



Draft Overseas Franchisee Agreement

This agreement is made on this ___ day of ___ between the Handicrafts & Handlooms Exports Corporation of India Limited (HHEC), a Company registered under the Indian Companies Act, 1956 and having its registered office at Jawahar Vyapar Bhawan Annexe, 1- Tolstoy Marg, New Delhi-110001 (India) and Corporate Office at A-2, Sector –2, Noida, Gautam Budha Nagar, U.P. (hereinafter referred to as 'Franchisor' which expression shall unless repugnant to the context mean and include its successors, affiliates, subsidiaries and assigns) of the **one Part**

AND

M/s.-----, a company incorporated under the provisions of the _____ Companies Act, ____ (year) and having its registered office at _____ represented by its Chief Executive Officer, Mr. _____ (hereinafter referred to as "Franchisee" which expression shall unless repugnant to the context mean and include its successors, affiliates, subsidiary and permitted assigns) of the **Other Part**

Franchisor and Franchisee are hereinafter collectively referred to as "Parties" and individually as " Party".

WHEREAS :

- A. The Franchisor, is a public sector undertaking, under the Ministry of Textiles, Government of India and is the largest and oldest organization engaged in the marketing of high quality handicrafts and handlooms in India.
- B. The Franchisor, is the registered owner of the Business Name "The Handicrafts & Handlooms Exports Corporation of India Limited" and logo "**Angel**" and operates through its branches in all Metropolis in India and 4 retail outlets in New Delhi. The products manufactured and sold by the Franchisor

are ready to wear garments for men, women, and children while the other products marketed and sold by the Franchisor are art objects, paintings, exquisite metal ware in brass, copper & white metal, wood crafts, ceramics, stone ware, toys, paper mache, silver and semi precious jewellery, and such other products as are defined in Annexure –A to this Agreement. (hereinafter referred to as the “Products”).

- C. The Franchisee is lessee of a lease with a prime location at _____ with an area of _____sq. ft. for the franchisee showroom.
- D. The Franchisee has represented to the Franchisor that it has the necessary expertise, staff, infrastructure and such other facilities to carry out the Business as a franchisee of the Franchisor and have further represented that it is legally entitled to carry out the above business under Article of Association of the company.
- E. Relying upon the representation of Franchisee, the Franchisor hereby agrees to grant franchise of the Business to the Franchisee on terms and conditions contained herein.

NOW THEREFORE IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS :

1. Definitions

For the purpose of this agreement, unless otherwise specified in the context, the following terms shall be deemed to have the following meaning:

‘Agreement’ shall mean this Franchise Agreement executed between the Parties and any amendment to this Franchise Agreement duly signed between the parties.

‘Business’ shall mean marketing, display and selling of the products.

‘Business Name and Logo’ shall mean the name The Handicrafts & Handlooms Exports Corporation of India Limited (HHEC) and the logo ‘Angel’.

‘Intellectual Properties’ shall mean and include trade mark, brand name, copy right, patents and other

intellectual property rights of the Franchisor in the Business Name/Logo and/or Products.

'Royalty'	shall have the meaning ascribed to it in Clause 8.1 hereof.
'Showroom'	shall mean such place from where the Franchisee would carry on the Business.
'Territory'	shall mean _____(City where showroom is to be opened)
'Term'	shall have the meaning ascribed to it in Clause 12 hereof.

2. Interpretation

In this Agreement, unless the context otherwise requires :

- (a) the words importing singular shall include plural and vice versa;
- (b) the headings are for convenience or reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (c) the words "include" and "including" are to be construed without limitation;
- (d) the expressions "hereof", "herein" and "hereunder" and similar expressions shall be construed as references to this Agreement as a whole and not be limited to the particular clause or provision in which the relevant expression appears;
- (e) time shall be the essence in the performance of the Parties' respective obligations under this Agreement;
- (f) Annexures and Schedules to this Agreement shall be deemed to form integral part and shall be read, as if they are specifically incorporated herein;
- (g) Any reference to this Agreement or to any other agreement or statute or deed or other instrument shall be construed as a reference to such agreement, statute, deed or other instrument as the same may from time to time be amended, varied, supplemented, re-enacted or novated, as the case may be;
- (h) Any references to Clauses, Articles, Annexures and Schedules are references to Clauses, Articles, Annexures and Schedules, respectively, of this Agreement;

3. Appointment

Subject to the terms and conditions contained in this Agreement and in consideration of the payment of Royalty by the Franchisee to the Franchisor, the Franchisor hereby grants to the Franchisee, the right to carry on the Business as a franchisee on a (exclusive basis) in the Territory.

The Franchisor hereby grants the Franchisee the right to use Business Name and Logo of the Franchisor in the Territory during the Term of this Agreement in the manner and subject to the terms and conditions of this Agreement.

4. Franchisor's Intellectual Property

4.1 The Franchisee irrevocably agrees and undertakes to use the Business Name and Logo of the Franchisor for the limited purposes of the Business only and not for any other purpose or business. The Franchisee further agrees and undertakes that it shall not apply or use the Business name and Logo of the Franchisor in relation to any other products or business of the Franchisee.

4.2 It is agreed and understood between the Parties that the Intellectual Property of the Franchisor shall always remain the exclusive property of the Franchisor and the Franchisee shall not be entitled to use or copy the same in any manner other than in connection with the transaction contemplated under this Agreement.

4.3 It shall pass on any/all information to the Franchisor, which may prejudicially affect the Business or the Business Name and Logo.

4.4 The Franchisee shall not apply for the registration of the Business Name and Logo as its Intellectual Property. The Franchisee undertakes to give all assistance that the Franchisor may require in connection with the registration of the Business Name and Logo in the Territory.

5. Products

5.1 The Franchisor agrees to offer to the Franchisee, its complete range of Products, for the purposes of Business.

- 5.2 The range of Products for each of the Showroom shall be decided pursuant to the discussions and consultations between the Parties, keeping in mind the taste, trends and market conditions.
- 5.3 The Franchisor shall supply the Products for the Showroom(s) against the order placed by the Franchisee, at the time and in the manner agreed to between the Parties.
- 5.4 The Franchisor shall make reasonable efforts to meet the demand of the Franchisee, for the supply of any new designs for the Products, but shall not be bound to do so.
- 5.5 The Franchisor shall sell the Products to the Franchisee on outright sale basis and there shall be no exchange or return of the unsold Products.
- 5.6 The Franchisee shall be responsible for taking all approvals/permissions, registrations and filings under all applicable laws and that may be required in connection with this Agreement including for the import of the products as well as the performance of this Agreement.
- 5.7 The Franchisee agrees and undertakes that during the Term of this Agreement, it shall not sell any other products including, any handicraft and handloom products from any third party manufacture(s), competitors or manufactured by itself, from the Showroom(s).
- 5.8 The Franchisee shall be entitled to price the Products as per his business policy decision.
- 5.9 The term of sale will be on FOB Delhi basis and the shipment of the Products would be made against an irrevocable, unconditional, revolving letter of credit, issued in favour of the Franchisor (the "Letter of Credit") by a first class bank acceptable to the Franchisor prior to the shipment.
- 5.10 The Franchisee shall procure the revolving Letter of Credit payable at sight in favour of the Franchisor as per clause 5.9 containing terms reasonably acceptable to the Franchisor. The Franchisee shall be responsible and bear all related fees and charges including without limitation opening, commitment and operation fee for the Letter of Credit.
- 5.11 The Franchisee agrees and undertakes to pay a nominal mark-up of (___) % (inclusive of all taxes) on the cost of Products to franchisor and sold to Franchisee by the Franchisor.

5.12 The Franchisee, during the Term of this Agreement undertakes to have exclusive relationship with the Franchisor and will not place any direct or indirect orders on any of manufactures/artisans/handicraft workers etc of the Franchisor, for the purchase of the Products. All orders for the Products would be placed directly with the Franchisor only.

5.13 The Franchisee shall sell the Products in the same condition in which it receives from the Franchisor and shall not alter or remove or tamper with the markings or name plates or indications of the source of origin on the Products or any packaging supplied by the Franchisor unless, as may be mutually agreed between the Parties in writing.

6. Showroom(s)

6.1 The Franchisor agrees to render consultancy services to the Franchisee for conceptual designing of the Showroom(s) highlighting the Indian ethnicity and cultural sensitivities, for a fee as may be agreed between the Parties from time to time.

6.2 Franchisee agrees that it shall not change the location of the showroom(s), without the prior written consent of the Franchisor.

6.3 The franchisee agrees that it shall not carry on the Business from a place other than from the Showroom(s) without the prior written consent of the Franchisor and shall not carry on or permit to be carried on any other business from the Showroom(s).

6.4 The Franchisee shall keep the Showroom(s) and furnishings in a good state of repair and decoration and shall replace and renew the furnishing and decorations so as to enhance the reputation of the Business Name and Logo of the Franchisor in any event and as required or may be required by the Franchisor.

7. Franchisee's obligations

The Franchisee agrees to undertake that :

7.1.1 It shall diligently promote and conduct the Business with the highest degree of probity and business competence;

7.1.2 It shall provide a minimum guaranteed business per annum as mentioned below from the Showroom. Any increase/decrease

in the minimum guaranteed business will be mutually decided depending upon the size and location of the Showroom. In the event the Franchisee fails to meet the minimum guaranteed business from the Showroom, the Franchisor shall be entitled to payment of royalty as specified in clause 8.1(i) on the minimum guaranteed business every year. The payment of royalty shall be computed on completion of one full year from the date of opening of the Showroom. However, this clause shall not be in force until 2 years after the date of signing this agreement ;

Year III	USD _____	(6,25,000)
Year IV	USD _____	(8,12,500)
Year V	USD _____	(10,00,000)

- 7.1.3 It shall allow the Franchisor or its representatives reasonable opportunity to inspect its Showroom(s) during business hours for verification of the quality of service, infrastructure, accounting information, stationary and other products available and being used in connection with the Business.
- 7.1.4 It shall not obstruct and thwart the entry of Franchisor its employees and agents in the Showroom or such other place where the records relating to the Business are kept by the Franchisee;
- 7.1.5 It shall maintain accounting and other records including such other records as required under the applicable laws relating to the Business.
- 7.1.6 It shall maintain highest degree of probity, discretion and business competent in its dealing;
- 7.1.7 The Franchisee, its employees and agents shall conduct the Business in a lawful manner and shall not engage in any unfair or restrictive or misleading practices or restore to any forcible, oppressive, vindictive, unfair, illegal of criminal means or methods of business.
- 7.1.8 All complaints/suggestion received from the customer regarding the Business shall be immediately communicated to the Franchisor. In case of complaints, the representative of the Franchisor and the Franchisee shall jointly discuss on the steps to be taken to resolve the complaint;

- 7.1.9 The Franchisee agrees and undertake not to sell, manufacture or use goods competing with the Products and shall not source the products from any other source, except from the Franchisor;
- 7.1.10 The Franchisee agrees and undertakes not to seek customers for the Products outside the Territory without the prior written consent of the Franchisor;
- 7.1.11 The Franchisee shall make full disclosure of all material circumstances and of everything known to it or which come to its knowledge subsequently, regarding the subject matter hereof which could affect or influence the Franchisor in any manner whatsoever;
- 7.1.12 The Franchisee shall pass on to the Franchisor, any enquiries from prospective customers or other leads outside the Territory or such other information which may come into its possession, for the purposes of Business or the services outside the Territory;
- 7.1.13 The Franchisee shall not assign, its right or interest under this Agreement without the prior consent of the Franchisor;
- 7.1.14 The Franchisee shall not delegate any duties or obligations arising under this Agreement otherwise than which may be expressly permitted under its terms and on written approval of the Franchisor;
- 7.1.15 The Franchisee shall obtain and keep in full force and effect, at all times a policy or policies of insurance covering transit policy, public liability for injury to persons or property with policy limits and provisions conforming to such requirements as the Franchisor may from time to time prescribe or which may be applicable under the law and shall deliver to the Franchisor copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement.

8. Payment

8.1 Royalty

- i) The Franchisee shall pay to the Franchisor for the use of the Business Name and Logo and for the exclusive arrangement in the Territory, royalty amounting to 5(five)% of the value of goods sold by the Franchisor. The value of goods sold shall include the mark up of Franchisor as defined in clause 5.11. The royalty shall be paid to the Franchisor along with the bill for the shipments.

ii) All payments under this Agreement shall be made on the due dates, any delay in the timely payment by the Franchisee would attract an interest of 5(five) % per annum for each delay payments.

iii) All payments to be made under this agreement shall be made by the Franchisee in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority save as required by law. If Franchisee is compelled to make any such deduction, it will pay to the Franchisor such additional amount as are necessary to ensure receipt by the Franchisor of the full amount which that party would have received but for the deduction.

9. Accounts

The Franchisee shall maintain separate records of accounts in respect of the Business, supply of the Products and conduct of the Business:

9.1.1 In accordance with generally accepted accounting standards in _____(Country) and in the Territory;

9.1.2 Submit copies certified by such auditors to the Franchisor, within 180 days of the end of each year.

10. Indemnity

10.1 The Franchisee undertakes to indemnify and keep the Franchisor indemnified and harmless from and against any action, suit, claims, proceedings, damages, liability, losses, expenses or costs (hereinafter referred to as "Claims") suffered by it on account of any breach of warranty, representations, unauthorized act, fraud, any act, deed, or things done or omitted to be done, or undertaking made by the Franchisor its employees, officers, agents.

In the event of any claim being made on the Franchisor, the Franchisee undertakes to pay on first demand made by the Franchisor of any amount on this account without any demur, reservation, contest, protest, whatsoever within 15 days of demand being made.

11. Relation between the Franchisor and the Franchisee

- 11.1 The relation between the Franchisor and the Franchisee shall be on a principal to principal basis;
- 11.2 The Franchisee shall have no authority, express or implied employ to represent or bind the Franchisor in respect of or to hold itself out as having any authority to do or cause to be done, anything other than the function and duties expressly specified in this Agreement;
- 11.2.1 Notwithstanding the close cooperation, coordination and interaction between the Parties as contemplated in this Agreement, it shall not deemed to make either Party an agent, partner or joint venture partner of the other or any analogous relationship. No contention to the contrary will be raised at any time by either Party.

12. Term & Termination

- 12.1 This Agreement shall be initially for a period of 5 years commencing from the date of signing of the agreement any may be extended for a further period of 5 years, on the same terms and conditions, other things being satisfactory.
- 12.2 This Agreement may be terminated forthwith by the Franchisor on occurrence of any of the following events:
- (a) Failure of the Franchisee to comply with the terms of this Agreement, including the failure to achieve the minimum guaranteed Business in any Showroom(s);
 - (b) Failure of the Franchisee to pay any amount due to the Franchisor;
 - (c) Any assignment of this Agreement by the Franchisee;
 - (d) Any challenge by the Franchisee to any part of the Intellectual Property;
 - (e) If the Franchisee makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things.
 - (f) If a receiver is appointed in respect of the whole or any part of Franchisee assets;
 - (g) If the Franchisee goes into liquidation either compulsory or voluntary;
 - (h) The Charter of the Franchisee to do business is suspended in accordance with the applicable law or there is change in the ownership of the franchisee.

12.3 This Agreement may be terminated by either Party, by giving 3 months prior written notice to the other, with respect of clause 12.1. However, the Agreement shall be irrevocable by the franchisor during 5 years commencing from date of signing of this Agreement.

12.4 This Agreement can be terminated without any notice period with the mutual consent of Parties.

13. Termination consequences

13.1 On the expiry or earlier termination of this Agreement, the Franchisee undertakes:

- (a) To dispose off all Products in hand in within 3 month from the date of the termination;
- (b) To destroy all stationery used in the Business;
- (c) To return to the Franchisor all samples and publicity promotional and advertising material used in the Business;
- (d) Cease the use of the Intellectual Property and to sign such confirmation of cessation of use of the Intellectual Property, as may be required by the Franchisor;
- (e) To return to the Franchisor all originals and copies of all documents and information in any form containing or covering in any way part of the Intellectual Property;

13.2 Termination by the Franchisor shall in no way adversely affect its rights to bring appropriate action to recover damages or assets belonging to the Franchisor in possession of the Franchisee or to set-off any assets or claims.

14. Default Notice

In the event of a breach by the Franchisee of any of the provisions of this Agreement, the Franchisor may serve notice requiring the breach to be remedied within 4 weeks before taking action in respect of the breach.

15. Miscellaneous

15.1 Warranty of power to enter Agreement

Each of the Parties represents and warrants that it has the power to enter into this Agreement and has taken all approvals to give effect to this Agreement.

15.2 Force Majeure

Neither Party shall be responsible or liable for or deemed in breach hereof, because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due) due to any event or circumstance and which is beyond the reasonable control of the Party such as national emergency, war, governmental regulation or act of god. The affected party shall give notice to the other party of any event constituting force majeure as soon as reasonably practicable, but not later than 10 days after the date on which affected party knew or should reasonably have know of the commencement of the event constituting force majeure. The affected party shall give notice to other Party of the condition and cessation of the relevant event constituting force majeure.

In the event, the performance of the any party's obligation is suspended due to an event of force majeure, for more than 28 days, the Franchisor may terminate this Agreement at his sole discretion.

15.3 Whole agreement

The Franchisee acknowledges that this Agreement contains the whole agreement between the Parties and it has not relied upon any oral or written representation made to it by the Franchisor or its employees or agents and has made its own independent investigations into all matters relevant to the Business.

15.4 Supersedes prior agreements

This Agreement supersedes any prior agreement between the Parties whether written or oral and any such prior agreements between the Parties.

15.5 Discretion

No decision or approval of any matter mentioned in this Agreement or arising from it shall be deemed to have been made by the Franchisor except if in writing and shall be as its sole discretion unless otherwise expressly provided in the Agreement.

15.6 Notices

All notices, returns of material, requests, consents and other communications required, permitted or desired to be given hereunder to be served upon or given to the Parties hereto shall be deemed duly served and given when received after being sent by confirmed facsimile transmission or delivered by hand or sent by registered or certified mail, return receipt requested, postage prepaid, e-mail notices to be followed up by signed hard copies, addressed as follows:

If to Franchisor

Attn: Mr./Ms. _____

Fax: _____

If to Franchisee

Attn: Mr. /Ms. _____

15.7 Dispute Resolution

In the event of any dispute or difference arising out of or otherwise relating to this Agreement, the Parties will endeavor to settle it amicably within 30 days of such differences/dispute having so arisen.

Any unresolved dispute will be referred to arbitration of three arbitrators, one to be appointed by the Franchisor, the other to be appointed by the Franchisee and both the arbitrator so appointed, shall appoint the third arbitrator who shall act as the Presiding Officer and shall be governed as per the provisions of the Arbitration and Conciliation Act 1996, as amended from time to time.

The venue of Arbitration shall be New Delhi and the language of arbitration would be English.

15.8 Confidentiality

15.8.1 The Franchisee agrees and undertakes that during the Term of this Agreement it shall not disclose or make available to any third party, any confidential and proprietary information's, trade secrets of the Franchisor, including, without limitation, financial information and information relating to the Products, techniques and modes of merchandising, marketing techniques, source of the Products, procedures and know-how, and terms of this Agreement;

15.8.2 This clause shall survive termination of this Agreement.

15.9 Proper law and jurisdiction

15.9.1 This Agreement shall be governed by laws of India in every particular including formation and interpretation.

15.9.2 By signing this agreement parties submit themselves to the jurisdiction of courts situated in Delhi only.

15.10 Waiver

Waiver of the breach of any term or provision of this Agreement by any Party shall not be deemed to be or operate as to be construed as a waiver by that Party, of any other subsequent breach of this Agreement by the other Party.

15.11 Severability

If any part or parts of this Agreement is or are invalid or unable to be enforced for any reason, the invalidity or unenforceability shall not effect the operation, construction or interpretation of any other provision unless it would be contrary to or materially alter the express or implied intention of the Parties.

15.12 Modification of the Agreement

No amendment, modification or addition to this Agreement shall be effective or binding on either of the Parties unless set forth in writing and executed by them through their authorized representative and subject to obtaining requisite Approvals, if any, following such execution.

15.13 Costs

Each of the Parties shall pay their own costs and expenses incurred by it in connection with negotiation and execution of this Agreement.

15.14 Counterparts

This Agreement may be executed in counterparts and each of which would be treated as an original.

15.15 Assignment

This Agreement cannot be assigned/transferred by the Franchisee nor can the Franchisee grant any sub-licence and/or the right to operate the Showroom and/or delegate any duties or obligations arising under this Agreement to third parties without the prior written permission of the Franchisor.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE CAUSED THIS FRANCHISE AGREEMENT TO BE EXECUTED THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

The Handicrafts & Handicrafts Exports

Corporation of India Limited
(Through its Authorised Signatory)

(M/s. _____)
(Through its Authorised Signatory)

WITNESSESS:

- 1.
- 2.