

**ACCUDIAGNOSTICS FRANCHISE GROUP, LLC**

**FRANCHISE AGREEMENT**

EXHIBIT C TO THE OFFERING CIRCULAR

Revised December 20, 2005

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**EXHIBITS**

- A. GENERAL RELEASE
- B. NONDISCLOSURE AND NON-COMPETITION AGREEMENT
- C. GUARANTY AND ASSUMPTION OF OBLIGATIONS
- D. HOLDERS OF LEGAL OR BENEFICIAL INTEREST IN FRANCHISEE;  
OFFICERS, DIRECTORS, MANAGERS AND TRUSTEES
- E. MULTI-STATE ADDENDA

# ACCUDIAGNOSTICS FRANCHISE GROUP, LLC

## FRANCHISE AGREEMENT

This Franchise Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is by and between AccuDiagnostics Franchise Group, LLC, a South Carolina limited liability company, having its principal place of business at 355 Woodruff Road, Suite 302, Greenville, South Carolina 29607 ("Franchisor"), and \_\_\_\_\_, whose principal address is \_\_\_\_\_, an individual/partnership/corporation/limited liability company established in the State of \_\_\_\_\_ ("Franchisee").

### WITNESSETH:

WHEREAS, Franchisor and its Affiliate<sup>\*</sup> have developed and are in the process of further developing a System identified by the trademark "AccuDiagnostics" and relating to the establishment, development and operation of "AccuDiagnostics Businesses" that provide affordable, full-service drug screening, DNA testing and other logistical solutions for a wide variety of client organizations including businesses, schools, government and private individuals; and

WHEREAS, the distinguishing characteristics of the System include, among other things, uniform standards and procedures for business operations; procedures and strategies for sales, marketing, advertising and promotions; business techniques; the Marks; the Manual; training courses, all of which Franchisor may improve, further develop or otherwise modify from time to time; and

WHEREAS, Franchisor grants to certain qualified persons and business entities the right to own and operate a single AccuDiagnostics Business under the System and using the Marks; and

WHEREAS, Franchisee desires to operate an AccuDiagnostics Business, has applied for a Franchise and its application has been approved by Franchisor in reliance upon all of the representations made therein; and

WHEREAS, Franchisee understands and acknowledges the importance of Franchisor's high and uniform standards of quality, operations and service and the necessity of operating its Franchised Business in strict conformity with Franchisor's System.

NOW, THEREFORE, Franchisor and Franchisee, intending to be legally bound, agree as follows:

### 1. DEFINITIONS

Whenever used in this Agreement, the following words and terms have the following meanings:

"Affiliate" means any entity that controls, is controlled by, or is under common control with Franchisor;

"Agreement" means this agreement entitled "AccuDiagnostics Franchise Group, LLC Franchise Agreement" and all instruments supplemental hereto or in amendment or confirmation hereof;

<sup>\*</sup> Capitalized terms not defined upon first use are defined in Section 1.

**“Approved Location”** means the site for the operation of the Franchised Business selected by Franchisee and approved in writing by Franchisor;

**“Approved Supplier(s)”** has the meaning given to such term in Section 0;

**“Area of Primary Responsibility”** has the meaning given to such term in Section 2.1.7;

**“Competitive Business”** means any business that offers (or grants franchises or licenses to others to operate a business that offers) drug screening or other testing services the same as or similar to those provided by AccuDiagnostics Businesses or in which Confidential Information could be used to the disadvantage of Franchisor, its Affiliate(s) or its other franchisees; provided, however, that the term “Competitive Business” shall not apply to (a) any business operated by Franchisee under a Franchise Agreement with Franchisor, or (b) any business operated by a publicly held entity in which Franchisee owns less than a five percent (5%) legal or beneficial interest;

**“Confidential Information”** means any trade secret and any information or matter that is or may be used to gain a competitive advantage over Franchisor or any of its Affiliates and is not generally known by the public, whether or not in written or tangible form and regardless of the media (if any) on which it is stored, relating to the System (including knowledge and experience in operating an AccuDiagnostics Business, product specifications, operational and production techniques and methods, record keeping and reporting methods, accounting systems, management and personnel training techniques, sales and promotion techniques, policies, procedures, standards, specifications for signs, displays, business forms and stationery, the Manual, research and development, lists of franchisees and suppliers, suggested pricing and cost information) and any other information or material identified to Franchisee by Franchisor as confidential;

**“Cooperative Advertising”** means the combined advertising of two (2) or more franchisees established within a common market which Franchisor may require for Franchised Businesses within a particular region, as further described in Section 0;

**“Designated Manager”** means the person designated by Franchisee who has primary responsibility for managing the day-to-day affairs of the Franchised Business, and if Franchisee is an individual and not a business entity, the Designated Manager shall be Franchisee;

**“Effective Date”** means the date on which this Agreement is fully executed, thereby commencing its effectiveness and term;

**“Franchise”** means the right granted to Franchisee by Franchisor to use the System and the Marks;

**“Franchise Fee”** has the meaning given to such term in Section 0;

**“Franchised Business”** means the AccuDiagnostics Business to be established and operated by Franchisee pursuant to this Agreement;

**“Franchisee”** means the individual or entity defined as “Franchisee” in the introductory paragraph of this Agreement;

**“Franchisor”** means AccuDiagnostics Franchise Group, LLC;

**“Gross Sales”** means the aggregate of all revenue from the sale of services and products from all sources in connection with the Franchised Business whether or not collected by Franchisee and whether for check, cash, credit or otherwise including, without limitation, all proceeds from any business interruption insurance, but excluding (a) all refunds made in good faith, (b) any sales and equivalent taxes that are collected by Franchisee for or on behalf of any governmental taxing authority and paid thereto, (c) and the value of any allowance issued or granted to any customer of the Franchised Business that is credited by Franchisee in full or partial satisfaction of the price of any services and products offered in connection with the Franchised Business;

**“Incapacity”** means the inability of Franchisee to operate or oversee the Franchised Business on a regular basis by reason of any continuing physical, mental or emotional condition, chemical dependency or other limitation;

**“Internet”** means any one (1) or more local or global interactive communications media that is now available, or that may become available, and includes sites and domain names on the World Wide Web;

**“Local Advertising”** has the meaning given to such term in Section 0;

**“Manual”** means the AccuDiagnostics Operations Manual and any other items as may be provided, added to, changed, modified or otherwise revised by Franchisor from time to time that contain or describe the standards, methods, procedures and specifications of the System, including other operations, administration and managers' manuals and all books, computer programs, password-protected portions of an Internet site, pamphlets, memoranda and other publications prepared by, or on behalf of, Franchisor;

**“Marketing Fund”** has the meaning given to such term in Section 0;

**“Marketing Fund Contribution”** has the meaning given to such term in Section 0;

**“Marks”** means the service mark “AccuDiagnostics” and such other trade names, trademarks, service marks, trade dress, designs, graphics, logos, emblems, insignia, fascia, slogans, drawings and other commercial symbols as Franchisor may designate to be used in connection with AccuDiagnostics Businesses;

**“National Accounts”** means customers or referral sources with locations in, desiring AccuDiagnostics services or products in, or referring customers from multiple AccuDiagnostics market areas;

**“Royalty Fee”** has the meaning given to such term in Section 0; and

**“System”** means the uniform standards, methods, procedures and specifications developed by Franchisor and as may from time to time be added to, changed, modified, withdrawn or otherwise revised by Franchisor, in its sole discretion, for the operation of an AccuDiagnostics Business.

## **2. GRANT OF FRANCHISE; APPROVED LOCATION**

### **Grant**

Franchisor hereby grants to Franchisee, and Franchisee undertakes and accepts, upon the terms and conditions herein contained, a revocable, limited license to operate one (1) AccuDiagnostics Business using the System and Marks.



**Approved Location**

The street address (or detailed description of the premises) of the Approved Location is:

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**Approved Location Not Determined**

If the Approved Location of the Franchised Business is not determined as of the Effective Date, Franchisee shall select an Approved Location within the Area of Primary Responsibility according to the process described in Section 0. When the Approved Location is determined, its address shall be inserted into Section 0. The failure to insert such address shall not automatically affect the enforceability of this Agreement.

**Sub-franchising/Agents**

Franchisee shall not sublicense the use of the System or Marks to any person or entity to perform any part of Franchisee's rights or obligations licensed hereunder, or to grant any person or entity the right to act as Franchisee's agent to perform any part of Franchisee's rights or obligations hereunder.

**Nonexclusive License**

The Franchise granted under this Agreement is nonexclusive and Franchisor does not grant exclusive or protected territories to AccuDiagnostics Businesses; provided, however, that so long as this Agreement is in force and effect and Franchisee is not in default under any of the terms hereof, Franchisor shall not establish or operate, or grant others the right to establish or operate, more than one (1) AccuDiagnostics Business for every fifty thousand (50,000) persons within the county in which the Franchised Business is located. Franchisor retains all rights and discretion with respect to the Marks and System, including the right to:

2.1.1 establish or operate, and grant others the right to establish or operate, AccuDiagnostics Businesses at any location whether inside or outside the Area of Primary Responsibility as Franchisor deems appropriate;

2.1.2 service National Accounts within the Area of Primary Responsibility, or allow other AccuDiagnostics Businesses or third parties to service such accounts, as set forth in Section 0;

2.1.3 establish or operate, and grant others the right to establish or operate, other businesses offering the same or similar products utilizing the Marks or other trade names, trademarks and service marks without offering Franchisee any right thereto;

2.1.4 provide services similar to those offered through the Franchised Business through any alternate channel of distribution including through outlets at a fixed location and by Internet, under terms and conditions that Franchisor deems appropriate; and

2.1.5 engage in any activities not expressly forbidden by this Agreement.

**Marketing and Solicitation Restrictions**

2.1.6 Franchisee shall not directly market to or solicit customers whose principal business office (or principal residence, if the client is a natural person) is outside of a defined geographic area ("Area of Primary Responsibility") surrounding the Franchised Business and defined in Section 2.1.7; provided, however, Franchisee has the right to provide services and sell products to customers located outside of the Area of Primary Responsibility if contact with such customer is initiated by the customer and not Franchisee. Except as part of Cooperative Advertising implemented pursuant to Section 0, Franchisee shall not advertise in any media whose primary circulation is outside of the Area of Primary Responsibility without the prior written approval of Franchisor. Franchisor shall make reasonable efforts to enforce these restrictions with regard to Franchisee and any other AccuDiagnostics Business, but under no circumstances shall Franchisor be required to engage in litigation or similar actions with regard to these restrictions.

2.1.7 The Area of Primary Responsibility shall be defined by and exist within the following zip codes or other physical, political or natural boundaries:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. FEES**

**Franchise Fee**

Upon execution of this Agreement, Franchisee shall pay a fee ("Franchise Fee") to Franchisor of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). The Franchise Fee shall be deemed fully earned upon execution of this Agreement and is nonrefundable, except under certain conditions set forth under Section 0. The Franchise Fee is payment, in part, for expenses incurred by Franchisor in furnishing assistance and services to Franchisee as set forth in this Agreement and for costs incurred by Franchisor, including general sales and marketing expenses, training, legal, accounting and other professional fees.

**Royalty Fee**

On the third (3<sup>rd</sup>) day of each month, Franchisee shall pay to Franchisor without offset, credit or deduction of any nature, so long as this Agreement shall be in effect, a monthly fee ("Royalty Fee") equal to five percent (5%) of Gross Sales for the preceding month. If the third (3<sup>rd</sup>) day of the month falls on a Sunday, Franchisee shall pay the Royalty Fee and submit the Gross Sales Report on the fourth (4<sup>th</sup>) day of the month. Each monthly Royalty Fee payment shall accompany the Gross Sales Report for the same period, as required by Section 0. If Franchisor requires Franchisee to pay Royalty Fees through electronic transfer as set forth in Section 0, then such reports shall instead be submitted to Franchisor via facsimile or electronic transmission.

**Marketing Fund Contribution**

Franchisor administers a System-wide marketing, advertising and promotion fund ("Marketing Fund") and Franchisee shall contribute monthly to the Marketing Fund an amount specified by Franchisor ("Marketing Fund Contribution"), which shall not exceed two percent (2%) of monthly Gross Sales. Marketing

Fund Contributions shall be made at the same time and in the same manner as Royalty Fee payments provided in Section 0. The Marketing Fund shall be maintained and administered by Franchisor or its designee in accordance with the provisions contained in Section 0.

#### **Electronic Transfer**

Franchisor has the right to require all Royalty Fees, Marketing Fund Contributions, amounts due for purchases by Franchisee from Franchisor and other amounts due to Franchisor to be paid through an Electronic Depository Transfer Account. At Franchisor's request, Franchisee shall open and maintain an Electronic Depository Transfer Account and shall provide Franchisor with continuous access to such account for the purpose of receiving any payments due to Franchisor. Every month, Franchisee shall make deposits to the account sufficient to cover amounts owed to Franchisor prior to the date such amounts are due. Franchisee shall execute any documents Franchisor's or Franchisee's bank requires to establish and implement the Electronic Depository Transfer Account. Once established, Franchisee shall not close the Electronic Depository Transfer Account without Franchisor's written consent.

#### **Taxes**

Franchisee shall pay to Franchisor an amount equal to all sales taxes, use taxes and similar taxes imposed on the fees payable to Franchisor hereunder and on services or goods furnished to Franchisee by Franchisor, whether such services or goods are furnished by sale, lease or otherwise, unless the tax is an income tax assessed on Franchisor for doing business in the state where the Franchised Business is located.

#### **Interest**

Any Royalty Fees or Marketing Fund Contributions due on revenues collected directly by Franchisee, and any other amounts due from Franchisee, that are not received by Franchisor within five (5) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum (or the highest rate allowed by law, whichever is lower) from the date payment is due to the date payment is received by Franchisor. Franchisee shall pay Franchisor for all costs incurred by Franchisor in the collection of any unpaid and past due Royalty Fees, Marketing Fund Contributions or any other amounts due Franchisor, including reasonable accounting and legal fees.

#### **Application of Payments**

Notwithstanding any designation by Franchisee, Franchisor shall have the sole discretion to apply any payments by Franchisee to any past due indebtedness of Franchisee for Royalty Fees, Marketing Fund Contributions, purchases from Franchisor or any other amount owed to Franchisor.

### **4. TERM AND RENEWAL**

#### **Initial Term**

This Agreement shall be effective and binding for an initial term of five (5) years from the Effective Date, unless sooner terminated pursuant to Section 16.

## **Renewal Term**

Subject to the conditions below, Franchisee has the right to renew this Franchise at the expiration of its term. Franchisee's right to enter into a new franchise agreement is limited to three (3) successive renewal terms of five (5) years each, such that the total term of the Franchise shall not exceed twenty (20) years. To qualify for a renewal, each of the following conditions shall have been fulfilled and remain true as of the last day of the term of this Agreement:

4.1.1 Franchisee has, during the entire term of this Agreement, substantially complied with all material provisions;

4.1.2 Franchisee has access to and, for the duration of the renewal term, the right to remain in possession of the Approved Location, or a suitable substitute location approved by Franchisor, which is in full compliance with Franchisor's then-current specifications and standards for the duration of the renewal term;

4.1.3 Franchisee has, at its expense, made such capital expenditures as were necessary to maintain uniformity with any Franchisor-required System modifications such that the Franchised Business reflects Franchisor's then-current standards and specifications;

4.1.4 Franchisee has satisfied all monetary obligations owed by Franchisee to Franchisor (or any Affiliate), and has timely met these obligations throughout the term of this Agreement;

4.1.5 Franchisee is not in default of any provision of this Agreement or any other agreement between Franchisee and Franchisor;

4.1.6 Franchisee has given written notice of renewal to Franchisor not less than nine (9) months nor more than twelve (12) months prior to the end of the initial term;

4.1.7 Franchisee has executed Franchisor's then-current form of the Franchise Agreement, or has executed renewal documents at Franchisor's election (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise), which franchise agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement by requiring, among other things, a different percentage Royalty Fee or Marketing Fund Contribution; provided, however, that Franchisee shall not be required to pay the then-current Franchise Fee;

4.1.8 Franchisee has complied or agrees to comply with Franchisor's then-current qualifications for a new franchisee and any training requirements; and

4.1.9 Franchisee has executed a general release, in a form the same as or similar to the General Release attached as Exhibit A, of any and all claims against Franchisor, its Affiliate(s) and its officers, directors, shareholders and employees, except to the extent prohibited by the laws of the state where the Franchised Business is located.

## **5. APPROVED LOCATION**

### **Selection of Site**

Franchisee shall promptly select a site for the Franchised Business and shall notify Franchisor of such selection. If Franchisor approves of such selection, the site will be designated as the Approved Location. If

Franchisor does not approve of such selection. Franchisee shall select a new site. Franchisor shall provide Franchisee with general guidelines to assist Franchisee in selecting a site suitable for the Approved Location. Franchisor has the right to approve or disapprove a proposed location based on such factors as it deems appropriate, including the condition of the premises, demographics of the surrounding area, proximity to potential clients, proximity to other AccuDiagnostics Businesses, lease requirements, proximity to major roads and overall suitability. Franchisee shall not locate the Franchised Business on a selected site without the prior written approval of Franchisor. *Franchisor does not represent that it or any of its employees have special expertise in selecting sites. Neither Franchisor's assistance nor approval is intended to indicate or indicates that the Franchised Business will be profitable or successful at the Approved Location. Franchisee is solely responsible for finding and selecting the Approved Location.*

#### **Lease of Approved Location**

After the designation of the Approved Location, Franchisee shall execute a lease for, or a binding agreement to purchase, the Approved Location, the terms of which must have been previously approved by Franchisor. Franchisor shall not unreasonably withhold its approval. *Franchisor's review of a lease or purchase agreement, or any advice or recommendation offered by Franchisor, shall not constitute a representation or guarantee that Franchisee will succeed at the Approved Location nor constitute an expression of Franchisor's opinion regarding the terms of such lease or purchase agreement.* Franchisor shall be entitled to require that nothing therein contained is contradictory to, or likely to interfere with, Franchisor's rights or Franchisee's duties under this Agreement. Any default for which the lease may be terminated shall also be deemed a default hereunder and the time to cure the same shall expire when the lease is terminated. At Franchisor's option, the lease shall contain such provisions as Franchisor may reasonably require, including, but not limited to:

5.1.1 a provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the Franchise grant;

5.1.2 a provision expressly permitting the lessor of the premises to provide Franchisor all sales and other information lessor may have obtained or received relating to the operation of the Franchised Business, as Franchisor may request;

5.1.3 a provision requiring the lessor to provide Franchisor with a copy of any written notice of deficiency sent by the lessor to Franchisee, and granting to Franchisor, in its sole discretion and sole option, the right (but not the obligation) to cure any deficiency under the lease should Franchisee fail to do so within fifteen (15) days after the expiration of the period in which Franchisee may cure the default;

5.1.4 a provision allowing Franchisee to display the Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;

5.1.5 a provision prohibiting the premises from being used for any purpose other than the operation of the Franchised Business;

5.1.6 a provision stating that any default under the lease shall constitute a default under this Agreement;

5.1.7 a provision stating that upon default of this Agreement, Franchisor or its nominee has the right to take possession of the premises and operate the Franchised Business; and

5.1.8 a provision allowing Franchisor, upon expiration or termination of the lease, to enter the premises and remove any signs containing the Marks.

### Development of Approved Location

Franchisor shall make available to Franchisee, at no charge to Franchisee, copies of standard plans and specifications (but not construction drawings or blueprints) for the development of an AccuDiagnostics Business, including specifications for exterior and interior design and layout, fixtures, equipment, décor and signs. Such plans and specifications are subject to alteration as may be necessary in Franchisor's sole discretion. Franchisee shall cause the Approved Location to be developed, equipped and improved in accordance with such plans and specifications within ninety (90) days after the Effective Date. In connection with the development of the Approved Location, Franchisee shall:

5.1.9 employ a competent licensed architect or engineer to prepare, for Franchisor's approval, preliminary plans and specifications for improvement of the Approved Location adapted from the plans furnished by Franchisor;

5.1.10 obtain all zoning classifications and clearances that may be required by state and local laws, ordinances or regulations, and submit to Franchisor, for Franchisor's approval, final plans for construction based upon the preliminary plans and specifications;

5.1.11 obtain all building, utility, sign, health, and business permits and licenses, and any other permits and licenses required for the build-out and operation of the Franchised Business and certify in writing and provide evidence to Franchisor that all such permits and certifications have been obtained;

5.1.12 employ a qualified, licensed general contractor, approved by Franchisor to complete construction of all required improvements to the Approved Location;

5.1.13 purchase and install all equipment, signs, furniture and fixtures, including any point-of-sale and computer equipment, required for the operation of the Franchised Business; and

5.1.14 obtain at least one (1) telephone number and one (1) fax number solely dedicated to the Franchised Business.

### Opening

5.1.15 Before opening the Franchised Business and commencing business, Franchisee must:

5.1.15.1 fulfill all of the obligations pursuant to the other provisions of this Section 5;

5.1.15.2 complete initial training to the satisfaction of Franchisor;

5.1.15.3 furnish Franchisor with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor may request;

5.1.15.4 pay in full all amounts due to Franchisor;

5.1.15.5 hire and train the personnel necessary or required for the operation of the Franchised Business; and

5.1.15.6 If Franchisee is a business entity, cause to be printed on the face of each of its stock certificates or other ownership interest certificates a statement in form satisfactory to Franchisor that such ownership interest is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement.

5.1.16 Franchisee shall comply with these conditions and be prepared to open and continuously operate the Franchised Business within five (5) months after the Effective Date. Time is of the essence.

5.1.17 If Franchisee is unable to commence the operation of the Franchised Business due to circumstances beyond Franchisee's reasonable control, then Franchisee may be entitled to such additional time as may be reasonably required and as to which Franchisor may consent.

#### **Use of Approved Location**

Franchisee shall not use the Approved Location for any purpose other than for the operation of an AccuDiagnostics Business in full compliance with this Agreement and the Manual, unless approved in writing by Franchisor.

#### **Relocation**

Franchisee shall not relocate the Franchised Business without the prior written consent of Franchisor, which may be withheld or delayed at Franchisor's sole discretion. If the lease for the Approved Location expires or is terminated without the fault of Franchisee or if the Franchised Business's premises is destroyed, condemned or otherwise rendered unusable, or as otherwise may be agreed upon in writing by Franchisor and Franchisee, Franchisor may, in its reasonable discretion, allow Franchisee to relocate the Franchised Business. Any such relocation shall be at Franchisee's sole expense, and shall proceed in accordance with the requirements set forth in Sections 0 through 0. Franchisor has the right to charge Franchisee for any costs incurred by Franchisor in providing assistance to Franchisee, including legal and accounting fees. Notwithstanding the foregoing, Franchisor has no obligation to provide relocation assistance. If Franchisor and Franchisee do not agree upon a substitute site within ninety (90) days after the lease expires or is terminated or the Approved Location is rendered unusable, this Agreement will terminate as provided in Section 16.1.1.1.

### **6. MARKS**

#### **Ownership**

Franchisee acknowledges that Franchisor and its Affiliate are the exclusive owners of the Marks and that Franchisee's right to use the Marks is derived solely from this Agreement, is nonexclusive and is limited to the conduct of business by Franchisee pursuant to, and in compliance with, this Agreement and all applicable standards, specifications and operating procedures prescribed from time to time by Franchisor. Any unauthorized use of the Marks by Franchisee is a breach of this Agreement and an infringement of the rights of Franchisor in and to the Marks. Franchisee's use of the Marks, and any goodwill created thereby, shall inure to the benefit of Franchisor. Franchisee shall not at any time acquire rights in the Marks by virtue of any use it may make of the Marks. This Agreement does not confer any goodwill, right, title or interest in the Marks to Franchisee. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of any of the Marks.

### **Limitations on Use**

Franchisee shall not use any Mark or portion of any Mark as part of any business entity name or trade name, with any prefix, suffix or other modifying words, terms, designs or symbols or in any modified form, without the prior written consent of Franchisor. Franchisee shall not use any Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by Franchisor. Franchisee shall give such notices of trademark and service mark registrations as Franchisor specifies and obtain such fictitious or assumed name registrations as may be required under applicable law. Franchisee shall not register or seek to register as a trademark or service mark, either with the United States Patent and Trademark Office or any state or foreign country, any of the Marks or a trademark or service mark that is confusingly similar to any Mark licensed to Franchisee. Franchisee shall include on its letterhead, forms, cards and other such identification a prominent notice stating that the Franchised Business is Franchisee's "Independently Owned and Operated AccuDiagnostics Franchisee."

### **Notification of Infringements and Claims**

Franchisee shall immediately notify Franchisor of any infringement of the Marks or challenge to its use of any of the Marks or claim by any person of any rights in any of the Marks. Franchisee shall not communicate with any person other than Franchisor and Franchisor's counsel in connection with any such infringement, challenge or claim; provided, however, Franchisee may communicate with Franchisee's counsel at Franchisee's expense. Franchisor shall have sole discretion to take such action as deemed appropriate and the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge, or claim or otherwise relating to any of the Marks. Franchisee shall execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of Franchisor's counsel, be necessary or advisable to protect and maintain Franchisor's interests in any such litigation or other proceeding or to otherwise protect and maintain Franchisor's interest in the Marks.

### **Indemnification for Use of Marks**

Franchisor shall reimburse Franchisee for all expenses reasonably incurred by Franchisee in any trademark or similar proceeding disputing Franchisee's authorized use of any Mark, provided that Franchisee has timely notified Franchisor of such proceeding and has complied with this Agreement and Franchisor's directions in responding to such proceeding. At Franchisor's option, Franchisor or its designee may defend and control the defense of any proceeding arising directly from Franchisee's use of any Mark. This indemnification shall not include the expense to Franchisee of removing signage or discontinuance of the use of the Marks. This indemnification shall not apply to litigation between Franchisor and Franchisee wherein Franchisee's use of the Marks is disputed or challenged by Franchisor. This indemnification shall not apply to any separate legal fees or costs incurred by Franchisee in seeking independent counsel separate from the counsel representing Franchisor and Franchisee in the event of litigation disputing Franchisor and Franchisee's use of the Marks.

### **Discontinuance of Use**

If it becomes necessary, in Franchisor's sole discretion, for Franchisee to modify or discontinue use of any of the Marks, and/or use one (1) or more additional or substitute trade names, trademarks, service marks or other commercial symbols, Franchisee shall comply with Franchisor's directions within a reasonable time after notice to Franchisee by Franchisor. Franchisor shall not be required to reimburse Franchisee for its expenses in modifying or discontinuing the use of a Mark or any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by Franchisee to promote a modified or substitute Mark.



### **Right to Inspect**

To preserve the validity and integrity of the Marks and any copyrighted materials licensed hereunder, and to ensure that Franchisee is properly employing the Marks in the operation of the Franchised Business, Franchisor and its designees have the right to enter and inspect the Franchised Business and the Approved Location at all reasonable times and, additionally, have the right to observe the manner in which Franchisee renders services and conducts activities and operations, and to inspect facilities, equipment, accessories, products, supplies, reports, forms and documents and related data to ensure that Franchisee is operating the Franchised Business in accordance with the quality control provisions and performance standards established by Franchisor. Franchisor and its agents shall have the right, at any reasonable time, to remove sufficient quantities of any product or other inventory items offered for retail sale, used in the preparation of products offered for retail sale or used in rendering services, to test whether such products or items meet Franchisor's then-current standards. Franchisor or its designee has the right to observe Franchisee and its employees during the operation of the Franchised Business and to interview customers and employees and to photograph or videotape the premises.

### **Franchisor's Sole Right to Domain Name**

Franchisee shall not establish, create or operate an Internet site or website using a domain name or uniform resource locator containing the Marks or the words "AccuDiagnostics" or any variation thereof or any domain name that would be confusingly similar. Franchisor has the exclusive right to advertise on the Internet and create websites using or containing the "AccuDiagnostics" name and any other Mark. Franchisor is the sole owner of all right, title and interest in and to such domain names, as Franchisor shall designate in the Manual.

## **7. CONFIDENTIAL INFORMATION**

### **Requirement of Confidentiality**

Franchisor shall disclose Confidential Information to Franchisee during the training program, through the Manual, and as a result of guidance furnished to Franchisee during the term of this Agreement. Franchisee shall not acquire any interest in the Confidential Information, other than the right to utilize it in the development and operation of the Franchised Business and in performing its duties during the term of this Agreement. Franchisee acknowledges that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. Franchisee acknowledges that the Confidential Information is proprietary, includes Franchisor's trade secrets and is disclosed to Franchisee solely on the condition that Franchisee (and all holders of a legal or beneficial interest in Franchisee and all officers, directors, executives, managers and members of the professional staff of Franchisee) (a) shall not use the Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement; (c) shall not make any unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information. Franchisee shall enforce this Section as to its employees, agents and representatives and shall be liable to Franchisor for any unauthorized disclosure or use of Confidential Information by any of them.

### **Additional Developments**

All ideas, concepts, techniques or materials concerning the Franchised Business, whether or not protectable intellectual property and whether created by or for Franchisee or its owners or employees, must be promptly disclosed to Franchisor and will be deemed the sole and exclusive property of Franchisor and works made-for-hire for Franchisor, and no compensation will be due to Franchisee or its owners or employees therefor.

At Franchisor's discretion, such items may be incorporated into the System. To the extent any item does not qualify as a "work made-for-hire" for Franchisor, Franchisee shall assign ownership of that item, and all related rights to that item, to Franchisor and must sign whatever assignment or other documents Franchisor requests to show Franchisor's ownership or to assist Franchisor in obtaining intellectual property rights in the item. Franchisor shall disclose to Franchisee concepts and developments of other franchisees that are made part of the System. As Franchisor may reasonably request, Franchisee shall take all actions to assist Franchisor's efforts to obtain or maintain intellectual property rights in any item or process related to the System, whether developed by Franchisee or not.

#### **Exclusive Relationship**

Franchisee acknowledges that Franchisor would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among AccuDiagnostics franchisees if owners of AccuDiagnostics Businesses and members of their immediate families and households were permitted to hold an interest in or perform services for any Competitive Business. Therefore, during the term of this Agreement, neither Franchisee nor any holder of a legal or beneficial interest in Franchisee (or any member of their immediate families and households), nor any officer, director, executive, manager or member of the professional staff of Franchisee, either directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, partnership, corporation, limited liability company or other business entity, shall:

7.1.1 Divert or attempt to divert any business, customer, referral source or supplier of the Franchised Business to any Competitive Business, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System; or

7.1.2 Own an interest in, manage, operate, or perform services for any Competitive Business wherever located.

#### **Nondisclosure and Non-Competition Agreements with Certain Individuals**

Franchisor has the right to require Franchisee and any holder of a legal or beneficial interest in Franchisee (and any member of their immediate families or households), and any officer, director, executive, manager or member of the professional staff of Franchisee to execute a standard form nondisclosure and non-competition agreement, in a form the same as or similar to the Nondisclosure and Non-Competition Agreement attached as Exhibit B, upon execution of this Agreement or prior to each such person's affiliation with Franchisee. Upon Franchisor's request, Franchisee shall provide Franchisor with copies of all nondisclosure and non-competition agreements to be signed pursuant to this Section. Said agreements shall remain on file at the offices of Franchisee and are subject to audit or review as otherwise set forth herein. Franchisor shall be a third party beneficiary with the right to enforce covenants contained in such agreements.

#### **Reasonableness of Restrictions**

Franchisee acknowledges that the restrictive covenants contained in this Section are essential elements of this Agreement and that without their inclusion, Franchisor would not have entered into this Agreement. Franchisee acknowledges that each of the terms set forth herein, including the restrictive covenants, is fair and reasonable and is reasonably required for the protection of Franchisor, the System and the Marks.

## **8. TRAINING AND ASSISTANCE**

### **Initial Training**

Franchisor shall make an initial training program available to the Designated Manager and one (1) assistant. Prior to the opening of the Franchised Business, the Designated Manager must attend and successfully complete, to Franchisor's satisfaction and not more than ninety (90) days after the Effective Date, an initial training program consisting of approximately two (2) weeks of classroom and on-the-job instruction pertaining to operation of the Franchised Business including, but not limited to, collection, screening and analysis methods and procedures, sales and marketing methods; financial controls; maintenance of quality standards; customer service techniques, record keeping and reporting procedures and other operational issues. Franchisor shall conduct the initial training program at its headquarters or at another designated location. Franchisor shall not charge tuition or similar fees for initial training, however, all expenses incurred by Franchisee in attending such program including, but not limited to, travel costs, room and board expenses and employees' salaries, shall be the sole responsibility of Franchisee. Franchisee shall be responsible for training its management and other employees.

### **Opening Assistance**

In conjunction with, and prior to, the beginning of operation of the Franchised Business, Franchisor shall make available to Franchisee, at Franchisor's expense, for approximately five (5) days, one (1) of Franchisor's representatives, experienced in the System, for the purpose of providing general assistance and guidance in connection with the opening of the Franchised Business. Should Franchisee request additional assistance from Franchisor in order to facilitate the opening or continued operation of the Franchised Business, and should Franchisor deem it necessary and appropriate to comply with such request, Franchisor shall provide such additional assistance at Franchisor's then-current standard rates, plus expenses.

### **Failure to Complete Initial Training Program**

If Franchisor determines, in its sole discretion, that the Designated Manager is unable to satisfactorily complete the training program described above, Franchisor has the right to terminate this Agreement. If this Agreement is terminated pursuant to this Section 0, Franchisor shall return to Franchisee fifty percent (50%) of the Franchise Fee paid by Franchisee upon Franchisor's receipt of a general release, the same as or similar to the General Release attached as Exhibit A, satisfying the requirements of Section 18.1.3. If Franchisee is a business entity and the Designated Manager fails to complete the initial training program to Franchisor's reasonable satisfaction, in Franchisor's sole discretion, Franchisee may be permitted to select a substitute manager and such substitute manager must complete the initial training to Franchisor's reasonable satisfaction. Franchisee may be required to pay Franchisor's then-current rates for additional training, if any, for providing the substitute manager an initial training program.

### **New Designated Manager**

If Franchisee is a business entity and, after beginning operations, Franchisee names a new Designated Manager, the new Designated Manager must complete the initial training program to Franchisor's satisfaction within sixty (60) days. The new Designated Manager may attend the initial training program without charge, provided that Franchisor has the right to require Franchisee to pay the costs of training if Franchisor determines that manager changes are excessive or caused by poor hiring practices. Franchisee shall be responsible for all travel costs, living expenses and employees' salaries incurred in connection with the Designated Manager's attendance at such training.

### **Ongoing Training**

From time to time Franchisor may provide, and if it does, has the right to require that the Designated Manager attend, ongoing training programs or seminars during the term of this Agreement. Franchisor shall not charge a fee for any mandatory ongoing training. Franchisor shall not require the Designated Manager to attend more than two (2) sessions in any calendar year and collectively not more than two (2) days in any calendar year. Franchisee shall be responsible for all travel costs, living expenses and employees' salaries incurred in connection with the Designated Manager's attendance at such training.

## **9. MANUAL**

### **Loan by Franchisor**

While this Agreement is in effect, Franchisor shall loan to Franchisee one (1) copy of the Manual or grant Franchisee access to an electronic copy of the Manual. Franchisee shall conduct the Franchised Business in strict accordance with the provisions set forth in the Manual. The Manual may consist of one (1) or more separate manuals and other materials as designated by Franchisor and may be in written or electronic form. The Manual shall, at all times, remain the sole property of Franchisor and shall promptly be returned upon expiration or termination of this Agreement.

### **Revisions to the Manual**

Franchisor has the right to add to or otherwise modify the Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules prescribed by Franchisor; provided, however, that no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Franchisor may make such additions or modifications without prior notice to Franchisee. Franchisee shall immediately, upon notice, adopt any such changes and shall ensure that its copy of the Manual is up-to-date at all times. If a dispute as to the contents of the Manual arises, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's headquarters shall be controlling.

### **Confidentiality of Manual**

The Manual contains proprietary information of Franchisor and its contents shall be kept confidential by Franchisee both during the term of the Franchise and subsequent to the expiration or termination of this Agreement. Franchisee shall at all times ensure that its copy of the Manual is available at the Approved Location in a current and up-to-date manner. If in paper form or stored on computer-readable medium, Franchisee shall maintain the Manual in a locked receptacle at the Approved Location, or if in electronic form, Franchisee shall maintain the Manual in a password-protected file. Franchisee shall only grant authorized personnel, as defined in the Manual, access to the key or combination of such receptacle or the password to such file (or Internet site, if the Manual is maintained on-line by Franchisor in a password-protected site). Franchisee shall not disclose, duplicate or otherwise use any portion of the Manual in an unauthorized manner.

## 10. FRANCHISE SYSTEM

### Uniformity

Franchisee shall strictly comply, and shall cause the Franchised Business to strictly comply, with all requirements, specifications, standards, operating procedures and rules set forth in this Agreement, the Manual or other communications supplied to Franchisee by Franchisor.

### Modification of the System

Franchisee recognizes that from time to time, Franchisor may introduce, as part of the System, other methods or technology which require certain System modifications including, without limitation, the adoption and use of modified or substitute Marks, new computer hardware and software, equipment or signs. Franchisee agrees to make all required upgrades and modifications at its expense as may be required by Franchisor; provided, however, that Franchisee shall not be required to make any expenditures which are unreasonably disproportionate to Franchisee's original investment to establish the Franchised Business. If such additional investment is required in the last year of the initial term, Franchisee may avoid making the investment by providing notice of intent not to renew the Franchise unless the investment is in connection with a modification to the System required by law or court order. Franchisee acknowledges that any required expenditures for changes or upgrades to the System shall be in addition to expenditures for repairs and maintenance as required in Section 0.

### Variance

Franchisor has the right, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary standards or specifications for any franchisee based upon that particular franchisee's qualifications, the peculiarities of the particular site or circumstances, the demographics of the trade area, business potential, existing business practices or any other condition which Franchisor deems to be of importance to the successful operation of any particular AccuDiagnostics Business. Franchisor shall not be required to disclose or grant to Franchisee a like or similar variance hereunder.

## 11. MARKETING AND PROMOTIONAL ACTIVITIES

### Grand Opening Advertising

Franchisee shall spend no less than THREE THOUSAND DOLLARS (\$3,000.00) during the first three (3) months of operation of the Franchised Business on local advertisement and promotion of the initial opening ("Grand Opening Advertising"). Prior to their use, all materials to be used in Grand Opening Advertising must be approved by Franchisor through the process set forth in Section 11.1.2. Grand Opening Advertising expenditures shall be in addition to any Local Advertising expenditures and Marketing Fund Contributions.

### Local Advertising

11.1.1 Franchisee shall continuously promote the Franchised Business. Every month, Franchisee shall spend at least two percent (2%) of the previous month's Gross Sales on advertising, promotions and public relations within the immediate locality surrounding the Franchised Business ("Local Advertising"). Such expenditures shall be made directly by Franchisee, subject to the approval and direction of Franchisor. Franchisor will provide general guidelines for conducting Local Advertising so as to better assist Franchisee. Within thirty

(30) days after the end of each month, Franchisee shall furnish to Franchisor an accurate accounting of the expenditures on Local Advertising for the preceding month.

11.1.2 Franchisee shall submit to Franchisor, for its prior approval, all advertising and promotional materials to be used by Franchisee including, but not limited to, ad copy, coupons, flyers, scripts and direct mail. Franchisor shall use reasonable efforts to provide notice of approval or disapproval within twenty (20) days from the date all requested material is received by Franchisor. If Franchisor does not approve submitted materials within twenty (20) days, such materials shall be deemed to have received the required approval. Franchisee shall not use any marketing or promotional material prior to approval by Franchisor. The submission of advertising materials to Franchisor for approval shall not affect Franchisee's right to determine the prices at which Franchisee provides services or sells products.

### **Marketing Fund**

Franchisor administers a Marketing Fund, as defined in Section 0 and Franchisee shall make monthly Marketing Fund Contributions in the form of a monthly deduction from the Gross Sales otherwise payable to Franchisee, the amount of which will be set by Franchisor and may be adjusted from time to time but shall not exceed two percent (2%) of that month's Gross Sales. Franchisor shall notify Franchisee at least thirty (30) days before implementing or changing Marketing Fund Contribution requirements. The Marketing Fund shall be maintained and administered by Franchisor or its designee as follows:

11.1.3 Franchisor shall oversee all marketing programs, with sole discretion over the creative concepts, materials and media used in such programs, and the placement and allocation thereof. Franchisor does not warrant that any particular franchisee will benefit directly or *pro rata* from expenditures by the Marketing Fund. The program(s) may be local, regional or System-wide. Franchisee's Marketing Fund Contributions may be used to meet the costs of producing, maintaining, administering and directing consumer advertising (including, without limitation, the cost of preparing and conducting television, radio, Internet, magazine and newspaper advertising campaigns and other public relations activities; developing and/or hosting an Internet web page or site and similar activities; employing advertising agencies to assist therein; and providing promotional brochures and other marketing materials to franchisees). All Marketing Fund Contributions shall be maintained in a separate account from the monies of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable costs and expenses, if any, that Franchisor may incur in activities reasonably related to the administration of the Marketing Fund.

11.1.4 Although Franchisor intends the Marketing Fund, if established, to be of perpetual duration, Franchisor has the right to terminate the Marketing Fund at any time. The Marketing Fund shall not be terminated, however, until all Marketing Fund Contributions have been expended for advertising and promotional purposes or returned to Franchisee and other franchisees on a *pro rata* basis.

11.1.5 It is anticipated that all Marketing Fund Contributions shall be expended for programs during Franchisor's fiscal year within which such contributions are made. If excess amounts remain in any Marketing Fund at the end of such fiscal year, all expenditures in the following fiscal year(s) shall be made first out of such excess amounts, including any interest or other earnings of the Marketing Fund and next out of prior year contributions and then out of current contributions.

11.1.6 Each AccuDiagnostics Business operated by Franchisor, or any Affiliate of Franchisor, shall make Marketing Fund Contributions at the same rate as franchised AccuDiagnostics Businesses.

11.1.7 At Franchisee's request, Franchisor shall prepare an accounting of the Marketing Fund's operation during the most recently completed fiscal year. Franchisor retains the right to have the Marketing Fund audited, at the expense of the Marketing Fund, by an independent certified public accountant selected by Franchisor.

11.1.8 Franchisee acknowledges that the Marketing Fund is not a trust and Franchisor assumes no fiduciary duty in administering the Marketing Fund.

#### **Cooperative Advertising**

Franchisor has the right, but not the obligation, to create a Cooperative Advertising program for the benefit of AccuDiagnostics Businesses located within a particular region. Franchisor has the right to (a) allocate any portion of the Marketing Fund to the Cooperative Advertising program; and (b) collect and designate all or a portion of the Local Advertising for a Cooperative Advertising program. Franchisor has the right to determine the composition of all geographic territories and market areas for the implementation of each Cooperative Advertising program, and to require that Franchisee participate in such Cooperative Advertising programs when established within Franchisee's region. If a Cooperative Advertising program is implemented in a particular region, Franchisor has the right to establish an advertising council to self-administer the Cooperative Advertising program. Franchisee shall participate in the council according to the council's rules and procedures and Franchisee shall abide by the council's decisions.

#### **Internet Advertising**

Franchisee may not establish a presence on, or market using, the Internet in connection with the Franchised Business without Franchisor's prior written consent. Franchisor has established and maintains an Internet website at [www.accudiagnosics.com](http://www.accudiagnosics.com) that provides information about the System and the services that AccuDiagnostics Businesses provide. Franchisor may, at its option, include at the AccuDiagnostics website an interior page containing information about the Franchised Business. If Franchisor includes such information on the AccuDiagnostics website, Franchisor has the right to require Franchisee to prepare all or a portion of the page, at Franchisee's expense, using a template that Franchisor provides. All such information shall be subject to Franchisor's approval prior to posting. Franchisor retains the sole right to market on the Internet, including the use of websites, domain names, uniform resource locaters, linking, search engines (and search engine optimization techniques), banner ads, meta-tags, marketing, auction sites, e-commerce and co-branding arrangements. Franchisee may be requested to provide content for Franchisor's Internet marketing and shall be required to follow Franchisor's intranet and Internet usage rules, policies and requirements. Franchisor retains the sole right to use the Marks on the Internet, including on websites, as domain names, directory addresses, search terms and meta-tags, and in connection with linking, marketing, co-branding and other arrangements. Franchisor retains the sole right to approve any linking to, or other use of, the AccuDiagnostics website. Franchisee may not establish a presence on, or market using, the Internet in connection with the Franchised Business without Franchisor's prior written consent.

#### **Telephone Directory Advertising**

Franchisee must list and advertise the telephone number(s) for the Franchised Business in the "white pages" telephone directory and the classified or "yellow pages" telephone directory distributed in its trade area and in such directory heading or category as specified by Franchisor. Franchisee must place the classified directory advertisement and listings together with other AccuDiagnostics Businesses operating within the distribution area of the directories. If a joint listing is obtained, all AccuDiagnostics Businesses listed together shall pay a *pro rata* share of the cost of the advertisements and listings.

## 12. ACCOUNTING, RECORDS AND REPORTING OBLIGATIONS

### Records

During the term of this Agreement, Franchisee shall maintain full, complete and accurate books, records and accounts in accordance with the standard accounting system prescribed by Franchisor in the Manual or otherwise in writing. Franchisee shall retain during the term of this Agreement, and for three (3) years thereafter, all books and records related to the Franchised Business including, without limitation, purchase orders, invoices, payroll records, sales tax records, state and federal tax returns, bank statements, cancelled checks, deposit receipts, cash receipts and disbursement journals, general ledgers, and any other financial records designated by Franchisor or required by law.

### Gross Sales Reports

Franchisee shall maintain an accurate record of Gross Sales and shall deliver to Franchisor a signed and verified statement of Gross Sales ("Gross Sales Report") for each month in a form and through a method that Franchisor approves or provides in the Manual. The Gross Sales Report for the preceding month must be provided to Franchisor by the close of business on the third (3<sup>rd</sup>) day of each month. If the third (3<sup>rd</sup>) day of the month falls on a Sunday, Franchisee shall submit the Gross Sales Report on the fourth (4<sup>th</sup>) day of the month.

### Financial Statements

Franchisee shall supply to Franchisor on or before the fifteenth (15<sup>th</sup>) day of each January, April, July and October in a form approved by Franchisor, a balance sheet as of the end of the preceding quarter and an income statement for the preceding quarter and the fiscal year-to-date. Franchisee shall, at its expense, submit to Franchisor within forty-five (45) days after the end of each calendar year, an income statement for the calendar year just ended and a balance sheet as of December 31 of such year. Such financial statements shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis. If required by Franchisor, such financial statements shall be reviewed or audited by a certified public accountant. Franchisee shall submit to Franchisor such other periodic reports in the manner and at the time specified in the Manual or otherwise in writing.

### Other Reports

Franchisee shall submit to Franchisor copies of all state sales tax returns required to be filed with the appropriate governmental agency and such other records as Franchisor may reasonably request from time to time or as specified in the Manual. Franchisor shall have the right to release financial and operational information relating to the Franchised Business to Franchisor's lenders or prospective lenders. Franchisee shall certify as true and correct all reports to be submitted pursuant to this Agreement.

### Computer System

Franchisee shall purchase, install and use computer systems consisting of hardware and software in accordance with Franchisor's specifications. Franchisee shall use the computer system to maintain its business records, customer information and sales and other financial information in a format that may be specified by Franchisor in the Manual or by other written communication. Franchisor shall have full access to all of Franchisee's computer and sale data and systems and all related information by means of direct access, either in person or by telephone, modem or Internet to permit Franchisor to verify Franchisee's compliance with its obligations under this Agreement.



### **Right to Inspect**

Franchisor or its designee has the right, during normal business hours, to examine, copy and audit the books, records and tax returns of Franchisee. If the audit or any other inspection should reveal that any payments to Franchisor have been underpaid, then Franchisee shall immediately pay to Franchisor the amount of the underpayment plus interest from the date such amount was due until paid at the rate of eighteen percent (18%) per annum (or the highest rate allowed by law, whichever is lower). If an audit discloses an underpayment of three percent (3%) or more of the amount due for any period covered by such audit, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel expenses and reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

### **Release of Records**

At Franchisor's request, Franchisee shall authorize and direct any third parties, including accounting professionals, to release to Franchisor all accounting and financial records arising from or relating to the operation of the Franchised Business including, but not limited to, records evidencing Gross Sales, profits, losses, income, tax liabilities, tax payments, revenues, expenses, and any correspondence, notes, memoranda, audits, business records, or internal accounts within said third parties' possession, custody or control, and to continue to release such records to Franchisor on a monthly basis for the length of the unexpired term of this Agreement or until such time as Franchisor withdraws its request. Franchisee shall execute all documents necessary to facilitate the release of records referenced herein to Franchisor.

## **13. STANDARDS OF OPERATION**

### **Authorized Products, Services and Suppliers**

13.1.1 Franchisee acknowledges that the reputation and goodwill of the System is based in large part on offering high quality services and products to its customers. Accordingly, Franchisee shall provide only those services, sell only those products and use only those supplies, signs, equipment and other products that Franchisor from time to time approves (and which are not thereafter disapproved) and that comply with Franchisor's specifications and quality standards. If required by Franchisor, any such products shall be purchased only from "Approved Suppliers" that Franchisor designates or approves (which might include, or be limited to, Franchisor or its Affiliate). Franchisee shall not provide or offer for sale through the Franchised Business or from the Approved Location any services or products that Franchisor has not approved.

13.1.2 Franchisor shall provide Franchisee, in the Manual or other written or electronic form, with a list of specifications and, if required, a list of Approved Suppliers for some or all of the supplies, signs, equipment and other approved or specified products, and Franchisor may from time to time issue revisions to such list. If Franchisee desires to offer for sale or use any product that Franchisor has not approved (for products that require supplier approval), Franchisee shall first send Franchisor sufficient information, specifications and/or samples for Franchisor to determine whether the product complies with its standards and specifications, or whether the supplier meets its Approved Supplier criteria. Franchisee shall bear all reasonable expenses incurred by Franchisor in connection with determining whether it shall approve a product or supplier. Franchisor shall decide within thirty (30) days after receiving the required information whether Franchisee may purchase such products from such supplier. Approval of a supplier may be conditioned on the supplier's ability to provide sufficient quantity of product; the quality and price of products; the supplier's production and delivery capability; and the supplier's dependability and general reputation. Nothing in this Section shall be construed to require Franchisor to

approve any particular supplier, or to require Franchisor to make available to prospective suppliers, standards and specifications that Franchisor, in its discretion, deems confidential.

13.1.3 Notwithstanding anything contrary in this Agreement, Franchisor has the right to review from time to time its approval of any products or suppliers. Franchisor may revoke its approval of any product or supplier at any time, and in its sole discretion, by notifying Franchisee or the supplier. Franchisee shall, at its own expense, promptly cease using any products disapproved by Franchisor and shall promptly cease purchasing from suppliers disapproved by Franchisor.

13.1.4 Franchisor has the right to designate certain services and products, not otherwise authorized for general use as part of the System, to be offered locally or regionally based upon such factors as Franchisor determines including, but not limited to, franchisee qualifications, test marketing and regional or local differences. Franchisor has the right, in its sole discretion from time to time, to give its consent to one (1) or more franchisees to provide certain services or use certain products not authorized for general use as part of the System. Such consent will be based upon the factors set forth in Section 0 and shall not create any rights in Franchisee to provide the same services or use the same products.

13.1.5 Franchisor has the right to retain volume rebates, markups and other benefits from suppliers or in connection with the furnishing of suppliers. Franchisee shall have no entitlement to or interest in any such benefits.

#### **Appearance and Condition of the Franchised Business**

Franchisee shall maintain the premises of the Franchised Business and any vehicles, furniture, fixtures, equipment and signage in "like new" condition. The expense of such maintenance shall be borne by Franchisee and shall be in addition to any required System modifications as described in Section 0.

#### **Ownership and Management**

The Franchised Business shall, at all times, be under the direct supervision of Franchisee. The Designated Manager shall devote his or her full-time efforts to the management of the day-to-day operation of the Franchised Business. "Full-time" means the expenditure of at least thirty-five (35) hours per week, excluding vacation, sick leave and similar absences, unless otherwise approved in writing by Franchisor. Franchisee shall keep Franchisor informed, in writing, at all times of the identity of its Designated Manager.

#### **Licenses and Permits**

Franchisee shall secure and maintain in force all required licenses, permits and certificates necessary for the operation of the Franchised Business and shall operate the Franchised Business in full compliance with all applicable laws, ordinances and regulations. Franchisor makes no representation to Franchisee with regard to any legal requirements that Franchisee must satisfy or comply with in connection with the operation of the Franchised Business. Franchisee shall be solely responsible for investigating and complying with all such laws, ordinances and regulations with regard to the operation of the Franchised Business.

#### **Notification of Proceedings**

Franchisee shall notify Franchisor in writing of the commencement of any action, suit or proceeding involving Franchisee or the Franchised Business, and of the issuance of any order, writ, injunction, award or decree which may affect the operation or financial condition of the Franchised Business and provide a copy of any

documentation of any such commencement of a suit or proceeding or any order, writ, injunction, award or decree not more than five (5) days after such commencement or issuance. Franchisee shall deliver to Franchisor not more than five (5) days after Franchisee's receipt thereof, a copy of any inspection report, warning, certificate or rating by any governmental agency relating to any health or safety law, rule or regulation that reflects Franchisee's failure to meet and maintain the highest applicable rating or Franchisee's noncompliance or less than full compliance with any applicable law, rule or regulation.

#### **Compliance with Good Business Practices**

Franchisee acknowledges that the quality of customer service, and every detail of appearance and demeanor of Franchisee and its employees is material to this Agreement and the relationship created hereby. Therefore, Franchisee shall endeavor to maintain high standards of quality and service in the operation of the Franchised Business. Franchisee shall at all times give prompt, courteous and efficient service to customers of the Franchised Business. The Franchised Business shall in all dealings with its customers, vendors and the general public, adhere to the highest standards of honesty, fair dealing and ethical conduct. If Franchisor deems that Franchisee did not fairly handle a customer complaint, Franchisor has the right to intervene and satisfy the customer. Franchisor has the right to terminate this Agreement for repeated violation of this Section. Franchisee shall reimburse Franchisor for all costs incurred by Franchisor in servicing a customer of the Franchised Business pursuant to this Section.

#### **Uniforms**

Franchisee shall abide by any uniform requirements stated in the Manual. Uniforms, if required, must be purchased from an Approved Supplier, if such is designated, or if none, then a supplier who meets Franchisor's specifications and quality standards for uniforms.

#### **Best Efforts**

Franchisee shall use its best efforts to promote and increase the sales and recognition of services offered through the Franchised Business. Franchisee shall require all of Franchisee's employees, managers, officers, agents and representatives to make a good faith effort to enhance and improve the System and the sales of all services and products provided as part of the System.

### **14. FRANCHISOR'S ADDITIONAL OPERATIONS ASSISTANCE**

#### **General Advice and Guidance**

Franchisor shall be available to render advice, discuss problems and offer general guidance to Franchisee by telephone, e-mail, facsimile, newsletters and other methods with respect to planning, opening and operating the Franchised Business. Franchisor shall not charge a fee for the normal use of this service; provided, however, that Franchisor retains the right to charge a fee or refuse any particular request for this service should Franchisee, in Franchisor's discretion, be deemed to be utilizing this service too frequently or in an unintended manner. Franchisor's advice or guidance to Franchisee relative to prices for services and products that, in Franchisor's judgment, constitutes good business practice is based upon the experience of Franchisor's Affiliate in operating a business similar to AccuDiagnosics Businesses, the experience of Franchisor's franchisees in operating AccuDiagnosics Businesses and an analysis of costs and prices charged for competitive services and products. Franchisee shall have the sole right to determine the prices to be charged by the Franchised Business.

### **National Accounts**

Franchisor may, but is not obligated to, establish National Accounts requiring AccuDiagnostics services in the Franchised Business's Area of Primary Responsibility. If Franchisor does establish such an account, Franchisee has the right to service such account. Franchisee shall be entitled to seventy-five percent (75%) of the price charged to such National Account by Franchisor, and Franchisor shall retain the remaining twenty-five percent (25%). If Franchisee elects not to service any National Account, Franchisor has the right to service National Accounts within the Area of Primary Responsibility itself, or to allow other AccuDiagnostics Businesses or third parties to service such accounts.

### **Periodic Visits**

Franchisor or Franchisor's representative shall make periodic visits to the Franchised Business for the purposes of consultation, assistance and guidance with respect to various aspects of the operation and management of the Franchised Business. Franchisor and Franchisor's representatives who visit the Franchised Business may prepare, for the benefit of both Franchisor and Franchisee, written reports detailing any problems or concerns discovered during any such visit and outlining any required or suggested changes or improvements in the operations of the Franchised Business. A copy of any such written report may be provided to Franchisee. Franchisee shall implement any required changes or improvements in a timely manner.

### **System Improvements**

Franchisor shall communicate improvements in the System to Franchisee as such improvements may be developed or acquired by Franchisor and implemented as part of the System.

### **Marketing and Promotional Materials**

Franchisor may periodically provide advertising and promotional materials including ad-slicks, brochures, fliers and other materials to Franchisee for use in the operation of the Franchised Business.

## **15. INSURANCE**

### **Types and Amounts of Coverage**

At its sole expense, Franchisee shall procure within sixty (60) days of the Effective Date, and maintain in full force and effect during the term of this Agreement, the types of insurance listed below. All policies, except those identified in Section 15.1.2, shall expressly name Franchisor as an additional insured or loss payee and shall contain a waiver of all subrogation rights against Franchisor and its successors and assigns. In addition to any other insurance that may be required by applicable law, or by lender or lessor, Franchisee shall procure:

15.1.1 "all risk" property insurance coverage on all assets, including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of the Franchised Business. Franchisee's property insurance policy shall include coverage for fire, vandalism and malicious mischief and must have coverage limits of at least full replacement cost;

15.1.2 workers' compensation insurance that complies with the statutory requirements of the state in which the Franchised Business is located and employer liability coverage with a minimum limit of ONE

HUNDRED THOUSAND DOLLARS (\$100,000.00) or, if higher, the statutory minimum limit as required by state law;

15.1.3 comprehensive general liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Franchised Business, or Franchisee's conduct of business pursuant to this Agreement, with a minimum liability coverage of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence or, if higher, the statutory minimum limit required by state law;

15.1.4 errors and omissions insurance, whether as a stand-alone policy or as part of the comprehensive general liability insurance, against claims for negligence in connection with the performance of AccuDiagnostics services, including specimen collection, analysis and testing and test or result reporting, with a minimum liability coverage of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence or, if higher, the statutory minimum limit required by state law;

15.1.5 automobile liability insurance for owned or hired vehicles with a combined single limit of at least ONE MILLION DOLLARS (\$1,000,000.00) or, if higher, the statutory minimum limit required by state law; and

15.1.6 such insurance as necessary to provide coverage under the indemnity provisions set forth in Section 0.

#### **Future Increases**

Franchisor has the right to reasonably increase the minimum liability protection requirement annually and require different or additional insurance coverage(s) to reflect inflation, changes in standards of liability, future damage awards or other relevant changes in circumstances.

#### **Carrier Standards**

Such policies shall be written by an insurance company licensed in the state in which Franchisee operates, and having at least an "A" Rating Classification and within the Financial Size Category "IX" or higher, each as indicated in A.M. Best's Key Rating Guide.

#### **Evidence of Coverage**

Franchisee's obligation to obtain and maintain the foregoing policies shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of this obligation relieve it of liability under the indemnity provisions set forth in Section 0. Franchisee shall provide, annually, certificates of insurance showing compliance with the foregoing requirements. Such certificates shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days prior written notice to Franchisor and shall reflect proof of payment of premiums.

#### **Failure to Maintain Coverage**

Should Franchisee not procure and maintain insurance coverage as required by this Agreement, Franchisor has the right (but not the obligation) to immediately procure such insurance coverage and to charge the premiums to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

## **16. DEFAULT AND TERMINATION**

### **Termination by Franchisee**

If Franchisee is in substantial compliance with this Agreement and Franchisor materially breaches this Agreement and fails to commence reasonable efforts to cure such breach within thirty (30) days after receiving written notice identifying the claimed breach, Franchisee has the right to terminate this Agreement unless the breach cannot reasonably be cured within such thirty (30) days. If the breach cannot reasonably be cured in such thirty (30) days, Franchisee has the right to terminate this Agreement only if Franchisor does not promptly undertake and continue efforts to cure such material breach within a reasonable period of time and furnish Franchisee reasonable proof of such efforts.

### **Termination by Franchisor**

16.1.1 Franchisor has the right to terminate this Agreement, without any opportunity to cure by Franchisee, if Franchisee:

16.1.1.1 fails to establish and equip the Franchised Business pursuant to Section 5;

16.1.1.2 fails to satisfactorily complete the training program pursuant to Section 8;

16.1.1.3 made any material misrepresentation or omission in its application for the Franchise or otherwise to Franchisor in the course of entering into this Agreement;

16.1.1.4 is convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of Franchisor, Franchisee or the Franchised Business;

16.1.1.5 discloses, duplicates or otherwise uses in an unauthorized manner any portion of the Manual or any other Confidential Information;

16.1.1.6 abandons, fails or refuses to actively operate the Franchised Business for five (5) or more consecutive days (unless the Franchised Business has not been operational for a purpose approved by Franchisor);

16.1.1.7 surrenders or transfers control of the operation of the Franchised Business without Franchisor's approval, makes or attempts to make an unauthorized direct or indirect assignment of the Franchise or an ownership interest in Franchisee, or fails or refuses to assign the Franchise or the interest in Franchisee of a deceased or incapacitated owner thereof, as herein required;

16.1.1.8 fails to maintain the Franchised Business under the primary supervision of a Designated Manager during the one hundred eighty (180) days following the death or incapacity of Franchisee or any holder of a legal or beneficial interest in Franchisee, pursuant to Section 0;

16.1.1.9 submits to Franchisor on two (2) or more separate occasions at any time during the term of the Franchise any reports or other data, information or supporting records that understate any Royalty Fee or any other fees owed to Franchisor by more than three percent (3%) for any accounting period and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error;

16.1.1.10 is adjudicated as bankrupt, becomes insolvent, commits any affirmative act of insolvency, or files any action or petition of insolvency; if a receiver of its property or any part thereof is appointed by a court; if it makes a general assignment for the benefit of its creditors; if a final judgment remains unsatisfied of record for thirty (30) days or longer (unless *supersedeas* bond is filed); if execution is levied against Franchisee's business or property; if a suit to foreclose any lien or mortgage against its Approved Location or equipment is instituted against Franchisee and not dismissed within thirty (30) days or is not in the process of being dismissed;

16.1.1.11 misuses or makes an unauthorized use of any of the Marks or Confidential Information or commits any other act which can reasonably be expected to impair the goodwill associated with any of the Marks;

16.1.1.12 fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit reports or other information or supporting records when due, to pay any Royalty Fee, Marketing Fund Contribution, amounts due for purchases from Franchisor and any Affiliate, or other payment when due to Franchisor or any Affiliate, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;

16.1.1.13 continues to violate any health or safety law, ordinance or regulation, or operates the Franchised Business in a manner that presents a health or safety hazard to its customers, employees or the public;

16.1.1.14 engages in any activity exclusively reserved to Franchisor;

16.1.1.15 fails to comply with any applicable law or regulation within ten (10) days after being given notice of noncompliance;

16.1.1.16 repeatedly breaches this Agreement or repeatedly fails to comply with mandatory specifications, customer service standards or operating procedures prescribed in the Manual, whether or not previous breaches or failures are cured; or

16.1.1.17 defaults under any other agreement between Franchisor (or an Affiliate) and Franchisee, such that Franchisor or its Affiliate, as the case may be, has the right to terminate such agreement or such agreement automatically terminates.

16.1.2 Except as otherwise provided in Section 16.1.1, upon any other default by Franchisee or upon Franchisee's failure to comply with any mandatory specification, standard or operating procedure prescribed in the Manual or otherwise prescribed in writing, Franchisor has the right to terminate this Agreement by giving notice of such termination at least thirty (30) days before the effective date of the termination stating the nature of the default; provided, however, that Franchisee may avoid termination by curing such default or failure before the effective date of termination, or provide proof acceptable to Franchisor that Franchisee has made all reasonable efforts to cure such default or failure and shall continue to make all reasonable efforts to cure until a cure is effected if such default or failure cannot reasonably be cured before the effective date of the termination.

#### **Reinstatement and Extension**

If provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation or non-renewal other than in accordance with applicable law, Franchisor

may reinstate or extend the term of this Agreement for the purpose of complying with applicable law by submitting a written notice to Franchisee without waiving any of Franchisor's rights under this Agreement.

**Right of Franchisor to Discontinue Sales to Franchisee**

If Franchisor delivers to Franchisee a notice of termination pursuant to Section 16.1.2, in addition to Franchisor's other remedies, Franchisor and its Affiliate(s) reserve the right to suspend the sale of any services or products to Franchisee for which Franchisor or an Affiliate is an Approved Supplier until such time as Franchisee corrects the default.

**17. RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION**

**Actions to be Taken**

Except as otherwise provided herein, upon termination or expiration, this Agreement and all rights granted hereunder to Franchisee shall terminate and Franchisee shall:

17.1.1 immediately cease to operate the Franchised Business and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor;

17.1.2 cease to use the Confidential Information, the System and the Marks including, without limitation, all signs, slogans, symbols, logos, advertising materials, stationery, forms and any other items which display or are associated with the Marks;

17.1.3 upon demand by Franchisor, at Franchisor's sole discretion, immediately assign (or, if an assignment is prohibited, sublease for the full remaining term, and on the same terms and conditions as Franchisee's lease), its interest in the lease then in effect for the Approved Location to Franchisor and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement, and Franchisor has the right to pay rent and other expenses directly to the party to whom such payment is ultimately due;

17.1.4 take such action as may be necessary to cancel or assign to Franchisor, at Franchisor's option, any assumed name or equivalent registration filed with state, city or county authorities which contains the name "AccuDiagnostics" or any other Mark, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement;

17.1.5 pay all sums owing to Franchisor and its Affiliate at the time of termination or expiration, which may include, but shall not be limited to, all damages, costs and expenses, including reasonable attorneys' fees, unpaid Royalty Fees, and any other amounts due to Franchisor or its Affiliate;

17.1.6 pay to Franchisor all costs and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of the Franchise in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement;

17.1.7 immediately return to Franchisor the Manual and all other Confidential Information including records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by Franchisor to Franchisee relating to the operation of the Franchised Business (all of which are



acknowledged to be Franchisor's property), and permanently remove from Franchisee's computer or computer data storage devices any electronic copy or backup of the Manual and all other Confidential Information:

17.1.8 assign all telephone listings and numbers for the Franchised Business to Franchisor and shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee's right to use any telephone numbers or facsimile numbers associated with the Marks in any regular, classified or other telephone directory listing and shall authorize transfer of same to or at the direction of Franchisor; and

17.1.9 comply with all other applicable provisions of this Agreement.

#### **Post-Termination Covenant Not to Compete**

17.1.10 Franchisee acknowledges that the restrictive covenants contained in this Section are fair and reasonable and are justifiably required for purposes including, but not limited to, the following:

17.1.10.1 to protect the trade secrets of Franchisor;

17.1.10.2 to induce Franchisor to grant a franchise to Franchisee; and

17.1.10.3 to protect Franchisor against its costs in training Franchisee and its officers, directors, executives, professional staff and Designated Managers.

17.1.11 Except as otherwise approved of in writing by Franchisor, neither Franchisee, nor any holder of a legal or beneficial interest in Franchisee, nor any officer, director, executive, manager or member of the professional staff of Franchisee, shall, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of termination, either directly or indirectly, for themselves or through, on behalf of or in conjunction with, any person, persons, partnership, corporation, limited liability company or other business entity:

17.1.11.1 own an interest in, manage, operate or provide services to any Competitive Business located or operating (a) within a twenty-five (25) mile radius of the Approved Location or within the Area of Primary Responsibility (whichever is greater), or (b) within a twenty-five (25) mile radius of the location of any other AccuDiagnosics Business in existence at the time of termination or expiration; or

17.1.11.2 solicit or otherwise attempt to induce or influence any employee or other business associate of Franchisor to terminate or modify his, her or its business relationship with Franchisor or to compete against Franchisor.

17.1.12 In furtherance of this Section, Franchisor has the right to require certain individuals to execute standard form nondisclosure or non-competition agreements in a form the same as or similar to the Nondisclosure and Non-Competition Agreement attached as Exhibit B.

#### **Unfair Competition**

If Franchisee operates any other business, Franchisee shall not use any reproduction, counterfeit, copy or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, that is likely to cause confusion, mistake or deception, or that is likely to dilute Franchisor's rights in the Marks. Franchisee shall not utilize any designation of origin, description or representation that falsely suggests or represents an association or connection with Franchisor. This Section is not intended to grant Franchisee a right to

operate other businesses and in no way is it intended to contradict Section 0 or 0. If Franchisor elects not to receive an assignment or sublease of the Approved Location, Franchisee shall make such modifications or alterations to the Approved Location (including changing telephone and facsimile numbers) immediately upon termination or expiration of this Agreement as may be necessary to prevent any association between Franchisor or the System and any business subsequently operated by Franchisee or others at the Approved Location. Franchisee shall make such specific additional changes to the Approved Location as Franchisor may reasonably request for that purpose including, without limitation, removal of all trade dress or other physical and structural features identifying or distinctive to the System. If Franchisee fails or refuses to comply with the requirements of this Section, Franchisor has the right to enter upon the Approved Location for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee shall pay upon demand.

#### **Franchisor's Option to Purchase Certain Business Assets**

Franchisor has the right (but not the duty), for a period of thirty (30) days after termination or expiration of this Agreement, to purchase any or all assets of the Franchised Business including equipment, supplies and other inventory. The purchase price shall be equal to the assets' book value, excluding any goodwill. If Franchisor elects to exercise this option to purchase, it has the right to set off all amounts due from Franchisee under this Agreement, if any, against the purchase price.

#### **Survival of Certain Provisions**

All obligations of Franchisor and Franchisee which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding their expiration or termination and until satisfied or by their nature expire.

### **18. TRANSFERABILITY OF INTEREST**

#### **Transfer by Franchisor**

This Agreement and all rights and duties hereunder are fully transferable in whole or in part by Franchisor and such rights will inure to the benefit of any person or entity to whom transferred; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall assume the obligations of Franchisor hereunder and Franchisor shall thereafter have no liability for the performance of any obligations contained in this Agreement.

#### **Transfer by Franchisee to a Third Party**

The rights and duties of Franchisee as set forth in this Agreement, and the Franchise herein granted, are personal to Franchisee (or its owners), and Franchisor has entered into this Agreement in reliance upon Franchisee's personal or collective skill and financial ability. Accordingly, neither Franchisee nor any holder of a legal or beneficial interest in Franchisee may sell, assign, convey, give away, pledge, mortgage, sublicense or otherwise transfer, whether by operation of law or otherwise, any interest in this Agreement, the Franchise granted hereby, the Approved Location used in operating the Franchised Business, its assets or any part or all of the ownership interest in Franchisee without the prior written approval of Franchisor. Any purported transfer without such approval shall be null and void and shall constitute a material breach of this Agreement. If Franchisee is in compliance with this Agreement, Franchisor's consent to such transfer shall be conditioned upon the satisfaction of the following requirements:

18.1.1 Franchisee has complied with the requirements set forth in Section 19:

18.1.2 all obligations owed to Franchisor, and all other outstanding obligations relating to the Franchised Business, are fully paid and satisfied;

18.1.3 Franchisee (and any transferring owners, if Franchisee is a business entity) has executed a general release, in a form the same as or similar to the General Release attached as Exhibit A, of any and all claims against Franchisor, including its officers, directors, shareholders and employees, in their corporate and individual capacities including, without limitation, claims arising under federal, state or local laws, rules or ordinances, and any other matters incident to the termination of this Agreement or to the transfer of Franchisee's interest herein or to the transfer of Franchisee's ownership of all or any part of the Franchise; provided, however, that if a general release is prohibited, Franchisee shall give the maximum release allowed by law;

18.1.4 the prospective transferee has satisfied Franchisor that it meets Franchisor's management, business and financial standards, and otherwise possesses the character and capabilities, including business reputation and credit rating, as Franchisor may require in its sole discretion, to demonstrate ability to conduct the Franchised Business;

18.1.5 the transferee and, if Franchisor requires, all persons owning any interest in the transferee, have executed the then-current Franchise Agreement for new franchisees, which may be substantially different from this Agreement, including different Royalty Fee and Marketing Fund Contribution rates and other material provisions, and the franchise agreement then executed shall be for the term specified in such agreement;

18.1.6 the transferee has executed a general release, in a form the same as or similar to the General Release attached as Exhibit A, of any and all claims against Franchisor and its officers, directors, shareholders and employees, in their corporate and individual capacities, with respect to any representations regarding the Franchise or the business conducted pursuant thereto or any other matter that may have been made to the transferee by Franchisee;

18.1.7 Franchisee has provided Franchisor with a complete copy of all contracts and agreements and related documentation between Franchisee and the prospective transferee relating to the intended sale or transfer of the Franchise;

18.1.8 Franchisee, or the transferee, has paid to Franchisor a transfer fee in the amount of FIVE THOUSAND DOLLARS (\$5,000.00);

18.1.9 the transferee, or all holders of a legal or beneficial interest in the transferee, has agreed to be personally bound jointly and severally by all provisions of this Agreement for the remainder of its term;

18.1.10 Franchisee has agreed to be bound to the obligations of the new franchise agreement and to guarantee the full performance thereof by the transferee, if required by Franchisor;

18.1.11 the transferee has obtained all necessary consents and approvals by third parties (such as the lessor of the Approved Location) and all applicable federal, state and local laws, rules, ordinances and requirements applicable to the transfer have been complied with or satisfied;

18.1.12 Franchisee has, and if Franchisee is an entity, all of the holders of a legal and beneficial interest in Franchisee have, executed and delivered to Franchisor a nondisclosure and non-competition agreement in a form satisfactory to Franchisor, and in substance the same as the nondisclosure and non-competition covenants contained in Sections 7 and 17; and