**Appointment of a Distributor for Consumer Products**THIS AGREEMENT is made at \_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_ 200\_\_\_ BETWEEN MESSRS RISHIT FOODS AND ICE CREAMS PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as **“THE COMPANY”** (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its’ successors and assigns) of the ONE PART; AND \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as **“THE DISTRIBUTOR”** (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include his/their heirs, executors and administrators) OF THE OTHER PART;

W H E R E A S:

(a) The Company is the exclusive Marketing Agent for India of **“BOOGIE WOOGIE ICE CREAMS”** and other milk and dairy products (herein referred as the **“said goods”**) and is duly authorized to appoint within the said territory of India distributors for all products manufactured under the above brand/trade name/mark.

(b) The Distributor is desirous of being appointed as the Distributor for the said goods in the territory of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (herein referred as the **“said territory”**) on the terms and conditions appearing hereinafter.

**NOW THIS DEED WITNESSETH AS BELOW:**

**1.** The Distributor is hereby **appointed as the distributor** of the Company for the said territory of \_\_\_\_\_\_\_\_\_\_\_ for sale of the said goods on the terms and subject to the conditions set out below.

**2.** For the due performance of this agreement, the Distributor shall deposit an **interest free security deposit** of   
Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) with the Company. The Company shall be at full liberty to increase the amount of the said security deposit any time hereafter and the said increased deposit shall accordingly be deposited by the Distributor with the Company, without raising any objection, within a period of one month from the date of the Company making the demand for the same. On determination of this agreement, as hereinafter provided, the Company shall refund the said deposit to the distributor without interest after deduction of the amounts payable, if any, by the Distributor to the Company under these presents.

**3.** The Company shall supply the said goods to the Distributor on the basis of **cash payment against the delivery**. The Company will accept the cash/local cheques/demand drafts/pay orders/bankers’ cheques towards the payment of its bills. No outstation cheques will be accepted.

**4.** The Company shall raise its bills/Invoices on the Distributor at the rates from time to time set and/or fixed by the Company as the dealer’s price. The invoices will allow discount of \_\_\_\_\_\_\_% on the dealer’s price. In addition to the said rates, the Distributor shall be liable to separately pay octroi duty, entry taxes and any other cess including service tax, central and state sales tax as applicable and leviable on the goods delivered to them.

**5.** The Company will effect delivery of the said goods to the cold storage of the Distributor. Thereafter, it shall be the sole responsibility of the Distributor to preserve and keep the said goods in good condition and the Company will not be responsible for deterioration of the goods stored by the Distributor. The Distributor shall be required to manage, at his own cost, and with his own labour and transportation arrangements the distribution and marketing of the said goods to the dealers/retailers within the said territory.

**6.** The distributor shall, at the time of delivery, receive the goods after due inspection. If at any time, it is observed that the said goods or part thereof are in damaged condition, in that case the Distributor is required to immediately, at the time of receipt itself, inform the company about the same by endorsing specific details of such damaged condition on the Company’s copy of the sale bill/invoice/Delivery Challan. Any subsequent claim or complaint by the Distributor in that behalf will not be entertained by the Company. Goods once delivered in good condition cannot be returned to the Company.

**7.** The Company shall, for better preservation of the said goods, supply its Deep Freezers worth Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) to the Distributor on the following terms:—

(a) The Ownership of the Deep Freezers shall always be that of the Company and at no time the Distributor shall be entitled to claim any right, title, interest or lien on the same.

(b) The Distributor shall deposit with the Company 50% of the aforesaid amount of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) being the additional security deposit free of any interest. This deposit is in addition to the security deposit referred in Clause 2 above.

(c) The Deep Freezers will be supplied to the Distributor on hire basis. The Distributor shall be required to pay initially nominal hire charges at the rate of   
Rs. \_\_\_\_\_\_\_\_\_\_/- per month per Deep Freezer. The Company has full liberty to review the said hire charges anytime hereafter without any notice to the Distributor. The Distributor shall not be entitled to raise any objection to such increase. The hire charges shall be payable irrespective of the fact whether the said Deep Freezers are actually used or not or for any other reason whatever. The Distributor shall, take all reasonable care to keep   
the said Deep Freezers in good condition and in   
working order.

(d) The Distributor shall pay the aforesaid hire charges in advance on or before 5th day of every month. The Distributor shall issue twelve cheques in advance for 12 months’ hire charges and on expiry of the said period shall from time to time issue further fresh cheques   
in advance for every subsequent 12 months. The Distributor assures to honour the said cheques at the   
first presentation.

(e) The Distributor may, with the prior approval of the Company in writing, keep the said Deep Freezers at the place of his dealers at his risk subject to terms and conditions hereof. The Distributor shall expressly clarify to the dealer that the said Deep Freezers are the absolute property of the Company. In any event it shall be the   
sole obligation and responsibility of the Distributor to pay the hire charges and for safe return of the said   
Deep Freezers to the Company on determination of the present agreement.

(f) The Company shall carry out major repairs of the said Deep Freezers. At the end of every month the Distributor shall in addition to the hire charges also pay a sum of   
Rs. \_\_\_\_\_\_\_\_\_\_/- per Deep Freezer to the Company towards maintenance and service expenses. However, the Company shall not be responsible for any repairs required due to any act of negligence of the Distributor or his staff or of the Distributor’s dealer and the Company’s decision in that behalf shall be final. The Company’s liability for repairs and maintenance of the said Deep Freezers in no case shall exceed Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_/- per annum. Any additional maintenance/repairs required shall be for and on account of the Distributor.

(g) The Distributor shall not be entitled to withhold the payment of hire and/or maintenance charges on the ground that the said Deep Freezers were under repairs or not being used or on any other ground.

(h) The Distributor and/or his dealers shall, in the said Deep Freezers, store goods only of the Company and shall not store therein goods of any other party.

(i) The Company shall not be held responsible or liable if stocks deteriorate due to failure of mechanism of Deep Freezers for any reason whatever including power failure. The Distributor at his cost and expense shall take out necessary insurance for the stocks.

(j) If the Distributor shall collect any deposit in respect of the said Deep Freezers from the dealers in excess of the deposit paid to the Company, in that case the Distributor shall remit such excess deposit to the Company. The Distributor shall submit a six monthly statement relating to the said Deep Freezers disclosing information as to the dealers with whom they are kept and the amounts of deposits received from them.

(k) The said Deep Freezers being absolute and exclusive property of the Company, the Distributor and/or his dealers shall not be entitled to create any kind of third party rights on the same.

(l) The Company has unilateral right to remove its Deep Freezers from the place of Distributor and/or from the place of his dealers and/or from any other place where the said Deep Freezers are kept for reasons deemed fit by the Company including non payment of any dues by the company and/or storage of the goods therein of other party and/or for breach of any of the terms of this Agreement by the Distributor.

**8.** The Distributor shall pay **a Franchise Fee** of Rs. \_\_\_\_\_\_\_\_/- per each parlour and Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_/- per outlet to   
the Company.

**9.** **The Company shall advertise its products** through different medias as may be thought fit by the Company in its sole discretion. The Distributor shall have no right to make any complaint in that behalf.

**10.** The Company shall Endeavour its utmost to deliver the said goods of best quality. However, on and from the point of its actual physical delivery, it shall be the sole obligation and responsibility of the Distributor to take all measures and precautions to preserve the quality and condition of the said goods until its consumption. The said goods being for human consumption, as mentioned in Clause 6 hereinabove, the Distributor shall be entitled to make any complaint in respect thereof, only at the time of its delivery and thereafter it shall be the sole responsibility of the Distributor. The Distributor agrees to keep indemnified and hereby indemnifies the Company against all claims, actions and demands in respect of the use of the said goods caused by the negligence of the Distributor in not properly preserving the said goods or for its timely consumption.

11. The Distributor shall:—

(a) purchase the said goods directly from the Company only and shall not purchase any goods of the same or similar type or Goods competing with the Company’s goods from any other source.

(b) sell the goods in the same condition and packing as they are received by him and not deface or alter the goods or their packaging or remove or modify any labels, instructions, trade marks or indentifying signs applied to or furnished in connection with the said goods or affix to the said goods or its packaging any labels or signs not previously approved in writing by the Company.

(c) shall fulfill the standards from time to time indicated by the Company for presentation of goods, setting up of infrastructure and/or for any other purposes.

(d) use his best endeavors to promote and extend the sale of the said Goods throughout the said territory and in particular to achieve the sales target of the Company.

(e) in all matters act loyally and faithfully to the Company and obey its orders and instructions and in any matter where it is not possible to obtain such orders or instructions in relation to any particular matter, act in prudent manner as he reasonably considers to be most beneficial to the Company’s interest.

(f) not engage or be interested either directly or indirectly as principal, agent, partner, director or employee in the production, sale or advertisement of goods of any description or kind similar to or competitive with the said goods without obtaining the previous consent in writing of the Company.

(g) disclose to the Company immediately particulars of all selling agencies in which the Distributor is engaged or interested either directly or indirectly as principal, agent, partner, director or employee and from time to time disclose promptly to the Company particulars of all further similar agreements in which the Distributor so becomes engaged or interested.

(h) act only within the territory assigned and shall not take orders for the sale to any person of the said goods which he knows or has reason to believe are intended for resale outside the said territory.

(i) not advertise the goods except by means of materials supplied or approved by the Company.

(j) not offer the said goods for sale at price except at the price time to time fixed by the Company.

(k) not, in selling the Goods, make any representations or give any warranties except those contained in the Company’s conditions of sale.

(l) keep full and proper books of account and records showing clearly all visits, inquiries, transactions and proceedings relating to the distribution and to keep those books and records separate from those relating to matters not relating to the distributorship and allow the authorized officers of the Company at all reasonable times to have access to and to inspect his books and records relating to the Distribution and on demand to supply copies thereof to the Company.

(m) supply such reports, returns and other information as the Company from time to time requests including sales, forecasts and information with regard to products competing with or likely to compete with the said goods in the said Territory.

(n) take part in meetings with representatives of the Company for better marketing propaganda of the   
said goods at such times and places as may be required by the Company.

(o) bring promptly to the notice of the Company any information received by him which is likely to be of use or benefit to the Company in relation to the marketing of the said goods.

(p) not incur any liability on behalf of the Company or in any way pledge or purport to pledge the Company’s credit or accept any orders or make any contract binding on the Company without the Company first approving its terms in writing.

(q) defray all expenses of and incidental to the distributorship.

(r) not at any time, whether during or after the term of this agreement, divulge or use any unpublished technical information derived from the company or any other information in relation to the Company’s affairs or business or method of carrying on business.

(s) not to sell the said goods under any trade mark or name other than as specified by the Company.

(t) not to directly or indirectly either as principal, agent, partner, director or employee, during the period of one year after the determination of this agreement for any reason whatsoever, solicit business, for goods which are or are likely to be competitive with the said goods, from Customers of the Company with whom Distributor has dealt as Distributor for the Company during the period of this Agreement.

(u) not in any way at all during or after the termination of the Agreement make any use of or claim any right in any name, logo, trade mark, pattern or design owned by the Company or any name logo, trade mark, pattern, or design resembling to the same.

(v) immediately bring any improper or wrongful user of the Company’s patents, trade marks, emblems, designs, models or other similar industrial or commercial monopoly rights which come to his notice, to the attention of the Company and in and about the execution of his/their/its duties use every effort to safeguard such rights and interest of the Company and assist the Company, at the request and cost of the Company, in taking all steps to defend the rights of the Company.

(w) not make directly or indirectly any profit or benefit from the sale of the said goods other than the requisite commission/discount.

(x) not transfer his rights and benefits under this agreement to any other party without the specific written consent of the Company.

**12.** Notwithstanding anything to the contrary contained in this Agreement **the Company reserves to itself the following rights**:—

(a) to continue to quote for or supply of the said goods to any buyer in the said Territory who directly approaches the Company or to any buyer outside the said Territory for delivery of the said goods within the said territory.

(b) to decline at its absolute discretion without giving any reason therefor, to execute any order or to submit any quotation or tender on any enquiry transmitted to it by the Distributor.

(c) to vary the price of the said goods and to vary its conditions of sale in each case without any prior notice.

(d) to make changes in the design, production or finish of the said goods and its packing.

(e) to specify from time to time sales target by the Distributor for the said goods or for particular type of goods within the said territory.

(f) if in the reasonable opinion of the Company the Distributor is not at any time producing adequate sales coverage throughout the said territory and without prejudice to any other of its rights under this Agreement, either to vary the extent of the said territory so as to exclude from this Agreement such part or parts of the said territory as it reasonably thinks fit.

(g) in the event of its business or any part of it being transferred to any other Company, to assign its right and obligations under this Agreement to that other Company.

**13. The relation between the Company and the Distributor will be that of principal to principal** and not as principal and agent and the company will not, therefore, be responsible or liable for the acts of the Distributor or for any amount due and payable by the Distributor to any other party.

**14.** Either party shall have **right to terminate** this agreement by giving a written notice of ninety days.

**15.** Without prejudice to any other remedies the Company may have against the Distributor, **the Company shall have the right, at any time by giving notice in writing to the Distributor to suspend the performance of or terminate all or any of its obligations** and the Distributor’s rights under this Agreement with the immediate effect, in any of the following events:—

(a) If the Distributor commits a breach of any of the terms of this Agreement;

(b) If the Distributor dies, becomes bankrupt or insolvent, compounds with his creditors or takes, suffers any similar action in consequence of debt or goes into liquidation voluntary or compulsory;

(c) If from any cause the Distributor is prevented from performing his duties under this Agreement for a continuous period of two months or for a total of three months in any period of six calendar months;

(d) If the Distributor is guilty of any conduct which in the reasonable opinion of the Company is prejudicial to the Company’s interest;

(e) If the Distributor purports to assign the burden or benefits or charge the benefits of this Agreement to any third party without obtaining prior written consent of the Company;

(f) If there is any material change in the identity of the management, executives, directors, shareholders or partners of the Distributor;

(g) If there is any material change in the constitution, capital or premises of the Distributor.

The Company’s decision of the aforesaid termination shall be final and binding on the Distributor.

**16. Upon the termination of this agreement** in any of the aforesaid manner:—

(a) The Distributor, at his own cost and expense, shall return, all the Deep Freezers together with all the other properties of the Company which are in possession of the Distributor or in possession of any dealers to the Company in good condition and without claiming any right, title, interest, lien or claim of whatsoever nature, at the place intimated by the Company.

(b) On return of the aforesaid items to the Company by the Distributor, the company shall settle all its claim and accounts with the Distributor and after settling such claims and accounts if any amount is payable to the Distributor, the company shall pay the same. If it is found that the amount is payable by the Distributor   
to the Company, the Distributor shall pay the same to   
the Company.

(c) The Distributor shall have no right to any compensation for goodwill, customer expenses or any other payment of any nature against the company save and except for what is provided herein.

**17. The waiver by the Company of any breach** of any terms of this Agreement by the Distributor shall not preclude the company from enforcing any subsequent breach of that term or of any other term and shall not be deemed as a waiver of any similar subsequent breach also.

**18.** All previous agreements and arrangements if any relating to the sale of the said goods made between the Company and the Distributor are superceded by this Agreement.

**19. No variation or amendment of this Agreement** or oral promise or commitment related to it shall be valid until and unless committed to in writing by the Company.

**20.** For any suit or legal proceedings arising out of this agreement the courts at \_\_\_\_\_\_\_\_\_\_\_ alone will have jurisdiction to entertain and try the same.

IN WITNESS WHEREOF the parties have executed these presents on the day and the year first hereinabove written.

THE COMMON SEAL OF the )

M/S. RISHIT FOODS AND )

ICE CREAMS PRIVATE LIMITED, )

the COMPANY above named )

is hereunto affixed pursuant to the )

Resolution of its Board of Directors )

made in that behalf, on the \_\_\_\_\_\_ )

day of \_\_\_\_\_\_\_\_\_\_\_ 200\_\_\_ )

in the presence of (1)\_\_\_\_\_\_\_\_\_\_\_\_\_\_, )

Managing Director and )

(2) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Director )

and in the presence of:- )

SIGNED AND DELIVERED )

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the Distributor )

Above named in the presence of …….. )