



FRANCHISE MERCHANT (DBA), MALKISON INC. | Phone: 800.450.8090/ 972.603.5500 |  
WWW.MALKISON.COM | BUSINESSBROKERS@MALKISON.COM

**EXCLUSIVE RIGHT TO SELL A BUSINESS LISTING AGREEMENT**

This Agreement is made, this \_\_\_\_ day of \_\_\_\_\_ **20**\_\_\_\_ by and between **Franchise Merchant DBA (Malkison Inc.)** (“Broker”) and \_\_\_\_\_ (“Seller”) who is the legal owner of a business located at \_\_\_\_\_, trading as \_\_\_\_\_.

The Seller and the Broker agreed as follows:

**OBLIGATIONS OF BROKER**

The Broker accepted and agreed to sell the above-mentioned business/ real estate to the best of its efforts. The Seller agreed to give Broker the irrevocable and exclusive right to sell the said business. The Seller agreed that title purchase of the above-mentioned business, shall include, but not limited to, a total ownership or partial ownership in the business and, accounts of the business.

**LISTING PRICE**

**1. Price.** The Seller’s desired price is \_\_\_\_\_ (\$ \_\_\_\_\_) including inventory or plus inventory and equipment of \_\_\_\_\_ (\$ \_\_\_\_\_). **BROKER'S**

**COMMISSION**

**2. Commission.** The Broker will be paid its commission of (Ten) 10% of the agreed upon price at that time or Ten Thousand dollars (\$10,000) whichever is greater if: (1) Broker procures a buyer who is ready, willing, and able to purchase the Business on terms deemed acceptable by the Business in its sole and absolute discretion; and (2) substantially the Business is sold to a buyer procured by the Broker during the term of this listing or if, within 6 months after the termination of this listing, the Business is sold to a buyer who was first submitted to the Business by the Broker. The Commission shall be based on the full purchase price, including all forms of considerations received, including the value of inventory and any other assets sold. In the event corporate stock is sold, the Broker shall receive its commission based on the sale price of the corporate stock plus the value of the corporate liabilities assumed by the buyer. The Broker shall receive its commission based on the full consideration received including, but not limited to, the sales price of the stock, the value of the corporate liabilities assumed by the purchaser and consideration paid for restrictive covenants. Although the Broker has carried its commission, it agrees to deter receipt of this commission until the settlement date agreed to in the contract, as an accommodation to the Seller. Such deferment will not be construed as a waiver of the Listing Agent’s commission. A party making settlement is hereby authorized to deduct the commission for the Broker from cash proceeds at the time of settlement. If during this listing period the business is sold by the Broker, Seller or third party the Broker will be paid its commission of (Ten) 10% of the agreed upon price at that time or Ten Thousand dollars (\$10,000) whichever is greater. All deposits will be held in escrow by Franchise Merchant DBA (Malkison Inc.) (“Broker”) by an attorney or escrow agent agreed upon by the Buyer and the Broker.

**TERM**

**3. Term.** The rights and obligations of the parties shall commence on the date first set forth above and shall terminate at midnight on \_\_\_\_ day of \_\_\_\_\_ **20**\_\_\_\_. This listing may be cancelled by either party at any time after three months by 30 days' written notice.



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## CONFIDENTIALITY

4. **Confidentiality Obligations.** During the term of this Agreement and for a period of three (3) years thereafter, Broker shall maintain in confidence and use only for purposes of this Agreement any information or documentation which Seller marks "Confidential" (collectively "Confidential Information"). To the extent it is reasonably necessary or appropriate to fulfill its obligations or exercise its rights under this Agreement, Broker may disclose Confidential Information which it is otherwise obligated under this Article not to disclose to its affiliates and to prospective buyers, on a need-to-know basis, on condition that such entities or persons agree to keep the Confidential Information confidential for the same time periods and to the same extent as Broker is required to keep the Confidential Information confidential.

## GENERAL PROVISIONS

5. **Binding Effect; Benefits.** This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the parties hereto and their respective heirs, successors, and assigns. Except as otherwise set forth herein, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective heirs, successors, and assigns any rights, remedies, obligations, or other liabilities under or by reason of this Agreement.
  6. **Governing Law.** This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of \_\_\_\_\_.
  7. **Severability.** If any term, covenant, condition, or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable to any extent, the remaining terms, conditions, and provisions of this Agreement shall not be affected thereby, and each remaining term, covenant, condition, and provisions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law. If any provision of this Agreement is so broad as to be unenforceable, such provisions shall be interpreted to be only as broad as is enforceable.
  8. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party to this Agreement except to the extent incorporated in this Agreement.
  9. **Amendments.** This Agreement may not be modified or changed except by an instrument or instruments in writing signed by the Business and the Broker.
10. **Assignment.** The rights and obligations of the parties under this Agreement shall not be assignable except with the prior written consent of the other party hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

\_\_\_\_\_ Seller's Signature \_\_\_\_\_ Date

\_\_\_\_\_ Seller's Printed Name

\_\_\_\_\_ Business Broker's Signature \_\_\_\_\_ Date

\_\_\_\_\_ Business Broker's Printed Name