

**EXHIBIT D**  
**FRANCHISE AGREEMENT**

**BATTERIES PLUS FRANCHISE AGREEMENT**

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FRANCHISEE

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DATE OF AGREEMENT

Batteries Plus, L.L.C.  
STD ~~2004~~2005 FA

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### EXHIBITS

A – STORE LOCATION AND PROTECTED AREA

ALTERNATIVE EXHIBIT A

B – COUNTERPOINT® SOFTWARE ACCESS AGREEMENT

C – PRO- SOURCE SOFTWARE AGREEMENT

D – GUARANTY AND ASSUMPTION OF OBLIGATIONS

## BATTERIES PLUS® FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Batteries Plus, L.L.C., a Wisconsin limited liability company, with a principal place of business at 925 Walnut Ridge Drive, Suite 100, Hartland, Wisconsin 53029 (“Franchisor”), and \_\_\_\_\_, a \_\_\_\_\_, formed and operating under the laws of the State of \_\_\_\_\_, or \_\_\_\_\_, an individual, with a principal place of business at \_\_\_\_\_ (“Franchisee”).

### INTRODUCTION

A. Franchisor develops and owns a system (the “System”) relating to the development and operation of retail stores selling batteries and battery-related items for the individual retail and commercial consumer.

B. Franchisor is the owner of the Batteries Plus® trademark, and other trademarks and service marks (the “Licensed Marks”) used in operating the System.

C. Franchisor grants qualified persons the right to develop, own and operate a Batteries Plus® store at a specific location.

D. Franchisee desires to obtain the right to develop and operate a Batteries Plus® store using the System at a specific location.

### AGREEMENTS

In consideration of the mutual covenants and agreements stated below, the parties agree as follows:

#### 1. DEFINITIONS

A. “Confidential Information” means the methods, techniques, formats, marketing and promotional techniques and procedures, specifications, information, systems and knowledge of and experience in the operation and franchising of Batteries Plus® stores that Franchisor communicates to Franchisee or that Franchisee otherwise acquires in operating the Store under the System. Confidential Information does not include information, processes or techniques that are generally known to the public, other than through disclosure (whether deliberate or inadvertent) by Franchisee.

B. “Licensed Marks” means the Batteries Plus® trademark and service mark and other trademarks, service marks, domain names, logos and commercial symbols that Franchisor has designated, or may in the future designate, for use in the System.

C. “Net Revenues” means the aggregate amount of all sales of goods and services (including service charges in lieu of gratuity), whether for cash, on credit or otherwise, made or provided at or in connection with the Store, including off-premises sales and monies derived at or away from the Store. The term “Net Revenues” does not include: (1) any federal, state, municipal or other sales, value added or retailer’s excise taxes paid or accrued by Franchisee; and (2) adjustments for net returns on salable goods and discounts allowed to customers on sales. Net Revenues will not be adjusted for uncollected accounts. For purposes of the royalty and service fee, the sale is made at the earlier of delivery of the product or service, or receipt of payment.

D. "Principal Owner" means any person or entity who directly or indirectly owns a ten percent (10%) or greater interest in Franchisee. If any corporation or other entity other than a partnership is a Principal Owner, a "Principal Owner" also will mean a shareholder or owner of a ten percent (10%) or greater interest in such corporation or other entity. If a partnership is a Principal Owner, a "Principal Owner" also will mean each general partner of such partnership and, if such general partner is an entity, each owner of a ten percent (10%) or greater interest in such general partner. If Franchisee is one or more individuals, each individual will be deemed a Principal Owner of Franchisee.

E. "Protected Area" means the geographic area, identified in Exhibit A, which is within a three (3) mile radius surrounding the location of the Store.

F. "Store" means the Batteries Plus® store developed and operated under this Agreement which offers a full line of batteries and battery-related products and services, as designated by Franchisor.

G. "System" means the Batteries Plus® system which includes the sale of batteries and battery-related items for the individual retail and commercial consumer under the Licensed Marks, using certain distinctive types of retail facilities, equipment (including the POS System (as defined in Section 4(C) below)), supplies, Confidential Information, business techniques, methods and procedures, and sales promotion programs, as Franchisor periodically may modify and further improve.

## 2. GRANT OF FRANCHISE

A. Grant Of Franchise, Store Location And Protected Area. Subject to the provisions contained in this Agreement, Franchisor grants Franchisee a franchise (the "Franchise") to own and operate a Batteries Plus® Store at a site approved by Franchisor and to use the Licensed Marks in operating the Store. The location of the Store and Franchisee's Protected Area are identified in Exhibit A, or alternatively, Franchisor and Franchisee will complete and sign Alternative Exhibit A, in which Franchisor and Franchisee agree upon a geographic area in which the location of the Store will be established, subject to Franchisor's approval, within one hundred eighty (180) days after the date of this Agreement. The designation of the geographic area in Alternative Exhibit A does not confer any territorial rights upon Franchisee, and Franchisor and its affiliates have the right to operate and franchise other Stores within the designated area. Once Franchisor consents to a location for the Store within the geographic area established in Alternative Exhibit A, however, Franchisor and Franchisee will sign Exhibit A and identify the Protected Area.

B. Nature of Franchisee's Protected Area. During the term of this Agreement (as described in Section 3), if Franchisee is in compliance, Franchisor will not directly operate or franchise another to operate any other full-service Batteries Plus® store within the Protected Area. The license granted to Franchisee under this Agreement is personal in nature, may not be used at any location other than the Store, does not include the right to sell products or services identified by the Licensed Marks at any location other than at the Store, and does not include the right to sell products or services identified by the Licensed Marks through any other channels of distribution, including the Internet (or any other existing or future form of electronic commerce). Franchisee will not open any other Batteries Plus® store in the Protected Area. Franchisee will not have the right to subfranchise or sublicense any of its rights under this Agreement. Franchisee will not use the Store for any purposes other than the operation of a Batteries Plus® store. Franchisee will not conduct any advertising which is primarily intended to solicit potential customers located outside Franchisee's "~~market area~~Market Area," unless such advertising is restricted to Franchisee's existing customers or Franchisee obtains Franchisor's prior written consent. For purposes of this Section, ~~Franchisor will define the term "market area" pursuant to guidelines established and periodically amended in Franchisor's "Operations Manual" (as defined in~~

Section 5(E) below: the term "Market Area" means the geographic area identified in Exhibit A attached hereto.

C. Rights Reserved To Franchisor. Notwithstanding the above, Franchisor (for itself and its affiliates) retains the right:

1. to itself operate, or to grant other persons the right to operate, Batteries Plus® stores at locations outside the Protected Area (except to the extent Franchisor may be restricted under a separate Batteries Plus® Multiple Unit Franchise Agreement or Franchise Agreement to which Franchisee is a party);

2. to sell the products and services authorized for sale at Batteries Plus® stores under trademarks and service marks other than the Licensed Marks through similar or dissimilar channels of distribution;

3. to sell the products and services authorized for sale at Batteries Plus® stores under the Licensed Marks through dissimilar channels of distribution (i.e., other than the operation of full-service retail Batteries Plus® stores), including by electronic means such as the Internet and by websites established by Franchisor, and pursuant to conditions Franchisor deems appropriate within and outside the Protected Area; and

4. to advertise the System on the Internet (or any other existing or future form of electronic commerce) and to create, operate, maintain and modify, or discontinue the use of a website using the Licensed Marks.

D. Protected Area - Minimum Net Revenues Requirement. Franchisee's rights respecting the Protected Area described in Section 1(B) above will terminate and be of no force and effect if Franchisee fails to generate the "Minimum Revenue Requirement" described in Section 10(M) below.

### 3. TERM OF FRANCHISE; RENEWAL RIGHTS

A. Term. The term of this Agreement will be for ten (10) years commencing on the date of this Agreement (the "Effective Date").

B. Renewal. Franchisee will have the right to renew the Franchise for the Store for one (1) additional ten (10) year term, provided Franchisee meets the following conditions:

1. Franchisee has given Franchisor written notice at least one hundred eighty (180) days before the end of the term of this Agreement of its intention to renew;

2. Franchisee has complied with all of the material provisions of this Agreement, including the payment of all monetary obligations owed by Franchisee to Franchisor or its affiliates, and has complied with Franchisor's material operating and quality standards and procedures;

3. Franchisee maintains possession of the Store premises and has at its expense made such reasonable capital expenditures necessary to remodel, modernize and redecorate the Store premises and to replace and modernize the supplies, fixtures, signs, and equipment used in Franchisee's business so that Franchisee's business reflects the then-current physical appearance of new Batteries Plus® stores, or is able to secure a new location within the Development Area which has been accepted by Franchisor (such acceptance not to be unreasonably withheld) and agrees to develop substitute premises

for the Store in compliance with Franchisor's then-current standards and specifications for new Batteries Plus® stores;

~~4.~~ Franchisee has paid a Renewal Fee of Two (or if Franchisee is an entity, a Principal Owner who has been approved by Franchisor) and the Store manager completes, to Franchisor's satisfaction, any new training and refresher programs as Franchisor may reasonably require. Franchisee is responsible for travel, living and compensation costs of attendees;

~~5.~~ Franchisee has paid a Renewal Fee of Five Thousand Dollars (\$2,000~~5,000~~) to Franchisor at least thirty (30) days before the term of this Agreement expires;

~~5-6.~~ Franchisee signs the standard Franchise Agreement then being used by Franchisor; provided that Franchisee will be required to pay the Renewal Fee in lieu of the Initial Franchise Fee stated in the then-current Franchise Agreement; and

~~6-7.~~ Franchisee and each Principal Owner signs a general release, in form acceptable to Franchisor, of all claims against Franchisor and its affiliates, officers, directors, employees, and agents.

#### 4. DEVELOPMENT AND OPENING OF THE STORE

A. Lease for Store Premises. If Franchisee enters into a lease for the Store premises, Franchisee must provide the proposed lease to Franchisor and receive Franchisor's prior written approval of the proposed lease (which will not be unreasonably withheld) before Franchisee signs it. Franchisee's lease must contain provisions requiring that: (1) so long as this Agreement remains in effect, the premises will be used only for a Batteries Plus® store; (2) Franchisor will be granted the right (but not the duty) to take possession of the Store premises and assume the lease in the event of a termination of this Agreement or a threatened termination of the lease as a result of a breach by Franchisee; (3) the landlord will provide Franchisor written notice of any Franchisee default or right to cure; and (4) upon termination of this Agreement or the lease for the Store premises, Franchisee must remove all signs and materials bearing the name "Batteries Plus" and other Licensed Marks.

B. Franchisee's Development of Store. Promptly after Franchisee signs a lease or acquires the premises for the Store, and receives from Franchisor the prototype plans and specifications for the Store, Franchisee will:

1. prepare and submit to Franchisor for approval, which will not be unreasonably withheld, any proposed modifications to Franchisor's basic plans and specifications, which Franchisee may modify only to the extent necessary to comply with applicable ordinances, building codes, permit requirements and lease or deed requirements and restrictions;

2. obtain all required building, utility, sign, health, sanitation and business permits and licenses, and any other required permits and licenses;

3. construct all required improvements to the Store premises, purchase and install all required fixtures and equipment and decorate the premises in compliance with the plans and specifications approved by Franchisor and all applicable ordinances, building codes, permit requirements and lease or deed requirements and restrictions;

4. ~~purchase~~secure, consistent with Franchisor's specifications and requirements, a commercial delivery ~~van and vehicle or arrange (with a third party) a reliable delivery service, and obtain~~ an opening inventory of batteries and battery-related products required for the Store; and

5. establish filing, accounting and inventory control systems complying with Franchisor's requirements.

C. Fixtures, Equipment, Furniture And Signs. Franchisee will use in constructing and operating the Store only those types of construction and decorating materials, fixtures, equipment (including computer hardware and software), furniture, and signs that Franchisor has approved for Batteries Plus® stores as meeting its specifications and standards for appearance, function and performance. Franchisee may purchase approved types of construction and decorating materials, fixtures, equipment, furniture and signs from any supplier approved or designated by Franchisor (which may include Franchisor and/or its affiliates). If Franchisee proposes to purchase any material, fixture, equipment, furniture or sign not then approved by Franchisor, or any items from any supplier not then approved by Franchisor, Franchisee must first notify Franchisor in writing and will provide to Franchisor (upon its request) sufficient specifications, photographs, drawings and other information or samples for Franchisor to determine whether the material, fixture, equipment, furniture or sign complies with Franchisor's specifications and standards, or the supplier meets Franchisor's approved supplier criteria, which determination Franchisor will make and communicate in writing to Franchisee within a reasonable time.

D. Point-of-Sale System. Franchisee will use in the Store the point-of-sale system, including all existing or future communication or data storage systems, components thereof and associated service, which Franchisor has developed and/or selected for the System (the "POS System"). The POS System developed for use in Franchisee's business includes one or more proprietary software programs developed for Franchisor (the "Proprietary Software"). Franchisee must lease the Proprietary Software from Franchisor or its designated third party supplier, which software will remain the confidential property of Franchisor or its third party supplier. Franchisee and Franchisor will enter into Franchisor's standard form computer software access or license agreement attached hereto as Exhibit B (the "Software Access Agreement") in connection with Franchisee's use of the Counterpoint® Proprietary Software, and will enter into Franchisor's standard form computer software license agreement attached hereto as Exhibit C (the "Pro- Source Software Agreement") in connection with Franchisee's use of the Pro-Source® Proprietary Software. Franchisee will pay Franchisor a computer access and POS System development fee of ~~Eight Thousand Two Hundred Ninety Five Dollars (\$8,295) in connection with~~ Nine Hundred Ninety Dollars (\$8,990) related to Franchisee's use of the Counterpoint® Proprietary Software and a computer access fee of One Thousand Four Hundred Ninety-Five Dollars (\$1,495) related to Franchisee's use of the Pro Source Proprietary Software. Franchisee will pay this fee at or before Franchisee opens the Store for business. In addition, Franchisor will charge Franchisee a reasonable monthly fee for computer software support Franchisor or its designee provides to Franchisee respecting the Counterpoint® Proprietary Software. Franchisor reserves the right to assign its rights, title and interest in the Proprietary Software, the Software Access Agreement or the Pro- Source Software Agreement to a third party designated by Franchisor or to replace the Proprietary Software. In such event, Franchisee may be required to enter into a separate computer software license agreement specified by the third party supplier of the Proprietary Software. Franchisor also may access financial information and customer data produced by or otherwise located on Franchisee's POS System (collectively the "Customer Data"). Except as otherwise provided in any applicable agreement governing a National Accounts program (as described in Section 10(K) below), Franchisor and Franchisee each own the Customer Data that is stored on the POS System, ~~and~~ Franchisor periodically will establish policies respecting the use of the Customer Data. Franchisee will have at the Store Internet access with a form of



high-speed connection as Franchisor requires and Franchisee will have an e-mail address for communication with Franchisor. The computer hardware component of the POS System must comply with specifications Franchisor develops and must be configured as a package unit. Franchisor has the right to designate a single source from whom Franchisee must purchase the POS System, any software or hardware components thereof or associated service, and Franchisor or its affiliates may be that single source. Franchisee will be required to use and, at Franchisor's discretion, pay for all future updates, supplements and modifications to the POS System.

E. Store Opening. Franchisee will not open the Store for business without Franchisor's prior written approval. Franchisee agrees to complete the development and open the Store for business within the time period stated in Exhibit A or Alternative Exhibit A, whichever Exhibit is applicable.

F. Extension Fee. If Franchisee cannot develop and open the Store within the time period stated in Exhibit A or Alternative Exhibit A, Franchisee may request in writing that Franchisor approve a six (6) month extension of the time in which Franchisee must open the Store. Franchisee must pay Franchisor an extension fee of Two Thousand Five Hundred Dollars (\$2,500) when Franchisee requests the six (6) month extension regarding the Store. If Franchisor grants an extension pursuant to a request, the extension will be limited to a six (6) month period. Franchisee will not receive more than one (1) extension for the Store. The extension fee will be credited back to Franchisee, provided Franchisee opens the Store on or before the opening date for the Store as extended. Otherwise, the extension fee paid is nonrefundable.

G. Store Opening Campaign. During the first ~~year~~ one hundred twenty (120) days of Store operations, Franchisee agrees to conduct a store opening campaign, and will spend a minimum of Twenty Five ~~Thousand Dollars (\$25,000)~~ 20,000 for advertising, public relations and marketing activities in connection with the store opening campaign. ~~Franchisee will use, subject to Franchisor's approval, approximately sixty percent (60%) of the minimum funding requirement for~~ In certain metropolitan areas, Franchisor may require that Franchisee spend a greater minimum amount on the store opening campaign expenditures within the first ninety (90) days after the opening of the Store. ~~If the Store is Franchisee's first Batteries Plus® store,~~ Franchisee will use Franchisor's approved media vendor (if any) and implement Franchisor's approved media plan in conducting the store opening campaign. Franchisor agrees that it will not receive compensation from any media supplier for directing media purchases on Franchisee's behalf in any Store opening campaign. ~~Franchisor recommends that Franchisee spend in excess of Twenty Five Thousand Dollars (\$25,000) for the store opening campaign in metropolitan areas.~~ On or before the last day of each month during the first year of Store operations, Franchisee must provide Franchisor with an accurate accounting of store opening campaign (advertising, marketing and public relations) expenditures.

H. Relocation Of Store. If Franchisee's lease for the Store premises expires or terminates without it being Franchisee's fault, or if in the judgment of Franchisor and Franchisee, there is a change in the character of the location of the Store sufficiently detrimental to its business potential to warrant its relocation, Franchisor will grant Franchisee permission to relocate the Store to a location approved by Franchisor. Any relocation will be at Franchisee's sole expense and Franchisee must comply with Franchisor's then-current décor and specifications of a new Batteries Plus® Store in developing the Store at the new site. In addition, Franchisee must pay Franchisor a fee of Three Thousand ~~Five Hundred Dollars (\$3,000)~~ 3,500 for services Franchisor will provide in connection with the relocation of the Store before Franchisor will review a proposed new site for the Store.

## 5. TRAINING AND OPERATING ASSISTANCE

A. Development Of Store. Franchisor will provide Franchisee with prototype drawings and specifications for a Store, reflecting Franchisor's requirements for dimensions, interior design and layout, image, building materials, fixtures, equipment, furniture, signs and decor. Franchisor will provide Franchisee with reasonable consulting services in connection with the selection and evaluation of the proposed Store site and development of the Store. Franchisee acknowledges that Franchisor's assistance in site location and acceptance of the premises does not constitute a representation or guaranty by Franchisor that the location will be a successful location for Franchisee's Batteries Plus® Store.

B. Training. Before the opening of the Store, Franchisor will provide, and Franchisee (or if Franchisee is an entity, a Principal Owner who has been approved by Franchisor) and any proposed manager of the Store must attend, an initial training program on the operation of a Store, provided at a place and time Franchisor designates. Franchisee is solely responsible for the compensation, travel, lodging and living expenses Franchisee and its employees incur in attending the initial training program or any supplemental or refresher training programs.

The initial training program will take place over a period of three (3) weeks. Franchisor may, however, require Franchisee to continue training for up to ten (10) additional days. The training program includes instruction relating to Store operations, understanding the equipment and product usage, customer service, marketing and sales programs, accountability for sales and marketing, employee scheduling and methods of controlling operating costs. ~~In connection with the initial training program, Franchisee must purchase training videos for employee training.~~ If, during any training program, Franchisor determines that any proposed manager is not qualified to manage the Store, Franchisor will notify Franchisee and Franchisee must select and enroll a substitute manager in the training program.

After the Store opens, Franchisor will provide training (at times Franchisor determines) to any new Store manager at Franchisee's expense. Franchisor may require that Franchisee (or a Principal Owner) and any manager(s) and assistant manager(s) attend all supplemental and refresher training programs that Franchisor designates. Franchisor may charge Franchisee a reasonable fee for the supplemental and refresher training programs.

C. Opening Assistance. Franchisor will provide Franchisee with the services of one employee of Franchisor for seven (7) days to assist Franchisee in the opening and initial operations of the Store. Franchisor may determine the time at which the employee is available to Franchisee.

D. Operating Assistance. Franchisor will advise Franchisee on operational issues and provide assistance in operating the Store as Franchisor deems appropriate. Operating assistance may include advice regarding the following:

1. additional products and services authorized for sale at Batteries Plus® stores;
2. selecting, purchasing and marketing batteries and battery-related products, and other approved products, materials and supplies;
3. employee relations, marketing assistance and sales promotion programs and accountability of employees; and

4. establishing and operating administrative, bookkeeping, accounting, inventory control, sales and general operating procedures for the proper operation of a Batteries Plus® store.

Franchisor will provide such guidance, in its discretion, through Franchisor's Operations Manual bulletins or other written materials, telephone conversations and/or meetings at Franchisor's office or at the Store in conjunction with an inspection of the Store. Franchisor will provide additional assistance for a fee.

E. Operations Manual. Franchisor will loan to Franchisee, during the term of this Agreement, either one manual copy of or electronic (internet) access to an Operations Manual, which may include the Franchise Administration Manual and Store Manual, and other handbooks, manuals and written materials (collectively, the "Operations Manual") for Batteries Plus® stores. The Operations Manual will contain mandatory and suggested specifications, standards and operating procedures that Franchisor develops for Batteries Plus® stores and information relating to other obligations of Franchisee. Franchisor may add to, and otherwise modify, the Operations Manual to reflect changes in authorized products and services, and specifications, standards and operating procedures of a Batteries Plus® store. The master copy of the Operations Manual that Franchisor maintains at its principal office and makes available to Franchisee by electronic access will control if there is a dispute involving the contents of the Operations Manual.

## 6. LICENSED MARKS

A. Ownership And Goodwill Of Licensed Marks. Franchisee acknowledges that Franchisee has no interest in or to the Licensed Marks and that Franchisee's right to use the Licensed Marks is derived solely from this Agreement and is limited to the conduct of business in compliance with this Agreement and all applicable specifications, standards and operating procedures that Franchisor requires during the term of the Franchise. Franchisee agrees that its use of the Licensed Marks and any goodwill established exclusively benefits Franchisor, and that Franchisee receives no interest in any goodwill related to Franchisee's use of the Licensed Marks or the System. Franchisee must not, at any time during the term of this Agreement or after its termination or expiration, contest or assist any other person in contesting the validity or ownership of any of the Licensed Marks.

B. Limitations On Franchisee's Use Of Licensed Marks. Franchisee agrees to use the Licensed Marks as the sole identification of the Store, but Franchisee must identify himself as the independent owner in the manner Franchisor directs. Franchisee must not use any Licensed Mark as part of any corporate or trade name or in any modified form, nor may Franchisee use any Licensed Mark in selling any unauthorized product or service or in any other manner not expressly authorized in writing by Franchisor. Franchisee agrees to display the Licensed Marks prominently and in the manner Franchisor directs on all signs and forms. Subject to Franchisor's rights described in this Agreement, Franchisee agrees to obtain fictitious or assumed name registrations as may be required under applicable law.

C. Restrictions On Internet And Website Use. Franchisor retains the sole right to advertise the System on the Internet and to create, operate, maintain and modify, or discontinue the use of, a website using the Licensed Marks. Franchisee has the right to access Franchisor's website. Except as Franchisor may authorize in writing, however, Franchisee will not: (1) link or frame Franchisor's website; (2) conduct any business or offer to sell or advertise any products or services on the Internet (or any other existing or future form of electronic communication); and (3) create or register any Internet domain name in any connection with Franchisee's franchise. Franchisee will not register, as Internet domain names, any of the Licensed Marks now or hereafter owned by Franchisor or any abbreviation,

acronym or variation of the Licensed Marks, or any other name that could be deemed confusingly similar.

D. Notification Of Infringements And Claims. Franchisee must notify Franchisor immediately in writing of any apparent infringement of or challenge to Franchisee's use of any Licensed Mark, or any claim by any person of any rights in any Licensed Mark or any similar trade name, trademark or service mark of which Franchisee becomes aware. Franchisee must not communicate with any person other than Franchisor and its counsel regarding any infringement, challenge or claim. Franchisor may take any action it deems appropriate and has the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge or claim relating to any Licensed Mark. Franchisee will sign all documents, provide assistance and take all action as Franchisor may reasonably request to protect and maintain Franchisor's interests in any litigation or other proceeding or to otherwise protect and maintain Franchisor's interests in the Licensed Marks.

E. Litigation. Franchisee will have no obligation to and will not, without Franchisor's prior written consent, defend or enforce any of the Licensed Marks in any court or other proceedings for or against imitation, infringement, any claim of prior use, or for any other allegation. Franchisee will, however, immediately notify Franchisor of any claims or complaints made against Franchisee respecting the Licensed Marks and will, at its expense, cooperate in all respects with Franchisor in any court or other proceedings involving the Licensed Marks. Franchisor will pay the cost and expense of all litigation Franchisor incurs, including attorneys' fees, specifically relating to the Licensed Marks. Franchisor and its legal counsel will have the right to control and conduct any litigation relating to the Licensed Marks.

F. Changes. Franchisee cannot make any changes or substitutions to the Licensed Marks unless Franchisor so directs in writing. Franchisor reserves the right, in its discretion, to modify or discontinue use of any Licensed Mark, or to use one or more additional or substitute trademarks or service marks. In such event, Franchisee will, at its expense, comply with such modification or substitution within a reasonable time after notice by Franchisor.

## 7. CONFIDENTIAL INFORMATION

Franchisee acknowledges and agrees that it does not acquire any interest in the Confidential Information, other than the right to use it in developing and operating the Store pursuant to this Agreement, and that the use or duplication of the Confidential Information in any other business constitutes an unfair method of competition. Franchisee acknowledges and agrees that the Confidential Information is proprietary and is a trade secret of Franchisor and is disclosed to Franchisee solely on the condition that Franchisee agrees that it: (1) will not use the Confidential Information in any other business or capacity; (2) will maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement; (3) will not make unauthorized copies of any Confidential Information disclosed in written form; (4) will adopt and implement all reasonable procedures Franchisor directs to prevent unauthorized use or disclosure of the Confidential Information, including restrictions on disclosure to Store employees; and (5) will sign a Confidentiality Agreement and will require all employees with access to Confidential Information to sign such an agreement in a form approved by Franchisor. Notwithstanding the foregoing, Franchisor and Franchisee each own the Customer Data as further described in Section 4(D) above.

The restrictions on Franchisee's disclosure and use of the Confidential Information will not apply to disclosure of Confidential Information in judicial or administrative proceedings to the extent Franchisee is legally compelled to disclose this information, if Franchisee uses its best efforts, and

provides Franchisor the opportunity to obtain an appropriate protective order or other insurance satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

Franchisee agrees that Franchisor has the perpetual right to use and authorize other Batteries Plus® stores to use, and Franchisee must fully and promptly disclose to Franchisor, all ideas, concepts, methods, techniques and Customer Data relating to the development and/or operation of a Batteries Plus® store conceived or developed by Franchisee and/or his employees during the term of this Agreement.

## 8. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION

A. Relationship Of The Parties. Franchisor and Franchisee are not contractors. Neither party is the agent, legal representative, partner, subsidiary, joint venture or employee of the other. Neither party will obligate the other or represent any right to do so. This Agreement does not reflect or create a fiduciary relationship or a relationship of special trust or confidence. Franchisee must conspicuously identify himself at the premises of the Store and in all dealings with customers, lessors, contractors, suppliers, public officials and others as the owner of the Store under a franchise agreement from Franchisor, and must place other notices of independent ownership on signs, forms, stationery, advertising and other materials as Franchisor requires.

B. Franchisee Indemnification Obligations. Franchisee agrees to indemnify and hold Franchisor and its subsidiaries, affiliates, stockholders, members, directors, officers, employees and agents harmless against, and to reimburse them for, any loss, liability or damages arising out of or relating to Franchisee's ownership or operation of the Store, and all reasonable costs of defending any claim brought against any of them or any action in which any of them is named as a party (including reasonable attorneys' fees) unless the loss, liability, damage or cost is solely due to the Franchisor's negligence.

C. Franchisor Indemnification Obligations. Franchisor agrees to indemnify and hold Franchisee and its officers, directors and agents harmless against, and to reimburse them for, any loss, liability or damage solely arising from or relating to Franchisor's negligence or attributable to agreements, representations or warranties of Franchisor, and all reasonable costs of defending any claim brought against it or any action in which it is named as a party (including reasonable attorneys' fees).

D. Survival. The indemnities and assumptions of liabilities and obligations continue in full force and effect after the expiration or termination of this Agreement.

## 9. FRANCHISE FEES

A. Initial Franchise Fee. Franchisee will pay Franchisor an initial franchise fee of Thirty Thousand \_\_\_\_\_ Dollars (\$30,000 \_\_\_\_\_). The initial franchise fee is payable when Franchisee signs this Agreement. The initial franchise fee is fully earned by Franchisor when Franchisor signs this Agreement and is nonrefundable.

B. Royalty And Service Fee. Franchisee will pay Franchisor a non-refundable royalty and service fee in an amount equal to four percent (4%) of Franchisee's Net Revenues. The royalty and service fee is due and payable on or before the tenth (10th) day of each month based on the Net Revenues for the previous month.

C. Electronic Transfer of Funds. Franchisor may require Franchisee to sign electronic transfer of funds authorizations and other documents as Franchisor periodically designates to authorize

Franchisee's bank to transfer, either electronically or through some other method of payment designated by Franchisor, directly to Franchisor's account and to charge Franchisee's account for all amounts due to Franchisor from Franchisee. Franchisee's authorizations will permit Franchisor to designate the amount to be transferred from Franchisee's account. If Franchisor requires payment through electronic transfer of funds or a similar method of payment, Franchisee will maintain a balance in its accounts sufficient to allow Franchisor to collect the amounts owed to it when due. Franchisee will be responsible for any penalties, fines or similar expenses associated with the transfer of funds described herein.

D. Interest On Late Payments. All royalty and service fees, national marketing fees (NMF Fees), and other amounts which Franchisee owes to Franchisor or its affiliates will bear interest after the due date at the lesser of: (1) one-and-one-half percent (1½%) per month; or (2) the maximum contract rate of interest permitted by law in the state in which the Store is located.

E. Application Of Payments. Franchisor has discretion to apply against amounts due to Franchisor or any of its affiliates any payments received from Franchisee or any indebtedness of Franchisor to Franchisee.

F. Withholding Payments Unlawful. Franchisee agrees that it will not withhold payment of any royalty and service fees, NMF Fees or any other amount due Franchisor, and that the alleged non-performance or breach of any of Franchisor's obligations under the Franchise Agreement or any related agreement does not establish a right at law or in equity to withhold payments due Franchisor for royalty and service fees, NMF Fees or any other amounts due.

G. Tax Indemnification. Franchisee will indemnify Franchisor and reimburse Franchisor for all income, capital, gross receipts, sales, and other taxes that the state in which the Store is located imposes as a result of Franchisee's operation of the Store or the license of any of Franchisor's intangible property in the jurisdiction in which the Store is located. If more than one Batteries Plus® franchisee is located in such jurisdiction, they will share the liability in proportion to their Net Revenues from the franchised business, except in the case of sales taxes and gross receipts taxes, which will be divided in proportion to taxable sales to the franchisees. If applicable, this payment is in addition to the royalty and service fee payments described above.

## 10. STORE IMAGE AND OPERATING STANDARDS

A. Condition And Appearance Of Store/Rebuilding Of Store. Franchisee agrees to maintain the condition and appearance of the Store, and refurbish and modify its layout, decor and general theme, as is required ~~Franchisor may require~~ to maintain the condition, appearance, efficient operation, ambience and overall image of Batteries Plus® stores (as Franchisor may modify). Franchisee will replace worn out or obsolete fixtures, equipment, furniture, or signs, repair the interior and exterior of the Store and adjacent parking areas, and periodic clean and redecorate the Store. If at any time in Franchisor's reasonable judgment, the general state of repair, appearance or cleanliness of the Store premises (including parking areas) or its fixtures, equipment, furniture or signs does not meet Franchisor's then-current standards, Franchisor will so notify Franchisee, specifying the action to be taken by Franchisee to correct the deficiency. If Franchisee fails, within ten (10) days after receipt of notice, to commence action and continue in good faith and with due diligence, to undertake and complete any required maintenance or refurbishing, Franchisor may (in addition to its rights under Section 16 below) enter the Store premises and correct the deficiencies on Franchisee's behalf, and at Franchisee's expense.

If the Store is damaged or destroyed by fire or any other casualty, Franchisee will, within thirty (30) days, initiate repairs or reconstruction, and thereafter in good faith and with due diligence continue (until completion) repairs or reconstruction, to restore the Store premises to its original condition before

the casualty. If, in Franchisor's reasonable judgment, the damage or destruction is of a nature or to an extent that Franchisee can repair or reconstruct the premises of the Store consistent with the then-current decor and specifications of a new Batteries Plus® store without incurring substantial additional costs, Franchisor may require Franchisee, by giving written notice, that Franchisee repair or reconstruct the Store premises in compliance with the then-current decor and specifications.

B. Store Alterations. Franchisee cannot alter the premises or appearance of the Store, or make any unapproved replacements of or alterations to the fixtures, equipment, furniture or signs of the Store without Franchisor's prior written approval. Franchisor may, in its discretion and at Franchisee's sole expense, correct any alterations to the Store not previously approved by Franchisor.

C. Restriction On Use Of Premises. Franchisee agrees that it will not, without Franchisor's prior written approval, offer at the Store any products or services not then authorized by Franchisor for Batteries Plus® stores, nor will the Store or the premises which it occupies be used for any purpose other than the operation of a Batteries Plus® store in compliance with this Agreement.

D. Franchisee's Hiring And Training Of Employees. Franchisee will hire all employees of the Store, be exclusively responsible for the terms of their employment and compensation, and implement a training program for Store employees in compliance with Franchisor's requirements. Franchisee will maintain at all times a staff of trained employees sufficient to operate the Store in compliance with Franchisor's standards.

E. Battery Products, Battery-Related Products, Supplies And Materials. Franchisee agrees that the Store will only offer for sale batteries and battery-related products and services which Franchisor has approved as being suitable for sale and meeting the standards of quality and uniformity for the System and are purchased from suppliers approved by Franchisor (which may include Franchisor and/or its affiliates). Franchisor periodically may modify the lists of approved brands and suppliers, and Franchisee will comply with such modified lists of approved brands and suppliers. If Franchisee proposes to offer for sale any batteries or battery-related products or other services which Franchisor has not approved, Franchisee must first notify Franchisor in writing and provide sufficient information, specifications and samples concerning the brand and/or supplier to permit Franchisor to determine whether the brand complies with Franchisor's specifications and standards and/or the supplier meets Franchisor's approved supplier criteria. Franchisor will notify Franchisee within a reasonable time whether or not the proposed brand and/or supplier is approved. Franchisor may develop procedures for the submission of requests for approved brands or suppliers and obligations that approved suppliers must assume (which may be incorporated in a written agreement to be signed by approved suppliers). Franchisor may impose limits on the number of suppliers and/or brands for any batteries or battery-related products and services to be used in the Store. Franchisee agrees that certain products, materials, and other items and supplies may only be available from one source, and Franchisor or its affiliates may be that source. Franchisee must at all times maintain an inventory of batteries and battery-related products sufficient in quantity and variety to realize the full potential of the Store. FRANCHISOR AND ITS AFFILIATES MAKE NO WARRANTY AND EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, RESPECTING PRODUCTS, EQUIPMENT (INCLUDING ANY REQUIRED COMPUTER SYSTEMS), SUPPLIES, FIXTURES, FURNISHINGS OR OTHER ITEMS THAT ARE MANUFACTURED OR DISTRIBUTED BY THIRD PARTIES AND THAT FRANCHISOR APPROVES FOR USE IN THE SYSTEM.

Franchisor may conduct market research and testing to determine consumer trends and the market for new batteries and battery-related products and services and other automobile services and products. Franchisee agrees to participate in Franchisor's market research programs, test market new

products and services in the Store and provide Franchisor with timely reports and other relevant information regarding market research. In connection with any test marketing, Franchisee must purchase a reasonable quantity of the tested products and effectively promote and make a reasonable effort to sell those products and/or services.

F. Standards Of Service. Franchisee must at all times give prompt, courteous and efficient service to its customers. Franchisee must, in all dealings with its customers and suppliers and the public, adhere to the highest standards of honesty, integrity and fair dealing.

G. Specifications, Standards And Procedures. Franchisee acknowledges and agrees that each and every detail of the appearance and operation of the Store is important to Franchisor and other Batteries Plus® stores. Franchisee agrees to maintain the highest standards of quality and service in the Store and agrees to comply with all mandatory specifications, standards and operating procedures (whether contained in the Operations Manual or any other written or oral communication to Franchisee) relating to the appearance or operation of a Batteries Plus® store, including:

1. type and quality of batteries and battery-related products and services;
2. quality and uniformity of service and sales of all batteries and battery-related products and services at the Store;
3. methods and procedures relating to marketing, dealing with customers and providing services and handling customer orders;
4. the hours and days during which the Store is open for business;
5. the safety, maintenance, cleanliness, function and appearance of the Store premises and its fixtures, equipment, furniture, decor, signs and the commercial delivery van;
6. qualifications, dress, general appearance and demeanor of Store employees;
7. the style, make and/or type of equipment (including computer equipment) used in operating the Store;
8. use and illumination of exterior and interior signs, posters, displays, standard formats and similar items; and
9. Store advertising and promotion.

H. Compliance With Laws And Good Business Practices. Franchisee must secure and maintain in force all required licenses, permits and certificates relating to the operation of the Store and must operate the Store in full compliance with all applicable laws, ordinances and regulations. Franchisee must notify Franchisor in writing within five (5) days of the commencement of any action, suit, proceeding or investigation, and of the issuance of any order, injunction, award of decree, by any court, agency, or other governmental instrumentality that may adversely affect the operation or financial condition of Franchisee or the Store. Franchisee will not conduct any business or advertising practice which injures Franchisor's business, the System or the goodwill associated with the Licensed Marks and other Batteries Plus® stores.

I. Management Of The Store/Conflicting Interests. The Store must at all times be under Franchisee's direct supervision (or, if Franchisee is a partnership, corporation or limited liability company, a Principal Owner or an operating manager who Franchisor has approved and who has



satisfactorily completed the training program). If an operating manager supervises the Store, Franchisee (or the Principal Owner) must remain active in overseeing Store operations.

Franchisee must at all times faithfully, honestly and diligently perform its obligations and continuously use its best efforts to promote and enhance the business of the Store. The person who is responsible for the day-to-day supervision of the Store (i.e., the Principal Owner or the approved manager) must assume responsibilities on a full-time basis and must not engage in any other business or other activity, directly or indirectly, that requires any significant management responsibility, time commitments, or otherwise may conflict with Franchisee's obligations.

If at any time Franchisee (or, if Franchisee is a partnership, corporation or limited liability company, the Principal Owner) or an approved manager who has satisfactorily completed Franchisor's training program is not managing the Store, Franchisor immediately may appoint a manager to maintain Store operations on Franchisee's behalf. Franchisor's appointment of a manager of the Store does not relieve Franchisee of its obligations or constitute a waiver of Franchisor's right to terminate the Franchise under Section 16 below. Franchisor is not liable for any debts, losses, costs or expenses incurred in the operation of the Store or to any creditor of Franchisee for any products, materials, supplies or services purchased by the Store while it is managed by Franchisor's appointed manager. Franchisor may charge a reasonable fee for management services and cease to provide management services at any time.

J. Insurance. Franchisee agrees to purchase and maintain in force, at its expense, the following insurance:

1. Comprehensive general liability insurance, including products liability, property damage, and personal injury coverage with a combined single limit of at least ~~One~~Two Million Dollars (~~\$1,000,000~~2,000,000).
2. Worker's compensation, employer's liability and other insurance to meet statutory requirements;
3. Fire, vandalism, theft, burglary and extended coverage insurance with primary and excess limits of not less than one hundred percent (100%) replacement value of the franchised facility and fixtures, equipment and inventory; and
4. Automobile liability insurance for owned and non-owned business vehicles including personal injury, wrongful death and property damage with a ~~single limit coverage~~ of at least One Million Dollars (\$1,000,000) per occurrence.

All insurance policies will: (1) be issued by an insurance carrier(s) acceptable to Franchisor; (2) will name Franchisor and its affiliates as an additional insured; (3) contain a waiver of the insurance company's right of subrogation against Franchisor; (4) contain the above-mentioned insurance coverage for each Batteries Plus® store that Franchisee operates; and (5) provide that Franchisor will receive thirty (30) days' prior written notice of a material change in or termination, expiration or cancellation of any policy. Franchisor periodically may, with prior written notice to Franchisee, increase the minimum liability protection requirements, and require different or additional kinds of insurance to reflect inflation or changes in standards of liability. If Franchisee at any time fails to maintain in effect any insurance coverage required by Franchisor, or to furnish satisfactory evidence thereof, Franchisor, at its option, may obtain insurance coverage for Franchisee. Franchisee agrees to promptly sign any applications or other forms or instruments required to obtain any insurance and pay to Franchisor, on demand, any costs and premiums incurred by Franchisor. Franchisee will provide Franchisor with a copy of the certificate

of insurance in compliance with these requirements within two (2) weeks before Franchisee takes possession and commences development of the Store premises. In addition, Franchisee will provide to Franchisor with a copy of the certificate of or other evidence of the renewal or extension of each insurance policy.

K. National Accounts Programs. Franchisor reserves the right to establish "national accounts" or similar commercial account programs designed to address the needs of customers desiring central billing accounts, multiple shipping destinations and similar requests that are typical of large volume customers or customers that conduct operations at more than one facility. Franchisee agrees to participate in such programs and understands that Franchisor will establish the rules under which Franchisee will participate, and be compensated for participation, in such programs.

L. Participation in Internet Web Site Website. Franchisee will participate in a Batteries Plus® website listed on the Internet or other online communications and participate in any Franchisor-controlled intranet system. Franchisor will, at its discretion, determine the content and use of a Batteries Plus® website and intranet system and will establish rules under which franchisees may or will participate. Franchisor will retain all rights relating to the Batteries Plus® website and intranet system and may alter or terminate the website or intranet system upon thirty (30) days' notice to Franchisee. Franchisee's general conduct on the Internet and the Batteries Plus® intranet system, and specifically its use of the Licensed Marks or any advertising on the Internet (including the domain name and any other Licensed Marks Franchisor may develop as a result of participation in the Internet), will be subject to the provisions of this Agreement. Franchisee acknowledges that certain information obtained through its online participation in the website or intranet system is considered Confidential Information (as defined in Section 7 above), including access codes and identification codes. Franchisee's right to participate in the Batteries Plus® website or intranet system or otherwise use the Licensed Marks or the System on the Internet will terminate when this Agreement expires or terminates.

M. Minimum Revenue Requirement. Franchisee agrees to use its best efforts to promote the Store. After the first twelve (12) months of operation, Franchisee must generate, in each "Anniversary Year" (as defined below) during the term of this Agreement, Net Revenues of at least seventy-five percent (75%) of the average historical median Net Revenues of all Batteries Plus® Stores in operation for at least twelve (12) months based on each Store's historical Net Revenues for the same Anniversary Year (the "Minimum Revenue Requirement"). The term "Anniversary Year" means the twelve (12) month period beginning on the first day of the month following the Effective Date and ending on the first anniversary thereof and between each succeeding anniversary. For example, if a Franchisee opened his/her Store in February 2002, Franchisee's Anniversary Year begins on March 1 and Store Net Revenues for the second Anniversary Year (March 1, 2003 to February 29, 2004) must be at least seventy-five percent (75%) of the average Net Revenues of all Batteries Plus® Stores (based on the historical Net Revenues of each Store during its second Anniversary Year.) If Franchisee owns and operates more than one (1) Store, Franchisee will be in compliance with this provision if the combined Net Revenues of Franchisee's Stores (using each Store's Net Revenues from the most recently completed Anniversary Year) are at least seventy-five percent (75%) of the combined average historical Median Net Revenues of each relevant class of Batteries Plus® Stores for the same Anniversary Year.

## 11. ADVERTISING

A. National Marketing and Promotional Fund. During the term of this Agreement, Franchisee will pay to Franchisor for deposit in a national marketing and promotional fund (the "NMF Fund") a national marketing fee (the "NMF Fee") of up to one percent (1%) of Franchisee's Net Revenues. Franchisor will place all NMF Fees it receives in the NMF Fund and will manage such Fund. Franchisor also will contribute to the NMF Fund for each Batteries Plus® store that it operates in the

United States at the same percentage rate as a majority of Batteries Plus® franchisees must pay to the NMF Fund. Reasonable disbursements from the NMF Fund will be made solely for the payment of expenses Franchisor incurs in connection with the general promotion of the Licensed Marks and the System, including the cost of formulating, developing and implementing advertising, marketing, promotional and public relations campaigns; and the reasonable costs of administering the NMF Fund, including the cost of employing advertising agencies to assist Franchisor and providing promotional brochures and advertising materials to Batteries Plus® stores and to regional and local advertising cooperatives, as well as accounting expenses and the actual costs of salaries and fringe benefits paid to Franchisor's employees engaged in administration of the NMF Fund. The NMF Fund is not a trust or escrow account, and Franchisor has no fiduciary obligations regarding the NMF Fund. Franchisor cannot insure that any individual franchisee will benefit directly or on a pro rata basis from the future placement of any such advertising in its local market. Franchisor may spend in any fiscal year an amount greater or less than the aggregate contributions of Batteries Plus® stores to the NMF Fund in that year. Franchisor may, through the NMF Fund, furnish Franchisee approved local marketing plans and materials on the same terms and conditions as plans and materials it furnishes to other Batteries Plus® franchisees. Franchisor will determine the methods of advertising, media employed and scope, contents, terms and conditions of advertising, marketing, promotional and public relations campaigns and programs. Upon written request, Franchisor will provide Franchisee an annual unaudited statement of the receipts and disbursements of the NMF Fund.

B. Local Advertising Expenditures and Store Promotion. In addition to the NMF Fee due under Section 11(A) above, Franchisee will spend at least four percent (4%) of the Net Revenues for the Store during each calendar year on advertising and promotional activities in Franchisee's local geographic area which satisfy Franchisor's requirements for local store marketing and otherwise comply with Section 11(E) below. ~~Franchisee's local advertising expenditures will include advertising, merchandising, sales promotion and other forms of advertising at the local level. During the first year~~ During the first one hundred twenty (120) days of Store operations, Franchisee will conduct a store opening campaign as further described in Section 4(FG) above. On or before ~~January~~ February 15 of each year, Franchisee will provide Franchisor with an accounting of the moneys that it has spent for ~~approved~~ local advertising for the preceding calendar year. If Franchisee fails to spend the minimum amount required under this Section for the calendar year for approved regional cooperative advertising or local advertising, Franchisee will deposit with Franchisor the difference between what it should have spent for approved advertising during the calendar year and what it actually spent for approved advertising during the calendar year. Franchisor will deposit such monies in the NMF Fund.

C. Cooperative Advertising. In addition to all other advertising fees, Franchisee will participate in, support and contribute a proportionate share, but no more than an amount equal to four percent (4%) of the Net Revenues for the Store, of the cost of regional cooperative advertising programs designated by Franchisor. Franchisor reserves the right to designate regional and local advertising markets, to establish regional advertising councils and to establish the bylaws and other rules under which such councils will operate. Franchisee contributions to regional and local advertising cooperatives will be credited toward Franchisee's local advertising obligations described in Section 11(B) above.

D. Telephone Directory Advertising. Franchisee will, at its expense, list and advertise the Store in the principal regular (white pages) and classified (yellow pages) telephone directories distributed within Franchisee's primary trading area, in directory categories Franchisor specifies, using Franchisor's standard forms of listing and classified directory advertisements. Classified directory advertisements will list other Batteries Plus® stores operating within the distribution area of classified directories and the cost of advertisements will be reasonably apportioned among all Batteries Plus® stores listed. Franchisee will not publish or use any toll-free number in operating the Store, other than 1-800-MR

START or other toll free telephone numbers designated by Franchisor. The cost of advertising will be credited towards Franchisee's local advertising obligations described in Section 11(B) above.

E. Approved Advertising Materials. Media Plans and Store Promotion Materials. Franchisor may develop, and make available to Franchisee, local store media planning assistance. If Franchisor does so, Franchisee must use Franchisor's recommended media plan in promoting the Store or otherwise develop, and obtain Franchisor's advance written approval to, an alternative media/promotion plan. In addition, Franchisee will use only Franchisor-approved advertising and promotional materials in promoting the Store. If Franchisee desires to use any unapproved advertising or promotional materials bearing the name "Batteries Plus®" or other Licensed Marks, Franchisee must obtain written approval from Franchisor before using any such materials, which approval will not be unreasonably withheld. If Franchisor does not respond within fifteen (15) days from the date it receives Franchisee's proposed materials, Franchisee may use such materials provided they otherwise comply with this Agreement. If Franchisor later determines that such advertising materials do not satisfy Franchisor's then-current advertising and promotional standards, Franchisee will immediately cease using such materials upon written notice from Franchisor.

F. Participation in Certain Programs and Promotions. Franchisee will use its best efforts to promote and advertise the Store and will participate in all advertising and promotional programs Franchisor establishes in the manner Franchisor directs. Franchisee will have the right to advertise and sell its products at whatever prices Franchisee determines.

## 12. RECORDS AND REPORTS

A. Accounting And Records. During the term of this Agreement, Franchisee agrees, at its expense, to maintain at the Store premises and retain for three (3) years from the date of their preparation, complete and accurate books, and records (using such methods of bookkeeping and accounting as Franchisor may require), copies of sales tax returns, and copies of portions of Franchisee's state and federal income tax returns as reflect the operation of the Store.

B. Reports And Tax Returns. Franchisee will deliver or provide access to Franchisor the following: (1) daily statements relating to Net Revenues accompanying Franchisee's payment of monthly royalty and service fees; (2) within forty-five (45) days after the end of each calendar quarter, a quarterly profit and loss statement for the Store for the immediately preceding calendar quarter and a year-to-date profit and loss statement; and (3) within ninety (90) days after the end of each fiscal year, an annual profit and loss statement and source and use of funds statement for the Store for the year and a balance sheet for the Store as of the end of the year, reviewed by an independent certified public accountant. Franchisee also will provide to Franchisor copies of other reports and other information and supporting records as Franchisor designates. All financial statements, reports and information must be on forms approved by Franchisor and signed and verified by Franchisee.

## 13. INSPECTION AND AUDITS

A. Franchisor's Right To Inspect The Store. To determine whether Franchisee is complying with this Agreement, Franchisor may, at any time during business hours and without prior notice to Franchisee, inspect the Store. Franchisee will fully cooperate with Franchisor's representatives making any inspection and will permit Franchisor's representatives to take photographs or videotapes of the Store and to interview employees and customers of the Store.

B. Franchisor's Right To Examine Books And Records. Franchisor may, at all reasonable times and without prior notice to Franchisee, examine, audit, or request copies of the business records,

cash control devices, bookkeeping and accounting records, bank statements, state and /or federal sales and income tax records and returns, and other books and records of the Store and the books and records of any Principal Owner. Franchisee must maintain all books, records and supporting documents at all times at the Store premises. Franchisee will make financial and other information available at a location Franchisor reasonably request, and will allow Franchisor (and its agents) full and free access to any such information at the Store. Franchisee otherwise will fully cooperate with Franchisor's representative and independent accountants hired to conduct any examination or audit.

C. Result of Audit; Unreported Net Revenues. If any examination or audit discloses an understatement of Net Revenues, Franchisee will pay to Franchisor, within fifteen (15) days after receipt of the examination or audit report, the royalty and services fees and any NMF Fees due on the amount of the understatement, plus interest (at the rate provided in Section 9(D) above) from the date originally due until the date of payment. ~~Franchisee must reimburse Franchisor for the cost of the audit or examination, including the charges of any independent accountants and the travel expenses, room and board and compensation of employees of Franchisor, if: (1) an examination or audit is necessary because Franchisee failed to timely provide required information or if, (2) any examination or audit results in a determination that Net Revenues for any month are understated by greater than two percent (2%)- Franchisee must reimburse Franchisor for the cost of the audit or examination, including the charges of any independent accountants and the travel expenses, room and board and compensation of employees of Franchisor, or (3) Franchisee fails to spend the minimum amount required for local store promotion under Section 11(B) above.~~ The foregoing remedies are in addition to all other remedies and rights of Franchisor under applicable law.

#### 14. COVENANTS

A. Non-Solicitation Of Customers/Employees. Franchisee covenants that, during the term of this Agreement, and for a period of two (2) years thereafter, Franchisee will not, directly or indirectly: (1) divert or attempt to divert any business, account or customer of the Store or any other Batteries Plus® stores or the System to any competing business; and (2) employ or seek to employ any person employed by Franchisor, or any other person who is at that time operating or employed by or at any other Batteries Plus® store, or otherwise directly or indirectly induce such persons to leave their employment.

B. Covenant Not To Compete During Term. Franchisee (and each Principal Owner) will not, during the term of this Agreement, directly or as an employee, agent, consultant, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, having any interest in, or assist any person or entity engaged in any business (including any e-commerce or internet-based business) that distributes, sells or otherwise deals in, at wholesale or retail, any battery or battery-related products, or any other related business that is competitive with or similar to a Batteries Plus® store, except: (i) with Franchisor's prior written consent; or (ii) the ownership of securities listed on a stock exchange or traded on the over-the-counter market that represent one percent (1%) or less of that class of securities.

C. Post-Term Covenant Not To Compete. Franchisee (and each Principal Owner) will not, for a period of two (2) years after this Agreement expires or is terminated or the date on which Franchisee ceases to conduct the business franchised under this Agreement, whichever is later, directly or as an employee, agent, consultant, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, having any interest in, or assist any person or entity engaged in any business that distributes, sells or otherwise deals in, at wholesale or retail, ~~in~~ any battery or battery-related products, or any other related business that is competitive with or similar to a Batteries Plus® store that is located at the Store or within a fifteen (15) mile radius of the former site of the Store or any other then existing Batteries Plus® store;

provided, however, that this Section 13(C) will not apply to: (i) other Batteries Plus® stores that Franchisee operates under Batteries Plus® franchise agreements; or (ii) the ownership of securities listed on a stock exchange or traded on the over-the-counter market that represent one percent (1%) or less of that class of securities. For purposes of this Section, any form of e-commerce business or website that distributes, sells or otherwise deals in, at wholesale or retail, any battery or battery-related products, or any other related business that is competitive with or similar to a Batteries Plus® store will be in violation of this provision if such e-commerce business or website offers, sells or otherwise makes its products or services available to individuals residing within or businesses located within fifteen (15) mile radius of the former site of the Store or any other then-existing Batteries Plus® Store.

D. **Injunctive Relief.** Franchisee agrees that damages alone cannot adequately compensate Franchisor if there is a violation of any covenant in this Section in that injunctive relief is essential for the protection of Franchisor. Franchisee therefore agrees that if Franchisee, or anyone acting on behalf of Franchisee's behalf, violates any covenant in this Section, Franchisor may seek injunctive relief without posting any bond or security, in addition to the remedies that may be available to Franchisor at equity or law. The covenants stated in this Section will survive the termination or expiration of this Agreement.

## 15. ASSIGNMENT

A. **By The Franchisor.** This Agreement is fully assignable by Franchisor and benefits Franchisor's successors and assigns. Any such assignment will require the assignee to fulfill Franchisor's obligations under this Agreement.

B. **Franchisee Assignment To Corporation Or Limited Liability Company.** This Agreement may be assigned by Franchisee to a corporation or a limited liability company that conducts no business other than the Store (or other Batteries Plus® stores under franchise agreements with Franchisor), which is actively managed by Franchisee and in which Franchisee owns at least seventy percent (70%) of the ownership interest in the corporation or limited liability company provided: (1) Franchisee and all Principal Owners of the assignee entity sign the Personal Guaranty attached hereto as Exhibit D; (2) Franchisee provides Franchisor fifteen (15) days written notice before the proposed date of assignment of this Agreement to the corporation or limited liability company; (3) Franchisee provides to Franchisor a certified copy of the articles of incorporation, operation agreement, organizational documents, a list of all shareholders or members having beneficial ownership, reflecting their respective interest in the assignee entity; and (4) the organizational documents and all issued and outstanding stock or membership certificates will bear a legend, in form acceptable to Franchisor, reflecting or referring to the assignment restrictions stated in Section 15(C) below. Franchisee will not pay a transfer fee for an assignment under Section 15(B).

C. **Franchisee Assignment Or Sale of Substantially All Of Its Assets.** Franchisee understands that Franchisor has granted the Franchise under this Agreement in reliance upon Franchisee's individual or collective character, aptitude, attitude, business ability and financial capacity. Franchisee (and its Principal Owners) will not transfer (whether voluntary or involuntary), assign or otherwise dispose of, in one or more transactions, Franchisee's business, the Store, substantially all or all of the assets of Franchisee's business, this Agreement or any controlling interest in Franchisee ("controlling interest") to include a proposed transfer of fifty percent (50%) or more of the common (voting) stock of a corporate Franchisee or of the ownership interest in a limited liability company or partnership) unless Franchisee obtains Franchisor's prior written consent (except as provided in Section 15(B) above). Franchisor will not unreasonably withhold its consent to an assignment, provided Franchisee complies with any or all of the following conditions which Franchisor may, in its discretion, deem necessary:

1. All of Franchisee's accrued monetary obligations to Franchisor and its affiliates have been satisfied, and Franchisee otherwise is in good standing under this Agreement;

2. The transferee-franchisee (or the managing Principal Owners, if applicable) is approved by Franchisor and demonstrates to Franchisor's satisfaction that he/she meets Franchisor's managerial, financial and business standards for new franchisees, possesses a good business reputation and credit rating, and has the aptitude and ability to conduct the franchised business. Franchisee understands that Franchisor may communicate directly with the transferee-franchisee during the transfer process to respond to inquiries, as well as to insure that the transferee-franchisee meets Franchisor's qualifications;

3. The transferee-franchisee enters into a written agreement, in form satisfactory to Franchisor, assuming and agreeing to discharge all of Franchisee's obligations and covenants under this Agreement for the remainder of its term or, at Franchisor's option, signs Franchisor's then-current standard form of franchise agreement (which will provide for the same royalty and service fees and NMF Fees required for a term equal to the remaining term of this Agreement, although such agreement may provide other rights and obligations from those provided in this Agreement);

4. ~~the~~The transferee franchisee successfully completes the training program required of new franchisees;

5. ~~If~~ required, the lessor of the Store premises consents to Franchisee's assignment or sublease of the premises to the transferee-franchisee;

6. Franchisee pays Franchisor an assignment fee equal to ~~Three~~Five Thousand Dollars (\$3,000) if the transferee is an existing ~~Batteries Plus®~~ franchisee or ~~Six Thousand Dollars (\$6,000) otherwise~~5,000. There is not an assignment fee due upon transfer to heirs or immediate family members;

7. Franchisee (and each Principal Owner, if applicable) signs a general release, in form and substance satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, officers, directors, employees and agents, except to the extent limited or prohibited by applicable law;

8. Franchisor approves the material provisions of the assignment or sale of assets which assignment or sale cannot permit Franchisee to retain a security interest in this Agreement or any other intangible asset; and

9. Franchisee (and each Principal Owners, if applicable) signs an agreement, in form satisfactory to Franchisor, in which Franchisee and each Principal Owner covenants to observe the post-termination covenant not to compete and all other applicable post-termination obligations.

D. Death Or Disability Of Franchisee. If Franchisee (or the managing Principal Owner) dies or is permanently disabled, Franchisee's executor, administrator or other personal representative, or the remaining Principal Owners, must appoint a competent manager acceptable to Franchisor within a reasonable time, not to exceed thirty (30) days, from the date of death or permanent disability. The appointed manager must satisfactorily complete Franchisor's training program. If a Franchisor-approved manager is not appointed within thirty (30) days after Franchisee's death or permanent disability, Franchisor may, but is not required to, immediately appoint a manager to maintain Store operations on

Franchisee's behalf until an approved assignee can assume the management and operation of the Store. Franchisor's appointment of a Store manager does not relieve Franchisee of its obligations, and Franchisor will not be liable for any debts, losses, costs or expenses incurred in operating the Store or to any creditor of Franchisee for any products, materials, supplies or services purchased by the Store while it is managed by Franchisor's appointed manager. Franchisor may charge a reasonable fee for management services and may cease to provide management services at any time.

If Franchisee (or the managing Principal Owner) dies or is permanent disabled, Franchisee's executor, administrator, or other personal representative must transfer his interest within a reasonable time, not to exceed twelve (12) months from the date of death or permanent disability, to a person approved by Franchisor. Such transfers, including transfers by devise or inheritance will be subject to conditions contained in Section 15(C) above.

E. Public Or Private Offerings. Subject to Section 15(C) above, if Franchisee (or any of its Principal Owners) desires to raise or secure funds by the sale of securities (including common or preferred stock, bonds, debentures or general or limited partnership interests) in Franchisee or any affiliate of Franchisee, Franchisee agrees to submit any written information to Franchisor before its inclusion in any registration statement, prospectus or similar offering circular or memorandum and must obtain the written consent of Franchisor to the method of financing before any offering or sale of securities. The written consent of Franchisor will not imply or represent Franchisor's approval respecting the method of financing, the offering literature submitted to Franchisor or any other aspect of the offering. No information respecting Franchisor or any of its affiliates will be included in any securities disclosure document, unless Franchisor furnishes the information in writing in response to Franchisee's written request, which request will state the specific purpose for which the information is to be used. Should Franchisor, in its discretion, object to any reference to Franchisor or any of its affiliates in the offering literature or prospectus, the literature or prospectus will not be used unless and until the objections of Franchisor are withdrawn. Franchisor assumes no responsibility for the offering.

The prospectus or other literature utilized in any offering must contain the following language in boldface type on the first textual page:

**“NEITHER BATTERIES PLUS, L.L.C. NOR ANY OF ITS AFFILIATES IS DIRECTLY OR INDIRECTLY THE ISSUER OF THE SECURITIES OFFERED. NEITHER BATTERIES PLUS, L.L.C. NOR ANY OF ITS AFFILIATES ASSUMES ANY RESPONSIBILITY RESPECTING THIS OFFERING AND/OR THE ADEQUACY OR ACCURACY OF THE INFORMATION CONTAINED HEREIN. NEITHER BATTERIES PLUS, L.L.C. NOR ANY OF ITS AFFILIATES ENDORSES OR MAKES ANY RECOMMENDATION RESPECTING THE INVESTMENT CONTEMPLATED BY THIS OFFERING.”**

F. The Franchisor's Right Of First Refusal. If Franchisee or its Principal Owners at any time desire to sell or assign for consideration the Franchise, the Store, an ownership interest in Franchisee or all or substantially all of Franchisee's assets, Franchisee or its Principal Owners must obtain a bona fide, executed written offer from a responsible and fully disclosed purchaser and must deliver a copy of the offer to Franchisor. Franchisor has the right, exercisable by written notice delivered to Franchisee or its Principal Owners within thirty (30) days following receipt of the proposed offer, to purchase the interest in the Store or ownership interest in Franchisee for the price and on terms contained in the offer. Franchisor may substitute cash for any non-cash form of payment proposed in the offer and will have a minimum of sixty (60) days to prepare for closing. If Franchisor does not exercise its right of first refusal, Franchisee or its Principal Owners may complete the sale to the proposed purchaser under the terms of the offer, provided Franchisee and the Principal Owners otherwise comply with this Section 15.



If the sale to the proposed purchaser is not completed within one hundred twenty (120) days after delivery of the offer to Franchisor, or if there is a material change in the terms of the sale, Franchisor again has the right of first refusal.

G. Guaranty. All Principal Owners of a Franchisee which is a corporation, partnership or other entity, will sign the Guaranty and Assumption Agreement in the form attached to this Agreement as Exhibit D (the "Guaranty Agreement"). Any person or entity that at any time after the date of this Agreement becomes a Principal Owner of Franchisee under the provisions of this Section 15 or otherwise will, as a condition of becoming a Principal Owner, sign the Guaranty Agreement. Franchisee will furnish to Franchisor at any time upon reasonable request a certified copy of the Articles of Incorporation or Articles of Organization and a list, in a form Franchisor reasonably requires, of all shareholders or members of record and all persons having a beneficial interest in any corporation or other entity that is or becomes a Franchisee.

## 16. FRANCHISOR'S TERMINATION RIGHTS

A. Termination of Protected Area. Franchisor may terminate Franchisee's Protected Area rights described in Section 2(B) above without terminating this Agreement, effective thirty (30) days following delivery of notice of termination to Franchisee, if Franchisee fails to meet the Minimum Revenue Requirement stated in Section 10(M) above for two (2) consecutive years during the term of this Agreement. If Franchisor terminates Franchisee's Protected Area rights, Franchisee's rights to continue operating the Store under this Agreement will continue. Franchisor will have the right, however, to establish, operate and franchise others to operate Batteries Plus® stores in Franchisee's Protected Area without restriction.

B. Termination of Franchise Agreement - Grounds. Franchisee will be in default, and Franchisor may, at its option, terminate this Agreement, as provided herein, if: (1) Franchisee (or the managing Principal Owner) fails to satisfactorily complete the initial training program or fails to open and commence operations of the Store at such time as provided in this Agreement; (2) Franchisee violates any material provision or obligation of this Agreement; (3) Franchisee or any of its managers, directors, officers or any Principal Owner makes a material misrepresentation or omission in the application for the Franchise or is convicted of, or pleads guilty to or no contest to (a) a charge of violating any law which adversely impacts upon the reputation of the Franchise or (b) any felony; (4) Franchisee fails to conform to the material requirements of the System or the material standards of uniformity and quality for the products and services as described in the Operations Manual or as Franchisor has established in connection with the System; (5) Franchisee fails to timely pay royalty and service fees or NMF Fees or any other obligations or liabilities due and owing to Franchisor or its affiliates or suppliers approved by Franchisor as a source for required items or fails to timely pay any advertising cooperative obligations; (6) Franchisee is insolvent within the meaning of any applicable state or federal law; (7) Franchisee makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; (8) Franchisee voluntarily or otherwise "abandons" (as defined below) the Store; (9) Franchisee is involved in any act or conduct which materially impairs the goodwill associated with the name "Batteries Plus" or any of the Licensed Marks or the System; (10) Franchisee or a Principal Owner makes an unauthorized assignment or transfer of this Agreement, the Store or an ownership interest in Franchisee; or (11) Franchisee's lease for the Store premises expires or is terminated for any reason (unless, through no fault of Franchisee, the lessor of the premises in which the Store is located refuses to renew Franchisee's lease and Franchisee relocates within the Protected Area to a site approved by Franchisor within sixty (60) days thereafter). The term "abandon" means Franchisee's failure to operate the Store during regular business hours for a period of

ten (10) consecutive days without Franchisor's prior written consent unless such failure is due to an act of God, war, strikes or riots.

C. Procedure. Except as described below, Franchisee will have thirty (30) days, or such longer period as applicable law may require, after its receipt from Franchisor of a written Notice of Termination within which to remedy any default hereunder, and to provide evidence thereof to Franchisor. If Franchisee fails to correct the alleged default within that time (or such longer period of time as applicable law may require), this Agreement will terminate without further notice to Franchisee effective immediately when the thirty (30) day period (or such longer period as applicable law may require) expires. Franchisor may terminate this Agreement immediately upon delivery of written notice to Franchisee, with no opportunity to cure, if the termination results from any of the following: (1) Franchisee fails to comply with one or more material requirements of this Agreement on three (3) separate occasions within any twelve (12) month period; (2) the nature of Franchisee's breach makes it not curable; (3) Franchisee willfully and repeatedly deceives customers relative to the source, nature or quality of goods sold; (4) any default under items (3), (6), (7), (8), (9) or (10) in Section 16(B) above; or (5) Franchisee willfully and materially falsifies any report, statement, or other written data furnished to Franchisor either during the franchise application process or after Franchisee is awarded a franchise. Any report submitted under Section 12(B) will be conclusively deemed to be materially false if it understates Gross Sales by more than four percent (4%).

C. Applicable Law. If the provisions of this Section 16 are inconsistent with applicable law, the applicable law will apply. Franchisor's ability to terminate or fail to renew a Wisconsin franchise will be governed by the Wisconsin Fair Dealership Law, Chap. 135, Wisc. Stats. Minnesota law provides franchisees with certain termination and non-renewal rights. As of the date of this Agreement, Minn. Stat. Section 80C.14, Subd. 3, 4 and 5 require that, except in certain specified cases, a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the Agreement.

## 17. FRANCHISEE'S TERMINATION RIGHTS

Franchisee may terminate this Agreement if Franchisor violates any material obligation of Franchisor to Franchisee and fails to cure such violation within sixty (60) days after Franchisor's receipt of written notice from Franchisee; provided, however, that Franchisee is in substantial compliance with the Agreement at the time of giving such notice of termination. Franchisee's written notice will identify the violation and demand that it be cured.

## 18. FRANCHISEE OBLIGATIONS UPON TERMINATION

A. Post-Term Duties. If this Agreement expires or is terminated for any reason other than a termination as a result of a breach by Franchisor, Franchisee will:

1. within ten (10) days after termination, pay all amounts due and owing to Franchisor or its affiliates, including all royalty and service fees, NMF fees and accrued interest due under this Agreement;
2. discontinue using, and return to Franchisor by first class prepaid United States mail any hard copies of, the Operations Manuals and any other manuals, advertising materials, and all other printed materials relating to the operation of the Franchise;
3. assign to Franchisor or, at Franchisor's discretion, disconnect the telephone number for the Store. Franchisee acknowledges that Franchisor has the sole right to and interest

in all telephone numbers and directory listings associated with the Licensed Marks, and Franchisee authorizes Franchisor, and appoints Franchisor as its attorney-in-fact, to direct the telephone company and all listing agencies to transfer such numbers and listings to Franchisor;

4. remove from the Store premises all signs, posters, fixtures, decals, wall coverings and other materials that are distinctive of a Store or bear the name "Batteries Plus" or other Licensed Marks;

5. comply with all post-termination obligations under the Software Access Agreement and the Pro- Source Software Agreement, including the return of all materials relating to the Proprietary Software;

6. take all necessary action to cancel all fictitious or assumed name or equivalent registrations relating to Franchisee's use of any of the Licensed Marks;

7. immediately cease using Confidential Information and return to Franchisor all documents in Franchisee's possession that contain Confidential Information; and

8. comply with all other applicable provisions of this Agreement, including the non-compete provisions. Upon termination of this Franchise Agreement for any reason, Franchisee's right to use the name "Batteries Plus" and the other Licensed Marks and the System will immediately terminate and Franchisee (and the Principal Owners) will not in any way associate itself/themselves as being associated with Franchisor. If Franchisee fails to remove all signs and other materials bearing the Marks, Franchisor may do so at Franchisee's expense.

B. Redecoration. If this Agreement is terminated for any reason, and Franchisee either remains in possession of the premises of the former Store to operate a separate business not in violation of Section 13 above or enters into an agreement with a third party to allow such third party to directly operate a business at the premises of the former Store, Franchisee will, at its expense, modify both the exterior and interior appearance of the business premises so that they will be easily distinguished from the standard appearance of Batteries Plus® stores. At a minimum, such changes and modifications to the premises will include: (1) repainting the premises with totally different colors; (2) removing all signs and other materials bearing the name "Batteries Plus" and other Licensed Marks; (3) removing from the premises all fixtures which are indicative of Batteries Plus® stores; (4) discontinuing use of the approved employee uniforms and refraining from using any uniforms which are confusingly similar; (5) discontinuing use of all packaging and Confidential Information regarding the operation of the Store; and (6) taking such other action, at Franchisee's expense, as Franchisor may reasonably require. If Franchisee fails to immediately initiate modifications to the premises of the former Store or completes such modifications with any period of time Franchisor deems appropriate, Franchisee agrees that Franchisor or its designated agents may enter the premises of the former Store to make such modifications, at Franchisee's risk and expense, without responsibility for any actual or consequential damages to Franchisee's property or others, and without liability for trespass or other tort or criminal act.

C. Franchisor Option To Purchase Store. If this Agreement expires or is terminated for any reason (other than the fault of Franchisor), Franchisor has the option, upon thirty (30) days written notice from the date of expiration or termination, to purchase from Franchisee all the tangible and intangible assets relating to the Store (excluding any unsalable inventory, cash, short-term investments and accounts receivable) (collectively, the "Purchased Assets") and to an assignment of Franchisee's lease for (1) the Store premises (or, if an assignment is prohibited, a sublease for the full remaining term under the same provisions as Franchisee's lease) and (2) any other tangible leased assets used in operating the Store. Franchisor may assign this option to purchase and assignment of leases separate and apart from the

remainder of this Agreement. Batteries are deemed salable only for starting, lighting and ignition batteries and sealed lead acid batteries in salable condition with a manufacturers code not exceeding nine (9) months from date of manufacturer's shipment.

The purchase price for the Store will be the "Book Value" (as defined below) of the Purchased Assets. "Book Value" means the net book value of the Purchased Assets, as disclosed in the last quarterly statement of the Store provided to Franchisor under Section 12(B) before termination or expiration, provided, however, that: (1) each depreciable asset will be valued on a "straight-line" basis without provision for salvage value; (2) Franchisor may exclude from the Purchased Assets any products or other items that were not acquired in compliance with this Agreement; and (3) Franchisor may exclude from Book Value any provision for goodwill or similar value attributable to intangible property. If Franchisor is not satisfied with the accuracy or fairness of any financial statements, or none has been submitted, Franchisor's regularly employed firm of certified public accountants will determine (by audit) the Book Value. Franchisor and Franchisee will equally bear the cost of the audit. The results of the audit will be final and binding on both parties.

The purchase price, as determined above, will be paid in cash at the closing of the purchase, which will occur no later than sixty (60) days after Franchisor delivers notice of its election to purchase the Store, unless Book Value is determined by audit, in which case the closing will occur within a reasonable time, not to exceed sixty (60) days, after the results of the audit are made available. At the closing, Franchisee will deliver documents transferring good and merchantable title to the assets purchased, free and clear of all liens, encumbrances and liabilities to Franchisor or its designee and such other documents Franchisor may reasonably request to permit it to operate the Store without interruption. Franchisor may set off against and reduce the purchase price by all amounts Franchisee owes to Franchisor or any of its affiliates. If Franchisor exercises its option to purchase the Store, Franchisor may, pending the closing, appoint a manager to maintain Store operations.

D. Continuing Obligations. All obligations of Franchisor and Franchisee which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect following its expiration or termination and until they are satisfied or expire.

## 19. DISPUTE RESOLUTION

A. Mediation. Except as otherwise stated in this Section 19(A), the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement (and attachments) or the relationship created by this Agreement to non-binding mediation before bringing such claim, controversy or dispute to arbitration or to a court. The mediation will be conducted either through an individual mediator or a mediator appointed by a mediation services organization, experienced in the mediation of disputes between franchisors and franchisees, agreed upon by the parties. If the parties do not agree upon a mediator or mediation services organization within fifteen (15) days after either party has notified the other of its desire to seek mediation, the dispute will be mediated by the American Arbitration Association pursuant to its rules governing mediation, at Franchisor's corporate headquarters in Hartland, Wisconsin. The costs and expenses of mediation, including compensation of the mediator, will be borne equally by the parties. If the parties cannot resolve the claim, controversy or dispute within ninety (90) days after conferring with the mediator, either party may submit such claim, controversy or dispute to arbitration under Section 19(B) below. Either party may bring an action under the applicable provisions of this Section 19 without first submitting the action to mediation under this Section 19(A): (i) for monies owed, (ii) for injunctive relief, or (iii) involving the possession or disposition of, or other relief relating to, real property.

B. Arbitration. Except to the extent Franchisor elects to enforce the provisions of this Agreement by injunction as provided in Section 19(D) below, all disputes, claims and controversies between the parties arising under or in connection with this Agreement or the making, performance or interpretation thereof (including claims of fraud in the inducement and other claims of fraud in the arbitrability of any matter) that have not been settled by or are not otherwise subject to mediation as described in Section 19(A) above will be settled by arbitration under the authority of the Federal Arbitration Act in Milwaukee, Wisconsin. The arbitrator(s) will have a minimum of five (5) years experience in franchising or distribution law and will have the right to award specific performance of this Agreement. The proceedings will be conducted under the commercial arbitration rules of the American Arbitration Association, to the extent such rules are not inconsistent with the provisions of this arbitration provision. The decision of the arbitrator(s) will be final and binding on all parties; provided, however, the arbitrator(s) may not under any circumstances: (i) stay the effectiveness of any pending termination of this Agreement; (ii) assess punitive or exemplary damages; or (iii) make any award which extends, modifies or suspends any lawful term of this Agreement or any reasonable standard of business performance set by Franchisor. This Section 19 will survive termination or nonrenewal of this Agreement under any circumstances. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction thereof. During any arbitration proceeding, Franchisor and Franchisee will fully perform their respective obligations under this Agreement.

C. Additional Proceedings. If, after Franchisor or Franchisee commences an arbitration proceeding, one or the other asserts a claim, counterclaim or defense, the subject matter of which, under statute or current judicial decision, is nonarbitrable for public policy reasons, the party against whom the claim, counterclaim or defense is asserted may elect to proceed with the arbitration of arbitrable claims, counterclaims or defenses or to proceed to litigate all claims, counterclaims or defenses in a court having competent jurisdiction.

D. Injunctive Relief. Notwithstanding Sections 19(A) and (B) above, Franchisee recognizes that a single franchisee's failure to comply with the terms of its agreement could cause irreparable damage to Franchisor and/or to some or all other Batteries Plus® franchisees. Therefore, if Franchisee breaches or threatens to breach any of the terms of this Agreement, Franchisor will be entitled to an injunction restraining such breach and/or a decree of specific performance, without showing or proving any actual damage, together with recovery of reasonable attorneys' fees and other costs incurred in obtaining such equitable relief, until such time as a final and binding determination is made by the arbitrators.

E. Attorneys' Fees. The nonprevailing party will pay all costs and expenses, including reasonable attorneys' fees, the prevailing party incurs in any action brought to enforce any provision of this Agreement or to enjoin any violation of this Agreement.

## 20. ENFORCEMENT

A. Severability. All provisions of this Agreement are severable and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein and partially valid and enforceable provisions will be enforced to the extent valid and enforceable. If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of or non-renewal of this Agreement than is required, or the taking of some other action not required, or if under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor is invalid or unenforceable, the prior notice and/or other action required by law or rule will be substituted for the comparable provisions.

B. Waiver of Obligations. Franchisor's waiver of any breach by Franchisee, or Franchisor's delay or failure to enforce any provision of this Agreement, will not be deemed to be a waiver of any other or subsequent breach or be deemed an estoppel to enforce Franchisor's rights respecting that or any other breach.

C. Rights of Parties are Cumulative. The rights of Franchisor and Franchisee are cumulative and no exercise or enforcement by either party of any right or remedy precludes the exercise or enforcement by such party of any other right or remedy to which such party is entitled by law or equity to enforce.

D. Venue. Any claims, controversies or disputes arising out of or related to this Agreement that are not subject to arbitration as provided above, will be brought in the Federal District Court for the Eastern District of Wisconsin or in Waukesha County District Court in Waukesha, Wisconsin. Each of Franchisor and Franchisee irrevocably consents to the jurisdiction of such courts. The provisions of this Section 20(D) will survive the termination of this Agreement.

E. Governing Law. Subject to Franchisor's rights under federal trademark laws and the parties' rights under the Federal Arbitration Act respecting Section 19 above, this Agreement will be governed by and construed under the laws of the state in which the Store is located, without regard to any conflict of laws principles of such state. Franchisee waives, to the fullest extent permitted by law, the rights and protections that might be provided through any state franchise or business opportunity laws, other than those of the state in which the Store is located.

F. Binding Effect. This Agreement is binding upon the parties and their respective executors, administrators, heirs, assigns, and successors in interest, and will not be modified except by written agreement signed by both Franchisee and Franchisor. Except as provided above, this Agreement is not intended, and will not be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

G. References. If Franchisee consists of two or more individuals, such individuals will be jointly and severally liable, and references to Franchisee in this Agreement will include all such individuals. Reference to Franchisee as neuter or a male will also include a neuter, male or female Franchisee as relevant in the context.

H. Interpretation of Rights and Obligations. The following provisions will apply to and govern the interpretation of this Agreement, the parties' rights under this Agreement and the relationship between the parties:

1. Franchisor's Rights. Whenever this Agreement provides that Franchisor has a certain right, that right is absolute and the parties intend that Franchisor's exercise of that right will not be subject to any limitation or review. Franchisor has the right to operate, administrate, develop and change the System in any manner that is not specifically precluded by the provisions of this Agreement.

2. Franchisor's Reasonable Business Judgment. Whenever Franchisor reserves discretion in a particular area or where Franchisor agrees or is required to exercise its rights reasonably or in good faith, Franchisor will satisfy its obligations whenever it exercises "reasonable business judgment" in making its decision or exercising its rights. A decision or action by Franchisor will be deemed to be the result of "reasonable business judgment", even if other reasonable or even arguably preferable alternatives are available, if Franchisor's decision or action is intended to promote or benefit the System generally even if the decision or action also promotes a financial or other individual interest of Franchisor. Examples of items that will promote or benefit the System include enhancing the value of

the Licensed Marks, improving customer service and satisfaction, improving product quality, improving uniformity, enhancing or encouraging modernization, and improving the competitive position of the System. Neither Franchisee nor any third party (including a trier of fact), will substitute its judgment for Franchisor's reasonable business judgment.

I. Waiver of Punitive Damages. Franchisee and Franchisor and their affiliates agree to waive, to the fullest extent permitted by law, the right to or a claim for any punitive or exemplary damages against the other and agree that in the event of any dispute between them, each will be limited to the recovery of actual damages sustained by it.

J. Force Majeure. If any party fails to perform any obligation under this Agreement due to a cause beyond the control of and without the negligence of such party, such failure will not be deemed a breach of this Agreement, provided such party uses reasonable best efforts to perform such obligations as soon as possible under the circumstances. Such causes include strikes, wars, riots, civil commotion, and acts of government, except as may be specifically provided for elsewhere in this Agreement.

K. Notice of Potential Franchisor Profit. Franchisor advises Franchisee that Franchisor and/or Franchisor's affiliates periodically may make available to Franchisee goods, products and/or services for use in the Store on the sale of which Franchisor and/or its affiliates may make a profit. Franchisor further advises Franchisee that Franchisor and its affiliates periodically may receive consideration from suppliers and manufacturers respecting sales of goods, products or services to Franchisee or in consideration for services provided or rights license to such persons. Franchisee agrees that Franchisor and its affiliates will be entitled to such profits and consideration.

L. Entire Agreement. The "Introduction" section and exhibit(s) are a part of this Agreement, which represents the entire agreement of the parties, and there are no other oral or written understandings or agreements between Franchisor and Franchisee relating to the subject matter of this Agreement.

## 21. NOTICES

All written notices and reports permitted or required to be delivered by the provisions of this Agreement are deemed so delivered at the time delivered by hand, one (1) business day after sent by a recognized overnight delivery service which requires a written receipt, or three (3) business days after placed in the U.S. Mail by registered or certified mail, return receipt requested, postage prepaid and addressed to the party to be notified at the address stated herein or at such other address as may have been designated in writing to the other party.

## 22. ACKNOWLEDGEMENTS

A. Success of Franchised Business. The success of the business venture Franchisee intends to undertake under this Agreement is speculative and depends, to a large extent, upon Franchisee's (or the Principal Owner's) ability as an independent businessman, and Franchisee's active participation in the daily affairs of the Store as well as other factors. Franchisor does not make any representation or warranty, express or implied, as to the potential success of the business venture.

B. Independent Investigation. Franchisee acknowledges that he has entered into this Agreement after making an independent investigation of Franchisor's operations and not upon any representation as to gross revenues, volume, potential earnings or profits which Franchisee might be expected to realize, nor has anyone made any other representation, which is not expressly stated herein, to induce Franchisee to accept this Franchise and sign this Agreement.

C. Receipt of Documents. Franchisee represents and acknowledges that he has received Franchisor's Uniform Franchise Offering Circular at least ten (10) business days before the date of the execution of this Agreement, and that a copy of this Agreement with all blanks filled was received from Franchisor at least five (5) business days before the date of execution of this Agreement. Franchisee represents that he has read this Agreement in its entirety and that he has been given the opportunity to clarify any provisions that Franchisee did not understand and to consult with any attorney or other professional advisor. Franchisee further represents that he understands the provisions of this Agreement and agrees to be bound.

D. Other Franchises. Franchisee acknowledges that other franchisees of Franchisor have or will be granted franchises at different times and in different situations, and further acknowledges that the provisions of such franchises may vary substantially from those contained in this Agreement.

~~IN WITNESS WHEREOF the~~ The parties have signed this Agreement on the date stated in the first paragraph.

FRANCHISOR:

BATTERIES PLUS, L.L.C.,  
a Wisconsin limited liability company

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

FRANCHISEE:

(If Franchisee is a corporation)

\_\_\_\_\_  
Name of Corporation

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

(If Franchisee is an individual owner,  
Franchisee must sign below; if a partnership,  
all partners must sign below)

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

(If Franchisee is a limited liability company)

\_\_\_\_\_  
Name of Limited Liability Company

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



**EXHIBIT A  
TO FRANCHISE AGREEMENT**

**STORE LOCATION AND PROTECTED AREA**

This Exhibit is attached to and is an integral part of the Batteries Plus® Franchise Agreement dated \_\_\_\_\_, 200\_\_ (the "Franchise Agreement"), between Franchisor and Franchisee.

1. Store Location. Franchisor and Franchisee agree that the Store will be located at the following premises:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Protected Area. The Protected Area will be a radius of three (3) miles from the location of the Store, as described in Section 1 above.

3. Market Area. The Market Area for the Store is described as follows:

4. Store Opening. Franchisee agrees to complete the development and open the Store for business within \_\_\_\_\_ months after the date first stated above.

4.5. Defined Terms. All capitalized terms contained in this Exhibit and not defined in this Exhibit will have the same meaning as provided in the Franchise Agreement.

FRANCHISOR:

BATTERIES PLUS, L.L.C.,  
a Wisconsin limited liability company

FRANCHISEE:

(If Franchisee is a corporation or limited liability company)

\_\_\_\_\_  
Name of Corporation or limited liability company

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

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

(If Franchisee is an individual owner, Franchisee must sign below; if a partnership, all partners must sign below)

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

Franchisee

**ALTERNATIVE EXHIBIT A**  
**TO FRANCHISE AGREEMENT**

**STORE LOCATION**  
**(ALTERNATIVE)**

This Exhibit is attached to and is an integral part of the Batteries Plus® Franchise Agreement dated \_\_\_\_\_, 200\_\_ (the "Franchise Agreement"), between Franchisor and Franchisee.

1. Area For Store Location. Within one hundred eighty (180) days after the date of the Franchise Agreement, Franchisee will select and obtain approval of a location with the provisions of this Exhibit within the following described geographical area (the "Area"): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Approval of Location and Store Opening. To obtain Franchisor's approval of the proposed Store premises, Franchisee must deliver to Franchisor a complete site report (containing information Franchisor reasonably requires) for the location at which Franchisee proposes to establish and operate the Store and which Franchisee reasonably believes to satisfy to the standardized site selection criteria established by Franchisor. The proposed location is subject to Franchisor's prior written approval, which will not be unreasonably withheld. In evaluating the proposed location, Franchisor will consider matters it deems material, including demographic characteristics of the proposed location, traffic patterns, parking, the predominant character of the neighborhood, the proximity to other businesses, including other Batteries Plus® stores, and other commercial characteristics, the purchase price or rental obligations and other lease terms for the proposed location, and the size of premises, appearance and other physical characteristics. Franchisor will notify Franchisee (in writing), approve or disapprove, within thirty (30) days of Franchisor's receipt of the complete site report and other materials Franchisor requests, whether a location proposed by Franchisee for the Store satisfies Franchisor's site selection criteria.

FRANCHISEE ACKNOWLEDGES AND AGREES THAT FRANCHISOR'S SELECTION OR APPROVAL OF A PROPOSED LOCATION DOES NOT REPRESENT A WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, AS TO THE SUITABILITY OF THE PROPOSED LOCATION FOR A BATTERIES PLUS STORE OR FOR ANY OTHER PURPOSE.

Franchisee agrees to complete the development and open the Store for business by \_\_\_\_\_.

3. Termination of Franchise Agreement. Franchisor has the right to terminate the Franchise Agreement, effective upon delivery of notice of termination to Franchisee, if Franchisee fails to obtain approval of a location for the Store within one hundred eighty (180) days after the date of the Franchise Agreement.

4. Defined Terms. All capitalized terms contained in this Exhibit and not defined in this Exhibit will have the same meaning as provided in the Franchise Agreement.

FRANCHISOR:

BATTERIES PLUS, L.L.C.,  
a Wisconsin limited liability company

FRANCHISEE:

(If Franchisee is a corporation or limited liability company)

\_\_\_\_\_  
Name of Corporation or limited liability company

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

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

(If Franchisee is an individual owner, Franchisee must sign below; if a partnership, all partners must sign below)

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee



**EXHIBIT B**  
**TO FRANCHISE AGREEMENT**

**COUNTERPOINT® SOFTWARE ACCESS AGREEMENT**

**BATTERIES PLUS  
COUNTERPOINT SOFTWARE ACCESS AGREEMENT**

**(For New ~~Franchisees~~Franchised Businesses)**

THIS SOFTWARE ACCESS AGREEMENT (this "Agreement"), between Batteries Plus LLC ("the Company"), and the Batteries Plus® Licensee listed at the end of this Agreement ("Licensee"), is effective as of \_\_\_\_\_, 200\_\_ (the "Effective Date").

**BACKGROUND**

A. The Company and Licensee have entered into a Franchise Agreement (the "Franchise Agreement") under which Licensee will operate a Batteries Plus® franchised business at a designated site (the "Franchised Business"). Under the Franchise Agreement, Licensee must use the software designated by the Company in operating the Franchised Business.

B. The Company has licensed from Synchronics, Inc. (the "Software Licensor") proprietary third-party software for use in point-of-sale cash registers and back-office computers for tracking, analyzing and reporting sales, inventory and other operational information, customized for use in the Franchised Business (the "Software").

C. The Company has contracted with a third-party hosting service to host the Software on a wide-area network in a data center environment that offers security, high-availability and back-up services (the "Hosting Service"). Licensee desires to access the Software through the Hosting Service for Licensee's Franchised Business.

**AGREEMENT**

In consideration of the foregoing and the agreements stated below, the parties agree as follows:

1. **ACCESS TO SOFTWARE**

A. **Grant of Access.** The Company grants to Licensee a non-transferable and non-exclusive right to access the Software through the Hosting Service for use solely in connection with the operation and management of the Franchised Business.

B. **Restrictions on Use.** Licensee may use the Software only as permitted under the terms of this Agreement. Licensee cannot use the Software for any other use, including copying or reproduction; processing of data arising other than from the internal operations of the Franchised Business; disassembling, reverse engineering, or accessing the source code of the Software; publication or disclosure; license, sublicense or re-license; alteration; or unauthorized assignment or transfer. Licensee will use its best efforts to protect the Software at all times from any unauthorized use.

C. **Multiple Locations.** This Agreement applies only to one Franchised Business location. If Licensee operates more than one Franchised Business, Licensee and the Company must enter into a separate Agreement for each Franchised Business location.

2. **HOSTING SERVICE**

A. **Connectivity.** Licensee must provide Wide Area Network (WAN) connectivity, either Internet-based or frame connection, from Licensee's site with sufficient bandwidth to meet Licensee's use demands. Licensee must use the current version of Microsoft Internet Explorer or other compatible

browser configuration specified by the Company. Licensee will comply with the Company's minimum hardware and software requirements, as disclosed and periodically updated in the Company's confidential franchise operations manuals (the "Operations Manual").

B. Uptime. The Hosting Service will provide Licensee access over the Internet or by frame connection to the Software. The Company's agreement with the Hosting Service provides for availability of the Hosting Service's network and servers 100% of each calendar month, excluding periods of scheduled maintenance, emergency maintenance, scheduled Software updates, and unavailability due to the Company or Licensee hardware, software or connectivity problems. Neither the Hosting Service, the Company, nor the Software Licensor is responsible for loss of access to the Software for reasons that are beyond their reasonable control. It is necessary that maintenance of the system be undertaken and upgrades made to the Software from time to time. Reasonable commercial efforts will be used to conduct maintenance and upgrades on a scheduled basis.

C. Security. Licensee will administer the distribution and assignment of logon identities and passwords for each user in Licensee's organization. Licensee is responsible for keeping and maintaining the security of the passwords. The Company will not be responsible for unauthorized access to Licensee's data that results from Licensee's failure to keep secure the assigned passwords.

D. Backup. All Licensee data will be backed up on a daily basis. The Hosting Service will maintain a copy of data for a reasonable period of time, not to exceed one (1) month. Neither the Company nor the Hosting Service will be liable for lost data, materials or information.

### 3. PAYMENT

A. Initial Development Fee. As further described in the Franchise Agreement, Licensee will pay to the Company a computer access and POS System development fee on or before the date Licensee commences operation of the Franchised Business.

B. Monthly Support Fee. Licensee will pay the Company a monthly software support fee (the "Support Fee") for the support and maintenance services described herein and for accessing the software. The current monthly support fee is Two Hundred Dollars (\$200). The Support Fee is calculated on a monthly basis and will be invoiced to Licensee monthly in advance. Payment is due within thirty (30) days of the invoice date. Upon execution of this Agreement, the Company will invoice Licensee for the monthly Support Fee due for the initial period beginning upon the Effective Date. Licensee is responsible for any sales, excise, use or value-added taxes applicable to the Software or this Agreement. The Company reserves the right to periodically increase the Support Fee by a reasonable amount to reflect the Company's increased costs of providing services (including those provided by third parties) and Software access under this Agreement.

### 4. SUPPORT AND MAINTENANCE

A. Company Support Services. The Company will provide the following maintenance services (directly or through the Software Licensor and/or hosting company) to Licensee during the term of this Agreement: at a minimum, help desk support from 8 a.m. to 6 p.m. central standard time, Monday-Friday, excluding holidays, to answer questions related to functionality of the Software; correcting identifiable and reproducible program errors in the Software; and providing major upgrades of the Software that are made generally available by the Software Licensor. The Company may (and currently does) provide support for additional hours and on weekend days. Help desk services are not a



substitute for training or consulting services. Training documentation is provided for Licensee to train its own employees. Training classes will also be offered for additional fees.

B. Counter Point Subscription Service. In partial consideration of the Support Fee, Licensee will be provided the benefits of the Software Licensor's "CounterPoint Subscription Service" ("CSS"). Through CSS, Licensee will receive feature enhancements and updates to the Software as they become available. If the Software Licensor discontinues offering CSS, the Company will, at its option, provide Licensee with a comparable service, reduce the Support Fee to reflect the termination of CSS or terminate this Agreement consistent with Section 10 below.

## 5. CONFIDENTIALITY

A. Confidential Information. The Company and Licensee agree that all provisions in the Franchise Agreement respecting "Confidential Information" (as defined in the Franchise Agreement) will apply to this Agreement.

B. Customer Data. The Company and Licensee agree that all provisions in the Franchise Agreement respecting "Customer Data" (as defined in the Franchise Agreement) will apply to this Agreement. The Company periodically will establish policies (the "Policies") respecting the use of and restrictions on the use of Customer Data. Each of the Company and Licensee acknowledge that some or all of the Customer Data may be confidential in nature and that some Customer Data may represent Confidential Information. The parties agree to maintain the confidentiality of such Customer Data; provided, however, that each party may use the Customer Data for purposes permitted in the Franchise Agreement and the Policies. Further, the Company will use reasonable efforts to obtain the agreement of the Hosting Service and the Software Licensor to maintain the confidentiality of the Customer Data.

## 6. INDEMNIFICATION FOR THIRD PARTY INFRINGEMENT CLAIMS

The Company agrees to extend to Licensee any assignable indemnification rights that the Software Licensor grants to the Company.

## 7. WARRANTY DISCLAIMER

THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING NON-INFRINGEMENT (EXCEPT AS PROVIDED IN SECTION 6 ABOVE), MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. LIMITATION ON DAMAGES

THE LIABILITY OF THE COMPANY TO LICENSEE WILL NOT EXCEED THE AMOUNTS LICENSEE PAYS TO THE COMPANY UNDER THIS AGREEMENT. THE COMPANY WILL NOT BE LIABLE TO LICENSEE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) RELATED TO THIS AGREEMENT OR RESULTING FROM LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, THAT ARISE FROM ANY CAUSE OF ACTION, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EVEN IF THE COMPANY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. PROPRIETARY RIGHTS

Other than the access granted under this Agreement, no right, title or interest in all or any portion of the Software is conveyed or assigned to Licensee, either expressly or by implication, under this

Agreement, including any patents, copyrights, trade secrets, trade marks, trade names, or other intellectual property associated with the Software.

10. TERM AND TERMINATION

This Agreement commences on the Effective Date and continues until the current term of the Franchise Agreement terminates or expires, unless this Agreement is earlier terminated under this Section. The Company may terminate this Agreement: (1) immediately upon written notice to Licensee if Licensee violates Sections 1(B) or 5 above; (2) if Licensee violates any provision of this Agreement (other than Section 1(B) or 5 above) and fails to cure such violation within the period of time permitted for violation of a material provision of the Franchise Agreement; (3) Licensee ceases to have the right to operate the Franchised Business; or (4) upon termination of the Company's license agreement with the Software Licensor, provided the Company offers to Licensee substitute software and services with capabilities reasonably necessary to operate the Franchised Business and Licensee agrees to sign a new license or access agreement in the form the Company reasonably directs. Upon termination of this Agreement, the Company agrees to provide Licensee with access to the Customer Data; provided, Licensee agrees not to use any Customer Data for any activity that would violate Licensee's covenants or post-termination obligations stated in the Franchise Agreement.

11. MISCELLANEOUS

A. This Agreement will be governed by the laws of the State of Wisconsin.

B. This Agreement represents the entire agreement between the parties respecting this subject matter and supersedes all prior agreements, representations, negotiations and understandings between the parties. The applicable terms of the Franchise Agreement will also control this Agreement. Licensee expressly acknowledges that a violation or default of the Franchise Agreement will constitute a default of this Agreement and any default of this Agreement will constitute a default of the Franchise Agreement. If Licensee defaults under the Franchise Agreement, the Company may pursue all remedies available to it under this Agreement or the Franchise Agreement, including the right of termination.

C. All amendments to this Agreement must be in writing and signed by both parties.

D. If any provision of this Agreement is found by a Court of competent jurisdiction to be illegal or unenforceable, then the remaining provisions will remain in full force and effect.

E. The Company may assign this Agreement to any other person or entity. Licensee may assign this Agreement only to its successor in interest under the terms of the Franchise Agreement.

F. Notices will be given to the parties at the addresses listed in the Franchise Agreement and will be deemed given as described in the Franchise Agreement.

The parties have signed this Agreement as of the date first written above.

Batteries Plus LLC:

Licensee:

\_\_\_\_\_

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

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

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

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

EXHIBIT C  
TO FRANCHISE AGREEMENT  
PRO- SOURCE SOFTWARE AGREEMENT

**BATTERIES PLUS**  
**PRO- SOURCE SOFTWARE LICENSE AGREEMENT**

THIS PRO- SOURCE AGREEMENT (this "Agreement"), between Batteries Plus LLC ("the Company"), and the Batteries Plus Licensee listed at the end of this Agreement ("Licensee"), is effective as of \_\_\_\_\_, 200\_\_ (the "Effective Date").

**BACKGROUND**

A. The Company and Licensee are parties to a Franchise Agreement, as amended if applicable (the "Franchise Agreement") under which Licensee operates a Batteries Plus® franchised business at a designated site (the "Franchised Business"). The Company owns a proprietary software program ("Pro- Source") that assists franchisees in battery cross-referencing. Licensee desires to use Pro- Source in operating the Franchised Business.

B. The Company has contracted with a third-party hosting service to host Pro- Source on a wide-area network in a data center environment that offers security, and high-availability. Licensee desires to access Pro- Source through the Hosting Service for Licensee's Franchised Business.

**AGREEMENT**

In consideration of the foregoing and the agreements stated below, the parties agree as follows:

1. **ACCESS TO PRO- SOURCE**

A. **Grant of Access.** The Company grants to Licensee a non-transferable and non-exclusive right to access Pro- Source web-site for use solely in connection with the operation and management of the Franchised Business.

B. **Restrictions on Use.** Licensee may use Pro- Source only as permitted under the terms of this Agreement. Licensee cannot use Pro- Source for any other use, including copying, reproduction, or processing of data arising other than from the internal operations of the Franchised Business. Licensee will use its best efforts to protect Pro- Source at all times from any unauthorized use.

C. **Multiple Locations.** This Agreement applies only to one Franchised Business location. If Licensee operates more than one Franchised Business, Licensee and the Company must enter into a separate Pro- Source access agreement for each Franchised Business location.

D. **Point-of-Sale.** Licensee must be using the Counterpoint Point-of-Sale (POS) System to be granted a license to use Pro- Source.

2. **HOSTING SERVICE**

A. **Connectivity.** Licensee must provide wide-area network (WAN) connectivity, either Internet-based or frame connection, from Licensee's site with sufficient bandwidth to meet Licensee's use demands. Pro- Source was designed to operate on DSL bandwidth or greater; Batteries Plus is not responsible for functionality with lesser bandwidth. Licensee must use the current version of Microsoft Internet Explorer or other compatible browser configuration specified by the Company. Licensee will comply with the Company's minimum hardware requirements for the use of Pro- Source, as disclosed and periodically updated in the Company's confidential franchise operations manuals (the "Operations Manual").

B. Security. Licensee will administer the distribution and assignment of logon identities and passwords for each user in Licensee's organization. Licensee is responsible for keeping and maintaining the security of its passwords. Licensee will change store password upon the departure of any employee who had been given a password. The Company will not be responsible for unauthorized access to Licensee's data that results from Licensee's failure to keep secure its assigned passwords. The Company will use its best efforts to obtain the agreement of the Hosting Service to establish security protocols that prevent one licensee from accessing the data of any other licensee. In addition, the Company will administer the distribution and assignment of logon identities and passwords for each user within the Company. The Company is responsible for keeping and maintaining the security of the passwords the Company issues to its employees and agents. The Company will be responsible for unauthorized access to Licensee's data that results from the Company's failure, due to gross negligence or willful misconduct, to keep secure its assigned passwords.

### 3. PAYMENT

~~As further described in the Franchise Agreement, Licensee will pay to the Company a computer access fee on or before the date Licensee commences operation at the Franchised Business.~~

### 4. 3-MAINTENANCE SERVICES; UPDATES

A. A. The Company will provide the following maintenance services (directly or through the Hosting Service) to Licensee during the term of this Agreement: Help desk support from 7:30 AM to 5:30 PM Central Standard Time, Monday-Friday, excluding holidays, to answer questions related to functionality of Pro- Source; and correcting identifiable and reproducible program errors in Pro- Source. The Company has established and will maintain an email account ([prosource@batteriesplus.com](mailto:prosource@batteriesplus.com)) for communications purposes.

B. B. The Company may, in its sole discretion, periodically release updates, modifications and enhancements respecting Pro- Source. Licensee will install any fixes, updates, modifications or enhancements which the Company designates as mandatory. The Company may charge a reasonable fee for its services, including any services or expenses relating to updates, modifications, and enhancements to Pro- Source which it elects to release.

### 5. 4-CONFIDENTIAL INFORMATION

The Company and Licensee agree that all provisions in the Franchise Agreement respecting "Confidential Information" (as defined in the Franchise Agreement) will apply to Pro- Source, Licensee's use of Pro- Source and data stored on or collected from Pro- Source. The Company will use reasonable efforts to obtain the agreement of the Hosting Service to maintain the confidentiality of all Confidential Information in its possession.

### 6. 5-INDEMNIFICATION FOR THIRD PARTY INFRINGEMENT CLAIMS

A. The Company agrees to extend to Licensee any assignable indemnification and warranty rights that the Hosting Service grants to the Company.

B. The Company does not have actual knowledge of any claim that Pro- Source infringes upon a third party's patent, copyright or other proprietary right. If a third party asserts such an infringement claim against Licensee, Licensee will immediately notify the Company in writing. The Company will have the right (but not the obligation) to defend any such claim, at the Company's expense, and Licensee will cooperate with the Company with respect to such defense. In the event of any such claim, Licensee will, at the Company's direction, immediately discontinue using Pro- Source. The

Company will either modify Pro- Source so as to ~~re-~~make it non-infringing or replace Pro- Source with such other non-infringing software as the Company may furnish to Licensee. In either case, the Company will do so only if the modified or replacement software performs substantially the same functions as the infringing software. So long as Licensee complies with the terms hereof, the Company will indemnify Licensee for any loss, damage, cost or expense related to such claim.

C. The Company will not be liable to Licensee if an infringement claim is based on use of Pro- Source in combination with any product, software or system not delivered by the Company, or Licensee's unauthorized use or modification of Pro- Source.

7. ~~6-~~WARRANTY DISCLAIMER

THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING NON-INFRINGEMENT (EXCEPT AS PROVIDED IN SECTION ~~5~~6 ABOVE), MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. ~~7-~~LIMITATION ON DAMAGES

THE LIABILITY OF THE COMPANY TO LICENSEE WILL NOT EXCEED THE AMOUNTS LICENSEE PAYS TO THE COMPANY UNDER THIS AGREEMENT. THE COMPANY WILL NOT BE LIABLE TO LICENSEE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) RELATED TO THIS AGREEMENT OR RESULTING FROM LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, THAT ARISE FROM ANY CAUSE OF ACTION, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EVEN IF THE COMPANY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

9. ~~8-~~PROPRIETARY RIGHTS

Other than the access granted under this Agreement, no right, title or interest in all or any portion of Pro- Source is conveyed or assigned to Licensee, either expressly or by implication, under this Agreement, including any patents, copyrights, trade secrets, trademarks, trade names, or other intellectual property associated with Pro- Source.

10. ~~9-~~TERM AND TERMINATION

A. Term and Termination. This Agreement commences on the Effective Date and continues until the current term of the Franchise Agreement terminates or expires, unless this Agreement is earlier terminated under this Section. The Company may terminate this Agreement: (1) immediately upon written notice to Licensee if Licensee violates Sections 1(B) or ~~4~~5 above; (2) if Licensee violates any provision of this Agreement (other than Section 1(B) or ~~4~~5 above) and fails to cure such violation within the period of time permitted for violation of a material provision of the Franchise Agreement; (3) if Licensee ceases to have the right to operate the Franchised Business or a violation of the Franchise Agreement; or (4) upon ninety (90) days' written notice from the Company that it intends to discontinue use of or replace Pro- Source.

11. ~~10-~~MISCELLANEOUS

A. This Agreement will be governed by the laws of the State of Wisconsin.

B. This Agreement represents the entire agreement between the parties respecting this subject matter and supersedes all prior agreements, representations, negotiations and understandings

between the parties. The applicable terms of the Franchise Agreement will also control this Agreement. Licensee expressly acknowledges that a violation or default of the Franchise Agreement will constitute a default of this Agreement and any default of this Agreement will constitute a default of the Franchise Agreement. If Licensee defaults under the Franchise Agreement, the Company may pursue all remedies available to it under this Agreement or the Franchise Agreement, including the right of termination.

C. All amendments to this Agreement must be in writing and signed by both parties.

D. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, then the remaining provisions will remain in full force and effect.

E. The Company may assign this Agreement to any other person or entity. Licensee may assign this Agreement only to its successor in interest under the terms of the Franchise Agreement.

F. Notices will be given to the parties at the addresses listed in the Franchise Agreement and will be deemed given as described in the Franchise Agreement.

The parties have signed this Agreement as of the date first written above.

Batteries Plus LLC:

Licensee:

\*Location: \_\_\_\_\_

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

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

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

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

\*If multiple locations please copy this page and submit one signed agreement per location.



**EXHIBIT D**  
**TO FRANCHISE AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

## EXHIBIT D

### **GUARANTY AND ASSUMPTION OF OBLIGATIONS**

In consideration of the execution of that certain Franchise Agreement of even date (the "Agreement") by Batteries Plus, L.L.C. (the "Franchisor"), each of the undersigned (a "Guarantor") personally and unconditionally guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement that \_\_\_\_\_ (the "Franchisee") will timely pay and perform each and every undertaking, agreement and covenant stated in the Agreement; and agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement.

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertaking; (2) notice of demand for payment of any indebtedness; (3) protest and notice of default to any party respecting the indebtedness; (4) any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability.

Each Guarantor consents and agrees that:

(1) Guarantor's liability under this undertaking will be direct and independent of the liability of, and will be joint and several with, Franchisee and the other Guarantors of Franchisee;

(2) Guarantor will make any payment or perform any obligation required under the Franchise Agreement upon demand if Franchisee fails to do so;

(3) Guarantor's liability hereunder will not be diminished or relieved by bankruptcy, insolvency or reorganization of Franchisee or any assignee or successor;

(4) Guarantor's liability will not be diminished, relieved or otherwise affected by any extension of time or credit which Franchisor may grant to Franchisee, including the acceptance of any partial payment or performance, or the compromise or release of any claims;

(5) Franchisor may proceed against Guarantor and Franchisee jointly and severally, or Franchisor may, at its option, proceed against Guarantor, without having commenced any action, or having obtained any judgment against Franchisee or any other Guarantor; and

(6) Guarantor will pay all reasonable attorneys' fees and all costs and other expenses Franchisor incurs in enforcing this Guaranty against Guarantor or any negotiations relative to the obligations hereby guaranteed.

IN WITNESS WHEREOF, each of the undersigned has signed this Guaranty as of the same day and year as the Agreement was executed.

GUARANTOR(S)

PERCENTAGE OWNERSHIP IN FRANCHISEE

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