for up to sixty (60) days and shall pay or credit Franchisee with the fair market rental value of that use; Franchisor shall be entitled to communicate directly with Franchisee's agents, employees, customers and vendors in order to facilitate a smooth transition to ownership by Franchisor or Franchisor's designee; Franchisor or its designee shall be entitled to all Gross Revenues received after the date of termination. No action taken pursuant to this paragraph shall constitute a waiver by Franchisor of any claims against Franchisee for any reason. The parties agree that there are no circumstances justifying a stay or delay in implementation of the terms of this paragraph and the parties specifically agree that any claims, including, but not limited to, allegations of wrongful termination, can be separately resolved and that an award of damages would be an adequate remedy.

#### *17.04 Continuing Royalties.*

Franchisor shall be entitled to receive royalties on all Gross Revenues received or receivable by Franchisee as of the Termination Date. All such royalties shall be due and payable on the Termination Date.

#### *17.05 Option To Purchase Certain Assets.*

Franchisor shall have and is hereby granted an exclusive option for a period of sixty (60) days from and after the Termination Date, to purchase from Franchisee all of Franchisee's right, title and interest in all or any part of the franchise, Franchisee's Licensed Business and business assets and/or the Premises, if applicable, at the fair market value, except as otherwise specifically provided herein, of all assets purchased, but excluding any value for purported "goodwill" or "blue sky". Franchisee acknowledges that Franchisor already owns the "goodwill" or "blue sky", which is attached to the Marks and the Licensed Business. Franchisor's notice exercising the option granted herein shall contain a list, at least by major category, of the assets Franchisor is purchasing. Franchisor shall not be obligated to assume any liabilities of Franchisee.

#### *17.06 Payment And Terms.*

Franchisor shall pay to Franchisee all sums due pursuant to this Article, and any other sums required by this Agreement or by law, over a period of sixty months, or such shorter period as Franchisor, in its sole discretion, shall elect, with interest thereon at the prime interest rate as published by Bank of America or its successor, if applicable, determined as of the end of the calendar quarter immediately preceding the Termination Date.

#### *17.07 Survival Of Terms.*

The terms of this Article 17 shall survive the termination, non-renewal or expiration of this Agreement for any reason.

## **Article 18 – Release From Franchisee Obligations.**

### *18.01 Release From Continuing Obligations.*

At any time, upon not less than ninety (90) days prior written notice to Franchisor, Franchisee may secure a release from Franchisee's continuing obligations under this Agreement by executing a Release From Continuing Obligations in substantially the form of Exhibit L and by electing one of the alternatives contained in the Release From Continuing Obligations. Upon receipt of a notice pursuant to this paragraph, Franchisor may, but is not obligated to, accelerate the effective date of Franchisee's termination to such date as Franchisor may select in Franchisor's sole discretion.

## **Article 19 - Arbitration of Disputes.**

### *19.01 Agreement to Arbitrate.*

Except as provided in paragraph 19.04, any controversy or claim or dispute between the parties hereto or between any party hereto and any other person arising out of or relating to this Agreement, the negotiation thereof, the offer or acceptance thereof, or the performance or breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This Article shall be governed by the Federal Arbitration Act. Any arbitration shall be before a panel of three arbitrators and shall take place in DuPage County, Illinois. No party shall join or attempt to join their claims in a single proceeding with the claims of any other party, person or entity even if similarly situated. The parties shall bear their own expenses, including their own attorney's fees and costs and shall share equally all expenses of the arbitrator.

### *19.02 Conduct of Arbitration.*

Unless otherwise specifically required by applicable law, demand for arbitration or proceedings in arbitration, or court proceedings shall not operate to stay, postpone, prohibit or rescind any expiration, termination or non-renewal of this Agreement as provided in this Agreement, and the parties will be limited to their remedy in damages, as determined by the court or arbitrator, for non-renewal or termination found by the arbitrator to be wrongful. Damages would be an adequate remedy for any such wrongs. The court or arbitrator shall not extend, modify or suspend any of the terms of this Agreement or the reasonable standards of business performance set by Franchisor. The arbitrators shall permit discovery between the parties pursuant to the Federal Rules of Civil Procedure.

### *19.03 Conditions Precedent to Arbitration.*

As conditions precedent to commencing an arbitration proceeding pursuant to this Agreement, the parties shall first comply with the terms of this paragraph 19.03. Failure to comply with this paragraph shall be a material breach of this Agreement and shall entitle the non-defaulting party to an award of all of their attorney's fees and costs reasonably expended in enforcing the terms of this paragraph. Such award of attorney's fees shall be made by the court enforcing this paragraph and shall be paid by the breaching party before and as a condition precedent to further proceeding in accordance with this Article. For the limited purpose of enforcing this paragraph 19.03, each party hereby waives arbitration and the matter shall be heard in DuPage County. Within not more than sixty days following the date on which the aggrieved party first discovered or reasonably should have discovered the facts of a dispute between the parties, but not more than one year after the date of the events or facts which gave rise to the dispute, the aggrieved party shall give a Notice to the other party (and any involved other persons) of the existence of the dispute, and shall set forth, in writing, a detailed description of the relevant facts together with a reasonably detailed

description of the legal basis of the claim. The Notice shall include a detailed description by the aggrieved party of the remedy or outcome desired. The non-aggrieved party shall respond to the Notice within thirty days following its receipt. If the Notice and response does not resolve the dispute, the parties shall meet, in person, within sixty days following the date of the non-aggrieved party's response, in the corporate offices of the Franchisor, and attempt to informally resolve the matter. If the informal meeting does not resolve the matter, the parties shall, within sixty days following the date of the informal meeting, submit to non-binding mediation in Wheaton, IL with a mediator selected according to the rules of the American Arbitration Association. If the dispute is not resolved through mediation, then either party may commence an arbitration proceeding, but must do so within ninety days following the date that either party or the mediator has declared the mediation terminated. The demand for arbitration shall contain a certificate by the party commencing arbitration that the party has fully complied with every provision of this paragraph 19.03. Copies of the Notice and the response thereto exchanged pursuant to this paragraph shall be attached to the demand for arbitration and the issues in the arbitration shall be limited to matters contained therein.

#### *19.04 Limited Exceptions to Arbitration and Mediation.*

The requirements of paragraphs 19.01, 19.02, and 19.03 shall not apply to actions for the sole purpose of collecting unpaid money, including franchise fees, royalties or Marketing Fees pursuant to this Agreement or to actions for the sole purpose of enforcing Franchisor's rights in the Marks (both for injunctive relief and damages), the Trade Secrets or the covenant against competition. Such actions and claims are not submitted to arbitration. Any such actions and claims shall be brought in the DuPage County. Any counterclaims to such actions and claims are submitted to arbitration and shall be subject to paragraphs 19.01, 19.02 and 19.03.

## **Article 20 - Representations Of Franchisee**

### *20.01 Representations*

Franchisee represents and warrants as follows:

20.01.01 Franchisee is not currently a party to or subject to any contract or agreement, including any other franchise agreement, employment agreement or any covenant not to compete which would directly or indirectly be breached by entering into this Agreement or which would directly or indirectly prohibit or restrict Franchisee's signing of this Agreement or performance thereunder;

20.01.02 Franchisee is executing this Agreement and purchasing the license herein for Franchisee's own account and not as an agent or representative of another (unless for an Entity otherwise named herein and in compliance herewith);

20.01.03 Franchisee intends to be actively involved in the Licensed Business for the entire term of this Agreement and knows of no reason that he/she might become a passive owner;

20.01.04 Franchisee is basing Franchisee's decision to purchase this license, in full, upon statements and representations contained in this Agreement and the **Melt n Dip** Franchise Disclosure Document and upon facts obtained pursuant to Franchisee's own investigation. Franchisee is not relying upon any statements or any information received either directly or indirectly from Franchisor or any person acting or purporting to act on behalf of Franchisor which information or statements are not contained in this Agreement or the **Melt n Dip** Franchise Disclosure Document or otherwise in writing and signed by an officer of Franchisor. Franchisee has not received any earnings claims or financial performance information, directly or indirectly, from Franchisor excepting only such information as may be contained in Item 19 of the **Melt n Dip** Franchise Disclosure Document.

20.01.05 Franchisee has not terminated and will not terminate Franchisee's existing employment or cease any other income-producing activity until after franchisee has an approved location, has successfully completed the Initial Training, and is open for business. If Franchisee elects,

notwithstanding this sub-paragraph to terminate employment or income-producing activity, Franchisee knowingly assumes the risk of loss of income and does so contrary to Franchisor's advice.

## **Article 21 - Miscellaneous Provisions**

### *21.01 Nonwaiver.*

No act or omission or delay in enforcing a right by either party shall waive any right under or breach by the other of this Agreement unless such party executes and delivers a written waiver. The waiver by either party of any right under or breach of this Agreement shall not be a waiver of any subsequent or continuing right or breach.

### *21.02 Attorneys Fees.*

In the event that legal action is properly commenced in court by either party to enforce this Agreement or to determine the rights of any party, as permitted by paragraph 19, including any appeal proceeding, the substantially prevailing party, in addition to any other remedy, shall be entitled to receive its reasonable actual attorneys fees and costs, including expert fees and fees on appeal.

### *21.03 Severability.*

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction or by an arbitration panel, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby, and full effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable and valid, unless such invalidity shall pertain to the obligation to pay fees, in which event this Agreement shall terminate.

### *21.04 Warranty Of Authority.*

Each person signing this Agreement for or on behalf of any party to this Agreement warrants that he/she has full authority to sign and to legally bind the party.

### *21.05 Estoppel Certificate*

In the event that Franchisor is considering transferring, assigning or encumbering this Agreement, the System, or any other of Franchisor's rights or assets, or upon request by Franchisor at any time, Franchisee shall, within ten (10) calendar days after Franchisor shall request the same, execute, acknowledge and deliver to Franchisor, a written certificate that (a) this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement as so modified is in full force and effect); (b) the date to which royalties or other charges have been paid in advance, if any; (c) there are not, to Franchisee's knowledge, any uncured defaults on the part of Franchisor or Franchisee hereunder, or specifying such defaults if any are claimed; (d) setting forth the dates of commencement and expiration of the Term of this Agreement; (e) Franchisee has and knows of no basis for any claims of any kind against Franchisor (or, if Franchisee has or knows of any such claims, a detailed statement of all such claims and a statement that Franchisee has and knows of no other claims); and (f) any other matter upon which certification is requested by Franchisor or a prospective assignee or encumbrancer. Franchisor may rely upon any certificate given pursuant to this sub-paragraph as may any prospective purchaser or encumbrancer of all or any portion of Franchisor's rights hereunder. Any failure or refusal to timely execute a truthful certificate pursuant to this sub-paragraph shall be a material breach of this Agreement.

### *21.06 Paragraph Headings.*

The various paragraph headings are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any portion thereof.

*21.07 Recitals.*

The recitals preceding the first numbered paragraph of this Agreement are hereby made part of this Agreement as if set forth within the numbered paragraphs. All references to "Franchisee" shall include all owners, parents and subsidiaries of Franchisee if Franchisee is an entity.

*21.08 No Third Party Beneficiary.*

Nothing in this Agreement shall be construed to give Franchisee any rights as a third party beneficiary or otherwise arising out of any similar or other agreement(s) between Franchisor and any other franchisee(s). Nothing in this Agreement shall be construed to give to any other franchisee or any other person any rights arising out of this Agreement. Any action or inaction by Franchisor with regard to any other franchisee's performance or non-performance as to any term of this or any similar agreement shall not give rise to any claims or rights in favor of Franchisee under this Agreement.

*21.09 Choice Of Law.*

Except as otherwise specified herein, this Agreement shall be governed by and construed under the laws of the state or province in which the Licensed Business is located.

*21.10 Notices.*

All notices required or permitted by this Agreement ("Notice" or "Notices") shall be sent to the respective parties at the addresses set forth herein. The place of Notice may be modified by appropriate Notice to the other party. All Notices shall be sent by certified mail, return receipt requested, postage prepaid, personally delivered, or by facsimile, overnight delivery, or telegraph. Notices shall be deemed given at the earlier of (a) receipt by the addressee, including by facsimile or electronic mail, (b) two (2) days following deposit with the United States Postal Service or its successor, with postage prepaid, or (c) immediately upon refusal of delivery by the addressee.

*21.11 Entire Agreement.*

This document, together with any exhibits and addenda appended hereto, constitutes the full and complete agreement between the parties hereto with respect to the subject matter hereof. There are no verbal or other agreements that affect or modify this Agreement. Notwithstanding the foregoing, nothing in any agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.

*21.12 Modification.*

This Agreement shall not be modified or changed except by a written agreement executed by an officer of Franchisor. No approval of a deviation from the terms of this Agreement shall be valid unless signed by an officer of Franchisor.

*21.13 Effective Date.*

This Agreement shall have no force or effect unless and until signed by an officer of Franchisor. The effective date shall be the date of such corporate signature. Notwithstanding the order of signatures, this Agreement shall be deemed made and entered into in the state where the Licensed Business is located.

*21.14 Time Of Essence.*

Time is of the essence of this Agreement.

**Article 22 - Business Risk.**

*22.01 No Promises.*

Franchisee has been informed by Franchisor, realizes and acknowledges that the business venture contemplated by this Agreement involves business risks and its success or failure will be largely dependent upon Franchisee's abilities in operating and managing the Licensed Business. Except to the extent expressly set forth in the **Melt n Dip** Franchise Disclosure Document, neither Franchisor nor anyone acting or purporting to act on behalf of Franchisor has made any promises or warranties, expressed or implied, as to Franchisee's potential sales, profits or success. As to those issues, Franchisee has made its own investigation and evaluation.

*22.02 Receipt For Disclosure Document.*

Franchisee has received a copy of this Agreement and the **Melt n Dip** Franchise Disclosure Document at least ten (10) days before signing this Agreement or paying any fee to Franchisor. Franchisee has received a complete copy of this Agreement and all exhibits and addenda, with all material blanks filled in, at least five (5) days before signing this Agreement. Franchisee has been encouraged and provided ample opportunity to consult an attorney or other advisor(s) of its own choosing before entering into this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year indicated below.

Dated: \_\_\_\_\_ [effective date]

**FRANCHISOR:**  
Melt n Dip Franchising, LLC

**FRANCHISEE:**

By \_\_\_\_\_  
Saed Khattab, Managing Director,  
4620 Forest Ave.  
Brookfield, IL 60513

By \_\_\_\_\_  
**Franchisee**

By \_\_\_\_\_

Date signed: \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

Date signed: \_\_\_\_\_

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## EXHIBIT A - Location of Licensed Business

The location of Franchisee's "Melt N Dip" Licensed Business Premises shall be:

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

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## **EXHIBIT B - Territory**

Franchisee's designated Territory shall be defined as follows:

The geographic boundaries (all geographic boundaries shall be as they exist on the date of this Agreement):

A seven-mile ring from your approved restaurant location.

The estimated population of the Territory is: \_\_\_\_\_

Map(s): Please see attached map(s).

### **Exhibit B-1**

Your franchise fee shall be paid as follows:

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## **EXHIBIT C - Required Equipment**

The required equipment for the "Melt n Dip" Licensed Business is as set forth in the Manual but includes the following. All equipment must comply with the specifications published in the Manual.

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## EXHIBIT D - Items Subject To Specifications

You must purchase the following items or categories of items in compliance with Franchisor's specifications.

- All Items you will offer or sell from the Licensed Business
- Signs, banners, business cards, marketing materials and promotional items
- All Items bearing the Marks
- All items of required equipment

## EXHIBIT E - Lease Conditional Assignment Agreement

This Rider is attached to and is part of that certain Lease, by and between: \_\_\_\_\_

\_\_\_\_\_ Lessor) and \_\_\_\_\_ (Lessee) dated \_\_\_\_\_ for the premises

located at: \_\_\_\_\_, legally described in Annex A hereto.

**A. CONDITIONAL ASSIGNMENT:** Lessee hereby conditionally assigns all of the Lessee's right, title and interest in this lease to **Melt n Dip** (hereinafter, "Franchisor"). This assignment shall become effective only upon occurrence of both of the following conditions:

1. Termination of the **Melt n Dip** Franchise Agreement between Franchisor and Lessee as Franchisee for the operation of a **Melt n Dip** franchise within the leased premises, and

2. Exercise by Franchisor of its option to assume the obligations of and to replace Lessee as the lessee under this lease as provided in the said Franchise Agreement within fifteen (15) days after termination of said Franchise Agreement.

**B. Lessor** hereby consents to the said conditional assignment and hereby agrees that if said conditional assignment becomes effective, Franchisor shall thereafter be substituted for Lessee as the Lessee in this lease, Lessee shall be relieved of all liability accruing under this lease after the effective date of the assignment and Franchisor shall have the right to reassign this lease to a new Franchisee of Franchisor without the prior consent of Lessor. In the event of such reassignment, Franchisor shall be relieved of all liability accruing under this lease after the date of said reassignment.

**C. Lessee** agrees that at such time as Franchisor exercises its option to become the Lessee under this lease, Lessee will immediately vacate the demised premises without removing any fixtures, parts, or accessories except as authorized in the Franchise Agreement and Lessor will permit Franchisor to enter upon and take possession of the demised premises. Lessor will cooperate in all legal action necessary to remove lessee if lessee refuses to vacate premises.

**D. Lessor** is hereby authorized and directed to rely solely upon written notice by Franchisor of the termination of the said **Melt n Dip** Franchise Agreement and exercise by Franchisor of its option to become the Lessee under this lease and is hereby relieved of any and all liability to Lessee for any action it takes in so relying.

**E. DEFAULT BY LESSEE:** Lessor agrees to give Franchisor thirty (30) days prior written notice of its intention to reenter and repossess the premises and to cancel the lease on account of Lessee's default of any of the terms, conditions or provisions thereof. During the thirty (30) day period Franchisor may cure such default or otherwise exercise its rights under the conditional assignment.

**F. OPTION TO RENEW:** In the event that Lessee fails to exercise any option which he might have under the lease to renew same prior to the expiration thereof, Lessor agrees to notify Franchisor in writing of lessee's failure to renew the lease and Franchisor shall then have fifteen (15) days from the receipt of such notice to exercise any option to renew and replace Lessee as the lessee under the lease.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year indicated below.

Dated: \_\_\_\_\_ [effective date]

**FRANCHISOR:**

Melt n Dip Franchising, LLC

By \_\_\_\_\_  
Saed Khattab, Managing Director,  
4620 Forest Ave.  
Brookfield, IL 60513

Date signed: \_\_\_\_\_

**FRANCHISEE:**

By \_\_\_\_\_  
Franchisee

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Date signed: \_\_\_\_\_

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**ACKNOWLEDGMENTS**

STATE OF \_\_\_\_\_ ) COUNTY OF \_\_\_\_\_ ) ss

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
in and for the State of \_\_\_\_ residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

\* \* \*

STATE OF \_\_\_\_\_ ) COUNTY OF \_\_\_\_\_ ) ss

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
in and for the State of \_\_\_\_ residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

## EXHIBIT F - Assignment of Telephone Numbers

\_\_\_\_\_ Franchisee/Assignor, in consideration of Franchisor/Assignee granting a **Melt n Dip** franchise contemporaneously herewith, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby assigns to **Melt n Dip** all telephone numbers and listings utilized or to be utilized by Franchisee/Assignor in the operation of his **Melt n Dip** Licensed Business. The Assignee hereby assumes the performance of all of the Terms, Covenants, and Conditions of the agreement(s) with the telephone company with respect to such telephones, telephone numbers and telephone listings with the same force and effect as if Assignee had been originally issued such telephone, telephone numbers, telephone listings and the usage thereof. This Assignment is valid on the effective date and is irrevocable. It applies equally to any numbers first used after the effective date. The telephone company is authorized to rely upon this Assignment at any time that it is delivered to the telephone company by Franchisor/Assignee. Assignee and Assignor each agree to hold harmless and indemnify the telephone company from any claims based upon the telephone company's reliance upon this Assignment. Assignee and Assignor each agree to sign any other documents necessary in the opinion of the telephone company to give effect to this Assignment.

Dated: \_\_\_\_\_ [effective date]

**FRANCHISOR:**

Melt n Dip Franchising, LLC

By \_\_\_\_\_  
Saed Khattab, Managing Director,  
4620 Forest Ave.  
Brookfield, IL 60513

Date signed: \_\_\_\_\_

**FRANCHISEE:**

By \_\_\_\_\_  
**Franchisee**

**By** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

Date signed: \_\_\_\_\_

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## EXHIBIT G - Personal Guaranty

IN CONSIDERATION of and to induce the consent by Melt N Dip Franchising, LLC, an Illinois Limited Liability Company ("Franchisor") to the assignment of all right, title, and interest in and to the **Melt n Dip** Franchise Agreement dated \_\_\_\_\_ to \_\_\_\_\_, a \_\_\_\_\_

[Type of Entity and State of organization] ("Franchisee"), [or alternatively, in consideration of and to induce Franchisor's consent for the undersigned to enter into the Franchise Agreement in the Entity form], and for other good and valuable consideration, I/we, and each of us jointly, severally, absolutely and unconditionally guarantee to Franchisor:

### 1.01 Payment Of Obligations.

The punctual payment and satisfaction of each and every claim, demand, default, liability, indebtedness, right or cause of action of every nature whatsoever, including expenses, damages and fees, now or hereafter existing, due or to become due, or held by Franchisor, its subsidiaries, divisions, or related companies, together with any interest as it may accrue, and all costs, expenses and attorneys fees paid or incurred by Franchisor or its subsidiary, division, or related company in collecting or attempting to collect the obligations of the Franchisee or in enforcing or attempting to enforce this Guaranty; and

### 1.02 Continuing Performance.

The timely performance of each term, covenant, and obligation of the license set forth in the **Melt n Dip** Franchise Agreement described above. This is a continuing Guaranty which shall apply to the Franchise Agreement and any subsequent renewals, extensions, amendments or modifications thereof, and such renewals, extensions, amendments or modifications shall be conclusively presumed to be covered by this Guaranty without further notice to or acceptance by the undersigned.

### 2.01 Execution And Delivery.

The undersigned acknowledge(s) and agree(s) that possession of this Guaranty by Franchisor constitutes true and correct execution and actual and proper delivery of same to Franchisor, and the undersigned waive notice of acceptance of this Guaranty and of the incurrence by Franchisee of any liability to which it applies or may apply, and waive presentment and demand for payment thereof, protest, notice of protest and notice of dishonor or non-payment thereof, collection thereof including any notice of default in payment thereof or other notice to, or demand of payment therefore on, any party. The undersigned further waive any right to have security applied before enforcing this Guaranty, any right to require suit against the Franchisee or any other party before enforcing this Guaranty, and any right to subrogation to Franchisor's rights against the Franchisee until the Franchisee's liabilities and obligations to Franchisor are paid and satisfied in full. Payment by the undersigned shall be made at the office of Franchisor in **Brookfield, IL** or such other location as Franchisor may designate in writing.

### 3.01 Rights Of Company

Franchisor may, at its option, at any time, without the consent of or notice to the undersigned, without incurring responsibility to the undersigned and without impairing or releasing the obligations of the undersigned, upon or without any terms or conditions and in whole or in part:

3.01.01 change the manner, place or terms of payment or change or extend the time of payment of, renew, or alter any obligation, liability or right of the Franchisee under the Franchise Agreement hereby guaranteed, or any liabilities incurred directly or indirectly hereunder, and the guaranty herein made shall apply to the obligations and liabilities of the Franchisee, so changed, extended, renewed or altered;

3.01.02 exercise or refrain from exercising any rights against Franchisee or others, or otherwise act or refrain from acting;

3.01.03 settle or compromise any liabilities hereby guaranteed or hereby incurred, and may subordinate the payment of all or any part of such liabilities to the payment of any liabilities which may be due to Franchisor or others; and

3.01.04 apply any sums paid to any liability or liabilities of Franchisee to Franchisor regardless of what liability or liabilities of Franchisee remain unpaid. Franchisor may, at its option, without the consent of or notice to the undersigned, apply to the payment of the liability created by this guaranty, at any time after such liability becomes payable, any moneys, property, or other assets belonging to the undersigned in the possession, care, custody and control of Franchisor.

#### 4.01 Irrevocable.

This agreement shall not affect in any manner the right of Franchisor to terminate the Franchise Agreement pursuant to the terms thereof, and this Guaranty shall survive the termination, expiration, or cancellation of the Franchise Agreement. Franchisor may at its option, elect to take no action pursuant to this Guaranty or the Franchise Agreement without waiving any rights under either. The undersigned do further agree that it will not be necessary for Franchisor, in order to enforce the terms of this agreement against them, to first institute suit or exhaust its remedies against the Franchisee or any others. This Guaranty shall operate as a continuing Guaranty and shall be non revocable, except with the express written consent of Franchisor.

#### 4.02 Joint And Several Liability.

The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" shall mean the undersigned or any one or more of them. Anyone signing this Guaranty shall be bound thereto at any time. Any married person who signs this Guaranty hereby expressly agrees that recourse may be had against his/her community and separate property for all obligations under this Guaranty.

#### 4.03 Successors And Assigns.

This Guaranty shall bind and inure to the benefit of the heirs, executors, administrators, successors, and assigns of Franchisor and of the undersigned.

#### 4.04 Noncompetition.

The undersigned hereby agree that they shall be individually bound by the provisions of the Franchise Agreement relating to trade secrets, confidentiality, and non-competition.

4.05 Bankruptcy Or Insolvency Of Franchisee.

In the event that a petition in bankruptcy or for an arrangement or reorganization of the Franchisee under any state or federal bankruptcy law or for the appointment of a receiver for the Franchisee or any of its property is filed by or against the Franchisee, or if the Franchisee shall make an assignment for the benefit of creditors or shall become insolvent, all indebtedness and other obligations of the Franchisee shall, for purposes of this Guaranty be immediately due and payable.

WITNESS our hands at \_\_\_\_\_, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[SIGNATURE]  
\_\_\_\_\_ % owner of Franchisee

### EXHIBIT H - Master Lease

\_\_\_\_\_ See Attached.

\_\_\_\_\_ None Applicable.

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# EXHIBIT I - Trade Secrets & Confidentiality Agreement – Franchisee and Employees

This Agreement is made and entered into by and between \_\_\_\_\_, **Melt n Dip** (hereinafter, "the Employer") and \_\_\_\_\_, (hereinafter, "Employee").

**WHEREAS**, Employer is engaged in the business of a **restaurant and catering** under the Marks and using the System, pursuant to a franchise agreement with **Melt n Dip** (herein, "the Licensed Business") according to a unique formula and under the trade name and mark, "Melt n Dip".

**WHEREAS**, Employer has a need for a manager or key employee for the Licensed Business;

**WHEREAS**, Employee is willing and able to become a manager or key employee for the Licensed Business;

**WHEREAS**, Employer is willing to hire Employee or to promote Employee to the position of manager or key employee of the Licensed Business, but only upon the terms and conditions set forth herein,

**NOW THEREFORE**, for and in consideration of the mutual covenants herein contained and other good and faithful consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties hereby agree as follows:

1. Employment.

Employer agrees to employ Employee as \_\_\_\_\_, and to pay compensation as follows:

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1. Trade Secrets

Employee agrees that all of the information provided to Employee by Employer in the course of employment relating to the Licensed Business, its operation, management, policies, relationship with its Franchisor, identity of its customers, members and vendors, pricing structures and formulas, product mix, and similar information, constitutes trade secrets. Employee acknowledges that such information has been received only from Employer and that it is not generally available to the public and that it derives independent economic value from not being widely known. Employee acknowledges and agrees that certain items or information to be made available may not, if analyzed in isolation, be trade secrets; however, unless Employer specifically agrees otherwise in

writing, all such items and information, when placed in the context of those things which are trade secrets if analyzed in isolation, become and are part of the trade secrets and are subject to this Agreement. Employee further acknowledges that should the information be misappropriated or transferred to any third party, the Employer and Employer's Franchisor would suffer irreparable harm. Trade secrets does not include information on public record or readily available from a third party without consent by Employer.

## 2. Employer Owns All Incidents

Employer shall be entitled to all of the benefits, profits and other issues arising from or incident to all work, services, and advice of Employee relating to the Trade Secrets or arising out of discussions with Employer regarding same, and in any way communicated to Employer or becoming known to Employer during or after the term of employment.

## 3. Nondisclosure

Employee shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any unauthorized person(s) any information regarding any trade secret(s) or any proprietary information of Employer. All such information shall be held by Employee in complete confidence. Such information is important, material, and confidential and gravely affects the effective and successful conduct of Employer's Licensed Business and goodwill. Should Employee, at any time, cease to be an employee of Employer, Employee shall immediately return to the Employer the originals and all copies of all documents or other media containing or representing trade secrets. Breach of any of the terms of this paragraph shall be a material breach of this Agreement. The terms of this paragraph shall survive termination of this Agreement for any reason. Employee shall be in breach of this Agreement during any month in which Employee or any third party has possession or use of any trade secrets in violation of this Agreement.

## 4. Remedies

Employee agrees that, in the event of alleged breach, Employer shall be entitled, in addition to all other remedies available at law or in equity, to a temporary restraining order, a preliminary injunction and other interim relief and that the maximum bond to be required of Employer for such relief shall be ten dollars (\$10.00). Employee waives any right to a higher bond. Employee agrees that any action taken by Employer pursuant to this Agreement shall not constitute an election of remedies. In addition to, and not in lieu of, an injunction, Employer shall be entitled to a judgment against Employee for the greater of (a) Employer's actual damages (if provable under the circumstances) or (b) liquidated damages calculated as Employee's average monthly gross compensation for the last six months (or portion thereof) for which Employee was employed by Employer, multiplied by the number of months during which Employee was in breach of this Agreement. The parties mutually agree that the liquidated damages agreed herein are not a penalty, but are a best good faith effort to estimate what Employer's actual damages would be in the event of a breach under circumstances where actual damages may, because of facts known at that time, not be readily susceptible of accurate calculation.

## 5. Enforcement By Franchisor

Both Employer and Employee acknowledge and agree that this Agreement is for the benefit not only of the Employer, but also of the Employer's Franchisor, **Melt n Dip**. Employer and Employee each agree that **Melt n Dip** shall have the same right to enforce this Agreement as Employer has; provided only that as between Employer and **Melt n Dip**, they shall be entitled to only one recovery of damages or liquidated damages.

## 6. Effectiveness

This Agreement shall become effective when signed and shall be enforceable at any time thereafter.

### 6.1. Nonwaiver.

No act or omission or delay in enforcing a right by either party shall waive any right under or breach by the other of this Agreement unless such party executes and delivers a written waiver. The waiver by either party of any right under or breach of this Agreement shall not be a waiver of any subsequent or continuing right or breach.

### 6.2. Attorneys Fees.

In the event that legal action or arbitration is commenced by either party to enforce this Agreement or to determine the rights of any party, including any appeal proceeding, the substantially prevailing party, in addition to any other remedy, shall be entitled to receive its reasonable attorney's fees and costs.

### 6.3. Severability.

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby, and full effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable and valid, unless such invalidity shall pertain to the obligation to pay fees, in which event this Agreement shall terminate.

### 6.4. Warranty Of Authority.

Each person signing this Agreement for or on behalf of any party to this Agreement warrants that he/she has full authority to sign and to legally bind the party.

### 6.5. Paragraph Headings.

The various paragraph headings are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any portion thereof.

### 6.6. Recitals.

The recitals preceding the first numbered paragraph of this Agreement are hereby made part of this Agreement as if set forth within the numbered paragraphs.

### 6.7. Choice Of Law.

This Agreement shall be governed by and construed under the laws of the state in which the Licensed Business is located.

### 6.8. Notices.

All notices required or permitted by this Agreement shall be sent to the respective parties at the addresses set forth herein. The place of notice may be modified by appropriate registered or certified mailing to the other party. All notices shall be sent by certified mail, return receipt requested, postage prepaid, or personally delivered. Notices shall be deemed given at the earlier of (a) receipt by the addressee or (b) two (2) days following deposit with the United States Postal Service or its successor.

### 6.9. Entire Agreement.

This document, together with any exhibits and addenda appended hereto, constitutes the full and complete agreement between the parties hereto with respect to the subject matter hereof. There are no verbal or other agreements that affect or modify this Agreement. Any prior representations, promises, contracts or agreements are hereby fully superseded.

6.10. Modification.

This Agreement shall not be modified or changed except by a written agreement executed by an officer of Employer. No approval of a deviation from the terms of this Agreement shall be valid unless signed by an officer of Employer.

Date: \_\_\_\_\_

**EMPLOYEE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

**THE EMPLOYER**

\_\_\_\_\_  
By

\_\_\_\_\_  
Its

\_\_\_\_\_  
Address

# RESTRICTIVE COVENANT AGREEMENT

## Franchisee agreement not to compete with Franchisor

THIS AGREEMENT, by and between, \_\_\_\_\_  
**(Franchisee)**, a [corporation] [partnership] [limited liability company] organized under the laws of  
the State of Illinois, and \_\_\_\_\_ **(Covenantors)**,  
an individual resident of the State of Illinois.

### WITNESSETH:

WHEREAS, pursuant to that certain Franchise Agreement dated \_\_\_\_\_ (the **Franchise Agreement**), Melt n Dip Franchising, LLC (**Franchisor**) granted Franchisee a franchise to operate a Melt n Dip Franchised Business (the **Franchise**), using Franchisor's unique franchise system and Franchisor's trade name and service mark Melt n Dip and other proprietary marks; and

WHEREAS, Covenantor is the owner (or spouse of the owner) of the Franchisee.

WHEREAS, Franchisor has expended substantial amounts of time and money in developing the Marks (as hereinafter defined) and Franchisor's distinctive franchise system, including, without limitation, unique sales and marketing methods, pricing techniques, promotional materials, new product development, financial information, and procedures for the efficient operation of a Melt n Dip Franchised Business, all of which Covenantor acknowledges to be confidential and proprietary information; and

WHEREAS, in connection with the operation of the Franchise, Covenantor will have access to such confidential and proprietary information; and

WHEREAS, as a condition precedent to granting the Franchise to Franchisee, all shareholders, officers, partners, or members of Franchisee must execute the covenants contained herein;

NOW, THEREFORE, as additional consideration and inducement for granting the Franchise to Franchisee, Covenantor hereby agrees and covenants to Franchisee as follows:

**1. Confidentiality.** Covenantor acknowledges the proprietary and confidential nature of Franchisor's Operating Manual, which Franchisee has received on loan from Franchisor, unique sales and marketing methods, pricing techniques, promotional materials, new product development, financial information, client or referral lists, procedures for the efficient operation of a Melt n Dip Franchised Business, and any other methods, procedures, processes, techniques, information, knowledge, or know-how concerning Franchisor's franchise system or Franchisee's Franchise, in particular, that may not be commonly known to the public or to Franchisor's or Franchisee's competitors and that Franchisor or Franchisee has identified or may identify as proprietary and confidential information (**Trade Secrets**). Covenantor shall use such Trade Secrets solely for Franchisee's benefit and shall not, during the term of the Franchise Agreement or at any time thereafter, communicate, divulge, or use any Trade Secrets to or for the benefit of any other person, entity, or organization.

**2. Proprietary Marks.** Covenantor acknowledges Franchisor's right, title, and interest in and to the service mark Melt n Dip, Franchisor's stylized design, and certain other proprietary

service marks, logos, symbols, and trade names presently used by Franchisor or that Franchisor may hereafter use or provide for use by Franchisee, and the identification, schemes, standards, specifications, operating procedures, and other concepts embodied in Franchisor's franchise system (the Marks). Covenantor further acknowledges that any use of the Marks outside the scope of the Franchise Agreement without Franchisor's prior written consent would be an infringement of Franchisor's rights in the Marks. Covenantor expressly covenants that he/she shall not, directly or indirectly, commit an act of infringement or contest, or aid in contesting, the validity or ownership of the Marks or take any other action in derogation thereof during the term of the Franchise Agreement or after the expiration or termination thereof pledges that his/her violation of any of the covenants contained in this Agreement would result in irreparable injury to Franchisor and Franchisee, for which no adequate remedy at law may be available, and accordingly consents to the issuance of, and agrees to pay all court costs and reasonable attorney fees incurred by Franchisor or Franchisee in obtaining, an injunction enjoining any conduct by Covenantor prohibited by the terms of this Agreement. This remedy shall be in addition to any and all other remedies that may be available to Franchisor or Franchisee.

**3. Non-competition.** Covenantor covenants that, during the term of the Franchise Agreement and for a continuous and uninterrupted period commencing upon the expiration or termination of the Franchise Agreement (regardless of the cause for termination) and continuing for two (2) years thereafter, directly or indirectly, for him/herself or through, on behalf of, or in conjunction with any person, entity or organization, own, maintain, operate, engage in, or have any interest in, any business offering freshly brewed coffee, coffee beans, and other retail items or any other products or services that have been offered by the Franchised Business, within twenty-five (25) miles of any Melt n Dip Company or Franchised Business. This restriction shall not apply to the beneficial ownership by Covenantor of less than five percent (5%) of the outstanding equity securities of any corporation whose securities are registered under the Securities and Exchange Act of 1934.

**4. Non-solicitation.** Covenantor covenants that he/she shall not, during the term of the Franchise Agreement and for a continuous and uninterrupted period commencing upon the expiration or termination of the Franchise Agreement (regardless of the cause for termination) and continuing, either directly or indirectly, for him/herself or through, on behalf of, or in conjunction with, any person, entity or organization for a period of two (2) years, divert or attempt to divert any business or client of Franchisee's business, or of any other Franchisee of Franchisor, to any competitor or to Covenantor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act that may be injurious or prejudicial to the goodwill associated with the Marks and Franchisor's franchise system.

**5. Severability.** The parties agree that each of the covenants contained in this Agreement shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant contained herein is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision, Covenantor expressly agrees to be bound by any lesser covenants subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenants were separately stated in and made a part of this Agreement.

**6. Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

**7. Construction.** The parties agree that this Agreement shall be deemed to have been entered into in and shall be governed by and construed in accordance with the laws of the State of where the Franchise is located.

**8. Jurisdiction.** The parties agree that any action based upon this Agreement brought by any party hereto against any other party hereto may be brought within the State and judicial district where the Franchised Business is located, and the parties hereby consent to the exercise of personal jurisdiction by any such court and waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

**9. Legal Expenses.** In the event a dispute arises under this Agreement, the prevailing party shall be entitled to recover its expenses, including reasonable attorney and accountant fees, in addition to any other relief to which it may be found entitled.

**10. Franchisor Third-Party Beneficiary.** Covenantor and Franchisee acknowledge and intend that the covenants contained in this Agreement shall directly benefit Franchisor and its affiliates, who shall be a third-party beneficiary thereof, entitled to enforce the provisions thereof in Franchisor's own name without Franchisee as a party in any action filed for such purpose, and shall further be entitled to all remedies provided in Section 2 hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement or caused it to be executed by their duly authorized representative, as of the dates set forth below.

**FRANCHISEE:**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Name:** \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COVENANTOR**

## **EXHIBIT J - Mutual Termination of Franchise Agreement and Release**

This Mutual Termination of **Melt n Dip** Franchise Agreement and Release is entered into by and between \_\_\_\_\_ (Franchisee) and **Melt n Dip** (Franchisor).

WHEREAS Franchisee is a franchisee of Franchisor pursuant to a franchise agreement dated \_\_\_\_\_ (the Agreement), governing a Licensed Business located at \_\_\_\_\_;

WHEREAS Franchisee and Franchisor desire to mutually terminate the Agreement and wind up and resolve all matters between them relating to or arising out of the Agreement and their relationship as Franchisor and Franchisee; and

WHEREAS Franchisee and Franchisor each desire to be bound by the terms of this Mutual Termination of **Melt n Dip** Franchise Agreement and Release,

NOW THEREFORE, the parties hereby agree as follows, acknowledging that each has received adequate consideration for this agreement.

1. Franchisee and Franchisor each acknowledge and agree that, by entering into this Agreement, all of their respective rights under the Agreement are terminated except only as specifically reserved herein.
2. Except for any remaining financial obligations of Franchisee to Franchisor for franchise fees or for goods purchased and except for any post-termination requirements of the Agreement involving competition and trade secrets, all claims, demands, rights, duties, obligations, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, torts, judgments, executions, liabilities, damages, injunctions, assignments, suits or causes of action of every kind and nature, however or wherever arising, whether known or unknown, foreseen or unforeseen, direct, indirect, contingent or actual, liquidated or unliquidated, which have arisen or which might or could arise under Federal, state or local law from any relationship under the Agreement (including any supplier-purchaser relationship) or under any agreement in connection therewith, or from the execution, operation under or termination of the Agreement and any services to Franchisee thereunder or under any prior agreement relating to the Licensed Business, existing or arising at any time prior to or at the item of the execution hereof or the Effective Date (whichever is later) are hereby mutually satisfied, acquitted, discharged and released by Franchisee and Franchisor, it being the express intention of each party that this Release is as broad as permitted by law.
3. Franchisee intends this Release to acquit and forever fully discharge Franchisor and any parent or direct or indirect subsidiary thereof, any division, affiliate or supplier who provided merchandise for Franchisee's operation of the Licensed Business, and its and their respective officers, directors, agents, employees, representatives, successors and assigns, and all other persons, firms or corporations who have acted in agreement or in concert with any of them or with Franchisee.
4. This Mutual Termination of **Melt n Dip** Franchise Agreement and Release shall be binding upon Franchisee and the heirs, legal representatives, successor and assigns of Franchisee and upon Franchisor and its successors and assigns.
5. Franchisee has either been advised by independent counsel before signing this or, acknowledging the need for independent counsel, knowingly waives any such review and advice.
6. In the event of litigation or arbitration to enforce this Agreement, the substantially prevailing party shall be entitled to its reasonable attorney's fees in addition to all other sums owed pursuant to this Agreement or otherwise.
7. The Effective Date of this document shall be: \_\_\_\_\_.

**Franchisee(s)**

**Franchisor**

Melt n Dip Franchising, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Franchisee

## EXHIBIT K - Consent, Waiver And Release For Training

This Consent, Waiver and Release is entered into by and between \_\_\_\_\_  
(Franchisee) and **Melt n Dip Franchising, LLC** (Franchisor) and shall also be for the benefit of any franchisee of **Melt n Dip** in whose office or premises Franchisee receives any part of his training under Franchisee's Franchise Agreement (Trainer).

Franchisee recognizes and acknowledges the value of receiving part of Franchisee's training (or Franchisee's employees' training, if appropriate) under the **Melt n Dip** Franchise Agreement in an actual **Melt n Dip** office owned and operated by another **Melt n Dip** franchisee. At least some of the training will be "hands-on", actually operating the Licensed Business or some aspect of the Licensed Business on a day-to-day basis. In some cases, Franchisee may be left solely in charge of the **Melt n Dip** office of the Trainer for some periods of time. "Franchisee" as used in this agreement shall include any employee(s) of franchisee who obtain training.

In consideration of the value of the hands-on, on-location training, Franchisee covenants and agrees:

Franchisee is not and will not be or become an employee of Trainer unless by a separate written agreement.

Franchisee covenants and agrees to not sue or make any claim, including under any federal, state or local statute or ordinance, for any compensation for services or for any benefits.

Franchisee shall not make any statement(s) or representation(s) inconsistent with this agreement.

Franchisee hereby assumes the risk of injury or death arising out of Franchisee's presence on the Licensed Business premises of Trainer and agrees to defend, hold harmless and indemnify Franchisor and Trainer from and against all claims, demands, damages, injuries or settlements arising out of or related to Franchisee's training on the premises of Trainer, excepting only for intentional or grossly negligent acts of Franchisor or Trainer.

Franchisee hereby assumes the risk of injury or death to others arising out of any negligent or intentional acts of Franchisee while on the Licensed Business premises of Trainer and agrees to defend, hold harmless and indemnify Franchisor and Trainer from and against all claims, demands, damages, injuries or settlements arising out of or related to Franchisee's training on the premises of Trainer caused in whole or in part by Franchisee's negligent or intentional acts.

Franchisee consents to having some or all of Franchisee's training occur under the guidance and on the premises of Trainer. Franchisee's training will take approximately two weeks or until Franchisee has achieved a level of competency as determined by Franchisor.

Franchisee understands and acknowledges that each **Melt n Dip** franchisee conducts the Licensed Business slightly differently and that Franchisee is advised to consider Trainer's methods and procedures, in light of Franchisee's own study of the Manual(s), as one way of operating the Licensed Business. Franchisee is solely responsible for Franchisee's conduct of Franchisee's Licensed Business. If Franchisee is in doubt as to the appropriateness of a procedure or manner of operating the Licensed Business, Franchisee shall obtain clarification from the Franchisor directly. Franchisee understands that it would not be a defense to a later breach of contract notice that he/she acted consistently with what Trainer did.

Trainer covenants and agrees as follows:

Trainer shall not be or become an employer of Franchisee, unless by separate written agreement.

Trainer covenants and agrees to not sue or make any claim, including under any federal, state or local statute or ordinance, for any compensation for services or for any benefits to Trainer.

Trainer shall not make any statement(s) or representation(s) inconsistent with this agreement.

Trainer hereby assumes the risk of injury or death arising out of Franchisee's presence on the Licensed Business premises of Trainer and agrees to defend, hold harmless and indemnify Franchisor from and against all claims, demands, damages, injuries or settlements arising out of or related to Franchisee's training on the premises of Trainer, excepting only for intentional or grossly negligent acts of Franchisor.

Trainer hereby assumes the risk of injury or death to others arising out of any negligent or intentional acts of Trainer and agrees to defend, hold harmless and indemnify Franchisor from and against all claims, demands, damages, injuries or settlements arising out of or related to Franchisee's training on the premises of Trainer caused in whole or in part by Trainer's negligent or intentional acts.

Trainer consents to having some or all of Franchisee's training occur under the guidance and on the premises of Trainer. Franchisee's training will take approximately two weeks or until Franchisee has achieved a level of competency as determined by Franchisor.

Trainer will make best efforts to teach Franchisee the operation of the Licensed Business in accordance with the current version of the Manual(s) and to remind Franchisee that, if Franchisee has questions about the proper procedure under the Manual(s) to obtain clarification from the Franchisor. If Franchisor requests it, Trainer will immediately modify the training to comply with the Manual(s).

Franchisor undertakes as follows:

Franchisor will be responsible for determining whether Franchisee has achieved a level of competency sufficient to satisfy the training requirement under the Franchise Agreement.

By signing below, the parties each hereby agree to be bound by this Consent, Waiver and Release for Training Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Trainer:

Franchisee:

\_\_\_\_\_

\_\_\_\_\_

Franchisor:

Melt n Dip Franchising, LLC

By: \_\_\_\_\_

Saed M. Khattab

Manager, Director, President & CEO

# EXHIBIT L - Release From Continuing Obligations

This Release From Continuing Obligations is entered into by and between \_\_\_\_\_  
\_\_\_\_\_ (Franchisee) and **Melt n Dip Franchising, LLC** (Franchisor).

WHEREAS Franchisee is a franchisee of Franchisor pursuant to a franchise agreement dated \_\_\_\_\_  
\_\_\_\_\_ (the Agreement), governing a Licensed Business located at \_\_\_\_\_  
\_\_\_\_\_;

WHEREAS Franchisee desires to be released from certain of Franchisee's continuing obligations under the terms of the Agreement; and

WHEREAS Franchisor is willing to release Franchisee from certain continuing obligations under the terms of the Agreement, but only upon the terms and conditions herein,

NOW THEREFORE, the parties hereby agree as follows, acknowledging that each has received adequate consideration for this agreement.

## 1. Release from Continuing Obligations.

For the consideration set forth in the alternative selected by Franchisee below, Franchisor hereby releases Franchisee from Franchisee's continuing obligations under the Agreement to the extent set forth in the alternative selected by Franchisee. Except to the extent specifically released by Franchisor according to this Release from Continuing Obligations, Franchisee shall continue to be obligated and shall continue to fully and timely perform all of Franchisee's continuing obligations under the Agreement.

## 2. Election by Franchisee and Terms of Release

Franchisee, by initialing one of the following options, hereby elects to be released from certain continuing obligations under the Franchise Agreement (and to continue to fully perform otherwise) as set forth in the option:

initials

A. By selecting this Option A, Franchisee elects to be released from all continuing obligations under the Agreement except for any existing financial obligations of Franchisee to Franchisor for franchise fees or for goods purchased, except that Franchisee shall continue to fully and timely perform according to the terms of Articles 6 (Trade Secrets), 17 (no competition), 18 (effect of termination) and 20 (arbitration) of the Agreement. In consideration of this Release, Franchisee shall pay to Franchisor \$5,000.00 (USD).

initials

B. By selecting this Option B, Franchisee elects to be released from all continuing obligations under the Agreement except for any existing financial obligations of Franchisee to Franchisor for franchise fees or for goods purchased, except that Franchisee shall continue to fully and timely perform according to the terms of Articles 6 (Trade Secrets) and 20 (Arbitration) of the Agreement. In consideration of this Release, Franchisee shall pay to Franchisor the sum of \$30,000.00 (USD) plus the greater of (a) 1.5 times the average monthly royalty paid during the months Franchisee was a franchisee times the number of months remaining in the Term of the Agreement or (b) 1.5 times the average monthly royalty paid during the immediately preceding twelve months Franchisee was a franchisee times the number of months remaining in the Term of the Agreement. The consideration for this Option B shall be due and payable upon execution of this Release of Continuing Obligations.

initials

C. By selecting this Option C, Franchisee elects to be released from all continuing obligations under the Agreement except for any existing financial obligations of Franchisee to Franchisor for franchise fees or for goods purchased, except that Franchisee shall continue to fully and timely perform according to the terms of

(Initial  
Only One  
Box)

Articles 6 (Trade Secrets) and 20 (Arbitration) of the Agreement. In addition, for so long as Franchisee is not in breach of any term of this Release of Continuing Obligations, Franchisor hereby agrees to not open or permit to be opened a company-owned or franchised **Melt n Dip** office within Franchisee's Territory as described in the Agreement, as modified to the date of this Release of Continuing Obligations, for the greater of two calendar years following this date or the balance of the Term of the Agreement had it not been terminated by this Release of Continuing Obligations. In consideration of this Release, Franchisee shall pay to Franchisor the sum of **\$25,000.00** (USD) plus the greater of (a) two times the average monthly royalty paid during the months Franchisee was a franchisee times the number of months remaining in the Term of the Agreement or (b) two times the average monthly royalty paid during the immediately preceding twelve months Franchisee was a franchisee times the number of months remaining in the Term of the Agreement. The consideration for this Option C shall be due and payable upon execution of this Release of Continuing Obligations.

### 3. Mutual Release and Termination

3.01 Franchisee and Franchisor each acknowledge and agree that, by entering into this Agreement, all of their respective rights under the Agreement are terminated except only as specifically reserved herein. The parties specifically agree to fully and timely perform pursuant to this Release From Continuing Obligations.

3.02 Except for any existing financial obligations of Franchisee to Franchisor for franchise fees or for goods purchased and except for any post-termination requirements of the Agreement specifically preserved by this Release From Continuing Obligations, all claims, demands, rights, duties, obligations, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, torts, judgments, executions, liabilities, damages, injunctions, assignments, suits or causes of action of every kind and nature, however or wherever arising, whether known or unknown, foreseen or unforeseen, direct, indirect, contingent or actual, liquidated or unliquidated, which have arisen or which might or could arise under Federal, state or local law from any relationship under the Agreement (including any supplier-purchaser relationship) or under any agreement in connection therewith, or from the execution, operation under or termination of the Agreement and any services to Franchisee thereunder or under any prior agreement relating to the Licensed Business, existing or arising at any time prior to or at the time of the execution hereof or the Effective Date (whichever is later) are hereby mutually satisfied, acquitted, discharged and released by Franchisee and Franchisor, it being the express intention of each party that this Release is as broad as permitted by law.

3.03 Franchisee intends this Release to acquit and forever fully discharge Franchisor and any parent or direct or indirect subsidiary thereof, any division, affiliate or supplier who provided goods or services for Franchisee's operation of the Licensed Business, and its and their respective officers, directors, agents, employees, representatives, successors and assigns, and all other persons, firms or corporations who have acted in agreement or in concert with any of them or with Franchisee.

4. This Release of Continuing Obligations shall be binding upon Franchisee and the heirs, legal representatives, successors and assigns of Franchisee and upon Franchisor and its successors and assigns.

5. Franchisee has either been advised by independent counsel before signing this or, acknowledging the need for independent counsel, knowingly waives any such review and advice.

6. Terms defined in the Franchise Agreement shall have the same meanings in this Agreement. Jurisdiction and Venue shall be in **Du Page County, IL**. The law of the state where the Licensed Business is located (except any choice of law provisions thereof) shall govern interpretation of this Agreement. In the event of litigation or arbitration to enforce this Agreement, the substantially

prevailing party shall be entitled to its reasonable attorney's fees in addition to all other sums owed pursuant to this Agreement or otherwise.

7. The Effective Date of this document shall be: \_\_\_\_\_.

**Franchisee(s)**

**Franchisor  
Melt n Dip Franchising, LLC**

\_\_\_\_\_  
Franchisee

By: \_\_\_\_\_

\_\_\_\_\_  
Franchisee

its: \_\_\_\_\_

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## EXHIBIT M - Confidentiality Agreement – Additional Information

[Applicable only if additional information requested by Franchisee]

This Confidentiality Agreement is entered into by and between \_\_\_\_\_ (Franchisee) and **Melt n Dip Franchising, LLC** (Franchisor).

Whereas Franchisee is considering purchasing a **Melt n Dip** Franchise;

Whereas Franchisee has requested additional information from Franchisor beyond that contained in the Franchise Disclosure Document;

Whereas the Franchisor regards the information Franchisee has requested to be proprietary, confidential information, and Trade Secrets;

Whereas, notwithstanding the foregoing, Franchisor is willing to provide certain additional information, but only upon the terms of this Confidentiality Agreement.

Therefore, the parties agree as follows, acknowledging the existence and sufficiency of consideration, and fully intending to be bound hereby.

1. Upon receipt of this Confidentiality Agreement, unaltered and fully executed by Franchisee, Franchisor will make a reasonable effort to provide to Franchisee one copy of the following information (the "Confidential Information"):

\_\_\_\_\_

\_\_\_\_\_

2. Franchisee shall be entitled to review the Confidential Information and may permit Franchisee's advisors with a genuine need to know and who are disclosed herein, including attorneys, accountants and confidential business advisors, to review it. No person shall make any reproduction, photo, electronic or other copy of the Confidential Information or any part thereof for any purpose, including summaries. No person shall use the Confidential Information or any part thereof for any purposes except as specifically permitted pursuant to this Confidentiality Agreement. Franchisee warrants that every person, including attorneys, accountants and confidential business advisors, who reviews any portion of the Confidential Information shall be subject to this Confidentiality Agreement, has been informed of the contents of this Confidentiality Agreement before reviewing any of the Confidential Information and has indicated, in writing, a willingness to be bound by this Confidentiality Agreement.

Franchisee's advisors whom Franchisee may permit to review the Confidential Information on Franchisee's behalf are as follows. Franchisee shall not, directly or indirectly, permit any other person to review the Confidential Information or any part thereof:

Name	Address & Telephone	Relationship to Franchisee

[Attach and initial an additional page if necessary]

3. Franchisee agrees that, immediately upon completion of Franchisee's review of the Confidential Information, regardless of whether Franchisee ever purchases a **Melt n Dip** franchise, to return the original and all copies of the Confidential Information to Franchisor, including all summaries of the information contained therein.
4. No person shall ever transfer or convey the Confidential Information or any part thereof to any person not specifically authorized to review the information pursuant to this Agreement. No person shall ever use, directly or indirectly, the Confidential Information or any part of it for any purpose whatsoever except as specifically permitted by this Confidentiality Agreement.
5. In the event Franchisee or any person authorized or permitted by Franchisee or this Confidentiality Agreement to review or possess any of the Confidential Information violates this Confidentiality Agreement, in addition to all other remedies available to Franchisor, Franchisee agrees to defend, hold harmless and indemnify Franchisor and its officers, directors, attorneys, agents and assigns, from and against any claims and liability arising out of or resulting from the violation, including, but not limited to claims by any person that the information provided constituted earnings claims or financial performance information which was unlawfully provided to a prospective franchisee. The obligation to defend, indemnify and hold harmless contained in this paragraph shall specifically require Franchisee to pay any attorneys fees, costs and expert witness fees incurred by Franchisor and the other beneficiaries of this paragraph in defending any such claim or in monitoring Franchisee's defense of any such claim.
6. In the event Franchisee or any person authorized or permitted by Franchisee or this Confidentiality Agreement to review or possess any of the Confidential Information violates this Confidentiality Agreement, in addition to all other remedies available to Franchisor, Franchisee agrees to pay to Franchisor, as liquidated damages, an amount calculated as the greater of: (a) all gross revenues of the person or entity who improperly had any of the Confidential Information during the time the person or entity retained or used any of the Confidential Information for any purpose; or (b) \$250.00 per page, or equivalent, of Confidential Information as to which this Confidentiality Agreement is violated for each day that any provision of this Confidentiality Agreement is violated. Franchisee acknowledges and agrees that calculating actual damages would be impossible and that the liquidated damages calculated pursuant to this paragraph would be a reasonable approximation of actual damages Franchisor would sustain on account of such breach and does not constitute a penalty.
7. In the event Franchisee or any person authorized or permitted by Franchisee or this Confidentiality Agreement to review or possess any of the Confidential Information violates this Confidentiality Agreement, in addition to all other remedies available to Franchisor, Franchisor shall be entitled to obtain a temporary and a permanent injunction or similar equitable relief from any court having jurisdiction thereof and any statutory or other requirement of a bond in excess of \$100.00 as a condition of obtaining such relief is hereby waived to the extent permitted by applicable law.
8. This Agreement shall be construed under the laws of the **Illinois** and jurisdiction and venue of any action brought to enforce or interpret this Agreement shall be in **DuPage County, IL**. Terms defined in the Franchise Agreement shall have the same meanings in this Agreement.
9. If any action is brought to enforce or interpret this Confidentiality Agreement, the substantially prevailing party, in addition to all other remedies, shall be entitled to an award of their attorney's fees and costs, including expert witness fees and any fees on appeal.
10. This Confidentiality Agreement is the complete agreement of the parties with regard to the Confidential Information and supersedes any prior or contemporaneous written or unwritten communications, representations or agreements.

11. Time is of the essence of this Agreement.

**DO NOT SIGN THIS CONFIDENTIALITY AGREEMENT UNTIL YOU HAVE HAD THE COMPANYABC FRANCHISE DISCLOSURE DOCUMENT FOR AT LEAST TEN BUSINESS DAYS AND UNTIL AT LEAST FIVE DAYS AFTER ALL BLANKS IN THIS CONFIDENTIALITY AGREEMENT HAVE BEEN FILLED IN.**

Dated: \_\_\_\_\_

**Franchisee(s)**

**Franchisor**

Melt N Dip Franchising, LLC

\_\_\_\_\_  
Franchisee

By: \_\_\_\_\_  
Saed M. Khattab  
Managing Director, President & CEO  
4620 Forest Ave  
Brookfield, IL 60513

\_\_\_\_\_  
Franchisee

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## **ATTACHMENT C - List of Current Franchisees**

**MD Route 59, LLC**  
4416 E New York St  
Aurora, IL 60504

**MELT N DIP 56, LLC**  
11301 N. 56th St., Ste. 11  
Temple Terrace, FL 33617

**SSBA, LLC**  
6512 Heritage  
West Bloomfield, MI 48322  
Restaurant Location: 6698 Orchard Lake Rd., West Bloomfield, 48322

**BRINSO LLC**  
8809 Carlisle CT.  
Darien, IL, 60561  
Restaurant Location: 6300 Kingery Hwy Unit 126, Willowbrook, IL 60527

**A & H MD Limited, Inc**  
7366 W 87th St.  
Bridgeview, IL 60455  
Restaurant location: 13030 S. LaGrange Rd., Palos Park, IL 60464

**M.N.D. Michigan, LLC**  
30484 Oakleaf Ln.  
Franklin, MI 48025  
Restaurant location: 24606 Ford Rd, Ste B, Dearborn Heights, MI 48127

**WADHA, LLC**  
7820 W. Layton Ave.  
Greenfield,WI.53220

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## **ATTACHMENT E - List of State Registered Agents**

Franchisor's agents for service of process are as follows:

California:

Commissioner of Corporations  
1515 K Street, Suite 200  
Sacramento, California 95814-4052

Connecticut:

Securities and Business Investment Division  
Connecticut Department of Banking  
260 Constitution Plaza  
Hartford, CT 06103-1800

Florida:

Department of Agriculture & Consumer Services  
Division of Consumer Services  
P.O. Box 6700  
Tallahassee, FL 32314-6700

Hawaii:

Business Registration Division  
Department of Commerce and Consumer Affairs  
P.O. Box 40  
Honolulu, HI 96810

Illinois:

Illinois Attorney General  
Office of Attorney General  
500 S Second  
Springfield, IL 62701

Indiana:

Franchise Section  
Secretary of State  
302 West Washington Street  
Indianapolis, IN 46204

Iowa:

Director of Regulated Industries Unit  
Iowa Securities Bureau  
340 East Maple  
Des Moines, IA 50319-0066

Maryland:

Office of the Attorney General  
Securities Division  
200 St. Paul Place, 20th Floor  
Baltimore, MD 21202-2020

Michigan:  
Franchise Administrator  
Michigan Department of Attorney General  
670 Law Building  
Lansing, MI 48913

Minnesota:  
Franchise Examiner  
Minnesota Department of Commerce  
133 East Seventh Street  
St. Paul, MN 55101

Nebraska:  
Department of Banking and Finance  
1200 N Street, Suite 311  
PO Box 95006  
Lincoln, NE 68509

New York:  
Bureau of Investor Protection and Securities  
New York State Department of Law  
120 Broadway, 23rd Floor  
New York, NY 10271

North Dakota:  
Franchise Examiner  
Office of Securities Commissioner  
600 East Boulevard, Fifth Floor  
Bismarck, ND 58505

Oregon:  
Director  
Department of Consumer and Business Services  
Corporate Securities Section  
Labor and Industries Building  
Salem, OR 97310

Rhode Island: Chief Securities Examiner  
Division of Securities  
233 Richmond Street, Suite 232  
Providence, RI 02903

South Dakota:  
Franchise Administrator  
Division of Securities  
118 West Capitol  
Pierre, SD 57501

Texas:  
Statutory Document Section  
PO Box 12887  
Austin, TX 78711

Utah:

Division of Consumer Protection  
Utah Department of Commerce  
160 East Three Hundred South  
PO Box 45804  
Salt Lake City UT 84145-0804

Virginia:  
State Corporations Commission  
Division of Securities and Retail Franchising  
1300 E Main Street, 9th Floor  
Richmond, VA 23219

Washington:  
Director  
Department of Financial Institutions  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033

Wisconsin:  
Franchise Administrator  
Division of Securities  
Department of Financial Institutions  
PO Box 1768  
Madison, WI 53701

The Address of the United States Federal Trade Commission is:  
Federal Trade Commission  
Washington, D.C. 20580

## **ATTACHMENT F - State Agencies**

The State agencies involved with franchising are as follows:

California:

Commissioner of Corporations  
1515 K Street, Suite 220  
Sacramento, California 95814-4052

Connecticut:

Securities and Business Investment Division  
Connecticut Department of Banking  
260 Constitution Plaza  
Hartford, CT 06103-1800

Florida:

Department of Agriculture & Consumer Services  
Division of Consumer Services  
P.O. Box 6700  
Tallahassee, FL 32314-6700

Hawaii:

Business Registration Division  
Department of Commerce and Consumer Affairs  
P.O. Box 40  
Honolulu, HI 96810

Illinois:

Illinois Attorney General  
Office of Attorney General  
500 S Second  
Springfield, IL 62701

Indiana:

Franchise Section  
Secretary of State  
302 West Washington Street  
Indianapolis, IN 46204

Iowa:

Director of Regulated Industries Unit  
Iowa Securities Bureau  
340 East Maple  
Des Moines, IA 50319-0066

Maryland:

Office of the Attorney General  
Securities Division  
200 St. Paul Place, 20th Floor  
Baltimore, MD 21202-2020

Michigan:

Franchise Administrator

Michigan Department of Attorney General  
670 Law Building  
Lansing, MI 48913

Minnesota:

Franchise Examiner  
Minnesota Department of Commerce  
133 East Seventh Street  
St. Paul, MN 55101

Nebraska:

Department of Banking and Finance  
1200 N Street, Suite 311  
PO Box 95006  
Lincoln, NE 38509

New York:

Bureau of Investor Protection and Securities  
New York State Department of Law  
120 Broadway, 23rd Floor  
New York, NY 10271

North Dakota:

Franchise Examiner  
Office of Securities Commissioner  
800 East Boulevard, Fifth Floor  
Bismarck, ND 58505

Oregon:

Director  
Department of Consumer and Business Services  
Corporate Securities Section  
Labor and Industrial Building  
Salem, OR 97310

Rhode Island:

Chief Securities Examiner  
Division of Securities  
233 Richmond Street, Suite 232  
Providence, RI 02903

South Dakota:

Franchise Administrator  
Division of Securities  
118 West Capitol  
Pierre, SD 57501

Texas:

Statutory Document Section  
PO Box 12887  
Austin, TX 78711

Utah:

Division of Consumer Protection  
Utah Department of Consumer  
160 East Three Hundred South  
PO Box 45804  
Salt Lake City, UT 84145-0804

Virginia:

State Corporations Commission  
Division of Securities and Retail Franchising  
1300 E. Main Street, 9th Floor  
Richmond, VA 23219

Washington:

Director, Department of Financial Institutions  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033

Wisconsin:

Franchise Administrator  
Division of Securities  
Department of Financial Institutions

The Address of the United States Federal Trade Commission is:

Federal Trade Commission  
Washington, D.C. 20580

# ATTACHMENT G - State Law Addendum

## Addendum for State-Specific Requirements

### General

These states have statutes which may supersede the franchise agreement in your relationship with Us including the areas of termination and renewal of your franchise: ARKANSAS [Stat. Section 70-807], CALIFORNIA [Bus. & Prof. Code Sections 20000-20043], CONNECTICUT [Gen. Stat. Section 42-133e *et seq.*], DELAWARE [Code, Tit. 6, Chap. 25, Section 2551 *et seq.*], HAWAII [Rev. Stat. Section 482E-1], ILLINOIS [ILCS 705/1-44], INDIANA [Stat. Section 23-2-2.7], IOWA [Code Sections 523H.1 – 523H.17], MICHIGAN [Stat. Section 19.854(27)], MINNESOTA [Stat. Section 80C.14], MISSISSIPPI [Code Section 75-24-51], MISSOURI [Stat. Section 407.400], NEBRASKA [Rev. Stat. Section 87-401], NEW JERSEY [Stat. Section 56:10-1], SOUTH DAKOTA [Codified Laws Section 37-5A-51], VIRGINIA [Code 13.1-557-574-13.1-564], WASHINGTON [Code Section 19.100.180], WISCONSIN [Stat. Section 135.03]. These and other states may have court decisions that may supersede the franchise agreement in your relationship with Us including the areas of termination and renewal of your franchise.

Some states have statutes that limit Our ability to restrict your activity after the franchise agreement has ended. Other states have court decisions limiting Our ability to restrict your activity after the franchise agreement has ended.

A provision in the franchise agreement that terminates the franchise upon your bankruptcy may not be enforceable under Title 11, United States Code.

### California Addendum

(Applies only to California franchisees)

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination and non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

SECTION 31125 OF THE CALIFORNIA CORPORATIONS CODE REQUIRES US TO GIVE YOU A DISCLOSURE DOCUMENT APPROVED BY THE COMMISSIONER, BEFORE WE ASK YOU TO CONSIDER A MATERIAL MODIFICATION OF YOUR FRANCHISE AGREEMENT. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT.

Neither We nor any person identified in Item 2 is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a *et seq.*, suspending or expelling the persons from membership in that association or exchange.

YOU MUST SIGN A GENERAL RELEASE OF CLAIMS IF YOU TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE §31512 VOIDS A WAIVER BY THE PERSON ACQUIRING A FRANCHISE OF CERTAIN RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE §§31000 THROUGH 31516). BUSINESS AND PROFESSIONS CODE §20010 VOIDS A WAIVER OF CERTAIN RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE §§20000 THROUGH 20043).

The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et. seq.)

The franchise agreement contains a covenant not to compete that extends beyond the termination of the franchise. This provision may not be enforceable under California law.

The franchise contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

You must resolve disputes through binding arbitration. The arbitration will occur at Wayne, New Jersey, USA, with the costs of arbitration being borne equally by the parties. Each party will bear its own expenses, including attorney's fees. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The Antitrust Law Section of the Office of the California Attorney General views maximum price agreements as per se violations of the Cartwright Act. As long as this represents the law of the State of California, We will not interpret the Franchise Agreement as permitting or requiring maximum price limits.

If your Licensed Business will be in California, You will not pay your Initial Fee to Us until your business is open and we have completed all of Our material pre-opening obligations to you. Item 5 of the Franchise Disclosure Document and Article 2 of the Franchise Agreement are amended accordingly. Please review Item 11 for our pre-opening obligations. You must have your bank verify that you have sufficient funds available at the time We sign the Agreement. The only condition on your obligation to pay the Initial Fee is that We must complete all of Our material pre-opening obligations to you.

#### Hawaii Addendum

(Applies only to Hawaii franchisees)

If your Licensed Business will be in Hawaii, You will not pay your Initial Fee to Us until your business is open and we have completed all of Our material pre-opening obligations to you. Item 5 of the Franchise Disclosure Document and Article 2 of the Franchise Agreement are amended accordingly. Please review Item 11 for our pre-opening obligations. You must have your bank verify that you have sufficient funds available at the time We sign the Agreement. The only condition on your obligation to pay the Initial Fee is that We must complete all of Our material pre-opening obligations to you.

#### Illinois Addendum

Illinois law governs the franchise agreements.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside Illinois.

Franchisees rights upon termination and non-renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

Item 17 is amended by the addition of the following: The conditions under which your franchise can be terminated and your rights upon nonrenewal may be affected by Illinois law, and we will comply with that law in Illinois.

The other conditions under which your franchise can be terminated and your rights of nonrenewal may be affected by Illinois law, 815 Illinois Compiled Statutes 705/19 and 705/20.

Any provision in the Franchise Agreement which designates jurisdiction or venue in a forum outside of Illinois may be unenforceable as to any cause of action which otherwise is enforceable in the courts of the State of Illinois.

Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive requirements with any provisions of the Illinois Franchise Disclosure Act or any other law of the State of Illinois is void. This shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under the G-3 provisions of the Illinois Franchise Disclosure Act, nor shall it prevent the arbitration of any claims according to the provisions of Title 9 of the United States Code.

#### Franchise Agreement and Multi-Unit Agreement

Sections 4 and 41 and Rule 608 of the Illinois Franchise Disclosure Act states that court litigation must take place before Illinois federal or state courts and all dispute resolution arising from the terms of this Agreement or the relationship of the parties and conducted through arbitration or litigation shall be subject to Illinois law. The FDD and Franchise Agreement are amended accordingly.

The governing law or choice of law clause described in the FDD and contained in the Franchise Agreement is not enforceable under Illinois law. This governing law clause shall not be construed to negate the application of the Illinois law in all situations to which it is applicable.

Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void.” The Franchise Agreement is amended accordingly. To the extent that the Franchise Agreement would otherwise violate Illinois law, such Agreement is amended by providing that all litigation by or between you and us, arising directly or indirectly from the franchise relationship, will be commenced and maintained in the state courts of Illinois or, at our election, the United States District Court for Illinois, with the specific venue in either court system determined by appropriate jurisdiction and venue requirements, and Illinois law will pertain to any claims arising under the Illinois Franchise Disclosure Act.

Section 21, Choice of Law, of the Franchise Agreement is revised to include the following “provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act.” Also, “there shall be no waiver of any right of choice of forum granted upon you by Section 4 of the Illinois Franchise Disclosure Act.”

The termination and non-renewal provisions in the Franchise Agreement and the FDD may not be enforceable under Sections 19 and 20 of the Illinois Franchise Disclosure Act.

Under Section 705/27 of the Illinois Franchise Disclosure Act, no action for liability under the Illinois Franchise Disclosure Act can be maintained unless brought before the expiration of 3 years after the act or transaction constituting the violation upon which it is based, the expiration of 1 year after you become aware of facts or circumstances reasonably indicating that you may have a claim for relief in respect to conduct governed by the Act, or 90 days after delivery to you of a written notice disclosing the violation, whichever shall first expire. To the extent that the Franchise Agreement is inconsistent with the Illinois Franchise Disclosure Act, Illinois law will control and supersede any inconsistent provision(s).

Each of the undersigned hereby acknowledges having read and understood this Addendum and consents to be bound by all of its terms.

**FRANCHISOR:**  
**Melt n Dip Franchising, LLC**

**FRANCHISEE:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### **Indiana Addendum**

(Applies only to Indiana franchisees)

Indiana law prohibits requiring you to prospectively agree to a release or waiver which purports to relieve any person from liability imposed by the Indiana Franchise Practices Act (IC 23-2-2.7(5)). The Franchise Agreement shall be deemed amended to the extent necessary to comply with IC 23-2-2.7(5).

Indiana law limits the parties agreement to resolve disputes in any jurisdiction outside of Indiana (IC 23-2-2.7(10)). Subject to the Federal Arbitration Act, the Franchise Agreement shall be deemed amended and the forum for any court proceedings shall be in Indiana.

## **Maryland Addendum**

(Applies only to Maryland franchisees)

The Maryland Franchise Registration and Disclosure Law, COMAR 02.02.08.16L, provides that, as a condition of the sale of a franchise, We may not require you to agree to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability under the Franchise Registration and Disclosure Law. Item 17 of the Franchise Disclosure Document is amended by adding: any general release required as a condition of sale and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement and Franchise Disclosure Document shall be deemed amended so that no release, assignment, novation, waiver or estoppel is required if it would violate the Maryland Franchise Registration and Disclosure Law. Nothing in the franchise agreement, including any acknowledgments or representations, shall be deemed a release or waiver of any right or obligation under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the Franchise Disclosure Document is amended by adding the following: The provision in the Franchise Agreement that provides for termination upon bankruptcy of the franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, et. seq.).

If you are a resident of Maryland or your Licensed Business will be in Maryland, You will not pay your Initial Fee or any other money to Us until your business is open and we have completed all of Our material pre-opening obligations to you. Item 5 of the Franchise Disclosure Document and Article 2 of the Franchise Agreement are amended accordingly. Please review Item 11 for our pre-opening obligations. You must have your bank verify that you have sufficient funds available at the time We sign the Agreement. The only condition on your obligation to pay the Initial Fee is that We must complete all of Our material pre-opening obligations to you.

Item 17 of the Franchise Disclosure Document and Article 19 of the Franchise Agreement are amended by adding: any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

Article 19 of the Franchise Agreement is amended to provide as follows: Any lawsuit permitted under this Article shall be brought in the federal or state courts located in the State of Maryland. Item 17 is hereby amended by adding the identical language in the "summary" column of line v.

## **Minnesota Addendum**

(Applies only to Minnesota franchisees)

Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Franchise Disclosure Document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

With respect to franchises governed by Minnesota law, the franchisor will comply with Minn. Stat. §80C.214, Subds. 3, 4, and 5 which require, except in certain specified cases, that We give you 90 days notice of termination (with 60 days to cure) and 180 days notice of non-renewal of the franchise agreement.

We will protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name, to the extent required by Minn. Stat. §80C.12, Subd. 1(g).

To the extent governed by Minn. Rule 2860.4400J, you shall not be deemed to have waived any rights under Minnesota law. You shall not be deemed to have consented to Us obtaining injunctive relief, although We may seek injunctive relief. A Court or the arbitrators shall determine whether to require a bond as a condition of injunctive relief.

If your Licensed Business will be in Minnesota, You will not pay your Initial Fee to Us until your business is open and we have completed all of Our material pre-opening obligations to you. Item 5 of the Franchise Disclosure Document and Article 2 of the Franchise Agreement are amended accordingly. Please review Item 11 for our pre-opening obligations. You must have your bank verify that you have sufficient funds available at the time We sign the Agreement. The only condition on your obligation to pay the Initial Fee is that We must complete all of Our material pre-opening obligations to you.

### **New York Addendum**

(Applies only to New York franchisees)

Item 3 is amended to read as follows:

Neither We nor any person identified in Item 2 above have any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against us alleging a violation of any franchise law, antitrust or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

Neither We nor any person identified in Item 2 above have been convicted of a felony or pleaded *nolo contendere* to any felony charge or during the 10 year period immediately preceding the date of this Franchise Disclosure Document, been convicted of or pleaded *nolo contendere* to a misdemeanor charge been held liable in any other civil action by final judgment or been the subject of any other material complaint or other legal proceeding where such felony, misdemeanor civil action, complaint or other legal proceeding involved violation of any franchise law, antifraud or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

Neither We nor any person identified in Item 2 above is subject to any currently effective injunctive or restrictive order or decree relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency, or is subject to any currently effective order of any national securities association or national securities exchange as defined by the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange, or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department.

Item 4 is amended to read as follows:

During the 10 year period immediately preceding the date of the Franchise Disclosure Document neither We nor any predecessor, affiliate, current officer or general partner of Us has been the subject of a bankruptcy proceeding, been adjudged bankrupt or reorganized due to insolvency or been a principal officer of a company or a general partner of a partnership at or within one year of the time that such company or partnership became the subject of a bankruptcy

proceeding or was adjudged bankrupt or reorganized due to insolvency or is subject to any such pending bankruptcy or reorganization proceeding.

Item 5 is amended by adding the following: We will use the Initial Fee for the purposes of covering the costs of selling the franchise and other franchises, for your initial training, for general overhead and for profit.

Item 12 is amended by adding the following: Although We will consider many factors in determining the boundaries of your Marketing Area, it will contain a population of not less than 25,000 people.

Item 17 is amended by changing the caption and preliminary statement to read as follows:

**Item 17: RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

THIS TABLE LISTS CERTAIN IMPORTANT PROVISIONS OF THE FRANCHISE AND RELATED AGREEMENTS PERTAINING TO RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION. YOU SHOULD READ THESE PROVISIONS IN THE AGREEMENTS ATTACHED TO THIS FRANCHISE DISCLOSURE DOCUMENT.

Item 17 D is amended by adding the following: You may terminate the agreement on any grounds available by law.

Item 17 J is amended by adding the following: We will only assign to an assignee who in Our good faith judgment is willing and able to assume Our obligations.

### **North Dakota Addendum**

(Applies only to North Dakota franchisees)

Under North Dakota law, no modification or change We make to the Manual or method of operation may materially affect your status, rights or obligations under the Franchise Agreement.

Covenants not to compete are considered unenforceable in the State of North Dakota.

Under North Dakota law, a requirement that you consent to liquidated damages or termination penalties in the event of termination of the franchise agreement is considered unenforceable.

The North Dakota Franchise Investment Law (Section 51-19-09) requires that the laws of North Dakota, which laws will prevail, will govern the Franchise Agreement. Further, North Dakota law requires that all issues or disagreements relating to the Franchise Agreement will be arbitrated, tried, heard and decided within the jurisdiction of courts in the state of North Dakota.

Under the North Dakota Franchise Investment Law (Section 51-19-09), a North Dakota franchisee may not be required to execute a general release upon renewal of the Franchise Agreement.

### **Rhode Island Addendum**

(Applies only to Rhode Island franchisees)

Item 17 is amended by adding the following: Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that a provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.

If your Licensed Business will be in Rhode Island, You will not pay your Initial Fee to Us until your business is open and we have completed all of Our material pre-opening obligations to you. Item 5 of the Franchise Disclosure Document and Article 2 of the Franchise Agreement are amended accordingly. Please review Item 11 for our pre-opening obligations. You must have your bank verify that you have sufficient funds available at the time We sign the Agreement. The only condition on your obligation to pay the Initial Fee is that We must complete all of Our material pre-opening obligations to you.

### **South Dakota Addendum**

(Applies only to South Dakota franchisees)

Covenants not to compete upon termination or expiration of a franchise agreement are generally unenforceable in South Dakota, except in certain instances as provided by law.

In the event that either party shall make demand for arbitration, such arbitration shall be conducted in a mutually agreed upon site in accordance with Section 11 of the Commercial Arbitration Rules of the American Arbitration Association.

The law regarding franchise registration, employment, covenants not to compete, and other matters of local concern will be governed by the laws of the State of South Dakota; but as to contractual and all other matters, this agreement and all provisions of this instrument will be and remain subject to the application, construction, enforcement and interpretation under the governing law of the state where the franchise is located.

Any provision of the franchise agreement which requires you to agree to jurisdiction and venue outside of South Dakota is void with respect to any cause of action which is otherwise enforceable in South Dakota.

Notwithstanding any term of the franchise agreement, We not terminate the franchise agreement upon default without first affording you thirty (30) days notice with an opportunity to cure the default within that time.

To the extent required by South Dakota law, all provisions giving any party a right to liquidated damages are hereby deleted from the franchise agreement and the parties shall be entitled to their actual damages instead.

### **Virginia Addendum**

(Applies only to Virginia franchisees)

Item 17 of the Franchise Disclosure Document is amended by adding the following: The provision in the Franchise Agreement that provides for termination upon your bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, et. seq.).

### **Washington Addendum**

(Applies only to Washington franchisees)

If any of the provisions in the Franchise Disclosure Document or franchise agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act, the provisions of the Act will prevail over the inconsistent provisions of the Franchise Disclosure Document and franchise agreement with regard to any franchise sold in Washington.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in Washington or in a place as mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

Initial Fees of new Washington franchisees are held in an escrow account until the franchisee's business is open.

The state law addendum, above, if applicable, is a part of the Franchise Agreement and supersedes any inconsistent term(s) of the Franchise Agreement

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## ATTACHMENT H - Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration, as of the Effective Date stated below:

State	Effective Date
California	
Hawaii	
Illinois	January 11, 2022
Indiana	February 11, 2022
Maryland	
Michigan	December 9, 2021
Minnesota	
New York	
North Dakota	
Rhode Island	
South Dakota	
Virginia	
Washington	
Wisconsin	12/2/2021

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

# ATTACHMENT I - Application for Franchise

Date: \_\_\_\_\_

## APPLICATION FOR AN MELT N DIP FRANCHISE (US)

I/We (owners) \_\_\_\_\_

of (Franchisee) \_\_\_\_\_

hereby submit an application to Melt n Dip, Inc 4620 Forest Ave, Brookfield, IL 60513 for a Melt n Dip Franchise:

Our Melt n Dip Franchise is to be located at: \_\_\_\_\_, in the state of

\_\_\_\_\_ (the "State"). This application once submitted is subject to the following terms and conditions:

1. Initial Franchise Fee for this franchise is \$45,000 payable in cash/check as follows:
  - a. When (We) the franchisor has satisfied its pre-opening obligations to the franchisee (you) and the franchisee (you) has commenced business operations
- 2.
3. I/we acknowledge that I/we have, at least fourteen calendar days, prior to the signing of this Application Agreement, received Melt n Dip's current form of Franchise Disclosure Document applicable to the State. I/we understand that a completed form of the Franchise Agreement will be provided at least five business days prior to signing the Franchise Agreement, and that all other terms are to be in accordance with it.
4. I/we have submitted a completed Confidential Qualification Report, including a completed Individual Financial Statement on Melt n Dip's form and I/we hereby authorize Melt n Dip to conduct an investigation of my/our background(s) to verify the information submitted.
5. I/we acknowledge and understand that submission of this application does not bind or obligate Melt n Dip, Inc. to issue a Melt n Dip Franchise to me/us.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Applicant (Print Name)

\_\_\_\_\_  
Applicant (Print Name)

# ATTACHMENT J - RECEIPT

[Return This Copy To Us]

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all Exhibits carefully.

If Melt n Dip offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If Melt n Dip does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit H.

The franchisor offering franchises for sale is Melt n Dip Franchising, LLC, located at 4620 Forest Ave, Brookfield, IL 60513. Its telephone number is 708-581-4905.

Issuance Date: April 30, 2023

I have received a Franchise Disclosure Document, dated April 30, 2023, that included the following Exhibits:

- A. Financial Statements
- B. Franchise Agreement
- C. List of Current and Former Franchisees
- D. Manual Table of Contents
- E. Our Agents For Service of Process
- F. State Agencies
- G. State Law Addendum
- H. Effective Dates
- I. Franchise Application

Date: \_\_\_\_\_

	_____ Signature
	_____ Printed Name
	_____ Address
	_____ City State Zip

	_____ Signature
	_____ Printed Name
	_____ Address
	_____ City State Zip

**RECEIPT**

[Keep this for your records]

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all Exhibits carefully.

If Melt n Dip offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If Melt n Dip does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and and the appropriate state agency identified on Exhibit H.

The franchisor offering franchises for sale is Melt n Dip Franchising, LLC, located at 4620 Forest Ave., Brookfield, IL 60531. Its telephone number is 708-581-4905.

Issuance Date: April 30, 2023

I have received a Franchise Disclosure Document, dated April 30, 2023, that included the following Exhibits:

- A. Financial Statements
- B. Franchise Agreement
- C. List of Current and Former Franchisees
- D. Manual Table of Contents
- E. Our Agents For Service of Process
- F. State Agencies
- G. State Law Addendum
- H. Effective Dates
- I. Franchise Application

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip