

loss of possession in which to apply for the Franchisor's approval to relocate or reconstruct the Premises;

- 15.1.6. You become insolvent or make a general assignment for the benefit of creditors; or you file a petition in bankruptcy; or a petition is filed against, and consented to, by you; or you are adjudicated a bankrupt; or a bill in equity or other proceeding for the appointment of a receiver of you or other custodian for your business or assets is filed and consented to by you; or a receiver or other custodian (permanent or temporary) of any part of your assets or property or the assets or property of any of you is appointed by any court of competent jurisdiction; or proceedings for a composition with creditors under any state or federal law is instituted by, or against, you; or a final judgment against you remains unsatisfied of record for 30 days or longer (unless supersedeas bond is filed); or execution which would materially affect your Franchised Center business is levied against you, your Franchised Center, or any of your property; or suit to foreclose any lien or mortgage against your Franchised Center premises furniture, fixtures, or equipment is instituted against you and not dismissed within 30 days; or the real or personal property of you is sold after levy upon it by any sheriff, marshal, or constable. Upon any of these happenings, this Agreement is not, and shall not be deemed, an asset subject to sale, levy, lien, or transfer and the Franchisor has the absolute right immediately to terminate this Agreement as of such event;
- 15.1.7. The unappealed conviction in a court of competent jurisdiction of you or any of your Franchisee Members or Guarantors of an indictable offense punishable by a term of imprisonment of one year or more; or misconduct relevant to the operation of your Franchised Center; or misconduct that impairs the goodwill associated with the Marks; or of any civil activity, criminal activity, or misconduct involving any person under the age of 19;
- 15.1.8. You maintain false books or records, submit false reports to the Franchisor, or submit financial or operating statements that understate Gross Revenue or enrollment by 3% or more or are otherwise substantially incorrect;
- 15.1.9. You misuse or make any unauthorized use of the Marks or any other identifying characteristics of the System, or otherwise impair the goodwill associated therewith or the Franchisor's rights therein;
- 15.1.10. You are notified of three or more of the same or similar defaults within a 12-month period (whether or not these defaults are cured). If this occurs, the Franchisor has the absolute right to terminate this Agreement immediately upon or anytime after your receipt of the notice of the occurrence of the third such default, and the Franchisor is not obligated to give you an opportunity to cure this third such default;
- 15.1.11. During the Term of this Agreement, you are notified of four or more of the same or similar defaults (whether or not these defaults are cured). If this occurs, the Franchisor has the absolute right to terminate this Agreement immediately upon or anytime after your receipt of the notice of the occurrence of the fourth such default, and the Franchisor is not obligated to give you an opportunity to cure this fourth such default;
- 15.1.12. You relocate your Franchised Center without complying fully with the provisions of Paragraph 4.7 above or without the prior written approval of the Franchisor; or
- 15.1.13. Your Gross Revenue fails to equal or exceed the minimum Gross Revenue requirement required



in Paragraph 4.8 above.

15.2. Defaults that Can Be Cured. Except as otherwise provided in Paragraph 15 above, upon any other default by you under this Agreement, the Franchisor has the absolute right, at its option, and without prejudice to any other rights of, or remedies for, the Franchisor provided by law or this Agreement, to terminate this Agreement and all rights granted hereunder, effective immediately upon the provision of notice to you; provided however, that you may avoid termination by immediately initiating a remedy to cure such default, curing it to the Franchisor's satisfaction, and by promptly providing proof thereof to the Franchisor within the lesser of 30 days or the period specified below. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to you, effective immediately upon the expiration of said 30-day period (or such shorter notice period as specified below) or such longer period as applicable law may require. Defaults that are susceptible of cure hereunder include the following illustrative events:

- 15.2.1. You fail to comply with any material term or condition of this Agreement, as it may be supplemented by the Manual;
- 15.2.2. You fail to submit any financial, operating, or informational statement, as required under this Agreement;
- 15.2.3. You fail to pay to the Franchisor or its designee or affiliates when due any Continuing Royalty, Advertising Fee, or other fee or payment required under this Agreement after 10 days written notice to pay such overdue amount;
- 15.2.4. You submit any information to the Franchisor, to any governmental authority, or to any financial institution that contains any materially inaccurate, incomplete, or misleading statement, or omits any material fact needed to make the submission not misleading. Information is material if it has a value in excess of \$10,000, causes or could cause any Gross Revenue loss or gain in excess of \$10,000, impairs the Marks, or is otherwise material;
- 15.2.5. You fail to comply with any applicable federal, state, or local law or regulation after you receive notice from a governmental agency and any permitted opportunity to comply;
- 15.2.6. You fail to locate an Approved Location or to construct and open the Franchised Center within the time limits provided in Paragraph 4.4 above;
- 15.2.7. You fail to maintain an Approved Location that meets the Franchisor's standards for conduct of your Franchised Center business or to operate or maintain your Franchised Center in accordance with this Agreement within 5 days written notice to correct such default;
- 15.2.8. You fail to sell or provide any Huntington Service after 5 days written notice to correct this default;
- 15.2.9. You sell or provide any product or service from the Franchised Center that is not part of Huntington Services or the System. You shall cease the sale of such products or services immediately upon written notice or within the period required by such notice;
- 15.2.10. You fail to maintain or observe any of the standards, specifications, procedures, or policies prescribed by the Franchisor in this Agreement, the Manual, or otherwise in writing;



- 15.2.11. You fail, refuse, or neglect to obtain the Franchisor's prior written approval or consent as required by this Agreement;
- 15.2.12. You or any of your Franchisee Members engage in any business or market any service or product under a name or mark that, in the Franchisor's opinion, is confusingly similar to the Marks;
- 15.2.13. You deny the Franchisor the right to examine, inspect, or audit your Franchised Center in accordance with this Agreement;
- 15.2.14. Your Manager fails to complete the initial training program, as provided in Paragraph 7 above;
- 15.2.15. You do not train your full-time and part-time employees in such manner as the Franchisor requires; or you use, or participate in, any training program not approved in writing by the Franchisor.
- 15.2.16. A threat or danger to public health or safety results from the construction, maintenance, or operation of the Franchised Center;
- 15.2.17. You fail to obtain or maintain a lease or sublease for, or you fail to purchase, the Premises for your Franchised Center; or you fail to deliver a copy of such lease or sublease to the Franchisor; or you fail to deliver a fully-executed copy of the Franchisor's then-current form of landlord authorization; or you fail to comply with all terms of such lease or sublease; or you terminate, renew, amend, modify, or assign such lease or sublease, or sublet the Premises, without first obtaining the Franchisor's written approval; or you obligate the Franchisor or grant rights against the Franchisor, without the Franchisor's written approval;
- 15.2.18. You fail to expend on opening advertising in the manner and within the time period after you open your Franchised Center the amount required in Paragraph 12.1.1 above;
- 15.2.19. You fail to expend the minimum amounts required on Local Media for Learning Center Services and Exam Preparation Services during the Term of this Agreement, as required by Paragraph 12.1.2 above;
- 15.2.20. You fail at any time during the Term of this Agreement to list your Franchised Center in the telephone directory commonly called the "White Pages" and "Yellow Pages" in the manner and as required by Paragraph 12.1.3 above;
- 15.2.21. You 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 and the Internet), in a manner not approved by the Franchisor, as described in Paragraph 12.1.4 above;
- 15.2.22. You fail to obtain minimum insurance or you fail to name the Franchisor as an additional insured as required in Paragraph 13 above; and
- 15.2.23. You fail to 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, as required in Paragraph 8.7 above.

15.3. **Cross Default.** Any default by you under any other agreement between the Franchisor or its affiliates as



one party and you or any of your Franchisee Members or any of your or their affiliates as the other party that is so material as to permit the Franchisor to terminate, or declare a default under, such other agreement shall be deemed to be a default of this Agreement, and the Franchisor shall have the right, at its option, to terminate this Agreement, effective immediately upon notice to you.

15.4. **Limits.** The description of any default in any Franchisor notice to you shall not preclude the Franchisor from specifying additional or supplemental defaults in any action or proceeding under this Agreement.

15.5. **Limitation of Services or Benefits.**

15.5.1. If you are in receipt of a notice of default issued pursuant to either (a) Paragraph 15 above, or (b) Paragraph 15.2 above and have not cured within the time period permitted in such notice, you agree the Franchisor has the right, in its sole and absolute discretion, temporarily or permanently, fully or partially, to limit, curtail, or remove certain services or benefits provided or required to be provided to you under this Agreement or under any other agreement between you and the Franchisor in lieu of exercising its right to terminate this Agreement pursuant to its terms, including, without limitation:

15.5.1.1. To terminate or limit your right to use or your use of some or all of the Software;

15.5.1.2. To refuse to provide you with any modifications, additions, or deletions to the Software;

15.5.1.3. To refuse to provide you with advice about the Software;

15.5.1.4. To terminate or limit your right to use or your use of some or all of the Phone Number;

15.5.1.5. To terminate, limit, or refuse to route to your Center calls received through the Phone Number;

15.5.1.6. To refuse to provide you with advice about the Phone Number;

15.5.1.7. To restrict you or any of your staff from attending any initial training, continuing training, meetings, workshops, or convention; and to refuse to provide you with any training material;

15.5.1.8. To refuse to sell or furnish to you any supplies, materials, educational materials, and advertising and promotional materials;

15.5.1.9. To refuse to provide you any advice about the operation of your Franchised Center or delivery of Huntington Services;

15.5.1.10. To refuse any request by you to approve your use of any product or service not in the Manual;

15.5.1.11. To refuse any request by you to approve your use of any advertising or promotional materials or activities;

15.5.1.12. To prohibit you from participating on any Franchisee Council or Huntington



Advertising Fund, Inc.;

- 15.5.1.13. To deny you access to any extranet site maintained by the Franchisor and from any Web Site; and;
 - 15.5.1.14. To remove or delete any information about your Franchised Center from any extranet site maintained by the Franchisor and from any Web Site.
- 15.5.2. Any services or benefits removed, curtailed, refused, or limited under this Paragraph 15.5 may be reinstated at any time by the Franchisor in its sole and absolute discretion and you hereby agree to accept immediately any such reinstatement of any services or benefits so removed, curtailed, refused, or limited. If the Franchisor reinstates any services or benefits, it has no obligation to provide you any service or benefit previously removed, curtailed, refused, or limited pursuant to this Paragraph 15.5.
- 15.5.3. You acknowledge and agree that, if the Franchisor limits any services or benefits under this Paragraph 15.5, you shall continue to pay timely all fees and payments required under this Agreement and any other agreement between you and the Franchisor and any of its affiliates, including, without limitation, any fees associated with services or benefits limited by the Franchisor. You shall have no right to a refund of any fees paid in advance for such services or benefits.
- 15.5.4. You acknowledge and agree that the Franchisor's exercise of its rights under this Paragraph 15.5 shall not be deemed a constructive termination of this Agreement or of any other agreement between you and the Franchisor, and shall not be deemed a breach by the Franchisor of any provision of this Agreement or of any provision of any other agreement between you and the Franchisor.
- 15.5.5. You agree the Franchisor shall not be liable for any loss, expense, or damage incurred by you or the Franchised Center because of any action the Franchisor takes under this Paragraph 15.5. The Franchisor is not obligated to reimburse or compensate you in any way for any service or benefit removed, curtailed, refused, or limited under this Paragraph 15.5. You agree to indemnify and hold harmless the Franchisor and its affiliates and their respective present and past directors, stockholders, officers, employees, and agents from and against all claims, demands, losses, obligations, costs, attorneys' and accountants' fees and expenses, court costs, expenses, liabilities, debts, and damages of every kind and nature resulting or arising, directly or indirectly, from any action the Franchisor takes under this Paragraph 15.5.
- 15.5.6. Nothing in this Paragraph 15.5 constitutes a waiver of any right or remedy of the Franchisor under this Agreement or at law or in equity or under any other agreement between you and the Franchisor, including, without limitation, the right to terminate this Agreement under Paragraphs 15, 15.2, and 15.3 hereof.

16. OBLIGATIONS UPON TERMINATION OR EXPIRATION

16.1. **Obligations.** Upon termination or expiration of this Agreement for any reason, your rights to use the Marks and System shall terminate immediately, and, at your sole expense:

- 16.1.1. You shall cease immediately any use of the Marks and System in any manner whatsoever.



- 16.1.2. You shall cease immediately operating the Franchised Center.
- 16.1.3. You shall immediately, and for all time thereafter, cease to represent that you are operating a Huntington Learning Center or that you are or were a Huntington franchisee.
- 16.1.4. Within 5 days of the expiration or termination of this Agreement for any reason:
- 16.1.4.1. You shall notify all your customers in writing using a Franchisor-approved form that you no longer operate a Huntington Learning Center and that you have no rights to the Marks and System, and you shall send a copy of this notice to the Franchisor;
 - 16.1.4.2. You shall remove all signs and other things that display to the public, your staff, and your customers that your Franchised Center was a Huntington Learning Center;
 - 16.1.4.3. You shall submit to the Franchisor all reports required under this Agreement;
 - 16.1.4.4. Upon the Franchisor's written request, you shall assign any student contracts to the Franchisor or its designee;
 - 16.1.4.5. You shall take such actions as may be necessary or required by the Franchisor to cancel any assumed name registration or equivalent registration obtained by you that contains the mark "Huntington" or any other Marks, and you shall furnish the Franchisor with evidence satisfactory to the Franchisor of compliance;
 - 16.1.4.6. You shall give the Franchisor, in the manner required by the Franchisor, a full and complete copy of all data obtained using the Software;
 - 16.1.4.7. You shall give the following to the Franchisor in the manner required by the Franchisor: (a) a list of all past customers and of all customers as of the date of expiration or termination showing their names, the names of all those responsible for payment for services, all their addresses, and all their phone numbers; (b) the amount each such customer paid to you; (c) the value of services rendered to each such customer; (d) and proof satisfactory to the Franchisor that each customer received a full refund for all paid services not rendered by you.
 - 16.1.4.8. You shall immediately refund any and all monies paid to you by your present and past customers in advance for services that have not been rendered and, as a result of the termination or expiration of this Agreement, will not be rendered to such customers. You shall provide to the Franchisor proof satisfactory to the Franchisor that you have paid such monies. You agree that, if you do not provide to the Franchisor such proof within 30 days after termination or expiration of this Agreement, then the Franchisor shall have the right, but not the obligation, to have judgment by confession entered against you in favor of the Franchisor or its assigns in any court of competent jurisdiction for all amounts payable by you to customers under this Paragraph 16.1.4.8, plus the Franchisor's out-of-pocket costs and expenses of entering such judgment, including, without limitation, attorneys' and accountants' fees and expenses and court costs and expenses. The Franchisor has the right to refund to such customers all monies recovered from you through such judgment by confession, less all of the Franchisor's related out-of-pocket costs and expenses. The Franchisor has no obligation to pay any such monies to you. For purposes of this Paragraph



16.1.4.8, you shall execute the Confession of Judgment attached hereto as Exhibit H. You agree that no Franchisor act or omission under this Paragraph 16.1.4.8 shall reduce in any way your sole responsibility to refund any and all monies paid to you by your present and past customers in advance for services that have not been rendered and, as a result of the termination or expiration of this Agreement, will not be rendered to such customers.

16.1.5. Immediately upon expiration or termination of this Agreement for any reason:

16.1.5.1. You shall cease using any telephone numbers listed in any telephone directories under any of the Marks, including under the name, "Huntington Learning Center";

16.1.5.2. You shall cease using any Web Site;

16.1.5.3. You shall cease using any web site, web pages, e-mail addresses, and domain names, whether or not authorized by the Franchisor, used by you in connection with the Franchised Center;

16.1.6. Upon the Franchisor's written request and at your sole expense, you shall change the Premises (including, but not limited to, its signage, paint colors, carpeting, furniture and fixtures) in the manner and in the time period required by the Franchisor to distinguish the Premises from its former appearance and from any Huntington Learning Center.

16.1.7. If you fail or refuse to comply with any requirements of Paragraphs 16.1.1, 16.1.2, 16.1.4.1, 16.1.4.2, or 16.1.5 hereof, the Franchisor shall have the right at any time to enter upon the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at your sole expense, that you agree to pay upon demand. You irrevocably waive any right for compensation by the Franchisor that you may have for any right you may have acquired as a result of your use of the Marks or System. You hereby irrevocably appoint the Franchisor or the Franchisor's nominee to be your attorney-in-fact coupled with an interest, and with power of substitution, to execute and to file for you at your sole expense any relevant document necessary to accomplish the acts contemplated in this Paragraph 16.1.7. The Franchisor has the right to file an original counterpart or a copy of this Agreement with any court 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;

16.1.8. You shall not use, or disclose to others, anything in the Manual or any Franchisor trade secret, operating instruction, or business practice. At your sole expense, you shall return to the Franchisor the Manual, all copies, summaries, and extracts from it, and all other material containing any Franchisor trade secret, operating instruction, and business practice relating to the operation of the Franchised Center (and any copies and summaries thereof, even if such copies or summaries were made in violation of this Agreement), all of which are acknowledged to be trade secrets of the Franchisor. These trade secrets, operating instructions, and business practices include, without limitation, uniform standards, specifications, policies, and procedures for the System and lists of present and former customers, whether in print or electronic form. You acknowledge and agree that any and all lists of present and former customers, whether in print or electronic form, shall be the property of the Franchisor. You shall deliver to the Franchisor a full and complete copy of all data recorded using the Software, which includes, by way of example and without limitation, customer and school contacts lists, student testing and instructional information, bookkeeping records, and financial information. You agree that all such data shall



be the property of the Franchisor. You shall retain no copy or record of any of the foregoing, except for your copy of this Agreement, any correspondence between the parties, and any other documents you reasonably need for compliance with applicable law. You acknowledge and agree that your failure to return to the Franchisor any of the materials or data described in this Paragraph 16.1.8 will cause the Franchisor irreparable harm, and the Franchisor shall have the right to injunctive relief requiring you to comply with the requirements of this Paragraph 16.1.8, in addition to any other remedies it may have under this Agreement, at law or in equity.

- 16.1.9. Your rights to use the Software and the Phone Number shall immediately terminate; and, at your sole expense, you shall cease using the Software and return to the Franchisor all copies of it and all related documentation, or, at the Franchisor's sole option, shall destroy all such copies and documentation; and you shall cease using the Phone Number and shall take such actions as may be necessary or required by the Franchisor to terminate your use or access to the Phone Number.
- 16.1.10. You shall pay immediately all sums due to the Franchisor and its affiliates under this Agreement, including, without limitation, all Continuing Royalty and Advertising Fees, due and owing under this Agreement.
- 16.1.11. You shall comply with all provisions of this Agreement that survive its termination and expiration, including the non-compete covenants in Paragraph 17 below.
- 16.1.12. Within 5 days after the expiration or termination of this Agreement for any reason, you shall deliver a written notice to the landlord of your Premises informing him that this Agreement has expired or been terminated and you shall simultaneously deliver a copy of this notice to the Franchisor.
- 16.1.13. Upon the Franchisor's written request, you shall assign to the Franchisor any interest you have in any lease or sublease for the Premises; and you shall direct the telephone company servicing your Franchised Center business telephones to transfer such telephone numbers to the Franchisor or to the person or entity and premises the Franchisor directs; and you shall direct the utility companies servicing your Franchised Center to transfer service to the Franchisor or to the person or entity the Franchisor directs. You agree to pay any entity, including your landlord, telephone company, and utility companies, any amount or compensation required by such entity to accomplish the acts required by the Franchisor under this Paragraph 16.1.13, or to the Franchisor immediately upon demand, if the Franchisor pays any such required amount. The Franchisor does not represent it will review or cause others to review your lease; however, if the Franchisor conducts any review of your lease, 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 irrevocably appoint the Franchisor or the Franchisor's nominee to be your attorney-in-fact coupled with an interest, and with power of substitution, to execute and to file for you any relevant document to accomplish the acts contemplated in this Paragraph 16.1.13. The Franchisor has the right to file an original counterpart or a copy of this Agreement with the utility company, telephone company, landlord, or any court, agency, or person as written evidence of the appointment by you of the Franchisor or the Franchisor's nominee to be your attorney-in fact.
- 16.1.14. If you continue to operate or subsequently begin to operate any other business, you agree not to use any reproduction, counterfeit, copy, or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, that, in the Franchisor's sole and absolute discretion, may possibly cause confusion, mistake, or deception, or that, in the Franchisor's sole and absolute discretion, may possibly dilute the Franchisor's rights in or to the Marks.



16.1.15. You shall comply with each and all of the provisions in this Paragraph 16.1 at your sole expense. You agree that time is of the essence in your complying with each and all of the provisions of this Paragraph 16.1. You agree to pay the Franchisor or its designee all costs and expenses it incurs under this Paragraph 16.1, including, without limitation, attorneys' and accountants' fees and expenses.

16.2. **Additional Obligation upon Termination Due to Your Default.** If this Agreement is terminated for any default by you, you shall pay to the Franchisor or its designee all damages and costs and expenses, including all attorneys' and accountants' fees and expenses, related to the termination that are incurred by the Franchisor; and all costs and expenses and any damages suffered by the Franchisor shall be a lien in favor of the Franchisor against the assets owned by you (including, without limitation, the personal property, furniture, fixtures, furnishings, equipment, signs, fixtures, and inventory owned by you) and on the Premises at the time of this default. Said payment and lien shall be in addition to any other relief available under this Agreement or at law or in equity

16.3. **Survival of Obligations.** The expiration or termination of this Agreement shall not relieve you of any of your obligations to the Franchisor existing at the time of such expiration or termination, or terminate your obligations that, by their nature, survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall be without prejudice to the Franchisor's rights against you. The Franchisor has no obligation to inform you of your obligations or of the termination of any of your rights under this Agreement.

17. COVENANTS

17.1. **Representations.** You agree that you and your Franchisee Members will receive certain valuable information about the Franchised Center, including its development and operation and the System, and that this information would not have been given to you or them, without your execution of this Agreement; that this information has been developed by the Franchisor over a number of years at great effort and expense and includes marketing techniques, operational procedures, business practices, and management methods not generally known; that none of these marketing techniques, operational procedures, business practices, and management methods was known to you or your Franchisee Members before your execution of this Agreement and all will be of significant competitive advantage to you and them; and that all of these marketing techniques, operational procedures, business practices, and management methods constitute valuable information, which are trade secrets of the Franchisor. After conducting an independent investigation of the Franchisor and individual Huntington Learning Centers before the Agreement Date, you acknowledge that you and all your Franchisee Members had limited or no experience in the learning center business or exam preparation business and that such experience, if any, was not comparable to that provided under the System; and it would take considerable time and effort for you or your Franchisee Members to develop knowledge and experience in the learning center business or exam preparation business comparable to that provided under the System. You agree that gaining access to the marketing techniques, operational procedures, business practices, and management methods used in your Franchised Center is a primary reason for your execution of this Agreement and that the training in the Franchised Center operation and the knowledge that will be imparted to you and your Franchisee Members are essential to the Franchised Center operation and would not be so imparted, except for execution of this Agreement. You agree that you and all your Franchisee Members have earned a livelihood before entering into this Agreement and have the skills to do so in the future, if the non-competition provisions in this Paragraph 17 shall be enforced against you or them. You agree that the representations in this Paragraph 17 all survive the expiration or termination of this Agreement.



17.2. In-Term Covenant against Competition. Except as otherwise approved in writing by the Franchisor, you covenant and agree that, during the Term of this Agreement, you and the Franchisee Members shall not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person or entity:

- 17.2.1. Divert or attempt to divert any present or prospective business or customer of any Huntington Learning Center to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System;
- 17.2.2. Employ or seek to employ any person who is at that time or was within one year before such date, employed by the Franchisor or by any other Huntington franchisee or by any of the Franchisor's affiliates, or otherwise directly or indirectly induce such person to leave his or her employment; or
- 17.2.3. Own, maintain, advise, invest in, operate, engage in, be employed by, be a consultant to, loan money to, provide any assistance to, be a franchisee of, or have any interest in (as owner, guarantor, or otherwise) any business (a) that is the same as, or similar to, a Huntington Learning Center; (b) that offers individualized instruction in reading, phonics, study skills, mathematics, or related areas; (c) that offers courses or tutoring to prepare for standardized entrance examinations, including, without limitation, the SAT and ACT; or (d) that offers educational services or products the same as or similar to those offered in a Huntington Learning Center.

17.3. Post-Term Covenant against Competition. Except as otherwise approved in writing by the Franchisor, you shall not, for a continuous uninterrupted period of 2 years commencing upon (a) any Transfer having the effect of (i) transferring this Agreement, (ii) changing control of you, or (iii) changing the ownership of all or substantially all of the assets of the Franchised Center, (b) termination or expiration of this Agreement (regardless of the cause for termination or expiration), or (c) a final order of a duly authorized court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Paragraph 17.3, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with, any person or entity:

- 17.3.1. Divert or attempt to divert any present or prospective business or customer of any Huntington Learning Center to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System;
- 17.3.2. Employ or seek to employ any person who is at that time, or was within one year prior to such date, employed by you or the Franchisor or by any other Huntington franchisee or by any of the Franchisor's affiliates, or otherwise directly or indirectly induce such person to leave his or her employment; or
- 17.3.3. Own, maintain, advise, invest in, operate, engage in, be employed by, be a consultant to, loan money to, provide any assistance to, be a franchisee of, or have any interest in (as owner, guarantor, or otherwise) any business (1) (a) that is the same as, or similar to, a Huntington Learning Center; (b) that offers individualized instruction in reading, phonics, study skills, mathematics, or related areas; (c) that offers courses or tutoring to prepare for standardized entrance exams, including, without limitation, the SAT and ACT; or (d) that offers any educational services or products the same as or similar to those offered in a Huntington



Learning Center; and (2) which business is, or is intended to be, located in or within:

- 17.3.3.1. The Premises;
- 17.3.3.2. The Exclusive Area;
- 17.3.3.3. A radius of 25 miles from the Exclusive Area;
- 17.3.3.4. A radius of 25 miles from your Approved Location; or
- 17.3.3.5. A radius of 25 miles from any Huntington Learning Center.

17.4. **Exceptions.** Paragraph 17.3.3 above shall not apply to:

- 17.4.1. Your ownership of a less than 5% beneficial interest in the outstanding equity securities of any corporation which has securities registered under the Securities Exchange Act of 1934; or
- 17.4.2. Your (or if you are a corporation, partnership, or limited liability company, your Franchisee Members) work for any school licensed by, or recognized as, a school by the state or jurisdiction in which such school operates, provided that you, your Franchisee Members, and such school does not use for your, their, or its benefit, or for the benefit of others, the System or Manual, or disclose any Franchisor trade secret.

17.5. **Modification.** The Franchisor has the right, but not the obligation, during the Term of this Agreement or afterwards, to reduce the scope of any covenant in this Paragraph 17 or any portion of any covenant in this Paragraph 17, without your consent, effective immediately upon receipt by you of written notice; and you shall comply immediately with any covenant as so modified, which shall be fully enforceable without regard to any other provision of this Paragraph 17.

17.6. **No Defense.** You agree that the existence of any claim you may have against the Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by the Franchisor of the covenants in this Paragraph 17.

17.7. **Individuals' Covenants.** You shall obtain and furnish to the Franchisor an executed Confidentiality and Non-Competition Agreement, as set forth in Exhibit D of this Agreement, from your spouse, the Franchisee Members, the spouses of the Franchisee Members, your Manager, the spouses of the Guarantors, and any employees having access to any of the Franchisor's confidential information.

17.8. **Costs and Expenses.** You agree to pay to the Franchisor or its designee all costs and expenses, including, without limitation, attorneys' and accountants' fees and expenses, incurred by the Franchisor in connection with, or related to, enforcement of this Paragraph 17.

18. PERMITS, TAXES, AND INDEBTEDNESS

18.1. **Compliance with Applicable Laws and Regulations.** At all times, you shall comply with all federal, state, municipal, and local laws, rules, regulations, ordinances, and codes applicable and related to this Agreement (including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of your Franchised Center), your Franchised Center, and all aspects of the conduct of your Franchised Center. You acknowledge and agree that Huntington Services are regulated by certain states; that federal and state governments, municipalities, regulatory bodies, or others may regulate your Franchised Center or Huntington Services now or in the future; and that most states regulate teachers. You represent that you have investigated and ascertained all applicable laws and regulations specific to education and the activities franchised hereunder that affect your Franchised Center, including all applicable federal, state, municipal, and local laws and regulations. You shall obtain all licenses and



permits required by any applicable federal, state, municipal, and local law, rule, regulation, ordinance and code, including, without limitation, those for construction, design, operation, occupancy, health, sanitation, building, utility, signage, education, exam preparation, labor, employment, teaching, tutoring, teacher certification, learning center operation, and test administration; and shall make timely filings of all required tax returns and of all documents and reports required by all federal, state, municipal, and local governmental agencies; and shall pay when due all taxes levied or assessed on, and related to, this Agreement and your Franchised Center. You may contest any law, rule, regulation, ordinance, code, or tax in accordance with applicable procedures, but you shall never permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor of Franchisee, the Franchised Center, or any assets of your Franchised Center. At no time is the Franchisor obligated to inform you of any federal, state, municipal, or local law, rule, regulation, ordinance, code, or tax. You shall pay to the Franchisor or its designee an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on the Franchisor with respect to any payments you make to the Franchisor or actions you take under this Agreement, unless the tax is credited against income tax otherwise payable by the Franchisor.

18.2. **Notification of Actions.** You shall immediately notify the Franchisor in writing of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, that may adversely affect the operation or financial condition of the Franchised Center.

19. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

19.1. **Relationship.** In all matters pertaining to this Agreement and your Franchised Center, you are, and shall be deemed, an independent party. The Franchisor and its affiliates and their directors, stockholders, employees, and agents shall have no fiduciary obligation to you. You are not, and shall not be deemed, an agent, legal representative, joint venturer, partner, or employee of the Franchisor or of any Franchisor affiliate for any purpose whatsoever. Neither the Franchisor nor any Franchisor affiliate is liable for your debts, obligations, or your Acts. You, your affiliates, and your Franchisee Members have no right to bind the Franchisor or any Franchisor affiliate in any way, for any reason, and shall not represent that you or they have any right to do so. You shall conduct all your obligations in your own name and not in the name of the Franchisor or the name of any Franchisor affiliate.

19.2. **Control.** Except as provided in this Agreement, the Franchisor has no right to control, or have access to, your funds, or control the expenditure of your funds, or exercise any dominion or control over your Franchised Center. None of your customers, employees, agents, or vendors are, or shall be deemed, the Franchisor's customers, employees, agents, or vendors, and the Franchisor shall have no control over, or any responsibility for, any of your customers, employees, agents, or vendors, and you shall communicate this to them. Except as described in Paragraph 8.2.2 above, you shall have sole discretion to establish prices for all Huntington Services sold at or from your Franchised Center, and the Franchisor shall have no control over the setting of such prices.

19.3. **Required Statements.** You shall indicate your independent ownership of your Franchised Center in all public records and on all stationery and checks. You shall place the words "Independently Owned and Operated," or other words as directed by the Franchisor in writing from time to time, in your Premises, on all stationery, business cards, brochures, literature, advertisements, promotional material, signs, and all materials and items using or displaying to the public any of the Marks.

19.4. **Indemnification.**

19.4.1. You, and not the Franchisor, are solely responsible for all losses, damages, and liabilities to all



your customers, employees, agents, and vendors and to all others, and for all damages to property, and for all physical and mental injury and illness and death of persons arising out of, or with, your Acts; and for your compliance with all federal, state, and local laws, statutes, codes, rules, regulations, and standards, including, by way of example and without limitation, the ADA. You, and not the Franchisor, are solely responsible for any and all fraudulent acts and practices committed by you, your staff, agents, suppliers, and vendors in connection with all consumer transactions in, and related to, the Franchised Center. You agree the Franchisor is, in no regard, a supplier in any consumer transaction conducted by you, your staff, agents, suppliers, or vendors. For all time, you shall indemnify and hold harmless the Franchisor and its affiliates and their respective present and past directors, stockholders, officers, employees, and agents from and against all claims, demands, losses, obligations, costs, attorneys' and accountants' fees and expenses, court costs, expenses, liabilities, debts, and damages of every kind and nature resulting or arising, directly or indirectly, from your Acts, the conduct of your business hereunder, and from any violation of any federal, state, or local laws, statute, code, rule, regulation, or standard by you, your business, your Franchised Center, your employees and agents, and from claims by any federal, state, or local governmental agency, bureau, or board and by any person, vendor, landlord, or other individual or entity, whether occasioned by neglect, omission, willful act, or otherwise, including, without limitation, all costs, including attorneys' and accountants' fees and expenses, of defending against them.

19.4.2. You shall advise immediately the Franchisor if a notice is received that a claim has been or may be filed with respect to a matter covered by this Agreement, and you shall immediately assume the defense thereof at your sole cost and expense. At your sole expense, the Franchisor will endeavor to cooperate with you and your counsel in the defense and settlement, if any, of all such claims. In any event, the Franchisor will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly in any way affect the Franchisor or its affiliates or their present or past officers, directors, employees, agents, successors, or assigns. The Franchisor may defend, settle, arbitrate, and litigate such action in the manner it deems appropriate and you shall, immediately upon written demand, pay to the Franchisor or its designee all costs, including attorneys' and accountants' fees and expenses, and litigation costs, incurred by the Franchisor in effecting such defense, in addition to any sum the Franchisor may pay by reason of any settlement or judgment against the Franchisor, any of its affiliates, or any other party.

19.5. **Fees and Costs.** You agree to pay the Franchisor or its designee all expenses, including, without limitation, attorneys' and accountants' fees and expenses and litigation and court costs, incurred by the Franchisor, its affiliates, and their successors and assigns (1) to issue any notice to remedy any default by you under this Agreement; (2) to issue any notice to remedy any default by you or any of your affiliates under any other agreement between you and any of your affiliates and the Franchisor and any of its affiliates; (3) to enforce any rights under this Agreement or under any other agreement between you and any of your affiliates and the Franchisor and any of its affiliates; (4) to effect termination of this Agreement; (5) to effect termination of any other agreement between you and any of your affiliates and the Franchisor and any of its affiliates; (6) to collect any amounts due under this Agreement; and (7) to collect any amounts due under any other agreement between you and any of your affiliates and the Franchisor and any of its affiliates.

20. APPROVALS AND WAIVERS

20.1. **Approvals.** Whenever this Agreement requires the prior approval or consent of the Franchisor, you shall make a timely written request to the Franchisor for such approval or consent, and you must obtain such



approval or consent in writing from a corporate officer of the Franchisor.

- 20.2. **No Actions, Advice, or Training Deemed a Guarantee.** You agree that, except as otherwise specifically stated herein, the Franchisor has the absolute right to exercise its own judgement on various matters about this Agreement and the Manual, and has the absolute right to approve, disapprove, give its consent, and refuse its consent to your requests in its sole and absolute discretion. You agree the Franchisor has the absolute right to refuse to grant any approval or consent permitted or required in this Agreement, if you are in default of this Agreement or if you or any of your affiliates are in default of any agreement between you and any of your affiliates and the Franchisor and any of its affiliates. You agree that the Franchisor's action, refusal to act, approval, disapproval, consent, or refusal of consent is not, and shall not be deemed, a representation, warranty, certification, or guarantee by the Franchisor about that which is acted upon or refused to be acted upon or that which is approved or disapproved or that which is consented to or refused consent, or about any appropriateness, legality, profitability, or success related thereto. Any failure by the Franchisor to respond to your request in a timely manner or within any time period required or permitted in this Agreement is not, and shall not be construed as, a default under this Agreement. No Franchisor action, refusal to act, approval, disapproval, consent, or refusal of consent is, or shall be deemed, a guarantee, warranty, or representation that you, your staff, your Franchised Center, or any aspect of your business complies with, or meets, any local, municipal, state, federal, or other laws or regulations related to the offering of Huntington Services or otherwise.
- 20.3. **Binding Effect.** Upon its execution by you and the Franchisor, this Agreement shall bind, and inure to the benefit of, you and the Franchisor and your and the Franchisor's permitted heirs, executors, personal representatives, successors, and assigns.
- 20.4. **Waiver of Obligation.** Either you or the Franchisor may by written notice unilaterally waive or reduce any obligation of, or restriction upon, the other under this Agreement effective upon delivery of such notice or upon any other effective date stated in such notice. Any such waiver granted by the Franchisor must be signed by a corporate officer of the Franchisor and shall not prejudice any other rights of the Franchisor and will be subject to review continually by the Franchisor, and the Franchisor retains the right to revoke such waiver at any time, effective upon delivery to you of written notice of revocation.
- 20.5. **Right to Disclose; Right to Obtain Credit Report.** You agree the Franchisor has the right (a) to use, disclose, and disseminate to any party using the System and to any Franchisor affiliate any report or information you are required or permitted to furnish to the Franchisor under this Agreement or the Manual or that the Franchisor obtains from any other party regarding you or the Franchised Center; and (b) to use, disclose, and disseminate to any party not using the System, for any purpose, any such report or information. You agree the Franchisor has the right from time to time to obtain a credit report of you and each of your Franchisee Members.
- 20.6. **Use of Name, Image, Voice.** You (or, if you are a corporation, partnership, or limited liability company, each Franchisee Member) hereby consent to the use by the Franchisor or its affiliates of your and each Franchisee Member's name, image, and voice, and any written or spoken statements by you or a Franchisee Member, for all time for any business purpose as determined by the Franchisor in its sole discretion. Such consent shall survive the expiration or termination of this Agreement and the death or incapacity of you or any Franchisee Member.
- 20.7. **Rights and Remedies.**
- 20.7.1. The Franchisor's rights and remedies in this Agreement are in addition to any other rights and remedies that may be granted by law. The Franchisor's rights under this Agreement are



cumulative. The Franchisor's failure to exercise any right under this Agreement or the acceptance of any payment or report from you shall not constitute a waiver of any term or condition of this Agreement for any preceding or succeeding breach, nor a waiver by the Franchisor of its right, at any time afterwards, to require exact and strict compliance with this Agreement. No exercise or enforcement by the Franchisor of any right or remedy under this Agreement shall preclude the exercise or enforcement by the Franchisor of any other right or remedy under this Agreement or that the Franchisor is entitled by law to enforce. The Franchisor's failure to terminate this Agreement under its terms is not, and shall not be construed to be, a waiver of, and does not affect, the Franchisor's absolute right to terminate this Agreement under its terms.

- 20.7.2. You agree the Franchisor's enforcement or failure to enforce any term of any franchise or other agreement with any franchisee shall not waive or inhibit the Franchisor's right to enforce the terms of this Agreement or any other agreement between you and any of your affiliates and the Franchisor and any of its affiliates. You agree that the Franchisor's course of conduct or action with respect to you or any other franchisee shall in no way be a defense to the Franchisor's enforcement of this Agreement.

20.8. Responsibility to Perform.

- 20.8.1. You agree that, if you are required under this Agreement or law or regulation to perform any action, you shall do so promptly and within the time period required by this Agreement or by law or regulation, or, if permitted or required under this Agreement or law or regulation, within the time period directed by the Franchisor in writing; and you shall so perform at your sole cost and expense.
- 20.8.2. Unless required to the contrary under this Agreement or by law or regulation, the Franchisor is not obligated to notify you of any requirement or time period to so perform, or to pay any costs or expenses related thereto. Any notice given by the Franchisor of any requirement or time period to perform that is not required under this Agreement or law or regulation shall not impose on the Franchisor any future obligation to provide any such or similar notice.
- 20.8.3. You agree that delays in the Franchisor's performance of its duties under this Agreement not due to the Franchisor's fault or not under the Franchisor's 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, shall not be deemed a default under this Agreement; and you agree to extend the period of time within which the Franchisor is obligated to so perform for the period of such delay or such other period of time as the Franchisor requires in writing.

20.9. **No Right to Withhold Release.** Unless permitted by law, you agree you shall have no right to withhold or delay providing to the Franchisor any release of the Franchisor required or permitted under this Agreement on any grounds, including, without limitation, due to (a) any claim or counter-claim by you or any of your affiliates under this Agreement or any other agreement between you or any of your affiliates and the Franchisor or any of its affiliates; or (b) the Franchisor's delay in demanding you provide any release required or permitted under this Agreement. Whenever you are required to execute a release in favor of the Franchisor upon your exercising a right under this Agreement, you agree that such requirement is a material condition to your execution of such right.

21. **NOTICES.** All notices to you and the Franchisor during the Term of this Agreement and afterwards shall be in



writing and shall be sent to the other party by registered or certified mail, postage fully prepaid, return receipt requested, or sent by other means that affords the sender evidence of delivery, attempted delivery, or rejected delivery, addressed to such party's address for notices as listed in Exhibit E to this Agreement, or at any other address that you or the Franchisor designates in writing, provided, however, that you shall not designate any address that is a post office box. Notices shall be deemed delivered and received on the earliest of actual receipt; 5 business days after placement in the U.S. mail; or one business day after mailing, if placed in the U.S. mail or a courier service for next business day delivery.

22. JOINT AND SEVERAL LIABILITY; ORGANIZATION OF FRANCHISEE

22.1. Joint and Several Liability.

22.1.1. You represent that:

22.1.1.1. The Franchisee is the person, persons, corporation, partnership, or limited liability company listed in the opening paragraph of this Agreement and that, if more than one party is described therein, each shall be liable jointly and severally for the Franchisee's performance under this Agreement;

22.1.1.2. Solely the person or entity termed the Franchisee is responsible for any investigation by you of the business opportunity presented by this Agreement;

22.1.1.3. You and each person executing this Agreement are duly authorized to do so, and that, upon such person's execution, this Agreement shall bind such persons;

22.1.1.4. The execution of this Agreement does not violate any term of any other agreement or commitment to which you or any of your affiliates are a party or to which any of your Franchisee Members or any Guarantor is a party; and

22.1.1.5. The execution of this Agreement does not violate any term of any stockholder, partnership, or member agreement of any corporation, partnership, or limited liability company that is the Franchisee or of any amendment thereto.

22.1.2. You agree that only the person, persons, corporation, partnership, or limited liability company named in the opening paragraph of this Agreement is the Franchisee and that no other person or entity, including any of your Franchisee Members or any Guarantor, is entitled to rely on, enforce, or obtain relief for, any breach of this Agreement by the Franchisor, either directly or by subrogation.

22.2. Partnership Franchisee. If you, including any successor to, or assignee of, the Franchisee, are a partnership, you must comply with the following requirements:

22.2.1. You must furnish the Franchisor with a copy of your current partnership agreement as well as such other documents as the Franchisor may request, with certification that the documents are complete and in full force.

22.2.2. If your partnership agreement does not provide that the transfer of interests or issuance of additional interests are restricted by this Agreement, you shall amend the applicable documents with the Amendment Agreement contained in Exhibit F attached hereto, or another amendment agreement satisfactory to the Franchisor in form and substance, to so reflect such



restriction. Upon the Franchisor's written request, you shall deliver a copy of the executed amendment, with all necessary resolutions and ratifications to the Franchisor.

22.3. Limited Liability Company Franchisee. If you, including any successor to, or assignee of, the Franchisee, are a limited liability company, you must comply with the following requirements:

- 22.3.1. Copies of your articles of organization, your operating agreement, and other governing documents, and any amendments thereto, must be promptly furnished to the Franchisor with certification that the documents are complete and in full force.
- 22.3.2. If your articles of organization or operating agreement, as applicable, do not provide that the transfer of interests or issuance of additional interests are restricted by this Agreement, you shall amend the applicable documents with the Amendment Agreement contained in Exhibit F attached hereto, or another amendment agreement satisfactory to the Franchisor in form and substance, to so reflect such restriction. Upon the Franchisor's written request, you shall deliver a copy of the executed amendment, with all necessary resolutions and ratifications to the Franchisor.

22.4. Corporate Franchisee. If you, including any successor to, or assignee of, the Franchisee, are a corporation, you must comply with the following requirements:

- 22.4.1. Copies of your articles or certificate of incorporation, bylaws, and other governing documents, and any amendments thereto, including the resolution of the board of directors authorizing entry into this Agreement, must be promptly furnished to the Franchisor with certification that the documents are complete and in full force.
- 22.4.2. If your articles or certificate of incorporation and bylaws, as applicable, do not provide that the transfer of interests or issuance of additional interests are restricted by this Paragraph 22.4, you shall amend the applicable documents to so reflect such restriction. Such amendment shall be in form and substance satisfactory to the Franchisor and, upon request, you shall deliver a copy of the amendment, with all necessary resolutions and ratifications to the Franchisor.
- 22.4.3. You must maintain stop-transfer instructions against the transfer on your records of any equity securities; and each of your stock certificates must have conspicuously endorsed upon its face a statement in a form satisfactory to the Franchisor that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement. The requirements of this Paragraph 22.4.3 shall not apply, however, to a publicly held corporation. You shall cause each share of stock to bear the following legend on its face, printed conspicuously and legibly and completed with the applicable date:

The transfer of this certificate of stock is subject to the terms and conditions of a franchise agreement, dated _____ with Huntington Learning Centers, Inc., which restricts the transfer of any stock of this corporation, except as provided in such franchise agreement. Similar restrictions are set forth in the Articles/Certificate of Incorporation and Bylaws of this corporation.

22.5. Guarantees. You agree that if your spouse, the Franchisee Members, or the spouses of the Franchisee Members, are not the Franchisee, then these individuals shall execute the Guarantee Agreement attached as



Exhibit B to this Agreement.

22.6. **Assurances.** You represent that the written information and application you submitted to the Franchisor (including, without limitation, the information you submitted, or are submitting in connection with the Agreement, to the Franchisor on its confidential application, the franchisee ownership description form, and any other form and application) are true and complete. You acknowledge that the Franchisor is entering into this Agreement relying on the information and application you submitted to the Franchisor.

23. **ENTIRE AGREEMENT.** This Agreement and all its exhibits constitute the entire agreement between you and the Franchisor with reference to its subject matter. This Agreement supersedes all prior and contemporaneous negotiations, understandings, representations, and agreements, oral or written, about this Agreement's subject matter. The Franchisor's obligations to you are confined exclusively to this Agreement. Any right granted to you by the Franchisor as to the subject matter hereof is described solely in, and limited to, this Agreement. Except for those specifically permitted by this Agreement to be made unilaterally by the Franchisor or you hereunder, no amendment, change, or variance from this Agreement shall be binding on either party, unless mutually agreed to by the parties and executed in writing by your authorized officers or agents and by a corporate officer of the Franchisor.

24. **APPLICABLE LAW; FORUM; DISPUTE RESOLUTION**

24.1. **Applicable Law; Forum.**

24.1.1. This Agreement shall be interpreted and construed in accordance with the laws of the state of Delaware, except for such state's conflict-of-law rules. The parties hereto agree that the New Jersey Franchise Practices Act shall not apply to this Agreement.

24.1.2. Except as otherwise provided herein, any action, whether or not arising out of, or relating to, this Agreement, whenever and wherever incurred, whether vested or contingent, whether in law or in equity, whether directly, representatively, derivatively, or in any other capacity, brought by you or any Franchisee Member against the Franchisor shall be brought in the judicial district in which the Franchisor has, at the time of commencement of such action, its principal place of business, as described in Exhibit E. The Franchisor shall have the right to commence an action against Franchisee in any court of competent jurisdiction. All such parties hereby waive all objections to personal jurisdiction or venue for the purpose of carrying out the purposes of this Paragraph 24.1.2, and such parties agree that nothing in this Paragraph 24.1.2 shall be deemed to prevent any party to such action from removing the action from state court to federal court. You acknowledge and agree that this Agreement is made in New Jersey and is to be performed in part through services rendered to you in New Jersey.

24.1.3. You acknowledge and agree that Paragraph 24.1 of this Agreement governs any dispute under any prior or other agreement between you or any of your affiliates and the Franchisor or any of its affiliates, and that such provision shall supersede and govern any contrary obligation in any such agreement for either such party thereunder to participate in any mediation or arbitration or both in connection with filing an action or claim under such agreement, which such contrary obligation shall be null and void and of no force or effect. You further acknowledge and agree that all such prior and other agreements shall be governed by this Paragraph 24.1.

24.2. **Claims against the Franchisor.** Notwithstanding any other provision of this Agreement, you have no



right to make any claim or counterclaim against the Franchisor during the Term of this Agreement in any manner other than the manner described in this Paragraph 24.2.

- 24.2.1. If, during the Term of this Agreement, you have any claim against the Franchisor or any Franchisor affiliate or their present or past directors, stockholders, officers, employees, or agents, including, without limitation, any claim related to renewal or Transfer hereunder, any claim that the Franchisor failed to meet any obligation under this Agreement, defaulted under this Agreement, or did not perform under this Agreement, then you shall notify the Franchisor in writing of this claim. This written notice shall describe the claim, provide an opportunity to cure, describe the manner in which you request the Franchisor cure, and provide a Cure Period within which the Franchisor may cure such alleged default of at least 60 days. Your written notice shall be delivered to the Franchisor in the manner described in Paragraph 21 above. If your notice is not in writing, and does not (1) describe the claim, (2) provide an opportunity to cure, (3) describe the manner in which you request that the Franchisor cure, and (4) provide a Cure Period of at least 60 days, then your notice shall be deemed to be (a) deficient, (b) not a claim upon which the Franchisor is required to act, (c) not an actionable claim, (d) not grounds for your seeking any remedy under this Agreement or otherwise, and (e) not grounds for your termination of this Agreement.
- 24.2.2. If you do not file a legal action for such claim, as described in Paragraph 24.2.1 above, within 30 days after the expiration of the Cure Period, then you shall have evidenced conclusively that you have no claim against the Franchisor and Franchisor affiliates and their respective present and past directors, stockholders, officers, employees, and agents; and you shall have evidenced conclusively that any claim you may have had is not a claim upon which the Franchisor is required to act, is not an actionable claim, is not grounds for your seeking any remedy under this Agreement or otherwise, and is not grounds for termination by you of this Agreement; and you shall be deemed to have agreed to have waived any right you may have had to initiate any future claim against the Franchisor for the same cause.

24.3. Waiver of Rights. You waive the right: to enforce any oral agreement, promise, representation, or warranty not in this Agreement; to amend, modify, or suspend any provision of this Agreement; to stay the effectiveness of any expiration or termination of this Agreement or any other agreement between you or any of your affiliates and the Franchisor or any of its affiliates or any pending expiration or termination thereof; and to seek damages against the Franchisor because the Franchisor insisted upon the execution of a general release or refused its consent or approval under this Agreement. Neither you nor the Franchisor shall seek to litigate as a representative of, or on behalf of, any other person, class, or entity any dispute, controversy, or claim of any kind arising out of, or relating to, this Agreement, the rights and obligations of the parties, the sale of the franchise, or other claims or causes of action relating to the performance of either party to this Agreement. No action or proceeding under this Agreement shall add as a party, by consolidation, joinder, or in any other manner, any person or party other than you and the Franchisor and any person in privity with, or claiming through, in the right of, or on behalf of, you or the Franchisor, unless both you and the Franchisor consent in writing. The Franchisor has the absolute right to refuse such consent.

24.4. Limitation on Claims. You and the Franchisor agree that any and all claims by you against the Franchisor arising out of, or relating to, directly or indirectly, the making of, interpretation of, or performance under this Agreement may not be commenced by you, unless brought before the earlier of (1) the expiration of one year after the act, transaction, or occurrence upon which such claim is based; or (2) one year after this Agreement expires or is terminated for any reason. You agree that any claim or action not brought by you within the periods required under this Paragraph 24.4 shall forever be barred as a claim, counterclaim,



defense, or set off.

24.5. WAIVER OF TRIAL BY JURY. YOU AND THE FRANCHISOR AGREE TO WAIVE A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING, WHETHER AT LAW OR IN EQUITY, ABOUT ANY AND ALL ISSUES THAT ARISE OUT OF, CONCERN, OR RELATE TO, THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT, YOUR PERFORMANCE OR THE FRANCHISOR'S PERFORMANCE UNDER THIS AGREEMENT, OR OTHERWISE, DURING THE TERM OF THIS AGREEMENT AND AFTERWARDS. YOU AND THE FRANCHISOR MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF YOUR AND THE FRANCHISOR'S CONSENT TO THE WAIVER OF A TRIAL BY JURY. YOU ACKNOWLEDGE AND AGREE YOU HAVE CONSULTED WITH, AND HAVE BEEN ADVISED BY, COUNSEL ABOUT THE TRANSACTION GOVERNED BY THIS AGREEMENT AND SPECIFICALLY ABOUT THE TERMS OF THIS PARAGRAPH 24.5, WHICH CONCERNS THE WAIVER OF RIGHT TO TRIAL BY JURY BY YOU AND THE FRANCHISOR. YOU AND THE FRANCHISOR AGREE THAT YOUR REPRESENTATIONS SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

24.6. Limitation on Remedies. Except as required to the contrary under the indemnification provisions of Paragraph 19.4 above or by law, during the Term of this Agreement and afterwards, you waive to the fullest extent permitted by law any right to, or claim for, any punitive, speculative, exemplary, incidental, indirect, special, or consequential damages against the Franchisor and all of its affiliates arising out of any cause whatsoever that arises out of, concerns, or relates to, the making of, interpretation of, or performance under, directly or indirectly, this Agreement, whether such cause is based in contract, negligence, strict liability, other tort, or otherwise, including, but not limited to, your claim or counterclaim that the Franchisor unreasonably gave, withheld, or delayed its consent or approval to anything.

24.7. No Exclusive Remedy. No right or remedy conferred upon or reserved to you or the Franchisor by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

24.8. Specific Performance. Notwithstanding any other provision of this Agreement, the Franchisor has the right to seek specific performance of any of your obligations under this Agreement or injunctive relief against any conduct that will cause it loss or damage, under customary equity rules, to prevent a breach or threatened breach of this Agreement without the need to show monetary damages and without posting a bond. Such conduct includes, without limitation, any use by you relating to the Marks, the System, the Manual, or the Franchisor's trade secrets and any violation by you of Paragraphs 9, 10, 16, and 17 hereof. An application for such a remedy shall not be deemed an election or a waiver of any other remedy under this Agreement or at law or in equity. The Franchisor may file an original counterpart or a copy of this Agreement with any court as written evidence of your consent to the issuance of injunctive relief.

24.9. Costs and Fees. Except as otherwise specifically provided for herein, in any judicial or administrative action, order, or proceeding hereunder involving you and the Franchisor during the Term of this Agreement or thereafter, the prevailing party shall be entitled to recover its damages, costs and expenses, including, without limitation, all court costs and attorneys' and accountants' fees and expenses.

25. SEVERABILITY AND CONSTRUCTION

25.1. Severability. Each article, paragraph, subparagraph, term, condition, and covenant of this Agreement and all portions of them shall be considered severable. If, for any reason, any portion of this Agreement is



determined to be unconscionable or unenforceable or invalid, contrary to, or in conflict with, any applicable present or future law, rule, or regulation in a final unappealed ruling issued by any court, agency, or tribunal with valid jurisdiction in an action or proceeding to which the Franchisor is a party, that ruling shall not impair the operation of, or have any other effect upon, any other portion of this Agreement, all of which shall remain binding on you and the Franchisor and shall continue to be given full force and effect. Any invalid portion shall be deemed not to be a part of this Agreement as of the date on which the ruling becomes final, if you are a party to this action or proceeding, or on your receipt of notice of non-enforcement from the Franchisor. You expressly agree to be bound by any promise or covenant imposing the maximum duty permitted by law that is subsumed within the terms of any provision hereof, as though it were separately articulated in, and made a part of, this Agreement, that may result from striking from any of the provisions hereof any portion or portions that a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which the Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order.

25.2. **Survival.** Any provision or covenant in this Agreement that expressly or by its nature imposes obligations beyond the expiration, termination, or assignment of this Agreement (regardless of cause for termination), shall survive such expiration, termination, or assignment, including, without limitation, Paragraphs 10 and 17 hereof.

25.3. **Construction.** Article, paragraph, and subparagraph captions are for convenience only and are not part of this Agreement and do not define, limit, or construe their contents. Words of any gender shall include masculine, feminine, and neuter usages and, where the context requires, words in the singular or plural shall include the other. The language in all parts of this Agreement shall be construed simply according to its fair and plain meaning and not strictly for or against you or the Franchisor. If any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

26. REPRESENTATIONS; ACKNOWLEDGMENTS

26.1. Representations.

26.1.1. If you are not renewing another Huntington franchise agreement, you represent and agree you received the Franchisor's Franchise Offering Circular (with all its exhibits and this Agreement with all its exhibits) on, or before, the earlier of your first personal meeting with the Franchisor (or the Franchisor's agent), or at least 10 business days before your signing of this Agreement, or the payment of any monies to the Franchisor under this Agreement; or, if you are renewing another Huntington franchise agreement, you represent you received the Franchisor's Franchise Offering Circular (with all its exhibits and this Agreement with all its exhibits) at least 10 business days before your signing of this Agreement or the payment of any monies to the Franchisor under this Agreement.

26.1.2. You represent and agree you have not received from the Franchisor any oral or written promises, representations, or warranties, express or implied, or quantitative or qualitative, as to the Exclusive Area; any reduction of the Exclusive Area; or about any potential or actual success, earnings, revenue, expense, profit, or cash flow of your Franchised Center that is not in the Franchisor's Franchise Offering Circular; that you are entering into this Agreement solely as a result of your own independent investigation and not as a result of any oral or written representation, guarantee, earnings claim, warranty, or inducement by the Franchisor



or any of its present or past directors, stockholders, officers, employees, or agents that is contrary to, or at variance with, any term of the Franchisor's Franchise Offering Circular or this Agreement.

- 26.1.3. You represent and agree that any average, minimum, maximum, range, estimate, or other amount or figure cited in this Agreement, the Franchisor's Franchise Offering Circular, or any agreement between you or any of your affiliates and the Franchisor and any of its affiliates, including, without limitation and by way of example, the minimum Continuing Royalty in Paragraph 6.2 above, the minimum Advertising Fee in Paragraph 12.2 above, the minimum Gross Revenue in Paragraph 4.8 above, the minimum revenue requirement in connection with the Renewal Franchise Fee in Paragraph 3.1 above, the minimum advertising requirement in Paragraph 12 above, the opening advertising requirement in Paragraph 12.1 above, and the earnings claim in Item 19 of the Franchisor's Franchise Offering Circular is not any representation, estimation, or projection of your Gross Revenue.
- 26.1.4. You represent and agree you have had every opportunity to speak with each and all of the Franchisor's franchisees and that the Franchisor did not limit or restrict you in any way from speaking with any of them. If you have participated in any Discovery Conference Call, you acknowledge and agree to each of the following:
- 26.1.4.1. Any information you may have received in any Discovery Conference Call does not constitute the opinions, ideas, or representations of the Franchisor;
- 26.1.4.2. All opinions, ideas, and representations made by any Discovery Conference Call participant is such participant's alone and not the Franchisor's;
- 26.1.4.3. The opinions, ideas, and representations of each Discovery Conference Call participant may not represent those of any of the Franchisor's franchisees; and
- 26.1.4.4. No Discovery Conference Call participant has been authorized by the Franchisor to provide any information regarding any potential or actual success, earnings, revenue, expense, profit, or cash flow of their franchised center, any other Huntington Learning Center, or of the Franchised Center.
- 26.1.5. Market development plan
- 26.1.5.1. You represent and agree that
- 26.1.5.1.1. You have received a market development plan for the area or market within which you might locate the Franchised Center;
- 26.1.5.1.2. Subject to the terms of this Agreement, the Franchisor may establish or franchise Huntington Learning Centers at any location, whether or not such locations were, now are, or will be identified in a market development plan or elsewhere;
- 26.1.5.1.3. The Franchisor is not obligated in any way to establish or franchise any Huntington Learning Center identified now or in the future in any market development plan; and



26.1.5.1.4. Any existing or future Huntington Learning Center may compete with the Franchised Center.

26.1.5.2. You represent and agree that any market development plans and any demographic or similar information you may have received from the Franchisor do not constitute any Franchisor representation as to the viability or likelihood of success of any location for a Huntington Learning Center and do not guarantee that the Franchised Center will or should be located at any specific site or in any area described in them; and that such materials are not predictive of any potential business success, revenue, or profits for the Franchised Center.

26.1.5.3. You represent and agree you have not relied in any way on any market development plans or other demographic or similar material provided to you by the Franchisor in your decision to enter into this Agreement or into any other agreement with the Franchisor.

26.1.6. You represent and agree that, if you are a corporation, partnership, or limited liability company, all of the Franchisee Members, and their percentage share of ownership, as of the date therein, are accurately set forth in Exhibit I of this Agreement. You further represent and agree that neither you nor any Franchisee Member is a trust. You acknowledge and agree that any change in the identity or ownership percentage of any Franchisee Member constitutes a Transfer and is governed by Paragraph 14 of this Agreement.

26.2. Independent Investigation. You represent that you have been accorded ample opportunity to ask the Franchisor all questions about the Franchisor's Franchise Offering Circular and its exhibits (including, but not limited to, the Software License Agreement and its exhibits; Phone Number License Agreement and its exhibits; Call Center License Agreement and its exhibits; Conference Service License Agreement and its exhibits; Territory Amendment and its exhibits; and School Services Amendment and its exhibits) and this Agreement and its exhibits, and the Franchisor has answered all these questions to your full and complete satisfaction; and that you have conducted an independent investigation of the business contemplated by, and the activities to be conducted under, this Agreement; and that you have been accorded ample opportunity to consult with counsel of your own choosing about the risks of entering into this Agreement; and that you have had the Franchisor's Franchise Offering Circular and all its exhibits and this Agreement and all its exhibits reviewed by counsel of your own choosing.

26.3. Disclaimer.

26.3.1. You represent that you have not received from the Franchisor or any present or past Franchisor affiliate or any of their present or past directors, stockholders, officers, employees, or agents

26.3.1.1. Any written or oral statement, representation, or warranty inconsistent with, or contradictory to anything in: (a) the Franchisor's Franchise Offering Circular; (b) this Agreement; the Software License Agreement; Phone Number License Agreement; Call Center License Agreement; Conference Service License Agreement; Territory Amendment; or School Services Amendment; or (c) all exhibits to all such documents;

26.3.1.2. Any oral or written promises, representations, or warranties, express or implied, or quantitative or qualitative, about the Exclusive Area, any reduction of the Exclusive



Area, or any service, training, or other thing to be provided by the Franchisor that is not in this Agreement; or

26.3.1.3. Any oral or written promises, representations, or warranties, express or implied, or quantitative or qualitative, about any of the following that is contrary to the statements made in the Franchisor's Franchise Offering Circular or its exhibits or this Agreement or its exhibits: (a) the rights granted under this Agreement; (b) the Franchised Center; (c) the Franchisor; or (d) any Franchisor policy.

26.3.2. You acknowledge and agree that the Franchisor is not obligated to offer you, and you are not obligated to enter into, a Development Agreement, Call Center License Agreement, Conference Service License Agreement, or School Services Amendment. You represent that you have not received whatsoever any assurance, representation, or guarantee, whether oral or written, express or implied, from the Franchisor or any present or past Franchisor affiliate or any of their present or past directors, stockholders, officers, employees, or agents that the Franchisor will offer you the opportunity to enter into a Development Agreement, Call Center License Agreement, Conference Service License Agreement, or School Services Amendment.

26.4. Approved Location; Exclusive Area; Site Selection Area; Franchised Center; Other Huntington Learning Centers.

26.4.1. You hereby acknowledge and agree that the Franchisor's approval of the Approved Location, Exclusive Area, and Site Selection Area does not constitute an assurance, representation, or warranty of any kind, express or implied, as to the suitability of the Approved Location, Exclusive Area, or Site Selection Area for the Franchised Center or for any other business or purpose. The Franchisor's approval of the Approved Location, Exclusive Area, Site Selection Area, Franchised Center, and any reduced Exclusive Area, indicates only that the Franchisor believes the Approved Location, Exclusive Area, Site Selection Area, Franchised Center, and any reduced Exclusive Area comply with minimum criteria established by the Franchisor solely for its purposes as of the time of the evaluation. You and the Franchisor acknowledge that application of such criteria will not be predictive of potential business, success, or Gross Revenue for your Approved Location, Exclusive Area, reduced Exclusive Area, Site Selection Area, or Franchised Center and that, after the Franchisor's approval of the Approved Location, Exclusive Area, any reduced Exclusive Area, Site Selection Area, and Franchised Center, demographic or economic factors, such as competition from other similar businesses, including other Huntington Learning Centers now or hereinafter established, included in or excluded from the Franchisor's criteria could change, thereby altering the potential business, success, or Gross Revenue of the Approved Location, Exclusive Area, Site Selection Area, Franchised Center and any reduced Exclusive Area. Such factors are unpredictable and are completely beyond the Franchisor's knowledge and control.

26.4.2. Under no circumstance shall the Franchisor be responsible or be obligated to reimburse or compensate you in any way for any failure of the Franchised Center or the Approved Location to meet your expectations as to business, success, Gross Revenue, or operational criteria. You acknowledge and agree that other Huntington Learning Centers that operate now or in the future may affect significantly your business, success, Gross Revenue, operations, and staff.

26.4.3. You acknowledge and agree that the Franchisor's execution of this Agreement for the operation of the Franchised Center at the Approved Location and in the Exclusive Area and Site Selection Area is based solely on your own independent investigation of the suitability of



such Approved Location, Exclusive Area, and Site Selection Area.

26.5. Retained Rights. You agree the Franchisor and its affiliates retain the rights, among others, in their sole and absolute discretion:

- 26.5.1. To establish or operate, and license others to establish or operate, Huntington Learning Centers, at any location outside the Exclusive Area, notwithstanding such Huntington Learning Center's proximity to your Franchised Center;
- 26.5.2. Within and outside the Exclusive Area, to market, sell, or distribute, or to license or contract with others to market, sell or distribute, any educational products or services of any kind (including, without limitation, books; audio tapes; video tapes; study aids; computer software and other software; testing materials; curricula; or teaching, training, computerized instruction, testing, instructional, counseling or guidance services) to any person, organization, or public or private entity, using the Marks or other trademarks or service marks, through any channel of distribution, including, without limitation and by way of example, through any computer service, email, the Internet, or any computer, television, or other electronic device; bookstores or any other retail outlets; mail order; or guidance centers;
- 26.5.3. Within the Exclusive Area, to offer, sell, and provide (and to contract with, or license, others to offer, sell, and provide) any products and services of any kind (other than Exam Preparation Services and Learning Center Services) under the Marks or other trademarks or service marks; and to develop and establish other businesses and systems using trademarks and service marks other than the Marks for any products and services (other than Exam Preparation Services and Learning Center Services), and to grant licenses thereto, without providing any rights therein to you;
- 26.5.4. Within and outside the Exclusive Area, and notwithstanding any other provision hereof, to acquire and thereafter own and operate, and franchise or license others to own and operate, any educational business or other business of any kind, including, without limitation, any business that offers products or services the same as or similar to Exam Preparation Services and Learning Center Services under the System or using the Marks or any other system or trademarks or service marks. Before the establishment or operation by the Franchisor or any Huntington franchisee in the Exclusive Area of any educational business of the type the Franchisor acquires and that offers products or services that, in the Franchisor's determination, are the same as or similar to Exam Preparation Services and Learning Center Services, the Franchisor will offer you the option to establish and operate such a business, as a franchised or licensed business, in the Exclusive Area on such terms as the Franchisor shall reasonably determine. If you agree in writing to franchise or license such business within 60 days after such offer, you shall execute all applicable documents to franchise or license such business within 180 days after such offer. If, within such time periods, you do not agree in writing to franchise or license such business, or if you do not execute all applicable documents to franchise or license such business, the Franchisor shall have the right thereafter itself to establish and operate, or franchise or license others to establish and operate, such business in the Exclusive Area; and
- 26.5.5. Outside the Exclusive Area, to offer, sell, and provide (and to contract with, or license, others to offer, sell, and provide) any products and services of any kind (including, without limitation, Exam Preparation Services and Learning Center Services) under the Marks or other trademarks or service marks; and to develop and establish other businesses and systems using



trademarks and service marks other than the Marks for any products and services, including, without limitation, Exam Preparation Services and Learning Center Services, and to grant licenses thereto, without providing any rights therein to you.

26.6. Items Purchased from the Franchisor. You agree that, if you purchase any item from the Franchisor or any of its affiliates, including, without limitation, any furniture, fixtures, equipment, graphics, inventory, supplies, educational material, web site material, and any advertising and marketing material, the Franchisor or its affiliates may earn revenue therefrom.

26.7. Government Programs.

26.7.1. You acknowledge and agree you have no right to, and shall not, apply, or obtain or accept approval to provide or market, School Services, without the Franchisor's prior written approval; and the Franchisor has the absolute right to refuse to grant you any such approval.

26.7.2. You acknowledge and agree the Franchisor and its affiliates have the right to apply, and to accept and obtain approval, to provide and market School Services, at any time and at any location, including at any location within the Exclusive Area and to grant such rights to others, including, without limitation, franchisees of the Franchisor and its affiliates. You acknowledge and agree that Huntington Learning Centers or other facilities or entities operated by the Franchisor and its affiliates and by franchisees of the Franchisor and its affiliates may use the Marks or any other marks to provide School Services at any time and at any location, including at any location inside the Exclusive Area, and may compete against you without compensation of any kind to you. You agree you shall make no claim, including any claim of encroachment or loss of business or damage, due to such use of the Marks or any other marks or such competition.

26.8. Marks. You expressly understand and acknowledge that the license of the Marks granted hereunder to you is nonexclusive, and the Franchisor and its affiliates retain the rights, among others, (1) to use the Marks in the Exclusive Area for any purpose not specifically prohibited by this Agreement; (2) to develop and establish other businesses and systems in the Exclusive Area using trademarks and service marks other than the Marks for products and services other than Exam Preparation Services and Learning Center Services as defined herein, and to grant licenses in the Exclusive Area; (3) to develop and establish businesses and systems in the Exclusive Area using similar proprietary marks, or any other proprietary marks, and to grant licenses thereto in the Exclusive Area without providing any rights therein to you; (4) to use and license the Marks outside the Exclusive Area at any time for any purpose; and (5) to use the Marks in connection with School Services at any location, including at any location within the Exclusive Area.

26.9. Business Activity. You understand and agree that Huntington Learning Centers and facilities offering School Services operated by the Franchisor and its affiliates and franchisees of the Franchisor and the Franchisor's affiliates may use the Marks and solicit customers inside and outside of the Exclusive Area and may compete against you without compensation of any kind to you. You agree you shall make no claim, including any claim of encroachment or loss of business or damage, due to such use of the Marks or such competition. You agree you shall make no claim, including any claim of encroachment or loss of business or damage for any of the activities described in Paragraphs 26.4.3, 26.7, 26.8, and 26.9 hereof. You agree the Franchisor reserves absolutely all rights not expressly granted to you in this Agreement.

26.10. Business Risk. You agree that the business franchised under this Agreement and the activities required hereunder involve risks that make your success largely and principally dependent on your (and



your Franchisee Members') abilities and services and on any persons you employ.

26.11. **Representative Capacity.** You agree that the Franchisor's officers, directors, employees, and agents act only in a representative manner, and not in a personal capacity, in their dealings with you.

26.12. **Survival.** You agree that each and every representation, warranty, and agreement made by you in this Agreement, including, without limitation, those in this Paragraph 26, shall survive the expiration or termination of this Agreement. You agree that the Franchisor provides no warranties, representations, or agreements, except those specifically identified in this Agreement.

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16. **ACCEPTANCE AND AGREEMENT.** I HAVE READ AND UNDERSTAND FULLY THIS AGREEMENT AND ALL OF ITS EXHIBITS. I HAVE HAD THIS AGREEMENT REVIEWED BY COUNSEL OF MY OWN CHOOSING. I HAVE CONSULTED WITH, AND HAVE BEEN ADVISED BY, COUNSEL OF MY OWN CHOOSING ABOUT THIS AGREEMENT AND THE TRANSACTION GOVERNED BY THIS AGREEMENT. I ACCEPT AND AGREE TO BE BOUND BY, AND TO PERFORM ACCORDING TO, THIS AGREEMENT AND EACH AND ALL OF ITS TERMS, WITHOUT RESERVATION. I ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS AGREEMENT AND ALL ITS EXHIBITS AT LEAST 5 BUSINESS DAYS BEFORE I EXECUTED IT.

IN WITNESS WHEREOF, you and the Franchisor have executed this Franchise Agreement on the above Agreement Date.

For the Franchisor, Huntington Learning Centers, Inc.,

Raymond J. Huntington

Chairman

Print name

Signature

Title

Name of Franchisee: _____

(Enter the same name that appears before Paragraph 1 of this Agreement)

For the Franchisee *(This is executed by all individuals comprising the Franchisee, if the Franchisee is an individual; or all officers of the corporation, if the Franchisee is a corporation; or all partners or members, if the Franchisee is a partnership or limited liability company.)*

Print name

Signature

Title

Print name

Signature

Title

Print name

Signature

Title

Print name

Signature

Title

Print name

Signature

Title

Print name

Signature

Title





APPROVED LOCATION; EXCLUSIVE AREA; SITE SELECTION AREA

- 1. **APPROVED LOCATION.** You, as Franchisee, shall establish and operate your Franchised Center, and use the System and Marks solely in connection with your Franchised Center at the location set forth below:

- 2. **EXCLUSIVE AREA.** Your Exclusive Area is that geographic area within a ___ mile radius of your Approved Location as determined by you and the Franchisor and as modified as follows:

Notwithstanding the foregoing, the Exclusive Area shall not include any geographic area 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).

- 3. **SITE SELECTION AREA.** If, as of the Agreement Date, you have not already obtained an Approved Location, you, as Franchisee, shall obtain your Approved Location for your Franchised Center within the following geographic area or boundaries:

The Site Selection Area shall be used only for selection of a site hereunder and grants you no territorial rights or protection.

The Franchisor has not made, and does not make, any representation or forecast about your Approved Location, Exclusive Area, or Site Selection Area or the success or profitability of your Franchised Center in it.

IN WITNESS WHEREOF, you and the Franchisor have executed this Exhibit A on the Agreement Date.

For the Franchisor, Huntington Learning Centers, Inc.,

<u>Raymond J. Huntington</u>		Chairman
<small>Print name</small>	<small>Signature</small>	<small>Title</small>

Name of Franchisee: _____
(Enter the same name that appears before Paragraph 1 of this Agreement)

For the Franchisee (This is executed by all individuals comprising the Franchisee, if the Franchisee is an individual; or all officers of the corporation, if the Franchisee is a corporation; or all partners or members, if the Franchisee is a partnership or limited liability company.)

<small>Print name</small>	<small>Signature</small>	<small>Title</small>
<small>Print name</small>	<small>Signature</small>	<small>Title</small>
<small>Print name</small>	<small>Signature</small>	<small>Title</small>





GUARANTEE AGREEMENT

In consideration of, and in order to induce Huntington Learning Centers, Inc. (the "Franchisor") to execute the franchise agreement (the "Agreement"), each of the undersigned personally, unconditionally, and irrevocably, jointly and severally, accept and agree that they shall be bound by, and perform according to, each and all of the provisions, covenants, and conditions of the Agreement executed between the Franchisor and _____ the Franchisee (as defined in the Agreement), for the operation of a Huntington Learning Center.

Upon demand by the Franchisor, the undersigned will immediately make each payment required of Franchisee under the Agreement. The undersigned hereby waive any right to require the Franchisor to: (a) proceed against Franchisee for any payment required under the Agreement; (b) proceed against or exhaust any security from Franchisee; or (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee. Without affecting the obligations of the undersigned under this Guarantee, the Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. The undersigned waive notice of amendment of the Agreement and notice of demand for payment by Franchisee, and agree to be bound by any and all such amendments and changes to the Agreement.

The undersigned hereby agree to defend, indemnify, and hold the Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, without limitation, attorneys' and accountants' fees and expenses, costs of investigation, and court costs expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement, any amendment thereto, or any other agreement executed by Franchisee referred to therein.

The undersigned hereby acknowledge and agree to be individually bound by all of the covenants contained in Paragraphs 10.2 and 17 of the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned that arose from events that occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with the dispute resolution provisions of Paragraph 24 of the Agreement. Notices under this Guarantee shall be furnished to the undersigned in accordance with Paragraph 21 of the Agreement at the addresses described below. Paragraphs 21 and 24 of the Agreement are hereby incorporated herein by reference.

Notices to the Franchisor: Huntington Learning Centers, Inc.; 496 Kinderkamack Road; Oradell, New Jersey 07649, Attn: Chairman

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Notices to Guarantors: (Name and addresses of Guarantors):

I have read and understand the Agreement and this Guarantee Agreement. I agree to be bound by, and to perform according to, the Agreement and this Guarantee Agreement. I have a copy of the Agreement and this Guarantee Agreement.

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed your signature.

Print name	Signature	Date
Print name	Signature	Date
Print name	Signature	Date



ADA CERTIFICATION

Huntington Learning Centers, Inc. (the "Franchisor") and _____ (the "Franchisee") are parties to a franchise agreement dated _____ (the "Franchise Agreement") for the operation of a Huntington Learning Center at _____

_____ (the "Franchised Center") (If the Franchised Center is not yet established, then write the words, "not yet open," in the preceding space.) in the Exclusive Area designated as _____. In accordance with Paragraph 4.4 of the Franchise Agreement, the Franchisee hereby certifies to the Franchisor that, to the best of the Franchisee's knowledge, the Franchised Center and its adjacent areas comply fully with all applicable federal, state, and local accessibility laws, statutes, codes, rules, regulations, and standards, including, without limitation, the Americans with Disabilities Act. The Franchisee acknowledges that it is an independent contractor and the requirement of this certification by the Franchisor does not constitute ownership, control, leasing, or operation of the Franchised Center by the Franchisor. The Franchisee acknowledges that the Franchisor has relied on the information contained in this certification. The Franchisee agrees to indemnify the Franchisor and its affiliates and their respective officers, directors, and employees in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified parties as a result of any matters associated with the Franchisee's compliance with the Americans with Disabilities Act, as well as the costs, including attorneys' and accountants' fees and costs, related to the same.

IN WITNESS WHEREOF, the undersigned have executed this ADA Certification on the date

Name of Franchisee: _____
(Enter the same name that appears in the first sentence of this Certification)

For the Franchisee (This is executed by all individuals comprising the Franchisee, if the Franchisee is an individual; or all officers of the corporation, if the Franchisee is a corporation; or all partners or members, if the Franchisee is a partnership or limited liability company.):

_____	_____	_____
Print name	Signature	Date
_____	_____	_____
Print name	Signature	Date
_____	_____	_____
Print name	Signature	Date





CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

Print your name		
Your address (street, town, state, zip)	Street	
	Town	
	State	Zip
Your phone number (with area code)	()	
Name of your employer (the "Employer")		
City and state in which your employer is located	City	State
Identify the position you hold or will hold with your employer		

In consideration of your position with the above employer (the "Employer"), and One Dollar, receipt of which is hereby acknowledged, you, the undersigned, hereby acknowledge and agree that:

- Confidentiality Agreement.** Your Employer operates a franchised Huntington Learning Center (the "Center") under a franchise agreement with Huntington Learning Centers, Inc. (the "Franchisor"). The Center offers individualized instruction in reading, phonics, study skills, mathematics, and related areas; and to prepare students for standardized entrance examinations, including the SAT and ACT. During the term of your employment with your Employer and for all time thereafter, you agree not to communicate, divulge, or use for the benefit of any person or entity (such as a partnership, association, limited liability company, corporation, or other entity) any confidential information, knowledge, or know-how concerning the training you receive and the methods of operation of the Center that may be communicated to you by virtue of your employment or affiliation with your Employer. Any and all information, knowledge, know-how, techniques, and other data that the Franchisor designates as confidential shall be deemed confidential for purposes of this Confidentiality and Non-competition Agreement (the "Agreement.")
- Non-Competition Agreement.** You agree you will receive certain valuable information about the Franchisor's system of operation (the "System"), and this information would not have been given to you, without your execution of this Agreement. You covenant that while you are employed by your Employer and for a continuous uninterrupted period of two years beginning when your employment or affiliation with your Employer ends, you shall not in any way (directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person or entity): (a) divert or attempt to divert any present or prospective business or customer of any Huntington Learning Center to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Franchisor's marks or its System; or (b) own, maintain, operate, engage in, be employed by, be a consultant to, loan money to, provide any assistance to, be a franchisee of, or have any interest in (as owner, guarantor, or otherwise) any business in competition with the Franchisor

Exceptions to the restrictions in this Paragraph 2. (a) After your termination of employment or affiliation with



your Employer, the restrictions in this Paragraph 2 apply only to such a business located within a radius of 25 miles from any Huntington Learning Center. (b) You may work for any school licensed by, or recognized as, a school by the state or jurisdiction in which such school operates, provided that you or it does not use for your or its benefit, or for the benefit of others, the Franchisor's confidential information, or disclose any Franchisor trade secret. (c) The Franchisor has the right, but not the obligation, at any time, to reduce the scope of any covenant in this Paragraph 2 or any portion of any covenant in this Paragraph 2, without your consent, effective immediately upon receipt by you of written notice; and you shall comply immediately with any covenant as so modified, which shall be fully enforceable without regard to any other provision of this Paragraph 2.

- 3. **Third-party beneficiary.** The Franchisor is a third-party beneficiary of this Agreement and may enforce it, solely or jointly with your Employer at the Franchisor's sole discretion. Any violation of this Agreement will cause the Franchisor and your Employer irreparable harm, and, therefore, the Franchisor or your Employer, or both, may apply for the issuance of an injunction preventing you from violating this Agreement in addition to any other remedies it or they may have hereunder, at law or in equity

I have read and understand this Confidentiality and Non-competition Agreement. I agree to be bound by this Confidentiality and Non-competition Agreement. I have a copy of this Confidentiality and Non-competition Agreement.

IN WITNESS WHEREOF, you have hereunto affixed your signature.

Print name, Signature

Address

Date



NOTICES AND FRANCHISOR'S PRINCIPAL BUSINESS ADDRESS

Franchisor address for notices: 496 Kinderkamack Road, Oradell, New Jersey 07649, Attention: Chairman

Franchisor principal business address: 496 Kinderkamack Road, Oradell, New Jersey 07649

* * *

Franchisee address for notices (This shall not be a post office box. If left blank, the Franchised Center's address shall be your address for notices for the purposes of receiving notice under the Franchise Agreement.):

Four horizontal lines for entering the franchisee address.

Name of Franchisee: _____

(Enter the same name that appears before Paragraph 1 of this Agreement),

For the Franchisee (This is executed by all individuals comprising you, if you are an individual; or all officers of the corporation, if you are a corporation; or all partners, if you are a partnership; or all members, if you are a limited liability company.):

Print name _____ Signature _____ Date _____

Print name _____ Signature _____ Date _____

Print name _____ Signature _____ Date _____





AMENDMENT AGREEMENT FOR RESTRICTIONS ON TRANSFERS
(FOR PARTNERSHIP OR LIMITED LIABILITY COMPANY)

Instructions: If you are a partnership, all partners must sign below. If you are a limited liability company, all members must sign below.

Notwithstanding anything to the contrary contained in the partnership agreement or operating agreement of
(enter the name of the partnership or limited liability company that is the franchisee) _____
(the "Franchisee") dated _____, the undersigned partners or members agree as follows:

The transfer of any partnership interest or membership interest, whichever is applicable, in the Franchisee is subject to the terms and conditions of a franchise agreement dated _____ with the Franchisor that restricts the transfer of any direct or indirect interest in Franchisee, except as provided in such franchise agreement.

The undersigned represent, warrant, and agree that they constitute all partners or members of the Franchisee necessary to amend the Franchisee's partnership agreement or operating agreement.

IN WITNESS WHEREOF, the undersigned have executed this Amendment Agreement on the date _____

Print name Signature

Print name Signature

Print name Signature





STATUS FORM

Franchisee Name. (Enter below the same name that appears before Paragraph 1 of this Agreement)

Please indicate your status by printing "YES" or "NA" in each box in the second column below and by signing in each box in the third column below.

Status	If applicable, print "YES"; if not applicable, print "NA"	Signature
I/We are renewing a Huntington franchise agreement that has a territory.		
I/We are an assignee of a Huntington franchise agreement that has a territory.		

If you responded YES to either of the above, execute a Territory Amendment with the Franchisor, Huntington Learning Centers, Inc.

IN WITNESS WHEREOF, the Franchisee has executed this Exhibit G on the Agreement Date set forth in the Franchise Agreement.

Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title



CONFESSION OF JUDGMENT

This CONFESSION OF JUDGMENT is made this date, _____ Upon your default of any of the obligations set forth in Paragraph 16.1.4.8 of the Franchise Agreement entered into this date by and between HUNTINGTON LEARNING CENTERS, INC. (the "Franchisor"), a corporation incorporated in Delaware and you, the Franchisee, _____ (in the following space, insert one of individual(s), corporation, partnership, or limited liability company) a _____, you hereby appoint, authorize, and empower any attorney of any court of competent jurisdiction to appear for you and enter judgment by confession against you in favor of the Franchisor or its assigns, for all amounts payable by you to customers under Paragraph 16.1.4.8 of the Franchise Agreement, plus the Franchisor's costs and expenses of entering this judgment and making payment hereunder, including, without limitation, attorneys' and accounts' fees and expenses and court costs and expenses. Such exercise of warrant of attorney shall not exhaust any future exercise or entry of judgment. You hereby expressly waive any summons or other process, consent to immediate execution of said judgment, and expressly waive demand, protest, notice of default or non-payment, presentment, stay of execution, appeal, all errors, or benefit of any statutory or common law debtor's exemptions.

For the Franchisee (This is executed by all individuals comprising the Franchisee, if the Franchisee is an individual; or all officers of the corporation, if the Franchisee is a corporation; or all partners or members, if the Franchisee is a partnership or limited liability company.):

IN WITNESS WHEREOF, the Franchisee has executed this Exhibit H on the Agreement Date set forth in the Franchise Agreement.

Print name Signature Title

Print name Signature Title

Print name Signature Title

Print name Signature Title

Print name Signature Title

Print name Signature Title



DISCLOSURE OF FRANCHISEE MEMBERS

(To be completed only if Franchisee is a Corporation, Partnership, or Limited Liability Company)

1. **Franchise Members.** Pursuant to Paragraph 26.1.6 of the Franchise Agreement, you acknowledge and agree that the following is a complete list of all of the shareholders, partners, or members of Franchisee and the percentage interest of each individual as of the Agreement Date set forth in the Franchise Agreement:

Name	Position	Percent interest

2. **Primary Franchisee Member.** Pursuant to Paragraph 8.6 of the Franchise Agreement, you acknowledge and agree that the following individual has at least a 20% ownership interest in Franchisee, and you hereby designate that individual as the Primary Franchisee Member:

Name	
Street address	
City, State, Zip code	
Daytime telephone number	
Evening telephone number	
Other telephone number	
Pager number	
Facsimile number	
Email address	

IN WITNESS WHEREOF, the Franchisee has executed this Exhibit I on the Agreement Date set forth in the Franchise Agreement.

Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title
Print name	Signature	Title

