

**EXHIBIT A TO THE OFFERING CIRCULAR
FRANCHISE AGREEMENT**







**HUNTINGTON LEARNING CENTERS, INC.
FRANCHISE AGREEMENT**





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This HUNTINGTON LEARNING CENTERS, INC. FRANCHISE AGREEMENT (the "Agreement") is made this date, _____ (the "Agreement Date") between HUNTINGTON LEARNING CENTERS, INC. ("Franchisor" or "Huntington"), a corporation incorporated in Delaware and you, the Franchisee, _____ a (in the following space, insert one of individual(s), corporation, partnership, or limited liability company) _____. Except as otherwise provided in this Agreement, the term (the "Term") of this Agreement begins on the Agreement Date and ends on _____ (the "Expiration Date"). "You" and "Franchisee" as used in this Agreement mean the individuals, corporation, partnership, or limited liability company referred to as the Franchisee in this paragraph of this Agreement.

Based upon the representations, warranties, and covenants in this Agreement and subject to this Agreement, you and the Franchisor agree as follows:

1. DEFINED TERMS

- 1.1. **ACT.** "ACT" refers to the ACT Assessment, a standardized college admissions test created by ACT, Inc. ACT is a registered trademark of ACT, Inc.
- 1.2. **Acts.** "Acts" shall mean any acts, omissions, or failures to act of you or of your employees or agents in connection with, or arising from, your Franchised Center; any acts, omissions, failures to act, transmission of information, or failures to transmit information to, for, or on behalf of, your customers, employees, agents, vendors, and others by you, your employees, or your agents in connection with, or arising from, your Franchised Center; any acts, omissions, or failures to act of you, your employees, or agents arising out of your possession, ownership, or operation of your Franchised Center or its furniture, fixtures, or equipment; and the sale or rendition of services, materials, goods, or products used or sold at, or from, your Franchised Center.
- 1.3. **Advertising Fee.** The "Advertising Fee" is the non-refundable fee you are required to pay monthly to the Franchisor as described in Paragraph 12.2 below.
- 1.4. **ADA.** The "ADA" shall mean the Americans with Disability Act, as amended.
- 1.5. **Advertising Fund.** The "Advertising Fund" is a fund created by the Franchisor to pay the expenses of promoting and enhancing the value, general public recognition, and acceptance of the Marks.
- 1.6. **Affiliate.** An "affiliate" shall mean an entity or person controlling, controlled by, or under common control with, another entity or person.
- 1.7. **Agreement.** The "Agreement" shall mean this franchise agreement between you and the Franchisor.
- 1.8. **Agreement Date.** The "Agreement Date" shall mean the date as set forth in the opening paragraph of this Agreement.
- 1.9. **Approved Location.** The "Approved Location" is the location from where you will operate the Franchised Center; is subject to the Franchisor's approval; and is set forth in Exhibit A to this Agreement.
- 1.10. **Association.** An "Association" is a group formed by the Franchisor composed of Huntington Learning Centers operated by you, other franchisees, the Franchisor, or the Franchisor's affiliates in a geographic area designated by the Franchisor.



- 1.11. **CITA.** "CITA" is the Commission on International and Trans-Regional Accreditation, or its successor organization, if any, as determined by the Franchisor and as described in the Manual.
- 1.12. **Continuing Royalty.** The "Continuing Royalty" is a non-refundable fee you must pay to the Franchisor each month, as described in Paragraph 6.2 below.
- 1.13. **Cooperative Advertising Fee.** A "Cooperative Advertising Fee" is a non-refundable fee imposed by an Association, as described in Paragraph 12.3 below.
- 1.14. **Cure Period.** "Cure Period" shall mean the period of time, not less than 60 days, during which the Franchisor shall have the right to correct any default alleged by you under this Agreement as set forth in a written default notice provided to the Franchisor under the terms of Paragraph 24.2 below.
- 1.15. **Discovery Conference Call.** A "Discovery Conference Call" is a Franchisor-organized conversation among franchisees and prospective franchisees.
- 1.16. **Exam Preparation Service.** "Exam Preparation Service" is tutoring provided personally to customers attending a Huntington Learning Center to prepare them for standardized entrance examinations, including, without limitation, the SAT and ACT, or such other standardized examinations as may be determined by the Franchisor from time to time.
- 1.17. **Exclusive Area.** The "Exclusive Area" shall mean that geographic area, if any, about or around your Approved Location as determined by you and the Franchisor and that is set forth in Exhibit A to this Agreement. The Exclusive Area shall not include any geographic area in the territory of any other franchisee operating under a franchise agreement with the Franchisor in which a territory has been granted (unless otherwise permitted by the Franchisor in writing).
- 1.18. **Expiration Date.** The "Expiration Date" shall mean the date on which the Term of this Agreement ends, as set forth in the opening paragraph of this Agreement.
- 1.19. **Franchised Center.** The "Franchised Center" is the Huntington Learning Center you shall operate under this Agreement.
- 1.20. **Franchisee.** "Franchisee" shall mean you, the individual(s), corporation, partnership, or limited liability company referred to in the opening paragraph of this Agreement.
- 1.21. **Franchisee Council.** A "Franchisee Council" is an association or group of persons formed by the Franchisor pursuant to Paragraph 8.13 below.
- 1.22. **Franchisee Member.** "Franchisee Member" shall mean each owner of any interest, directly or indirectly, in any corporation, partnership, or limited liability company that is the Franchisee.
- 1.23. **Franchisor.** The "Franchisor" shall mean Huntington Learning Centers, Inc., as set forth in the opening paragraph of this Agreement.
- 1.24. **Gross Revenue.** "Gross Revenue" shall mean all received and accrued revenue, including cash, cash equivalents, and credit, derived directly or indirectly from all business conducted with the use of the Marks or System or upon, from, or with, your Franchised Center, whether evidenced by check, cash, credit, charge, exchange, or otherwise and whether for services or products provided or to be provided. Gross Revenue shall not be offset by any expense; however, Gross Revenue shall not include sales or similar tax



that, by law, is chargeable to customers (if such taxes are separately stated and charged to the customer, paid by the customer, and paid to the appropriate taxing authority by you) or any documented refund given to customers by you in good faith.

- 1.25. **Guarantor.** "Guarantor" shall mean each person who signs the Guarantee Agreement attached as Exhibit B to this Agreement.
- 1.26. **Huntington Advertising Fund, Inc.** The "Huntington Advertising Fund, Inc." shall mean Huntington Advertising Fund, Inc., the entity that controls and determines the manner in which the monies in the Advertising Fund are expended.
- 1.27. **Huntington Learning Center.** A "Huntington Learning Center" is a business operated under the Marks and the System at a physical location attended by customers.
- 1.28. **Huntington Services.** "Huntington Services" are those services and products, described in the Manual or authorized in writing by the Franchisor from time to time, that are provided personally to customers attending a Huntington Learning Center, including, without limitation, Learning Center Services and Exam Preparation Services. Huntington Services do not include School Services, as defined herein.
- 1.29. **Incapacity.** "Incapacity" shall mean the death or physical or mental incapacity of any person with an interest in this Agreement, in you, or in all or substantially all of the assets of your business operated under this Agreement.
- 1.30. **Initial Franchise Fee.** The "Initial Franchise Fee" shall mean the non-refundable fee in the amount set forth in Paragraph 6.1 below.
- 1.31. **Learning Center Service.** "Learning Center Service" is individualized instruction in reading, phonics, study skills, mathematics, and related areas provided personally to customers attending a Huntington Learning Center.
- 1.32. **Local Media.** "Local Media" shall mean advertising media that claim circulation in an area (including, without limitation and by way of example, a town, county, an area located in a ZIP code, or other geographic area) in which the Premises are located, and shall include, without limitation and by way of example, direct mail, newspapers, magazines, and television, radio, and cable stations, as determined by the Franchisor from time to time. Any dispute about Local Media, including, without limitation, any dispute about definition or interpretation, shall be resolved by the Franchisor, in its sole discretion.
- 1.33. **Major Upgrade.** A "Major Upgrade" shall include structural changes, installation of new equipment, remodeling, and decoration of the Premises. Any dispute about Major Upgrades, including, without limitation, any dispute about definition or interpretation, shall be resolved by the Franchisor, in its sole discretion.
- 1.34. **Manager.** The "Manager" is the individual primarily responsible for the day-to-day management of your Franchised Center.
- 1.35. **Manual.** The "Manual" is the written description of the System, and of mandatory standards, specifications, policies, and procedures imposed by the Franchisor, and relating to, the Marks and System.
- 1.36. **Marks.** The "Marks" are certain trade names, service marks, trademarks, logos, emblems, trade dress, and indicia of origin, including, without limitation, the mark, "Huntington Learning Center", as are now



designated or as may in the future be designated by the Franchisor in writing for use in connection with the System. The System is identified by the Marks.

- 1.37. **Phone Number.** The "Phone Number" is the telephone number, 1-800-226-5327, or such other telephone number(s) as the Franchisor may designate from time to time in the Manual or in writing.
- 1.38. **Premises.** "Premises" shall mean the interior and exterior physical location of your Franchised Center.
- 1.39. **Primary Franchisee Member.** The "Primary Franchisee Member" is a Franchisee Member with at least a 20% ownership interest in you, as described in Paragraph 8.6 below and identified in Exhibit I.
- 1.40. **Renewal Agreement.** The "Renewal Agreement" is the Franchisor's then-current franchise agreement and all additional agreements and exhibits then required by the Franchisor at the time you renew the rights under this Agreement, which will supersede this Agreement in all respects and the terms of which may differ substantially from the terms of this Agreement, as described more fully in Paragraph 3.1 below.
- 1.41. **Renewal Franchise Fee.** The "Renewal Franchise Fee" is the non-refundable fee in the amount set forth in Paragraph 3.1 below.
- 1.42. **Renewal Notice.** "Renewal Notice" shall mean your written notice informing the Franchisor of your decision to exercise your renewal option according to Paragraph 3.1 below.
- 1.43. **Renewal Notice Deadline.** "Renewal Notice Deadline" shall mean the date that is 180 days prior to the Expiration Date.
- 1.44. **SAT.** "SAT" refers to the SAT I, a standardized college admissions tests created by the College Board, Inc. SAT is a registered trademark of the College Board.
- 1.45. **School Services.** "School Services" are those educational services provided in connection with any local, state, or federal government program, including, without limitation, the federal No Child Left Behind Act of 2001, as amended, which services may be provided at a Huntington Learning Center or any other location by the Franchisor or any of its affiliates or by any franchisee of the Franchisor or of any of its affiliates.
- 1.46. **Site Selection Area.** The "Site Selection Area" is the geographic area or boundaries set forth in Exhibit A to this Agreement within which you shall obtain an Approved Location for your Franchised Center if, as of the Agreement Date, you have not already obtained an Approved Location.
- 1.47. **Software.** "Software" shall mean the software you must license from the Franchisor under the Franchisor's then-current, non-exclusive software license agreement.
- 1.48. **System.** The "System" is the learning center and exam preparation format and operating system designed to provide uniform, high quality instruction in a personal and professional manner on which the Franchisor has expended time, effort, and money to develop. The System consists of uniform standards and procedures for the marketing and operation of, and procedures, business practices, and management methods for, a Huntington Learning Center, which include use of the Marks and the offer and sale of Huntington Services; preparation of customer and school contacts lists; student testing and instructional materials; procedures for student administration; sales and marketing materials, curricula and instructional materials; computer software; procedures for staff recruitment and training; training for you and your full-time or part-time employees; standards and specifications for inventory, supplies, equipment, furniture, and



fixtures for your Franchised Center; standards and specifications for the construction and decoration of your Franchised Center; promotional materials; marketing and advertising techniques and materials; design specifications; and accounting, business, and administrative systems (including, without limitation, accounting, bookkeeping, payroll, cash control, and finance procedures and systems); all of which may be changed, improved, and further developed by the Franchisor from time to time. The Franchisor has the right, in its sole and absolute discretion, to supplement, modify, and delete from, the System at any time; and, upon written notice to you, you agree promptly to comply with all requirements of the Franchisor in that regard, including, without limitation, offering and selling new products and services as the Franchisor specifies.

1.49. **Term.** "Term" shall mean the term of this Agreement as set forth in the opening paragraph of this Agreement.

1.50. **Transfer.** "Transfer" shall mean the direct, indirect, or contingent sale, assignment, transfer, conveyance, gift, pledge, mortgage or other encumbrance (whether by or among any of your Franchisee Members or others and whether by agreement or by law) of any interest in the Franchisee, this Agreement, any asset of your Franchised Center, any share of stock in a corporate Franchisee, any membership interest in a limited liability company Franchisee, or any partnership interest in a partnership Franchisee.

1.51. **Transfer Fee.** A "Transfer Fee" is a fee payable to the Franchisor as described in Paragraph 14 below in the event of a Transfer.

1.52. **Transferee.** "Transferee" shall mean any person or entity to whom any Transfer is made under this Agreement.

1.53. **Web Site.** The "Web Site" shall mean a World Wide Web site the Franchisor has the right, but not the obligation, to establish and maintain, as described in Paragraph 12 below. Any dispute about the Web Site, including, without limitation, any dispute about definition or interpretation, shall be resolved by the Franchisor, in its sole discretion.

1.54. **You.** The term, "you", shall mean the Franchisee, the individual(s), corporation, partnership, or limited liability company referred to in the opening paragraph of this Agreement.

2. GRANT

2.1. The Franchisor grants to you, and you accept, the limited right and obligation, subject to the terms of this Agreement and solely during the Term of this Agreement:

- 2.1.1. To establish and operate a Franchised Center at the Approved Location;
- 2.1.2. To use the System solely at your Franchised Center;
- 2.1.3. To use the Marks as described herein; and
- 2.1.4. To market Huntington Services in any geographic area, except (a) in the territory of any other franchisee operating under a Huntington franchise agreement in which a territory has been granted (unless otherwise permitted by the Franchisor in writing), or (b) as otherwise restricted herein.

2.2. The Franchisor will not establish or operate, or license any other party to establish or operate, a Huntington Learning Center within the Exclusive Area during the Term of this Agreement.

2.3. You acknowledge and agree that this Agreement does not grant you any right to provide School Services at any time or at any location.



3. **RENEWAL**

3.1. **Renewal.** Subject to the conditions in this Paragraph 3.1, you will have the right to renew the rights under this Agreement for unlimited consecutive terms of 10 years each. Each of the following conditions shall be met prior to your renewal, each of which is a material condition to your right to renew described in this Paragraph 3.1:

- 3.1.1. No later than 180 days before the Expiration Date, but not more than 240 days before the Expiration Date, you shall give the Franchisor a Renewal Notice;
- 3.1.2. During the Term of this Agreement, you shall not have received four or more notices of a material default under this Agreement (whether cured or not) of any obligation in this Agreement, or any other agreement between you or any of your affiliates and the Franchisor or any of its affiliates. Without any further notice to you, upon your receipt of a fourth notice of such default, you will have waived conclusively your right to renew this Agreement under this Paragraph 3.1;
- 3.1.3. During the Term of this Agreement, you shall have satisfied fully all monetary and all other obligations to the Franchisor and its affiliates within the time periods required by the Franchisor and its affiliates;
- 3.1.4. Before the Renewal Notice Deadline, you and your staff shall have completed any initial and ongoing training the Franchisor is requiring for its then-current franchisees, or you shall have made arrangements to comply fully with such requirements within a time period and in a manner satisfactory the Franchisor. You acknowledge you may have to make substantial expenditures for such training;
- 3.1.5. Before the Renewal Notice Deadline, you shall have upgraded your Franchised Center to comply fully with the Franchisor's then-current standards and specifications, including, without limitation, standards for insurance, location, location lease, signs, graphics, curriculum, furniture, fixtures, equipment (including, without limitation and by way of example, Internet, telecommunications equipment, computer equipment, audio and video equipment, and related software), computer and other software, and leasehold improvements, or you shall have made arrangements to comply fully with such standards and specifications within a time period and in a manner satisfactory to the Franchisor. The Franchisor does not represent it will review or cause others to review your lease or any proposed lease you provide to the Franchisor; however, if the Franchisor conducts any review of any lease or proposed lease you provide to the Franchisor, you agree to pay to the Franchisor or its designee all its attorneys' and accountants' fees and expenses related to any such lease review. You acknowledge you may have to make substantial expenditures for such upgrading;
- 3.1.6. Before the Expiration Date, you pay to the Franchisor or its designee a non-refundable Renewal Franchise Fee, plus all its attorneys' and accountants' fees and expenses related to the renewal that are incurred by the Franchisor. The Renewal Franchise Fee shall be:
 - 3.1.6.1. \$6,000 if Gross Revenue at the Franchised Center during the 12 complete months immediately preceding the Renewal Notice Deadline was greater than or equal to \$600,000;



- 3.1.6.2. \$12,000, if Gross Revenue at the Franchised Center during the 12 complete months immediately preceding the Renewal Notice Deadline was greater than, or equal to \$400,000, but less than \$600,000; or
- 3.1.6.3. The greater of (a) \$20,000 or (b) 50% of the Franchisor's then-current initial franchise fee, if Gross Revenue at the Franchised Center during the 12 complete months immediately preceding the Renewal Notice Deadline was less than \$400,000, providing the Franchisor agrees, in its sole discretion and without obligation, to waive the minimum Gross Revenue requirement set forth in Paragraph 4.8 below;
- 3.1.7. Before the Expiration Date, you execute the Renewal Agreement, which shall supersede completely this Agreement and may contain terms, obligations, continuing royalty, advertising fee, and other fees and expenses that are significantly different from, in addition to, or less favorable to you than, those in this Agreement, including, without limitation, a smaller exclusive area as determined by the Franchisor. The Renewal Agreement shall not require payment of an initial franchise fee in addition to the Renewal Franchise Fee. If you renew as described in this Paragraph 3.1, the Franchisor shall execute the Renewal Agreement and, after the Expiration Date, shall deliver one fully executed copy to you;
- 3.1.8. Before the Renewal Notice Deadline, you shall supply the Franchisor with evidence satisfactory to it of your compliance with the Franchisor's then-current qualification requirements and all other requirements, including, without limitation, insurance, location lease, signs, graphics, curriculum, furniture, fixtures, equipment (including, without limitation and by way of example, Internet, telecommunications equipment, computer equipment, audio and video equipment, and related software), computer and other software, and leasehold improvements;
- 3.1.9. Before the Renewal Notice Deadline, you shall present evidence satisfactory to the Franchisor that you have the right to remain in possession of the Premises of the Franchised Center for at least the first 36 complete months of the renewal term or shall obtain the Franchisor's approval of a new location for the Franchised Center for the duration of the renewal term;
- 3.1.10. You and each of your Franchisee Members and Guarantors shall execute the Franchisor's then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents, when you give the Franchisor the Renewal Notice and when you execute the Renewal Agreement, to the extent not prohibited by applicable law. You agree the requirements of this Paragraph 3.1.9 to provide the Franchisor with a release when you give the Franchisor the Renewal Notice and when you execute the Renewal Agreement are material conditions to your renewal and your failure to comply with these requirements will terminate your right to renew this Agreement; and
- 3.1.11. Your Gross Revenue shall have equaled or exceeded \$400,000 for the 12 complete months immediately preceding the Renewal Notice Deadline. In addition to, and without limiting, the foregoing, your Gross Revenue shall have equaled or exceeded \$400,000 for each complete 12-month period following the fifth anniversary date of the Agreement Date; provided, however, if you are the transferee of a Huntington franchise agreement, the requirements of this Paragraph 3.1.11 shall apply following the first anniversary of the Agreement Date; and, if you are renewing a Huntington franchise agreement, the requirements of this Paragraph 3.1.11 shall apply as of the Agreement Date.

3.2. Option for Additional Franchised Center. If you renew as required in this Agreement and if your



Renewal Agreement's exclusive area is smaller than the Exclusive Area granted in this Agreement, then, providing (a) your Gross Revenue shall have equaled or exceeded \$400,000 for each 12-month period following the fifth anniversary date of the Agreement Date; and (b) during the Term of this Agreement, you did not receive four or more notices of a material default under this Agreement (whether cured or not) of any obligation in this Agreement, or any other agreement between you or any of your affiliates and the Franchisor or any of its affiliates, then the Franchisor shall grant you the limited, non-transferable right to obtain franchise rights, within a site selection area determined solely by the Franchisor, for one Huntington Learning Center in the geographic area comprised of the difference between the Renewal Agreement's exclusive area and the Exclusive Area granted in this Agreement, subject to the following conditions, each of which is a material condition to your execution of the right described in this Paragraph 3.1.11:

- 3.2.1. You and the Franchisor execute the Franchisor's then-current franchise agreement and all additional agreements and exhibits then required by the Franchisor for said Huntington Learning Center within 180 days of the Franchisor's execution of the Renewal Agreement; and you pay in full all fees in connection with such agreements. The franchise agreement for said Huntington Learning Center may contain terms, obligations, continuing royalty, advertising fee, and other fees significantly different from, in addition to, and less favorable to you than, those in this Agreement, including, without limitation, no exclusive area or a smaller exclusive area than granted in this Agreement as determined solely by the Franchisor. You and each of your Franchisee Members and Guarantors shall execute the Franchisor's then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents, releasing any and all claims against the Franchisor and its affiliates, and their respective present and past officers, directors, shareholders, agents, and employees, to the extent not prohibited by applicable law.
- 3.2.2. Recognizing that time is of the essence, if you do not timely execute the Franchisor's then-current franchise agreement, general release (to the extent not prohibited by applicable law), and all additional agreements and exhibits then required by the Franchisor for such Huntington Learning Center within 180 days of the Franchisor's execution of the Renewal Agreement and pay in full all fees in connection with such agreements, the right granted to you under this Paragraph 3.1.11 shall terminate upon the end of the 180th day after the Franchisor's execution of the Renewal Agreement and the Franchisor and its affiliates have the right anytime thereafter to operate or franchise Huntington Learning Centers at any location outside the Renewal Agreement's exclusive area.
- 3.3. **Non-renewal.** If, for any reason, this Agreement expires or is terminated or you do not timely fulfill each and all of the conditions to renewal as described in this Paragraph 3, your renewal option shall terminate immediately as of the date of the expiration or termination of this Agreement. Upon such termination or expiration, you shall comply fully with all the terms and conditions of this Agreement that survive its termination or expiration, including, without limitation, Paragraph 16 below.

4. **FRANCHISED CENTER**

- 4.1. **Approved Location.** You must operate the Franchised Center only at the Approved Location set forth in Exhibit A to this Agreement. If, at the time of execution of this Agreement, the Franchisor has not approved a location for the Franchised Center, you and the Franchisor shall agree on a geographic area or boundaries, set forth in Exhibit A, within which the Approved Location shall be located, as described in this Paragraph 4.
- 4.2. **Location Lease.** You must purchase, lease, or sublease the Premises for your Franchised Center. Within 10 days after you execute any lease or sublease for the Premises, you shall deliver a copy of such lease or



sublease to the Franchisor, together with a fully-executed copy of the Franchisor's then-current form of landlord authorization. You shall be solely responsible for your lease or sublease and to perform all of your obligations under such lease or sublease and for any breach of it. You shall comply with all terms of such lease or sublease, and all other agreements affecting the operation of the Franchised Center; shall undertake best efforts to maintain a good and positive working relationship with your landlord or lessor or both; and shall refrain from any activity that may jeopardize your right to remain in possession of, or to renew the lease or sublease for, the Premises. You shall not terminate, renew, amend, modify, or assign such lease or sublease, or sublet the Premises, without first obtaining the Franchisor's written approval. In any lease of the Premises, you shall not obligate the Franchisor, grant any rights against the Franchisor, or agree to anything inconsistent with this Agreement. You shall give the Franchisor copies of all proposed modifications to any lease of your Premises, and, when executed, copies of such modifications. Within 10 days of your receipt of any written notice you receive from your landlord or lessor, including, for example, any notice of any violation of any lease, you shall deliver a copy of such notice to the Franchisor. The Franchisor does not represent it will review or cause others to review your lease or any proposed lease you provide to the Franchisor; however, if the Franchisor conducts any review of any lease or proposed lease you provide to the Franchisor, you agree to pay to the Franchisor or its designee all its attorney's and accountants' fees and expenses related to any such lease review.

- 4.3. **Location Renovation, Construction, and Signs.** Before commencing any renovation or construction of the Franchised Center, you, at your expense, shall employ a qualified architect or engineer to prepare preliminary and final architectural drawings and specifications of the Premises in accordance with the Franchisor's standard plans, the Manual, and drawings approved by the Franchisor. You acknowledge that such plans and approved drawings shall not contain the requirements of any federal, state or local law, code or regulation (including, without limitation, those concerning the ADA or similar rules governing public accommodations or commercial facilities for persons with disabilities). You shall not construct or decorate your Premises, or construct or affix any interior or exterior signage for the Premises, using any drawings not approved in writing by the Franchisor. You shall submit any and all drawings for construction, decoration, and signage to the Franchisor for its prior, written approval. The Franchisor has 30 days to approve your drawings in writing. If the Franchisor does not approve your drawings in writing within such 30 days, they are deemed disapproved. The drawings and specifications shall not thereafter be changed or modified without the prior written approval of the Franchisor. You shall be solely responsible, at your expense, to conform the Premises to local ordinances and building codes, the ADA, and to obtain all zoning classifications, permits, and clearances, including, without limitation, health, sanitation, building, utility, and sign permits, or certificates of occupancy, that may be required by federal, state, or local laws, ordinances, or regulations, or that may be necessary or advisable owing to any restrictive covenants relating to the Premises or required by the lessor. You agree to pay to the Franchisor or its designee all its out-of-pocket architectural fees and expenses related to any review of the architectural drawings and specifications of the Premises conducted by the Franchisor. The Franchisor does not warrant or represent that any design specifications for a Huntington Learning Center comply with any building, disability, ADA, zoning, or other requirement, rule, or regulation imposed by any law or governmental agency, and you agree to comply with all such laws and requirements. The Franchisor's approval shall not relate to your obligations with respect to any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Franchised Center, which shall be your sole responsibility.

- 4.4. **Opening; Continuous Operation.** Unless you are renewing a Franchise Agreement, you shall identify an Approved Location and open your Franchised Center within 180 days after the Agreement Date; provided, however, that you may request in writing a one-time extension of this 180-day period, to which the Franchisor will not unreasonably withhold its written consent. In connection with any such extension granted by the Franchisor, you and each of your Franchisee Members and Guarantors shall execute the



Franchisor's then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents, releasing any and all claims against the Franchisor and its affiliates, and their respective present and past officers, directors, shareholders, agents, and employees, to the extent not prohibited by applicable law. The length of any such extension granted will be determined by the Franchisor, in its sole discretion, and shall in no event be greater than 90 days. You shall obtain the Franchisor's written approval before opening the Franchised Center. You agree that time is of the essence in the opening of the Franchised Center. You shall operate your Franchised Center from the Approved Location continually during the Term of this Agreement, except as described in Paragraph 4.7 below. Before opening the Franchised Center; after any renovation, as described in Paragraph 4.5 below; and after any relocation, as described in Paragraph 4.7 below, you shall execute and deliver to Huntington an ADA Certification in the form attached to this Agreement as Exhibit C, to certify to the Franchisor that the Franchised Center and any proposed renovations comply with the ADA.

4.5. Maintenance; Refurbishment.

4.5.1. You shall maintain in good condition and in excellent repair, continually during the Term of this Agreement, the Premises (including, without limitation, its fixtures and utilities), the furniture, fixtures, and equipment in and on the Premises (including, without limitation and by way of example, computers, computer and other software, telephones, video conference equipment, Internet, telecommunications and other communications equipment, furniture, and furnishings), and the signs in and at your Franchised Center. You shall adhere to all standards, specifications, and procedures at your Franchised Center for its signs, furnishings, furniture, fixtures, and equipment as described in the Manual, or as otherwise required by the Franchisor in writing from time to time.

4.5.2. The Franchisor has the sole and absolute right, at any time, to modify, add to, or delete from, the standards, specifications, policies, and procedures for signs, furnishings, furniture, fixtures, and equipment for the Franchised Center to conform to the building design, trade dress, color schemes, and presentation of the Marks in a manner consistent with the then-current image for Huntington Learning Centers. If the Franchisor modifies, adds to, or deletes from, these standards, specifications, and procedures, you shall promptly upgrade, refurbish, and improve the Premises, the signs in and at your Franchised Center, and the furniture, fixtures, and equipment in and about your Franchised Center as required by the Franchisor in writing, and discontinue the use of any unauthorized signs, furnishings, furniture, fixtures, or equipment.

4.5.3. During the Term of this Agreement, the Franchisor will not require you to make a Major Upgrade more than once every 3 years. If the Franchisor requires any Major Upgrade during the last 2 years of the Term of this Agreement, you will not be required to make such Major Upgrade, if you provide written notice, in the form and manner required by the Franchisor, to the Franchisor within 30 days of the Franchisor's notice of the required Major Upgrade that you conclusively and unconditionally waive your right to renew this Agreement.

4.5.4. Maintenance, refurbishment, modification, and upgrading of your Premises shall be at your sole cost and expense. You acknowledge that you may have to make substantial expenditures for this maintenance, refurbishment, modification, and upgrading.

4.6. **Damage to your Franchised Center.** If the Premises are damaged or destroyed or need repair or reconstruction, you shall promptly repair or reconstruct the Premises in compliance with the terms of Paragraph 4 hereof.



4.7. **Relocation.** Any request by you to relocate the Franchised Center shall be in writing and shall be accompanied by payment to the Franchisor of the Franchisor's then-current, non-refundable relocation fee. You shall not relocate your Franchised Center without the prior written approval of the Franchisor, provided, however, the Franchisor has the absolute right to refuse to approve any relocation (a) for any reasonable business reason; (b) if you are in default of this Agreement; or (c) if you or any of your affiliates are in default of any agreement between you or any of your affiliates or the Franchisor or any of its affiliates. The Franchisor has the absolute right to refuse to approve any relocation of your Franchised Center outside the Exclusive Area. Upon relocation of your Franchised Center, the new, approved location shall be deemed to be your Approved Location, and shall be subject to all the terms and conditions of this Agreement. If your Franchised Center is not relocated to the new, approved location within 180 days after you receive the Franchisor's written approval, the Franchisor's approval shall be withdrawn automatically, without notice to you. The Franchisor does not represent it will review or cause others to review your lease or any proposed lease you provide to the Franchisor; however, if the Franchisor conducts any review of any lease or proposed lease you provide to the Franchisor, you agree to pay to the Franchisor or its designee all attorney's and accountants' fees and expenses related to any such lease review. You agree to pay to the Franchisor or its designee all its architectural fees and expenses related to any review of the architectural drawings and specifications of the Premises conducted by the Franchisor. You agree to pay to the Franchisor or its designee all its costs and expenses, including all attorneys' and accountants' fees and expenses, in connection with any request by you to relocate and in connection with any relocation of your Franchised Center. In connection with any relocation of your Franchised Center, you and each of your Franchisee Members and Guarantors shall execute the Franchisor's then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents, releasing any and all claims against the Franchisor and its affiliates, and their respective present and past officers, directors, shareholders, agents, and employees, to the extent not prohibited by applicable law, when you notify the Franchisor of your intent to relocate your Franchised Center and upon its relocation. You agree your compliance with each requirement in this Paragraph 4.7 is a material condition to the Franchisor granting you written approval to relocate your Franchised Center.

4.8. **Gross Revenue Requirement.** Your Gross Revenue shall equal or exceed \$400,000 for each 12-month period following the fifth anniversary date of the Agreement Date; provided, however, if you are the transferee of a Huntington franchise agreement, the requirements of this Paragraph 4.8 shall apply following the first anniversary of the Agreement Date; and, if you are renewing a Huntington franchise agreement, the requirements of this Paragraph 4.8 shall apply as of the Agreement Date.

5. FRANCHISOR'S DUTIES

- 5.1. **Manual.** Before you open your Franchised Center, the Franchisor will either lend you one copy of the Manual or provide you with electronic access to the Manual (via Internet, extranet, or other electronic means) for your use during the Term of this Agreement. During the Term of this Agreement, the Franchisor will provide you with modifications, additions, and deletions to the Manual from time to time, as the Franchisor determines and in the manner determined by the Franchisor.
- 5.2. **Design Specifications.** Before you open your Franchised Center, the Franchisor will provide you with standard design specifications for a prototypical Huntington Learning Center for adaptation by you to your Premises.
- 5.3. **Advice.** During the Term of this Agreement, the Franchisor will provide you, in the Franchisor's sole and absolute discretion, with such advice about the operation of your Franchised Center and delivery of Huntington Services as the Franchisor determines and in the manner determined by the Franchisor.



- 5.4. **Training.** Before you open your Franchised Center, the Franchisor will offer an initial training program to you and the individuals described in Paragraph 7 below.
- 5.5. **Supplies, Suppliers.** Before you open your Franchised Center, the Franchisor will provide you with a list of products and services required for use at the Franchised Center, including educational materials, and any required or suggested suppliers for the System. The Franchisor will offer to sell you certain materials required for operation of the Franchised Center that are owned by, or licensed to, the Franchisor on terms and prices determined by the Franchisor from time to time in the price list in the Manual.
- 5.6. **Advertising and Marketing Materials.** The Franchisor shall make available to you advertising and promotional materials for use by your Franchised Center, from time to time, as provided in Paragraph 12 below.

6. **FEES**

- 6.1. **Franchise Fee.** In consideration of the rights granted in this Agreement, you shall pay to the Franchisor or its designee when or before you execute this Agreement a non-refundable, Initial Franchise Fee of _____ receipt of which is hereby acknowledged; provided, however, the Initial Franchise Fee is waived, if you are renewing a Huntington franchise agreement and have paid the renewal franchise fee due under that agreement. The entire Initial Franchise Fee or renewal franchise fee is fully earned by the Franchisor upon execution of this Agreement for administrative and other expenses incurred by the Franchisor and for development opportunities lost or curtailed as a result of the rights granted to you.
- 6.2. **Continuing Royalty.** You shall pay monthly to the Franchisor a non-refundable, Continuing Royalty in an amount equal to 8% of your monthly Gross Revenue, which, beginning on the first day of the earlier of (a) the 9th full calendar month after the date you open your Franchised Center, as determined by the Franchisor, and (b) the 15th full calendar month after the Agreement Date, shall be a minimum of \$1,200 per month. The Franchisor has the right, but not the obligation, to waive in writing this minimum for one month, if, in each of the prior 12 months you have paid the Franchisor Continuing Royalty in excess of this minimum amount. If you are renewing or are a transferee under an existing Huntington franchise agreement, you shall begin paying said minimum Continuing Royalty beginning on the Agreement Date. Each Continuing Royalty payment shall be made by separate electronic payment, or, solely with Franchisor written consent, by separate check, made payable to the Franchisor or its designee, and shall be accompanied by a monthly profit and loss statement, operations statement, and other monthly reports described in Paragraph 11 below, in the manner and form required in the Manual or by the Franchisor in writing from time to time. Any electronic payment not actually received by the Franchisor on or before the 15th day of the month shall be deemed overdue. Continuing Royalty paid by non-electronic payment shall be paid to the Franchisor monthly by the 10th day of each month, calculated on the Gross Revenue for the preceding month. Any non-electronic payment not actually received by the Franchisor on or before the 15th day of the month shall be deemed overdue, if not postmarked by the 10th day of the month.
- 6.3. **Interest; Late Fee.** Any Continuing Royalty, Advertising Fee, or other payment due the Franchisor or any of its affiliates or Huntington Advertising Fund, Inc. under this Agreement that is not paid when due shall be subject to the then-current late fee and shall bear daily interest at the rate of 10% per annum, but no more than the highest rate permitted by applicable law. Entitlement to such late fee and interest shall be in addition to any other remedies the Franchisor may have under this Agreement or at law or in equity. This Paragraph 6.3 shall not bind the Franchisor to accept any payment after its due date.
- 6.4. **Payment Terms.** You shall pay promptly to the Franchisor or its designee when due and without prior demand or notice the Continuing Royalty due and payable to the Franchisor under this Agreement. You



shall pay promptly to the Franchisor or its designee upon written notice to you all other amounts due to the Franchisor and its affiliates for products or services purchased by you from the Franchisor or its affiliates hereunder; and any monies advanced by the Franchisor or its affiliates to you, or which the Franchisor or its affiliates has paid, or become obligated to pay, on your behalf hereunder. You shall pay all amounts due the Franchisor and its affiliates at the Franchisor's principal business address as listed in Exhibit E to this Agreement, or at any other address the may Franchisor designate in writing from time to time. If you are delinquent in any payment to the Franchisor, the Franchisor has the right to apply any of your payments to any late fee, interest charge, or past due indebtedness. Neither you nor any of your affiliates shall have any right to withhold any payment of any Continuing Royalty, Advertising Fee, or any other monies due to the Franchisor or any of its affiliates on any grounds (including, without limitation, any claim or counter-claim by you under this Agreement or by you or any of your affiliates under any agreement between you or your affiliates and the Franchisor or any of its affiliates, or otherwise). Neither you nor any of your affiliates shall have any right to set-off any amount due to the Franchisor or any of its affiliates by you or any of your affiliates against any monetary claim by you or any of your affiliates against the Franchisor or its affiliates.

- 6.5. **Electronic Payments.** The Franchisor has the right to require, in the Manual or otherwise in writing, that you make Continuing Royalty payments and any other payments required under this Agreement directly to the Franchisor, its affiliates, or to a bank or such other financial institution account specified by the Franchisor, at the times and with the frequency designated by the Franchisor, by electronic funds transfer, on-line banking, pre-authorized auto-draft arrangement, or such other means as the Franchisor may specify from time to time, notwithstanding any other provisions of this Agreement, and you agree to comply with such requirement. You must furnish the Franchisor, the Franchisor's bank, or other financial institution, and any other recipient of payment with such information and authorizations as may be necessary to permit such persons to make withdrawals by electronic funds transfer, on-line banking, or auto-draft arrangement. You shall bear all expenses, if any, associated with such authorizations and payments.
- 6.6. **Third Party Fees.** You agree to reimburse the Franchisor for any fees imposed on the Franchisor or its affiliates by any third party to process any payment you make to the Franchisor or its affiliates under this Agreement. Such third party fees include, without limitation, any fees imposed by a bank or credit card company to process any credit card payment you make to the Franchisor or its affiliates.

7. TRAINING

- 7.1. **Initial Training Requirements.** Within 180 days of the Agreement Date and before you open your Franchised Center, you (or, if you are a corporation, partnership, or limited liability company, a person who has at least a 20% ownership interest in you) and your Manager (if any) must complete the Franchisor's initial training program to the Franchisor's satisfaction. All full-time staff members (including, without limitation, your Manager) employed by you shall attend and complete the Franchisor's initial training program to the Franchisor's satisfaction within 90 days of the date of their hire by you, unless otherwise permitted by the Franchisor in writing. The length of any such extension shall in no event be greater than 30 days.
- 7.2. **Ongoing Training Requirements.** The Franchisor has the right, in its sole and absolute discretion:
- 7.2.1. To require that you (or, if you are a corporation, partnership, or limited liability company, a person who has at least a 20% ownership interest in you) attend any additional initial or subsequent training program;
- 7.2.2. To require you and any of your full-time or part-time staff attend any continuing training,



meetings, workshops, and the Franchisor's franchise convention from time to time;

- 7.2.3. To determine the curricula, standards, location, direction, manner of instruction (including, without limitation, video-conference and Internet training), class size, and all other aspects of all training, meetings, workshops, and conventions conducted by the Franchisor; and
- 7.2.4. To require you to pay to the Franchisor or its designee the then-current training fee for each trainee attending any portion of any training required by the Franchisor, including, without limitation, the initial training program described in Paragraph 7. The Franchisor has the right, but not the obligation, to exempt any Franchisee Member from this requirement.
- 7.3. **Training Expenses.** You shall be solely responsible to pay all costs and expenses related to your and your Manager's and staff's training, including, without limitation, your and their salaries and expenses for travel, food, and lodging.
- 7.4. **Franchisee's Training Programs.** You shall train your full-time and part-time employees at the Franchised Center in such manner as the Franchisor requires, or as it permits, from time to time, as described in this Paragraph 7 or in the Manual or in writing from time to time. You shall not use any training program not approved in writing by the Franchisor. If you use any training program developed by the Franchisor, you shall use it solely in the manner directed by the Franchisor. If you wish to use any training program not developed by the Franchisor, you shall submit it to the Franchisor, together with such information related to it as the Franchisor requests for its written approval. The Franchisor has 30 days to approve such training program in writing. If the Franchisor does not approve such training program in writing within such 30 days, it is deemed disapproved.

8. **FRANCHISEE'S DUTIES**

- 8.1. **Manner of Operation.** At all times during the Term of this Agreement, you shall operate your Franchised Center solely for the business franchised hereunder; you shall keep it open and in operation for such minimum hours and days as the Franchisor shall specify in the Manual or in writing from time to time; you shall operate your Franchised Center in strict compliance with the standards, specifications, procedures, and policies described in this Agreement, in the Manual, and required by the Franchisor in writing from time to time; you shall refrain from deviating from such standards, specifications, procedures, and policies without the Franchisor's prior, written consent; and you shall not use your Franchised Center or the Premises for any purpose or activity other than that of a Huntington Learning Center. You shall provide all services to your customers at your Franchised Center and at no other location. You shall not transport, or provide or arrange for transportation of, any customer to or from the Franchised Center.
- 8.2. **Services and Products for Customers.** You understand and acknowledge that every detail of the Franchised Center is important to you, the Franchisor, and other franchisees of the Franchisor in order to develop and maintain high operating standards, to increase the demand for Huntington Services, and to protect the Franchisor's reputation and goodwill. You agree to comply fully with all the terms of this paragraph 8.2 at your sole expense. You agree:
- 8.2.1. To offer and provide all Huntington Services specified by the Franchisor in the Manual or otherwise in writing from time to time, and no other services or products, and to refrain from using or permitting the use of the Premises for any other business purpose or activity at any time; to discontinue offering and selling any services or products that the Franchisor, in its sole and absolute discretion, may disapprove at any time; to adhere to all standards, specifications, policies, and procedures related to Huntington Services as required in this Agreement, the



Manual, and by the Franchisor in writing from time to time; and to refrain from offering for sale or selling any Huntington Services in any manner other than at the Premises, including, without limitation and by way of example, through any computer service, the Internet, or any computer, television, or other electronic device;

- 8.2.2. To comply with all reasonable restrictions on maximum prices of specific goods or services to be offered or sold hereunder by you as required in the Manual, in any advertising programs for the System described in Paragraph 12 below, or as otherwise reasonably specified in writing from time to time by the Franchisor;
- 8.2.3. To meet the Franchisor's then-current standards and specifications for such services and products to be used at your Franchised Center as the Franchisor specifies in the Manual or otherwise in writing from time to time; to purchase all products and supplies from suppliers for such services and products as the Franchisor specifies in the Manual or otherwise in writing from time to time that comply with the standards and specifications in the Manual or otherwise specified in writing by the Franchisor; and
- 8.2.4. To purchase, install, and use all furniture, fixtures, furnishings, equipment, decor, supplies, and signage as the Franchisor may direct from time to time in the Manual or otherwise in writing and in accordance with the Franchisor's standards and specifications; and to refrain from installing or permitting to be installed on or about the Premises, or from using, without the Franchisor's prior written consent, any furniture, fixtures, furnishings, equipment, signage, or other items not previously approved in writing as meeting the Franchisor's standards and specifications.
- 8.3. **Educational Materials.** You acknowledge and agree that certain products, including, without limitation, certain educational materials, are essential to the Huntington Services offered at the Franchised Center and in some cases may be proprietary to the Franchisor or its affiliates. You shall purchase such products from such suppliers (which may include the Franchisor or its affiliates) for use or sale at your Franchised Center.
- 8.4. **Software; Phone Number.** You shall license the Software from the Franchisor by executing the Franchisor's then-current, non-exclusive software license agreement simultaneously with your execution of this Agreement. You shall license from the Franchisor the Phone Number by executing the Franchisor's then-current, non-exclusive phone number license agreement simultaneously with your execution of this Agreement.
- 8.5. **Products and Services Requested by You.** If you want the Franchisor to approve your use of any product or service not in the Manual, then, at your expense, you shall submit to the Franchisor such product or service and such information and samples related thereto as requested by the Franchisor. The Franchisor will review such information and samples in accordance with its standards and specifications. The Franchisor shall notify you of its receipt of this information and samples and of its approval or disapproval of the submitted product or service. You shall not use any product or service not approved by the Franchisor in writing.
- 8.6. **Franchised Center Supervision.**
- 8.6.1. You shall use your best and continuing efforts to promote and develop Huntington Services at your Franchised Center. You (or if you are a corporation, partnership, or limited liability company, a person who has at least 20% ownership interest in you) shall devote your full time and best efforts to the operation and management of your Franchised Center.



- 8.6.2. You (or if you are a corporation, partnership, or limited liability company, a person who has at least 20% ownership interest in you) or your Manager shall exercise full-time, on-premises supervision of your Franchised Center during all hours it is open or operating. However, if you have not operated or managed a Huntington Learning Center prior to executing this Agreement, then you may only appoint a Manager to exercise full-time, on-premises supervision of your Franchised Center (during all hours it is open or operating) after the Franchised Center has been open and operating for a minimum of 12 complete months.
- 8.6.3. If you are a corporation, partnership, or limited liability company, you shall designate, in writing, a Primary Franchisee Member using the attached Exhibit I. The Primary Franchisee Member is the person whom the Franchisor may contact at any time with regard to this Agreement and the Franchised Business. The Franchisor is not obligated to discuss this Agreement or the Franchised Business with any Franchisee Member other than the Primary Franchisee Member. The Primary Franchisee Member shall have at least a 20% ownership interest in you. You may not change the Primary Franchisee Member without the Franchisor's permission, which shall not be unreasonably withheld.
- 8.7. **Customer Relations; Staffing.** You shall maintain a competent, conscientious, trained staff at the Franchised Center. You shall, and you shall take such steps as are necessary to ensure that your employees, treat all customers fairly and provide Huntington Services in an honest, ethical, and non-discriminatory manner; not withhold any material information from your customers or attempt to sell any product or service to them that you believe, in your good faith estimation, is not needed; not advertise in a deceptive, misleading, or unethical manner; make solely those promises, representations, and guarantees to customers and others at your Franchised Center authorized in the Manual or in writing by the Franchisor from time to time; preserve good customer relations; render competent, prompt, courteous, and knowledgeable service; and meet such minimum standards as the Franchisor may establish in the Manual or in writing from time to time. You and your employees shall handle all customer complaints, refunds, returns, and other adjustments in a manner that will not detract from the name and goodwill of the Franchisor. You shall pay to any customer any refund properly due and owing to that customer within 30 days of demand by that customer, or within such other time period as the Franchisor may require in the Manual or from time to time in writing. You shall be solely responsible for all employment decisions and functions of the Franchised Center including, without limitation, those related to hiring, firing, training, wage and hour requirements, record-keeping, supervision, and discipline of employees and you shall inform your employees as to such requirement. No Franchisor advice and no training program conducted, supplied, or recommended by the Franchisor shall reduce in any way your sole responsibility for your employment and management of your staff.
- 8.8. **Confidentiality of Student Financial Information.** You acknowledge and agree you are solely responsible to maintain the confidentiality of all student and parent and guardian data and their identities and financial information, including, without limitation, any information you obtain by virtue of completing loan applications or other financial documents on behalf of students or parents. You agree to take all steps necessary to protect such information.
- 8.9. **Accreditation.** To the extent permitted by CITA, you shall apply to the Franchisor to be accredited by CITA and, if you are accredited by CITA, you shall comply with the Franchisor's and CITA's requirements to maintain such accreditation in full force and effect continually during the Term of this Agreement and as described in the Manual and in writing from time to time. The Franchisor has the right to modify, add to, or delete from, such requirements from time to time in writing. You shall pay to CITA, or, at CITA's direction, to CITA's designee or to the Franchisor, all accreditation fees and expenses and all ongoing fees, and reimburse the Franchisor and CITA for all their out-of-pocket expenses incurred in



connection with your accreditation.

- 8.10. **Inspection.** You shall permit the Franchisor and its agents and designees to enter upon the Premises at any time for the purpose of conducting inspections; shall cooperate fully with the Franchisor and its agents and designees in such inspections by rendering such assistance as they may request; and, upon notice from the Franchisor or its agents or designees, and without limiting the Franchisor's other rights under this Agreement, shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Should you, for any reason, fail to correct such deficiencies within a time as determined by the Franchisor, the Franchisor shall have the right, but not the obligation, to correct any deficiencies that may be susceptible of correction by the Franchisor and you agree to pay to the Franchisor or its designee all its related costs and expenses, including its attorneys' and accountants' fees and expenses, immediately upon Franchisor demand. The foregoing shall be in addition to such other remedies the Franchisor may have under this Agreement or at law or in equity.
- 8.11. **Marks.** You shall ensure that all advertising and promotional materials, signs, decorations, and other items specified by the Franchisor bear the Marks in the form, color, location, and manner prescribed by the Franchisor and in no other way.
- 8.12. **Change, Amendment, Improvement, or Deletion.** You shall not implement any change, amendment, or improvement to the System, or deletion from the System, without the express prior written consent of the Franchisor. You shall notify the Franchisor in writing of any change, amendment, or improvement to the System, or any deletion from the System, you propose to make, and you shall promptly provide to the Franchisor at your sole expense such proposed change, amendment, improvement, or deletion, and such information as the Franchisor requests regarding the proposed change, amendment, improvement, or deletion. You acknowledge and agree that the Franchisor shall have no obligation to implement any change, amendment, or improvement to the System, or deletion from the System, proposed by you; and has the right to incorporate any such proposed change, amendment, or improvement to the System, or deletion from the System, and shall thereupon obtain all right, title, and interest therein without any compensation to you.
- 8.13. **Franchisee Councils.** You acknowledge and agree that the Franchisor shall have the right, but not the obligation, to establish one or more Franchisee Councils. If established, you acknowledge and agree that, if you have agreed to participate in a Franchisee Council, you shall use your best efforts to participate actively in each such Franchisee Council as the Franchisor designates and participate in all Franchisee Council programs approved by the Franchisor; the Franchisor reserves the right to prepare and amend the bylaws of any Franchisee Council from time to time, and may merge, change, or discontinue any Franchisee Council, in its sole and absolute discretion, at any time; members of any Franchisee Council shall be determined by the Franchisor; each Franchisee Council shall serve only in an advisory capacity.

9. MARKS

9.1. Use. With respect to your use of the Marks, you agree that:

- 9.1.1. The Franchisor has the sole and absolute right to approve any use of the Marks and any object using or exhibiting the Marks, including, without limitation and by way of example, all signs, decorations, stationery, business cards, brochures, forms, and web sites; and in every medium, including, without limitation, print, audio, video, electronic, and Internet;
- 9.1.2. You shall not do or permit any act or thing to be done in derogation of the Marks or of any Franchisor rights to the Marks;



- 9.1.3. You shall not use the Marks in any business other than in connection with your Franchised Center; and you shall use the Marks only for the operation of the Franchised Center and only from the Approved Location, or in advertising or marketing for the Franchised Center;
- 9.1.4. You shall not use the Marks to incur any obligation or indebtedness for the Franchisor;
- 9.1.5. You shall not, directly or indirectly, at any time cause or permit any act impairing or tending to impair the Franchisor's right, title, or interest in the Marks;
- 9.1.6. You shall use only the Marks designated by the Franchisor, and shall use them only in the manner authorized and permitted by the Franchisor;
- 9.1.7. You shall not use the Marks in connection with the Internet or with anything related to the Internet, including reservation or use of domain names, as part of an electronic mail address or any other form of identification in an electronic medium, without the Franchisor's prior written approval;
- 9.1.8. In connection with your Franchised Center, you shall not use the name "Huntington" alone, or any trademark, service mark, logotype, symbol, or other mark that is not part of the Marks or that is confusingly similar to the Marks, and you shall not use the Marks or any trademark, service mark, logotype, symbol, or other mark that the Franchisor determines, in its sole and absolute discretion, may be confusingly similar to any of the Marks in connection with any other business in which you have an interest, or in connection with the sale of any unauthorized product or service from your Franchised Center;
- 9.1.9. In the adoption of a corporate, partnership, or limited liability company name, you shall not use any of the Marks, any variations or abbreviations of the Marks, or any words or symbols deemed by the Franchisor to be confusingly similar to the Marks, including, without limitation, the words, "Huntington", "Learning", "Center", "Exam", "NCLB", "Prep," "Provider", "School", "Service", "Supplemental", or "Tutor", or any combination of these words with or without prefix or suffix, whether in English or any other language;
- 9.1.10. Unless otherwise authorized or required by the Franchisor in writing, you shall operate and advertise the Franchised Center only under the name "Huntington Learning Center," and shall use all Marks without prefix or suffix;
- 9.1.11. You shall identify yourself as the operator of the Franchised Center (in the manner required by the Franchisor from time to time) in conjunction with any use of the Marks, including, without limitation, on invoices, order forms, receipts, and business stationery, as well as at such conspicuous locations at the Premises as the Franchisor may designate in writing from time to time;
- 9.1.12. Your right to use the Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of rights of the Franchisor; and
- 9.1.13. You shall execute any documents deemed necessary by the Franchisor, at your sole cost and expense, to obtain protection for the Marks or to maintain their continued validity and enforceability.



9.2. **Acknowledgments.** You expressly understand and acknowledge that:

- 9.2.1. All ownership, right, title, and interest to the Marks is vested solely in the Franchisor or its affiliates, and the Franchisor has the right to use, and license others to use, the Marks;
- 9.2.2. All goodwill created by your use of the Marks shall inure exclusively to the Franchisor;
- 9.2.3. You disclaim any right, title, and interest in the Marks and any goodwill derived from them;
- 9.2.4. You shall not assert any claim to any goodwill, reputation, or ownership of the Marks by virtue of your licensed or franchised use of them or otherwise;
- 9.2.5. You have no right to restrict the Franchisor, any Franchisor affiliate, or any other Huntington franchisee from using the Marks in any way not prohibited by this Agreement; and you shall not contest, directly or indirectly, the validity of, or the Franchisor's or its affiliates' ownership of, or right to use and to license others to use, the Marks;
- 9.2.6. You shall not in any way dispute or impugn the validity of the Marks;
- 9.2.7. You irrevocably waive any right for compensation by the Franchisor and by any Franchisor affiliate that you may have for any goodwill created by your use of the Marks;
- 9.2.8. The Marks are valid and serve to identify the System and those who are authorized to operate under the System;
- 9.2.9. Immediately upon expiration or termination of this Agreement for any reason, you shall not use the Marks, or dispute or impugn the rights of the Franchisor, the Franchisor's affiliates, its franchisees, licensees, or other authorized users, to use the Marks for any purpose; and
- 9.2.10. The Franchisor reserves the right to modify, amend, or discontinue the Marks hereunder, and to substitute different Marks, for use in identifying the System and the franchised Huntington Learning Centers operating thereunder. You agree to comply immediately with such modification, amendment, discontinuance, or substitution, when notified by the Franchisor to do so, at your sole cost and expense, and the Franchisor shall have no liability or obligation whatsoever to you with respect thereto.

9.3. **Infringement.** You shall promptly notify the Franchisor of: any suspected infringements, imitations, or suspected unauthorized use of the Marks, or any challenges to the validity, the Franchisor's ownership of, right to use and license others to use, or to your use of, the Marks. You acknowledge the Franchisor has the sole right to institute, defend, direct, and control any judicial, arbitration, and administrative proceedings and actions involving the Marks, including any settlement. The Franchisor has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Marks. The Franchisor has the right, but not the obligation, to defend you against any third-party claim, suit, or demand arising out of your use of the Marks; and, if the Franchisor provides such a defense, then the cost of the defense, including the cost of any judgment or settlement, shall be borne by you. If the Franchisor undertakes the defense or prosecution of any judicial, arbitration, or administrative proceedings or actions affecting the Marks, you shall cooperate with the Franchisor in these proceedings or actions and you agree to execute at your sole expense all documents and to do those acts and things as may, in the opinion of the Franchisor's counsel, be necessary to comply with this Paragraph 9, including being named as a nominal party in these proceedings or actions. The Franchisor will not indemnify you for any damages or expenses



incurred by you, due to any judicial, arbitration, or administrative proceedings or actions involving the Marks. The Franchisor shall not be liable for any loss, expense, or damage incurred by you because of your use of the Marks, except as described in this Paragraph 9.3. You irrevocably appoint the Franchisor or the Franchisor's nominee to be your attorney-in-fact coupled with an interest, with power of substitution, to execute and to file for you any relevant document and to perform any legal act necessary to defend, compromise, and settle in any judicial, arbitration, or administrative proceedings or actions affecting the Marks. The Franchisor has the right to file an original counterpart or a copy of this Agreement with any court, arbitrator, or agency as written evidence of the appointment by you of the Franchisor or the Franchisor's nominee to be your attorney-in fact with regard to this matter. Solely with the Franchisor's written consent, you may participate at your own expense in any judicial, arbitration, or administrative proceedings or actions affecting the Marks.

10. MANUAL AND CONFIDENTIAL INFORMATION

10.1. **The Manual.** The subject matter of the Manual includes the description of the System's uniform standards, specifications, policies, and procedures for marketing techniques, operational procedures, business practices, and management methods described in this Agreement. The purpose of the Manual is to protect the reputation and goodwill of the Franchisor and to maintain uniform standards of operation under the Marks and System.

- 10.1.1. The Franchisor has the sole and absolute right to modify, add to, and delete from, the Manual for any business purpose at any time. When notified in writing by the Franchisor, you shall promptly update your copy of the Manual with any modifications of, additions to, and deletions from, it. If you do not receive a paper copy of the Manual, but instead are provided electronic access to the Manual, all modifications of, additions to, and deletions from the Manual will be made by the Franchisor. Any written notice that the Franchisor delivers to you containing any such modification of, addition to, and deletion from the Manual shall bind you upon your receipt of such notice. You shall be solely responsible to insure that the Franchised Center is operated in compliance with the most current and up-to-date version copy of the Manual.
- 10.1.2. The electronic copy (or, if unavailable, paper copy) of the Manual maintained by the Franchisor at its home office is, and shall be, controlling in the event of any dispute as to the Manual's contents. You shall use the Manual solely for the operation of your Franchised Center.
- 10.1.3. The Manual contains confidential business information and trade secrets that belong to the Franchisor. The Franchisor owns the Manual and all rights, including proprietary rights, in, and to, the Manual and its information. Any copies and summaries of the Manual are, and shall at all times remain, the property solely of the Franchisor. You shall at all times treat the Manual and its information as confidential. You shall use all reasonable efforts to maintain the information in the Manual as secret and confidential.
- 10.1.4. The Franchisor has the right to maintain all or any portions of the Manual in written or electronic form, including, without limitation, on one or more web sites. If the Franchisor maintains the Manual in electronic form or on one or more web sites, you agree (a) to install, maintain, and upgrade continually throughout the Term of this Agreement and as required by the Franchisor in the Manual and in writing from time to time, at your sole expense, the highest-speed Internet connection available to provide access to such portions of the Manual; (b) to make one copy of such portions of the Manual and to maintain such copies and their contents as secret and confidential; and (c) you and none of your Franchisee Members or staff shall make any electronic copy of any portion of the Manual.



10.2. Confidential Information.

- 10.2.1. You shall not, during the Term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, limited liability company, corporation, or other entity, any confidential information, knowledge, or know-how concerning the methods of operation of the Franchised Center (including, without limitation, the Manual) that may be communicated to you or any of your employees of which you or your employees may be apprised by virtue of your operation under this Agreement. You shall divulge such confidential information only to such of your employees as must have access to it in order to operate the Franchised Center. All information, knowledge, know-how, techniques, and other data that the Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement.
- 10.2.2. If you become aware of any unauthorized disclosure or use of the Manual or any confidential information or trade secret of the Franchisor, you shall immediately notify the Franchisor in writing, and the Franchisor shall have the sole and absolute right to take any actions it deems appropriate.
- 10.2.3. You shall require your spouse, the Franchisee Members, the spouses of the Franchisee Members, your Manager, the spouses of Guarantors, and any of your employees having access to any of the Franchisor's confidential information to execute the Confidentiality and Non-competition Agreement described in Paragraph 17 below.

11. ACCOUNTING AND RECORDS

11.1. **Records.** You shall record all sales from your Franchised Center in the manner required by the Franchisor, which may be on a computer- or Internet-based, record-keeping and control system designated by the Franchisor, or on other equipment specified by the Franchisor in the Manual or otherwise in writing from time to time. During the Term of this Agreement, you shall maintain records of your Franchised Center, including, without limitation, those records required in the Manual, and retain them for a minimum of 3 years after the end of each calendar year or for such longer period of time as required by law.

11.2. Reports.

- 11.2.1. You shall submit to the Franchisor in the manner required by the Franchisor such reports required by the Franchisor in the Manual or otherwise in writing from time to time, including the following reports:
 - 11.2.1.1. Such monthly reports as to Gross Revenue, advertising, marketing, operations, student activity, parent contact, school contact, and finance, and such other reports, as required by the Franchisor in the Manual or in writing from time to time;
 - 11.2.1.2. A monthly profit and loss statement, balance sheet, and cash flow statement of the Franchised Center for the preceding month;
 - 11.2.1.3. Within 60 days after the end of each calendar year, a profit and loss statement and cash flow statement for the preceding calendar year for you, and a balance sheet as of the end of each such calendar year; and



11.2.1.4. Within 60 days after the end of each calendar year, a completed copy of the Franchisor's then-current franchisee ownership description form and such other reports as required by the Franchisor in writing.

11.2.2. The profit and loss statement, balance sheet, and cash flow statement shall be prepared in accordance with generally accepted accounting principles consistently applied; and such financial statements and the Franchisor's then-current franchisee ownership description form shall be certified as true and correct by you (or, if you are a corporation, partnership, or limited liability company, by a Franchisee Member).

11.3. **Electronic Reporting.** You agree to submit any report or data required by the Franchisor under this Agreement or the Manual directly to the Franchisor or its designee at the times and with the frequency designated by the Franchisor by electronic communication (including, by way of example, by email or the Internet), or such other means as the Franchisor may specify from time to time. You agree the Franchisor has the right to access and record the programs and data of the Software at your Franchised Center. You agree to bear all expenses associated with such communication, reporting, access, and recording of reports, programs, and data, and you shall cooperate fully and perform promptly all acts required by the Franchisor to permit the Franchisor to fulfill the purpose of this Paragraph 11.3, including, without limitation, purchase, installation, and maintenance of appropriate communication hardware and software. You agree to install, maintain, and upgrade continually throughout the Term of this Agreement, at your sole expense, the highest speed Internet connection available and an electronic mail account for your Franchised Center.

11.4. **Audit.** To ascertain your compliance with this Agreement and the Manual, the Franchisor and its agents and designees shall have the right to enter your Franchised Center without notice to you and at any time to examine, inspect, copy, and audit all your books, computers, records, accounts, tax returns, bank records, computer software and data, bookkeeping, revenue, expenses, reports, curricula, testing materials, student and teacher files, and all elements of the Huntington System. You agree to permit and cooperate fully with this examination, inspection, and audit. If, for any reason, you decline to permit, or you fail to cooperate fully with, such examination, inspection, or audit, then, immediately upon the Franchisor's written demand, you shall pay to the Franchisor or its designee all out-of-pocket costs and expenses incurred by the Franchisor and its employees, agents, and designees in conducting, and related to, such examination, inspection, or audit, including, without limitation, all travel costs, lodging costs, wages, and attorneys' and accountants' fees and expenses. If any Franchisor examination, inspection, or audit discloses that Gross Revenue is understated by 3% or more on any statement or payment made by you, then, immediately upon the Franchisor's written demand, in addition to paying the Franchisor interest from the date such amount was due and all applicable late fees, you shall also pay to the Franchisor or its designee (a) the additional amount due as a result of such underpayment, and (b) all out-of-pocket costs and expenses incurred by the Franchisor and its employees, agents, and designees in conducting, and related to, such examination, inspection, or audit, including, without limitation, all travel costs, lodging costs, wages, and attorneys' and accountants' fees and expenses. The foregoing remedies shall be in addition to any other remedies the Franchisor may have under this Agreement or at law or in equity.

12. **ADVERTISING AND PROMOTION**

12.1. **Advertising and Promotion.** You agree to advertise and promote your Franchised Center and the sale of Huntington Services actively and diligently during the Term of this Agreement and in conformity with this Agreement, the Manual, and the Franchisor's written direction.

12.1.1. Before you open the Franchised Center and upon any Transfer, you shall retain, at your sole cost, a marketing professional of your choice to assist you in developing a written marketing plan to



promote the Franchised Center; and you shall provide a copy of this plan to the Franchisor. In addition to all other expenditures required under this Agreement, by no later than three months after you open your Franchised Center, you shall have expended at least \$6,000 on opening advertising.

- 12.1.2. During the Term of this Agreement and prorated over the number of months your Franchised Center is open in the first and last calendar year of the Term of this Agreement, you shall promote your Learning Center Services by expending on Local Media in each calendar year a minimum of \$36,000; and you shall promote your Exam Preparation Services by expending on Local Media in each calendar year a minimum of \$7,500. You agree that failure to expend such minimum amounts for promotion of Learning Center Services and Exam Preparation Services is a material breach of this Agreement.
- 12.1.3. Continually during the Term of this Agreement you shall list your Franchised Center in the telephone directory commonly called the "White Pages" that circulates in the geographic area in which your Franchised Center is located, and you shall advertise your Franchised Center under at least two headings in the telephone directory commonly called the "Yellow Pages" that circulates in the geographic area in which your Franchised Center is located, in the manner and as described in the Manual. Any dispute about the White Pages and Yellow Pages shall be resolved solely by the Franchisor.
- 12.1.4. You shall not use any advertising or promotional materials, engage in any advertising or promotional activities, or advertise or promote in any print, broadcast, cable, electronic, computer, or other media (including, without limitation and by way of example, email or the Internet), in a manner not approved by the Franchisor. Before engaging in any unapproved activities, or using unapproved materials or media, you shall first submit them with a description of their use to the Franchisor for its written approval. The Franchisor has 30 days to approve such activities, material, and media and their use in writing. If the Franchisor does not approve any such activities, materials, media, or use in writing within such 30-day period, such activity, material, media, and use shall be deemed disapproved. All materials and media on which the Marks appear shall include the designation or notice required in the Manual or by the Franchisor in writing.

12.2. Advertising Fund. You acknowledge and agree that:

- 12.2.1. You shall pay monthly to the Franchisor or its designee a non-refundable Advertising Fee of 2% of your monthly Gross Revenue. Beginning on the earlier of (a) the 9th full calendar month after the date you open your Franchised Center, as determined by the Franchisor, and (b) the 15th full calendar month after the Agreement Date, you shall pay a minimum Advertising Fee of \$300 per month; provided, however, if you are renewing or assuming an existing Huntington franchise agreement, the minimum Advertising Fee begins on the Agreement Date. The Franchisor has the right, but not the obligation, to waive in writing this minimum for a month, if, in each of the prior 12 months you have paid the Advertising Fee in excess of this minimum amount. Each Advertising Fee payment shall be made by electronic payment, or, solely with Franchisor written consent, by separate check, made payable to the Franchisor or its designee, or as required by the Franchisor in the Manual or otherwise in writing. Any electronic payment not actually received by the Franchisor or its designee on or before the 15th day of the month will be deemed overdue. Advertising Fee paid by non-electronic payment shall be paid by the 10th day of each month, calculated on Gross Revenue for the preceding month. Any non-electronic payment not actually received by the Franchisor or its designee on or before the 15th day of that month shall be



deemed overdue if it is not postmarked by the 10th day of the month.

- 12.2.2. Huntington Advertising Fund, Inc. shall control and determine the manner in which the monies in the Advertising Fund are expended. By your execution of this Agreement, you consent to, and do hereby become a member of, Huntington Advertising Fund, Inc. and you agree to comply with its applicable bylaws and other governing documents now in effect and as they may be modified from time to time. If you have agreed to participate as a director of Huntington Advertising Fund, Inc., you shall use your best efforts to participate actively.
- 12.2.3. Except as otherwise described in this Paragraph 12.2, the Advertising Fund, all contributions thereto, and earnings thereon shall be spent on market research, and on development, production, and placement of marketing programs and materials, in any media, in any geographic or market area, and to meet any and all costs of administering, directing, preparing, placing, and paying for promotions, public relations, market research, advertising, and related activities, including the cost of preparing and conducting television, radio, electronic media (including, without limitation and by way of example, email and the Internet), direct mail, magazine, and newspaper advertising campaigns and public relations activities and related activities and employing advertising agencies to assist with these activities. You acknowledge and agree that the Advertising Fund may be used to cover all administrative and operating costs and third-party expenses of the Advertising Fund and Huntington Advertising Fund, Inc., including, without limitation, accountants' and attorneys' fees and expenses. The Advertising Fund shall not be used to defray any of the Franchisor's general operating expenses, except that the Advertising Fund shall pay monthly to the Franchisor or its designee 5% of the monies contributed to the Advertising Fund to reimburse the Franchisor for administrative costs and overhead incurred by the Franchisor in any activities related to the administration of the Advertising Fund. You acknowledge and agree that the Advertising Fund may provide coverage that is local, regional, national, or international in scope; that Huntington Advertising Fund, Inc. is not obligated to spend any Advertising Fund monies in the geographic or market area in which your Franchised Center is located or in any manner that is proportionate or equivalent to your contributions; and that you may receive no direct or indirect benefit from the Advertising Fund. Huntington Advertising Fund, Inc. shall have the right to accumulate monies in the Advertising Fund. Huntington Advertising Fund, Inc. may accumulate any monies in the Advertising Fund that are not spent in the year in which they accrue. Although the Advertising Fund is intended to be of perpetual duration, the Franchisor has the right to terminate it, if all monies in it have been expended.
- 12.2.4. You agree you are not a third party beneficiary with respect to the Advertising Fund. You and the Franchisor acknowledge and agree that there shall be no formal or informal fiduciary or trustee relationship created by this Agreement between the Franchisor and the Advertising Fund, between the Franchisor and Huntington Advertising Fund, Inc., between the Franchisor and the Franchisee, or otherwise. The Franchisor and Huntington Advertising Fund, Inc. have the right to use the Advertising Fund to defend, indemnify, and hold harmless the members of Huntington Advertising Fund, Inc. and the Franchisor and its affiliates and their respective present and past directors, stockholders, officers, employees, and agents from all claims, demands, losses, obligations, costs, attorneys' and accountants' fees and expenses, expenses, liabilities, debts, and damages resulting, directly or indirectly, from administration of the Advertising Fund.

12.3. Advertising Cooperative Association. The Franchisor has the right to form Associations and to require you to become a member of one such Association.



- 12.3.1. The Franchisor has the right to determine each Association's membership, organization, bylaws, government, administration, starting date, ending date, and geographic area; and to change, dissolve, or merge any Association. Each Association's activities shall be approved in advance by the Franchisor in writing; and no activity may be undertaken by any Association without the Franchisor's prior written approval. When the members of any Association vote, each member Huntington Learning Center (including any Huntington Learning Center owned by the Franchisor or any of its affiliates) shall be accorded one vote. If any Association operates according to written governing documents or prepares annual or periodic financial or operating statements, projections, or budgets, these documents, statements, projections, and budgets shall be provided to the Franchisor and all members in a timely manner. Each Association shall permit the Franchisor and its agents and designees to observe and participate in all its meetings and to observe all its activities.
- 12.3.2. The Association of which you are a member has the right to require you pay it a non-refundable monthly Cooperative Advertising Fee that shall not exceed \$2,000 per month, unless a greater amount is determined by a majority vote of the Association's members. The Cooperative Advertising Fee paid by you to the Association shall be maintained and administered solely in accordance with the agreement establishing the Association. You shall pay the Cooperative Advertising Fee to the Association by the 10th day of each month for the preceding month, unless its members agree to a different schedule. By the 10th day of each month you shall (a) submit to the Association and to the Franchisor the statements and reports the Franchisor requires; and (b) submit to the Franchisor the statements and reports that the Association requires of its members. The Association's Cooperative Advertising Fees may be expended to meet any costs of placement and conduct of advertising and marketing programs in any media determined in accordance with the Association's bylaws. All Association members have the right to vote on all its expenditures. If you pay any such Cooperative Advertising Fee, then, to the extent such payments do not exceed the aggregate amount of monies you are required to expend on local advertising under Paragraph 12.1.2 hereof, such payments shall be credited against such monies.
- 12.3.3. If an Association is established that is applicable to you or any geographic area in which your Franchised Center is located as of the Agreement Date or during the Term of this Agreement, you shall immediately execute such documentation as required in writing by the Franchisor and become a member of such Association and comply with the applicable bylaws and other governing documents for such Association, including payment of any required Cooperative Advertising Fee. Your failure to pay any fee required by the Association or to perform any legal act required by such Association shall be a material breach of this Agreement, and the Franchisor shall have the right, but not the obligation, to enforce any obligation owed by you to the Association on the Association's behalf. If the Franchisor elects to take any action on behalf of the Association to enforce your obligations to the Association, including the collection of unpaid fees, then the Association shall be obligated to pay to the Franchisor or its designee all of its out-of-pocket costs and expenses incurred by the Franchisor, including, but not limited to, attorneys' and accountants' fees and costs.
- 12.3.4. No promotional or advertising plans or materials may be used by any Association or furnished to its members by the Association without the prior written approval of the Franchisor. All such plans and materials shall be submitted to the Franchisor in accordance with the procedure set forth in Paragraph 12.1 above. The Franchisor, in its sole and absolute discretion, may grant to any Huntington Learning Center an exemption for any length of time from the requirement of membership in an Association, upon written request of such franchisee or any Huntington Learning Center stating reasons supporting such exemption. The Franchisor's decision



concerning such request for exemption shall be final.

12.3.5. The Association may not change its bylaws, unless such change is approved in advance in writing by the Franchisor. The Association shall submit any and all proposed changes to its bylaws to the Franchisor for its prior, written approval. The Franchisor has 30 days to approve any proposed change in writing. If the Franchisor does not approve any proposed change in writing within such 30 days, it is deemed disapproved. The Association's bylaws shall not thereafter be changed or modified, without the prior written approval of the Franchisor. The Association shall be solely responsible, at its expense, to conform its bylaws and corporate documents to all applicable laws, rules, and regulations, to obtain all required or permitted permits, and to pay all applicable taxes and fees that may be required by federal, state, or local laws, ordinances, or regulations. The Association shall pay to the Franchisor or its designee all its costs and expenses related to any review of any proposed change to the Association's bylaws or any other Association document conducted by the Franchisor, including, but not limited to, the Franchisor's attorneys' and accountants' fees and costs. The Franchisor does not warrant or represent that any bylaws or other Association document comply with any requirement, rule, or regulation imposed by any law or governmental agency.

12.4. **Mandatory School Visits.** Before you open the Franchised Center and upon any Transfer, you (or, if you are a corporation, partnership, or limited liability company, a person who has at least a 20% ownership interest in you) or your Manager, if any, shall, with a Franchisor representative, spend up to four consecutive days on mutually agreed upon dates, conducting visits to schools to market Huntington Services in the manner provided by the Franchisor, except (a) to schools located in the territory of any other franchisee operating under a Huntington franchise agreement in which a territory has been granted (unless otherwise permitted by the Franchisor in writing), or (b) as otherwise restricted herein. You shall provide the Franchisor at least 30 days written notice of the dates on which you request to satisfy this obligation. You shall pay all your costs and expenses related to such school visits, plus the then-current per diem fee for the Franchisor representative.

12.5. **Advertising Materials.** The Franchisor may furnish you advertising and promotional materials required for use from time to time at the Franchised Center and may charge you a fee for the cost of preparation and production of such materials.

12.6. **Web Site.** You acknowledge and agree the Franchisor shall have the right, but not the obligation, (a) to establish one or more Web Sites; (b) to modify any Web Site from time to time; (c) to discontinue any Web Site; (d) to develop and discontinue relationships with any other web sites; (e) to market and advertise on the Web Site and on the Internet and on any other web site and on any other public computer network; and (f) to do all things necessary to accomplish the foregoing, including, by way of example and without limitation, obtaining, maintaining, and terminating domain names and home page addresses. Upon the Franchisor's written request, you shall use the Franchisor's Web Site as described in the Manual or as required in writing by the Franchisor from time to time. In connection with the Franchised Center, you may not establish or maintain any web site or otherwise maintain a presence or advertise on the Internet or any other public computer network, without the Franchisor's express written permission. The Franchisor reserves the right to prepare web materials, web pages, web images, and web site content and to develop hyperlinks and other links and to require you to use such materials, pages, images, content, and links. The Franchisor reserves the right to require you to link your web site to that of any other Huntington franchisee or Association or with that of any Huntington Learning Center operated by a Huntington franchisee or by the Franchisor or any Franchisor affiliate. The Franchisor reserves the right to require you to change or discontinue any web site operated or controlled by you in connection with the Franchised Center. You shall pay all costs and expenses in connection with your web site; if your web site is linked with the web



site of any other Huntington franchisee or Association or with any Huntington Learning Center operated by a Huntington franchisee or by the Franchisor or by any Franchisor affiliate, the Franchisor reserves the right to apportion the costs and expenses of the linked site to you in a manner determined by the Franchisor. If the Franchisor approves any web site operated or controlled by you in connection with the Franchised Center, you shall comply with the following requirements, and all other applicable requirements the Franchisor sets forth in the Manual or otherwise in writing from time to time:

- 12.6.1. You may only use web materials, web pages, web images, and web site content the Franchisor has approved in advance in writing. You must promptly incorporate on, and remove from, your web site any information the Franchisor requires in the manner specified in the Manual or otherwise in writing from time to time. You shall pay all costs and expenses associated with any web sites operated or controlled by you, including, without limitation, any initial, ongoing, and maintenance costs;
- 12.6.2. You must provide on your web site all hyperlinks or other links required in writing by the Franchisor; and remove from your web site any hyperlink and other links as required in writing by the Franchisor. You may not post or include any confidential information (including, without limitation, confidential information described in Paragraph 10.2 above) or any Franchisor or other copyrighted material or information on your web site, without the Franchisor's prior written approval. You may not discontinue your web site without the Franchisor's prior written permission. If you wish to modify your web site, you must first request and receive the Franchisor's prior written approval;
- 12.6.3. The Franchisor may furnish you with materials, pages, images, and content for your web site at your expense. If the Franchisor furnishes you with materials, pages, images, or content for your web site, you must adapt and use them in the manner required by the Franchisor;
- 12.6.4. You acknowledge and agree the Franchisor shall be, and at all times remain, the sole owner of (a) its Web Sites; (b) all web sites you maintain in connection with the Franchised Center; (c) all material, content, images, and pages of such web sites; and (d) all copyrights thereto; and
- 12.6.5. You must obtain the Franchisor's prior written approval for each Internet domain name and home page address you use in connection with your web site. The Franchisor shall be, and at all times remain, the sole owner of all domain names and home page addresses for all web sites you maintain in connection with the Franchised Center. You shall execute all documents required by the Franchisor in connection with any web site you maintain in connection with the Franchised Center; and you hereby appoint the Franchisor as your attorney-in-fact to execute such documents on your behalf if you fail to do so. The Franchisor has the right to file an original counterpart or a copy of this Agreement with any court, arbitrator, or agency as written evidence of the appointment by you of the Franchisor or the Franchisor's nominee to be your attorney-in-fact with regard to this matter.

12.7. Additional Expenditures; School Visits. In addition to the other requirements in this Paragraph 12, you are encouraged to expend additional funds on marketing and advertising. Further, you are encouraged to conduct visits to schools to market Huntington Services, except (a) to schools located in the territory of any other franchisee operating under a Huntington franchise agreement in which a territory has been granted (unless otherwise permitted by the Franchisor in writing), or (b) as otherwise restricted herein.

13. INSURANCE



- 13.1. Minimum Insurance.** You shall be solely responsible to secure, prior to commencement of any operations under this Agreement, and to maintain, in full force and effect continually during the Term of this Agreement, at your sole expense, an insurance policy or policies insuring you, the Franchisor, and your and the Franchisor's respective present and past officers, directors, partners, agents, and employees against any demand or claim with respect to personal injury, death, or property damage, or any loss, liability, or expense whatsoever arising or occurring upon, or in connection with, the Franchised Center. You shall maintain the minimum insurance described in the Manual or the Franchisor's then-current insurance requirements form; provided, however, the Franchisor has the right to modify, add to, or delete from, such insurance requirements from time to time in writing. The Franchisor does not represent that such insurance will insure you against any insurable risk.
- 13.2. Requirements.** If you fail to obtain or maintain such minimum insurance specified in Paragraph 13.1 above, the Franchisor has the right to obtain, through companies or agents of its own choosing and on your behalf, such minimum insurance; and, upon the Franchisor's written demand, you shall pay immediately to the Franchisor or its designee the cost of such minimum insurance and a fee determined by the Franchisor for its so acting. Any insurance policy and all certificates of insurance covering your Franchised Center shall name the Franchisor as an additional insured and shall provide the Franchisor be given at least 10 days written notice of any termination, amendment, cancellation, or modification of such policy. You shall provide the Franchisor and its designee with certificates of insurance evidencing such insurance (a) no later than 10 days before you begin operating your Franchised Center; (b) after any modification of, addition to, or deletion from, such insurance; (c) within 60 days after the end of each calendar year; (d) upon renewal of such insurance; (e) 30 days before such insurance's expiration date; and (f) immediately upon the Franchisor's written request. You agree that failure to obtain such minimum insurance required in Paragraph 13.1 above is a material breach of this Agreement; and failure to name the Franchisor as an additional insured as required in this Paragraph 13.2 is a material breach of this Agreement.
- 13.3. Further Obligations.** Your obligation to obtain and maintain the insurance policy or policies in the amounts specified in this Agreement, the Manual, or otherwise in writing shall not be limited in any way by reason of any insurance that may be maintained by the Franchisor, nor shall your performance of that obligation relieve you of any liability under the indemnity provisions set forth in Paragraph 19.4 below

14. TRANSFER OF INTEREST

- 14.1. Transfer by You.** This Agreement is personal to you. The Franchisor enters into this Agreement in reliance upon, and in consideration of, your or your Franchisee Members' skills, qualifications, and representations and the trust and confidence reposed in you or your Franchisee Members by the Franchisor. Neither you nor any of your Franchisee Members may Transfer any interest in the Franchisee, this Agreement, or of any of the assets of your business, without first obtaining the Franchisor's written approval and complying with the terms of this Paragraph 14. Neither you nor any of your Franchisee Members may Transfer any interest in the Franchisee, this Agreement, or of any of the assets of your business to (a) a trust; or (b) any person who is at that time or was within one year before the effective date of the proposed Transfer, employed by the Franchisor or any of its affiliates. Any purported Transfer not having the prior, written consent of the Franchisor shall be null and void and shall constitute a material breach of this Agreement, for which the Franchisor may immediately terminate, without opportunity to cure.
- 14.2. Conditions for Transfer by You.** You shall give the Franchisor written notice of any proposed Transfer at least 30 days before such Transfer is proposed to take place. Such notice shall provide the following: (a) the name and address of the proposed Transferee and the price and terms of the Transfer and a copy of the proposed sales contract with all its attachments, if any; (b) a complete and accurate description of the



ownership interest proposed for Transfer using the Franchisor's then-current franchisee ownership description form; (c) any related information and documentation reasonably requested by the Franchisor; and (d) at the time you submit such notice, full payment of the Transfer Fee required by Paragraph 14.2.11 below. The Franchisor shall have 30 days from receipt of such notice and the Transfer Fee, and receipt of all information and documentation requested by the Franchisor under this Paragraph 14.2 to approve or disapprove the Transfer or exercises its right of first refusal (as described in Paragraph 14.5 below). Such approval shall be in writing and shall be effective for 30 days. If the Transfer is not completed within 30 days of your receipt of the Franchisor's written approval, such approval shall be deemed withdrawn without notice. The Franchisor shall not unreasonably withhold its consent to any Transfer, but the Franchisor may, in its sole and absolute discretion, require any or all of the following as conditions of its approval, each of which is a material condition to the Transfer. If you fail to fulfill any of the following conditions, the Franchisor shall have the right to refuse any proposed Transfer:

- 14.2.1. The proposed Transferee (if a partnership, the managing general partner or partners; if a limited liability company, its members or managers; or, if a corporation, the principal officers, shareholders, and directors) is approved as a franchisee under the Franchisor's standards then in effect, including requirements about financial condition, character, managerial commitment, and other conditions and standards that the Franchisor may then be applying to new franchisees;
- 14.2.2. The proposed Transferee shall have completed the Franchisor's initial training program for new franchisees; or shall have agreed, in writing, to complete said training within a time period satisfactory to the Franchisor;
- 14.2.3. At the Franchisor's option, the proposed Transferee shall have assumed in writing for the benefit of the Franchisor all your obligations under this Agreement or, unless exempted by the Franchisor in writing, the proposed Transferee shall execute the Franchisor's then-current franchise agreement, which may include, without limitation, a smaller exclusive area (as determined by the Franchisor), higher fees, and other and different fees, and terms and obligations significantly different from, in addition to, and less favorable than granted to you in this Agreement; except its term shall be for the unexpired Term of this Agreement, and the Transferee shall pay to the Franchisor or its designee continuing royalty and advertising fees at the highest rate contained in the Franchisor's then-current franchise agreement. If the Transferee executes a franchise agreement with a smaller exclusive area than the Exclusive Area granted in this Agreement, then the Transferee will have the option described in Paragraph 14.3 below. The Transferee shall pay to the Franchisor or its designee an initial franchise fee of \$4,000 for purchase of Transferor's franchised business, notwithstanding any provision to the contrary contained in the then-current franchise agreement;
- 14.2.4. You shall not be in default of this Agreement; and neither you nor any of your affiliates shall be in default under any agreement between you or any of your affiliates and the Franchisor or any of its affiliates. All obligations of you and all your affiliates to the Franchisor and its affiliates (including, without limitation, monetary obligations), whether arising under (a) this Agreement; (b) any agreement between you or any of your affiliates and the Franchisor or any of its affiliates; (c) or otherwise, are fully satisfied at, or before, the effective date of the Transfer;
- 14.2.5. Your Franchised Center complies fully with the Franchisor's then-current standards and specifications, including, without limitation, standards for insurance, location, location lease, signs, graphics, facility, curriculum, furniture, fixtures, carpeting, lighting, equipment (including, without limitation and by way of example, Internet, telecommunications equipment, computer equipment, audio and video equipment, and related software), computer and other software, and



leasehold improvements, or you shall have made arrangements to comply fully with such standards within a time period not to exceed 180 days after the date of the Transfer and in a manner satisfactory to the Franchisor. The Franchisor does not represent it will review or cause others to review your lease or any proposed lease you provide to the Franchisor; however, if the Franchisor conducts any review of any lease or proposed lease you provide to the Franchisor, you agree to pay to the Franchisor or its designee all its attorney's and accountants' fees and expenses related to any such lease review. You agree to pay to the Franchisor or its designee all its fees and expenses related to any review of the drawings and specifications of the Premises conducted by the Franchisor. The Franchisor's approval of the Transfer shall not relate to your obligations with respect to any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Franchised Center, which shall be your sole responsibility. You acknowledge you may have to make substantial expenditures for such upgrading;

- 14.2.6. Before or at the time the Transfer becomes effective, you, the proposed Transferee, and the Franchisor shall execute the Franchisor's then-current consent to transfer agreement';
- 14.2.7. When you notify the Franchisor of your intent to Transfer and at the time of the effective date of the Transfer, you and each of your Franchisee Members and Guarantors shall execute the Franchisor's then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents, releasing any and all claims against the Franchisor and its affiliates, and their respective present and past officers, directors, shareholders, agents, and employees, to the extent not prohibited by applicable law. If you or any of your Franchisee Members or Guarantors fail, for any reason to execute the Franchisor's then-current general release, the Transfer shall be deemed ineffective, void, and of no force or effect;
- 14.2.8. You shall remain liable for all your obligations under this Agreement before the effective date of the Transfer and all provisions of this Agreement that, by their nature, survive the expiration or termination of this Agreement (including, without limitation, Paragraphs 10, 16, and 17 hereof), and, at your sole cost, shall execute promptly any and all instruments requested by the Franchisor to evidence such liability;
- 14.2.9. You shall have first offered to sell such interest to the Franchisor, if required under Paragraph 14.5 below;
- 14.2.10. If the proposed assignment is to a corporation, limited liability company, or other entity formed solely for convenience of your ownership, you shall use the Franchisor's then-current corporation or limited liability company assignment agreement, and the Transferee corporation or limited liability company shall assume and agree to be bound by, and to perform all the terms of, this Agreement, and, during the Term of this Agreement, shall never be in any business other than operation of your Franchised Center;
- 14.2.11. Except as described in Paragraph 14.6 below, you shall pay to the Franchisor or its designee a Transfer Fee of the greater of (a) \$14,000 or (b) 35% of the Franchisor's then-current initial franchise fee; provided, however, that the Transfer Fee shall be waived for any transfer within 90 days of the Agreement Date to a corporation or limited liability company formed for the convenience of ownership; and \$1,000 for (a) any Transfer within 91-180 days of the Agreement Date to a corporation or limited liability company formed solely for convenience of ownership; and (b) any Transfer of a non-controlling interest (as determined by the Franchisor) (i) to an



existing Franchisee Member; or (ii) to a full-time staff member (as defined in the Manual or otherwise in writing by the Franchisor from time to time) of your Franchised Center; or (iii) from a Franchisee Member to that Franchisee Member's spouse, natural or adopted children, or step-children. You agree to pay any broker fees in connection with any Transfer. For any Transfer hereunder, you shall pay to the Franchisor or its designee all its costs and expenses associated with the Transfer (including, without limitation, attorneys', accountants', and brokers' fees and expenses).

14.2.11.1. The Transfer Fee shall be deemed fully earned by the Franchisor and is not refundable, if the Franchisor does not exercise its right of first refusal and the Transfer is completed. If the Franchisor exercises its right of first refusal, the Transfer Fee shall be refunded in full, or, at the Franchisor's option, credited to any amount owed by you to the Franchisor or any Franchisor affiliate. If the Franchisor disapproves the Transfer or if the Franchisor approves the Transfer and the Transfer is not completed as described in this Paragraph 14, 25% of the Transfer Fee shall be earned in full by the Franchisor and not refundable and the balance shall be refunded, or, at the Franchisor's option, credited to any amount owed by you to the Franchisor or any Franchisor affiliate; and

14.2.11.2. For any Transfer to a full-time staff member of your Franchised Center other than a Franchisee Member, the transferor and Transferee must provide, in language approved in writing by the Franchisor before the effective date of the Transfer, that any interest Transferred to such staff member must be Transferred back to the transferor within 30 days after the staff member ceases to be a full-time employee at the Franchised Center. You must notify the Franchisor in writing within 5 days after such staff member ceases to be a full-time employee at the Franchised Center.

14.3. Transferee's Option for Additional Franchised Center. If you Transfer pursuant to the terms of this Agreement and if the Transferee's exclusive area under its franchise agreement is smaller than the Exclusive Area granted in this Agreement, then, providing (a) your Gross Revenue shall have equaled or exceeded \$400,000 for each 12-month period following the fifth anniversary date of the Agreement Date; and (b) during the Term of this Agreement, you did not receive four or more notices of a material default under this Agreement (whether cured or not) of any obligation in this Agreement, or any other agreement between you or any of your affiliates and the Franchisor or any of its affiliates, the Franchisor shall grant the Transferee the limited, non-transferable right to obtain franchise rights, within a site selection area determined solely by the Franchisor, for one Huntington Learning Center in the geographic area comprised of the difference between the Transferee's exclusive area and the Exclusive Area granted in this Agreement, subject to the following conditions, each of which is a material condition to the Transferee's execution of the option described in this Paragraph 14.3:

14.3.1. The Transferee and the Franchisor execute the Franchisor's then-current franchise agreement and all additional agreements and exhibits then required by the Franchisor for said Huntington Learning Center within 180 days of the Transfer; and the Transferee pays in full all fees in connection with such agreements. The franchise agreement for said Huntington Learning Center may contain terms, obligations, continuing royalty, advertising fee, and other fees significantly different from, in addition to, and less favorable to the Transferee than, those in this Agreement, including, without limitation, no exclusive area or a smaller exclusive area, as determined by the Franchisor, than granted in this Agreement.

14.3.2. The Transferee and each of its franchisee owners and guarantors shall execute the Franchisor's



then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents at the same time the Transferee executes said franchise agreement, to the extent not prohibited by applicable law.

- 14.3.3. Recognizing that time is of the essence, if the Transferee does not execute the Franchisor's then-current franchise agreement, general release (to the extent not prohibited by applicable law), and all additional agreements and exhibits then required by the Franchisor for said Huntington Learning Center within 180 days of the Transfer and pay in full all fees in connection with such agreements, the option granted to the Transferee under this Paragraph 14.3 shall terminate upon the end of the 180th day after the Transfer, and the Franchisor and its affiliates have the right anytime thereafter to operate or franchise Huntington Learning Centers at any location outside the Transferee's exclusive area.

14.4. No Encumbrance. Neither you nor any of your affiliates shall pledge, mortgage, give as a security for an obligation, or otherwise encumber any interest in (a) the Franchisee, (b) this Agreement, (c) the Franchised Center, (d) any assets of the Franchised Center, or (e) any agreement between you or any of your affiliates and the Franchisor or any of its affiliates, without the Franchisor's prior written consent; and the Franchisor has the absolute right to refuse its consent. The Franchisor has the right to require, as a condition of its consent, that, if you or any of your affiliates default under any documents related to the pledge, mortgage, security interest, or encumbrance, the Franchisor shall have the right and option, but not the obligation, to be substituted as obligor to the secured party and to cure any such default; and, if the Franchisor exercises such option, any acceleration of indebtedness due to default by you or any of your affiliates shall be void. Before the effective date of the encumbrance, you shall pay to the Franchisor or its designee its then-current processing fee, plus all Franchisor's costs and expenses associated therewith (including, without limitation, attorneys' and accountants' fees and expenses). In connection therewith, you and all your Franchisee Members and Guarantors shall execute the Franchisor's then-current general release of the Franchisor and the Franchisor's affiliates, and their respective present and past officers, directors, employees, and agents, releasing any and all claims against the Franchisor and its affiliates, and their respective present and past officers, directors, shareholders, agents, and employees, to the extent not prohibited by applicable law.

14.5. Right of First Refusal. If you as Franchisee, any Franchisee Member, or any party owning any of the interest in, or asset of, your Franchised Center, desire to accept any offer from any party to purchase such interest or asset or to make any Transfer under this Paragraph 14, the following provisions shall apply (unless such Transfer (a) is within 180 days of the execution of this Agreement to a corporation or limited liability company formed by you for the convenience of ownership; (b) is made pursuant to Paragraph 14.6 below; or (c) is a Transfer of a non-controlling interest in the Franchisee (as reasonably determined by the Franchisor) (i) to an existing Franchisee Member; or (ii) to a full-time staff member (as defined in the Manual or otherwise in writing by the Franchisor from time to time) of your Franchised Center; or (iii) from a Franchisee Member to that Franchisee Member's spouse, natural or adopted children, or step-children):

- 14.5.1. You must notify the Franchisor of the proposed Transfer and provide it with such information and documentation as required in this Paragraph 14;
- 14.5.2. The Franchisor shall have the option, exercisable within 30 days after its receipt of such written notification and required information and documentation, to send written notice to the seller that the Franchisor intends to purchase the seller's interest or asset on the same terms and conditions offered by the proposed Transferee;



- 14.5.3. If the Franchisor elects to purchase the seller's interest or asset, you shall indemnify the Franchisor against any claim by the proposed Transferee pursuant to such exercise. Closing on such purchase must occur within 30 days from the date of notice to the seller of the Franchisor's election to purchase, or at such later date when the Franchisor's conditions to closing are satisfied or when the Franchisor agrees to waive such conditions upon the Franchisor's exercise of its right of first refusal;
- 14.5.4. If the Franchisor elects not to purchase the seller's interest or asset, any change thereafter in the terms of the offer from a proposed Transferee shall constitute a new offer subject to the same rights of first refusal by the Franchisor as in the case of the proposed Transferee's initial offer. Failure of the Franchisor to exercise the option afforded by this Paragraph 14.5 shall not constitute a waiver of any provision of this Agreement, including all of the requirements of this Paragraph 14, with respect to any other proposed Transfer; and
- 14.5.5. If the consideration, terms, or conditions offered by a proposed Transferee are such that the Franchisor, in its sole determination, may not be required to furnish the same consideration, terms, or conditions, then the Franchisor may purchase the interest proposed to be sold for its equivalent in cash. If the parties cannot agree within 30 days on the reasonable equivalent in cash of the consideration, terms, or conditions offered by the third party, an independent appraiser shall be designated by the Franchisor, and the appraiser's determination of the appropriate consideration shall be binding. The expense of the appraisal shall be borne equally by you and the Franchisor.
- 14.6. **Incapacity.** Upon the Incapacity of any person with an interest in this Agreement, in you, or in all or substantially all of the assets of your business operated under this Agreement, the executor, administrator, or representative of such person must promptly notify the Franchisor, and must transfer such interest to a third party approved by the Franchisor (a) before the Expiration Date or (b) within 240 days after such Incapacity, whichever occurs first. During the period between such Incapacity and such transfer, such executor, administrator or personal representative must fulfill your obligations hereunder; and any failure to do so shall constitute a default under this Agreement for which the Franchisor may terminate this Agreement immediately upon written notice to you or to your heirs or beneficiaries or to your executor, administrator, or personal representative. In the case of transfer by will or intestate inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Paragraph 14, the executor, administrator, or personal representative of the decedent must still transfer the decedent's interest to another party approved by the Franchisor (a) before the Expiration Date or (b) within 240 days after such Incapacity, whichever occurs first, which disposition shall be subject to all the terms and conditions for Transfers contained in this Agreement. If the interest is not so transferred or assigned (a) before the Expiration Date or (b) within 240 days after such Incapacity, whichever occurs first, the Franchisor may terminate this Agreement immediately upon written notice to you. For all Transfers under this Paragraph 14.6, you shall pay to the Franchisor or its designee a non-refundable Transfer Fee of \$1,000, plus all Franchisor costs and expenses in connection with, or related to, the Transfer (including, without limitation, attorneys' and accountants' fees and expenses).
- 14.7. **Offerings.** You may not be publicly held, except with the Franchisor's express, prior, written consent, which may be withheld in the Franchisor's sole and absolute discretion. All materials required for any offering of partnership interests, membership interests, or securities in you by federal or state law must first be submitted to the Franchisor by the offeror for review before filing with any government agency; and any materials to be used in any exempt offering must be submitted to the Franchisor for review before their use. No offering will imply, by use of the Marks or otherwise, that the Franchisor is participating in an underwriting, issuance, or offering of securities of either you or the Franchisor; and the Franchisor's review



of any offering will be limited solely to the subject of the relationship between you and the Franchisor. You and the other participants in the offering must fully indemnify the Franchisor and its affiliates and their respective present and past officers, directors, shareholders, agents, and employees in connection with the offering. For each proposed offering, you must pay to the Franchisor or its designee a non-refundable fee of \$50,000 plus all of the Franchisor's out-of-pocket costs in connection with reviewing the proposed offering materials, including attorneys', accountants', and investment bankers' fees and expenses, in addition to the fees described in this Paragraph 14. You must give the Franchisor written notice at least 120 days before the date of commencement of any offering or other transaction covered by this Paragraph 14.7. Any such offering is subject to the Franchisor's prior, written consent and right of first refusal as provided in Paragraph 14 hereof.

14.8. Assignment by Huntington. The Franchisor has the absolute right to transfer, assign, or sell, by agreement or by law, directly, indirectly, or contingently, this Agreement and any right and obligation under this Agreement.

15. DEFAULT AND TERMINATION

15.1. Defaults that Cannot Be Cured. The Franchisor has the absolute right, at its option, to terminate this Agreement and all rights granted hereunder, upon any of the following defaults by you, without giving you an opportunity to cure the default and without prejudice to any other rights or remedies of the Franchisor provided by law or this Agreement, effective immediately upon the provision of notice to you or at such later time as indicated in such notice, if:

- 15.1.1. You fail to complete successfully the initial training program, as provided in Paragraph 7.1 above;
- 15.1.2. You or any party makes any Transfer or purported Transfer in violation of Paragraph 14 of this Agreement;
- 15.1.3. You, any of your Franchisee Members or Guarantors, your spouse, or any spouse of any of your Franchisee Members or Guarantors use or disclose any of the Manual or any Franchisor confidential information or trade secret in violation of this Agreement;
- 15.1.4. You, any of your Franchisee Members or Guarantors, your Manager, your spouse, or any spouse of any of your Franchisee Members or Guarantors, or any employee having access to any of the Franchisor's confidential information, violate any of the covenants described in Paragraph 17 below, or fail to execute, or to obtain execution of, the covenants required in Paragraph 10.2 above or Paragraph 17.7 below;
- 15.1.5. You do not keep your Franchised Center open for operation for 5 consecutive business days; or you lose possession of your Premises; or you lose or forfeit the right to do or transact business in the jurisdiction in which your Franchised Center is located. However, if your failure to keep your Franchised Center open for operation for 5 consecutive business days is caused by events not under your reasonable control (including, by way of example, fire, flood, natural disasters, acts of terrorism, boycotts, strikes, acts of God, governmental acts or orders, and civil disorders), then such failure shall not be deemed a default under this Paragraph 15.1.5, provided you notify the Franchisor immediately and take all action reasonably required by the Franchisor to reopen your Franchised Center. Further, if, through no fault of your own, you lose possession of your Premises, or the Premises is damaged or destroyed by an event such that repairs or reconstruction cannot be completed within 60 days thereafter, then you shall have 30 days after such event or

