

NITELITES FRANCHISE SYSTEMS, INC.

FRANCHISE AGREEMENT

EXHIBIT C TO THE OFFERING CIRCULAR

Revised: April 19, 2006

TABLE OF CONTENTS

| <u>SECTION</u> | <u>PAGE</u> |
|----------------|--|
| 1 | DEFINITIONS 2 |
| 2 | SCOPE OF LICENSE..... 5 |
| | A Grant..... 5 |
| | B Franchise Premises..... 5 |
| | C Franchise Premises Not Determined 5 |
| | D Protected Territory..... 5 |
| | E Franchisor's Rights..... 5 |
| | F National Accounts 6 |
| | G Acquisition of Competing System 7 |
| 3 | FEES..... 8 |
| | A Franchise Fee 8 |
| | B Initial Inventory Package Fee..... 8 |
| | C Start-up Kit Fee 8 |
| | D Royalty Fee 9 |
| | E Marketing Fund Contribution..... 9 |
| | F Internet Marketing Fee 9 |
| | G Call Center Service Fee 9 |
| | H Taxes..... 9 |
| | I Interest..... 10 |
| | J Electronic Transfer 10 |
| | K Application of Payments..... 11 |
| 4 | TERM AND RENEWAL..... 11 |
| | A Initial Term..... 11 |
| | B Renewal Term 11 |
| | C Notice 12 |
| | D Continued Operation Following Expiration..... 12 |
| 5 | FRANCHISE PREMISES 12 |
| | A Selection of Franchise Premises..... 12 |
| | B Lease of Franchise Premises..... 13 |
| | C Development of Franchise Premises 14 |
| | D Initial Inventory Package 15 |
| | E Start-up Kit..... 15 |
| | F Opening..... 15 |
| | G Destruction of Franchise Premises; Relocation 16 |
| | H Administration of the Franchised Business 16 |
| | I Conversion 16 |
| 6 | MARKS..... 16 |
| | A Ownership 16 |
| | B Limitations on Franchisee's Use of Marks..... 17 |
| | C Notification of Infringements and Claims..... 17 |
| | D Right of Inspection..... 17 |
| | E Discontinuance of Use of Marks..... 18 |
| | F Franchisor's Sole Right to Domain Name 18 |
| 7 | CONFIDENTIAL INFORMATION..... 18 |
| | A Requirement of Confidentiality 18 |
| | B Improvements Developed by Franchisee..... 19 |
| | C Exclusive Relationship 19 |
| | D Third Party Nondisclosure 19 |
| | E Injunctive Relief 20 |

TABLE OF CONTENTS (continued)

| <u>SECTION</u> | | <u>PAGE</u> |
|----------------|---|-------------|
| 8 | MANUAL | 20 |
| | A Operation in Conformity with Manual | 20 |
| | B Revisions of Manual | 20 |
| | C Confidentiality of Manual | 20 |
| | D Ownership of Manual | 20 |
| 9 | TRAINING AND OPERATIONS ASSISTANCE | 21 |
| | A Initial Training | 21 |
| | B Failure to Complete Initial Training Program | 21 |
| | C New Designated Manager | 21 |
| | D Operations Assistance | 22 |
| | E Ongoing Training Meetings | 22 |
| 10 | MARKETING AND PROMOTION | 22 |
| | A Local Advertising | 22 |
| | B Systemwide Marketing Fund | 22 |
| | C Cooperative Advertising | 24 |
| | D Grand Opening Advertising | 24 |
| | E Telephone Directory Advertising | 24 |
| | F Internet Advertising | 25 |
| 11 | BOOKS AND RECORDS | 27 |
| | A Requirement to Maintain | 25 |
| | B Sales Reports | 25 |
| | C Monthly and Annual Financial Reports | 26 |
| | D Computer System/Point-of-Sale System | 26 |
| | E Right of Franchisor to Perform Inspection | 26 |
| | F Release of Records | 27 |
| 12 | FRANCHISE SYSTEM | 27 |
| | A Uniformity of System | 27 |
| | B Modification of the System | 27 |
| | C Variance | 27 |
| 13 | OPERATING STANDARDS | 28 |
| | A General Operation | 28 |
| | B Authorized Services and Products | 28 |
| | C Approved Suppliers | 28 |
| | D NITELITES Products and Equipment | 29 |
| | E Minimum Annual Purchase Requirement | 30 |
| | F Appearance and Condition of the Franchised Business | 30 |
| | G Employees and Subcontractors | 30 |
| | H Management and Operation of the Franchised Business | 31 |
| | I Best Efforts | 31 |
| | J Licenses and Permits | 31 |
| | K Compliance with Good Business Practices | 32 |
| | L Payment of Liabilities and Taxes | 32 |
| | M Notification of Proceedings | 32 |
| | N Right to Inspect | 33 |
| | O Days of Operation | 33 |
| | P Vending Machines | 33 |
| | Q Credit Cards | 33 |
| | R Uniforms | 33 |

TABLE OF CONTENTS (continued)

| <u>SECTION</u> | | <u>PAGE</u> |
|----------------|--|-------------|
| 14 | FRANCHISOR'S ONGOING OPERATIONS ASSISTANCE..... | 33 |
| | A General Advice and Guidance | 33 |
| | B Periodic Visits | 34 |
| | C Advertising and Promotional Materials..... | 34 |
| | D System Improvements..... | 34 |
| 15 | INSURANCE..... | 34 |
| | A Types and Amounts of Coverage..... | 34 |
| | B Carrier Standards..... | 35 |
| | C Evidence of Coverage | 35 |
| | D Failure to Maintain Coverage | 35 |
| 16 | FRANCHISEE'S COVENANTS NOT TO COMPETE | 36 |
| | A During Term..... | 36 |
| | B After Termination or Expiration..... | 36 |
| | C Reasonableness of Restrictions..... | 37 |
| | D Remedies | 37 |
| | E Severability | 37 |
| 17 | DEFAULT AND TERMINATION | 37 |
| | A Termination by Franchisee..... | 37 |
| | B Termination by Franchisor..... | 38 |
| | C Right of Franchisor to Discontinue Sales to Franchisee | 40 |
| | D Reinstatement and Extension | 40 |
| 18 | RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION | 40 |
| | A Events Upon Termination | 40 |
| | B Franchisor's Option to Purchase Certain Assets | 41 |
| | C If Franchisee Starts Another Business..... | 42 |
| | D Survival of Certain Provisions | 42 |
| | E Liquidated Damages | 42 |
| | F Remedies | 43 |
| 19 | TRANSFERABILITY OF INTEREST | 43 |
| | A By Franchisor | 43 |
| | B By Franchisee to a Third Party..... | 43 |
| | C Pledge of Franchise | 45 |
| | D Transfer by Franchisee to an Entity Controlled by Franchisee | 45 |
| | E Franchisor's Disclosure to Transferee..... | 46 |
| | F For Sale Advertising..... | 46 |
| | G Death or Incapacity of Franchisee | 46 |
| 20 | RIGHT OF FIRST REFUSAL | 47 |
| | A Submission of Offer..... | 47 |
| | B Franchisor's Right to Purchase | 47 |
| | C Non-Exercise of Right of First Refusal | 47 |
| 21 | FRANCHISOR'S OPTION TO TERMINATE..... | 48 |
| | A Exercise of Option | 48 |
| | B Franchisee's Obligations Upon Exercise of Option..... | 48 |
| 22 | RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION | 49 |
| | A Independent Contractor..... | 49 |
| | B Indemnification | 49 |
| | C Right to Retain Counsel | 50 |
| 23 | GENERAL CONDITIONS AND PROVISIONS | 50 |
| | A Non-Waiver..... | 50 |

TABLE OF CONTENTS (continued)

| <u>SECTION</u> | <u>PAGE</u> |
|---|-------------|
| B Notices..... | 51 |
| C Cost of Enforcement or Defense..... | 51 |
| D Guaranty and Assumption of Obligations..... | 51 |
| E Non-Individual Franchisee..... | 51 |
| F Approvals..... | 52 |
| G Entire Agreement..... | 52 |
| H Severability..... | 53 |
| I Construction..... | 53 |
| J Force Majeure..... | 53 |
| 24 DISPUTE RESOLUTION..... | 54 |
| A Choice of Law..... | 54 |
| B Jurisdiction and Venue..... | 54 |
| C Cumulative Rights and Remedies..... | 54 |
| D Limitations of Claims..... | 54 |
| E Limitation of Damages..... | 55 |
| F Waiver of Jury Trial..... | 55 |
| G Mediation..... | 55 |
| H Injunctive Relief..... | 55 |
| 25 ACKNOWLEDGMENTS..... | 56 |
| A Receipt of Agreement..... | 56 |
| B Receipt of Franchise Offering Circular..... | 56 |
| C Consultation by Franchisee..... | 56 |
| D True and Accurate Information..... | 56 |
| E Risk..... | 56 |
| F No Guarantee of Success..... | 57 |
| G Multiple Originals..... | 57 |
| H No Violation of Other Agreements..... | 57 |

EXHIBITS

- A. MAP OF OR DESCRIPTION OF DESIGNATED AREA
- B. MAP OF OR DESCRIPTION OF PROTECTED TERRITORY
- C. CONVERSION ADDENDUM
- D. CALL CENTER SERVICE AGREEMENT
- E. NITELITES PRODUCTS AND EQUIPMENT SUPPLY AGREEMENT
- F. GUARANTY AND ASSUMPTION OF OBLIGATIONS
- G. STATE ADDENDUM

NITELITES FRANCHISE SYSTEMS, INC.

FRANCHISE AGREEMENT

This Franchise Agreement, made this _____ day of _____, 20____, by and between NITELITES FRANCHISE SYSTEMS, INC., an Ohio corporation, having its principal place of business at 6107 Market Avenue, Franklin, Ohio 45005 ("Franchisor"), and _____, whose principal address is _____, an individual/partnership /corporation/limited liability company/business trust established in the State of _____ ("Franchisee").

WITNESSETH:

WHEREAS, Franchisor and its Affiliate¹ have developed, and are in the process of further developing, a System identified by the service mark, "NITELITES," relating to the establishment and operation of businesses which offer superior-quality lighting products and services, including the design and installation of architectural and landscaping illumination products for upscale homeowners and commercial enterprises, referred to as "NITELITES Businesses;" and

WHEREAS, Franchisor and its Affiliate have developed and manufacture a line of superior-quality exterior illumination products including, but not limited to, transformers, fixtures, bulbs, timers, outlets, lens covers, connectors, and lighting systems for path, spot, deck, grill and water lighting ("NITELITES Products and Equipment") which are supplied to Franchisee and other franchisees on a for-profit basis; and

WHEREAS, in addition to the NITELITES Products and Equipment, the service mark "NITELITES" and certain other Marks, the distinguishing characteristics of the System include, among other things, uniform standards and procedures for efficient business operations; the Manual; procedures and strategies for marketing, advertising and promotion; distinctive customer development and service techniques; specifications for product sourcing, placement, presentation and demonstration techniques; distinctive architectural and landscaping illumination design and installation techniques; research and development and other technical assistance; and

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

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

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

¹ Capitalized terms are defined in Section 1.

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

1. DEFINITIONS

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

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

"Agreement" means this agreement entitled "NITELITES FRANCHISE SYSTEMS, INC. Franchise Agreement" and all instruments supplemental hereto or in amendment or confirmation hereof;

"Approved Supplier(s)" has the meaning given to such term in Section 13.C hereof;

"Competitive Business" means any business which offers or sells, or grants franchises or licenses to others to operate a business that offers or sells, exterior lighting and related products and services or similar products and services to those offered as part of the NITELITES System or in which Confidential Information could be used to the disadvantage of Franchisor or its other franchisees or its Affiliate; provided, however, that the term "Competitive Business" shall not apply to: (a) any business operated by Franchisee under a Franchise Agreement with Franchisor; or (b) ownership for investment purposes of less than five percent (5%) of the stock of any publicly-traded corporation;

"Confidential Information" means any trade secret and any information or matter that is competitively sensitive and not generally known by the public, whether or not in written or tangible form, and regardless of the media (if any) on which stored relating to the System, including know-how, knowledge of and experience in operating a NITELITES Business, methods, techniques, formats, specifications, procedures, systems, policies and standards, business operating systems and techniques, record keeping and reporting methods, accounting systems, sales and marketing methods and training techniques, specifications for signs, displays, business forms and stationery to be used by franchisees, designs, drawings and specifications for the Franchise Premises, the Manual, ideas, research and development, lists of franchisees and suppliers, suggested pricing and cost information, software which Franchisor or its Affiliates may develop and introduce as part of the System, and any other information or material identified to Franchisee by Franchisor as confidential;

"Cooperative Advertising" means the combined advertising program of two (2) or more franchisees established within a common market which Franchisor may require for Franchised Businesses within a particular region;

"Designated Area" means the area within which Franchisee is required to locate the Franchised Business as defined by the map or other description set out in Exhibit A hereof and does not confer any territorial protection or exclusivity;

“Designated Manager” means the person designated by a business entity Franchisee who has primary responsibility for managing the day-to-day affairs of the Franchised Business;

“Effective Date” or “Execution Date” means the date upon which Franchisor executes this Agreement and commences the effectiveness and term of this Agreement;

“Electronic Depository Transfer Account” means an account established at a national banking institution approved by Franchisor providing Franchisor with access to electronically withdraw any funds due Franchisor;

“Franchised Business” means the NITELITES Business to be established and operated by Franchisee in accordance with the System and using the Marks pursuant to this Agreement;

“Franchise Fee” has the meaning given to such term in Section 3.A. hereof;

“Franchise Premises” means the site for the operation of the Franchised Business selected by Franchisee pursuant to Section 5.A hereof, which is more particularly described in Section 2.B;

“Franchisee” means the individual or entity defined as “Franchisee” in the introductory paragraph of this Agreement, and such term includes all holders of a legal or beneficial interest in Franchisee, and if “Franchisee” is a business entity, such term shall also include all partners of the entity (if the entity is a partnership); all shareholders, officers and directors of the entity (if the entity is a corporation); all members and managers of the entity (if the entity is a limited liability company), and any trustee (if the entity is a business trust) as of the Effective Date of this Agreement, or which are appointed as such at any time during the term of this Agreement. By Franchisee's signature hereto, all partners, shareholders, officers, directors, members, managers and trustees as of the Effective Date of this Agreement, or which are appointed as such at any time during the term of this Agreement acknowledge and accept the duties and obligations imposed upon each of them, individually, by the terms of this Agreement;

“Franchisor” means NITELITES FRANCHISE SYSTEMS, INC.;

“Gross Sales” means the aggregate of all revenue accrued from the sale of all exterior lighting products and related products from all sources in connection with the Franchised Business, whether or not collected by Franchisee and whether for check, cash, credit or otherwise including, without limitation, all proceeds from any business interruption insurance, but excluding all refunds made in good faith, promotional and coupon discounts, and any sales and equivalent taxes which are collected by Franchisee for or on behalf of any governmental taxing authority;

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

“Initial Inventory Package” has the meaning given to such term in Section 5.D hereof;

“Initial Inventory Package Fee” has the meaning given to such term in Section 3.B hereof;

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

“**Local Advertising**” has the meaning given to such term in Section 10.A hereof;

“**Manual**” means not only the NITELITES FRANCHISE SYSTEMS, INC. Operating Manual, but other items as may be provided in the future, including other manuals and all books, computer programs, pamphlets, memoranda and other publications prepared by or on behalf of Franchisor and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor from time to time setting out the standards, methods, procedures and specifications of the System;

“**Marketing Fund**” means the systemwide advertising and promotion fund established by Franchisor described in Section 10 hereof;

“**Marketing Fund Contribution**” has the meaning given to such term in Section 3.E hereof;

“**Marks**” mean the service mark “NITELITES” and other trade names, trademarks, service marks, designs, graphics, logos and other commercial symbols as Franchisor may designate and not thereafter withdraw to be used in connection with the Franchised Business;

“**National Account**” means any account designated as such by Franchisor on the basis that such account holders are major purchasers such as a national or regional chain with separate locations. Such accounts are expressly excluded from Franchisee's Protected Territory, except under the circumstances set forth in Section 2.F hereof;

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

“**Protected Territory**” has the meaning given to such term in Section 2.D hereof;

“**Royalty Fee**” has the meaning given to such term in Section 3.D hereof;

“**Start-up Kit**” has the meaning given to such term in Section 5.E hereof;

“**Start-up Kit Fee**” has the meaning given to such term in Section 3.C hereof;

“**System**” means the uniform standards, methods, procedures and specifications developed by Franchisor and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor for the operation of a NITELITES Business; and

“**Transfer**” means any event pursuant to which the rights or obligations of the affected party under this Agreement are attempted to be sold, assigned, pledged, hypothecated, mortgaged, sublicensed or transferred through bequest, inheritance, trust, divorce or operation of law.

2. SCOPE OF LICENSE

A. Grant

Franchisor hereby grants to Franchisee, and Franchisee undertakes and accepts, upon the terms and conditions herein contained, the right, license and privilege to operate one (1) NITELITES Business under the System and Marks at the specified location provided in Section 2.B hereof ("Franchise Premises"). Franchisee shall not relocate the Franchised Business without the prior consent of Franchisor, which may be withheld or delayed at Franchisor's discretion.

B. Franchise Premises

The street address (or sufficiently detailed description of the premises) of the Franchise Premises is:

C. Franchise Premises Not Determined

In the event the Franchise Premises has not yet been determined as of the date of this Agreement, then the geographical area in which the Franchised Business is to be located will be within a defined area which is described or otherwise mapped out in Exhibit A to this Agreement ("Designated Area"). At such time as the address of the Franchise Premises has been determined, such address will be inserted into Section 2.B above. Franchisee acknowledges and understands that the Designated Area is delineated for the sole purpose of site selection and does not confer any territorial exclusivity or protection.

D. Protected Territory

So long as this Agreement is in force and effect and Franchisee is not in default under any of the terms hereof, Franchisor will neither establish nor license another to establish or operate a NITELITES Business within the geographic area identified in Exhibit B to this Agreement (the "Protected Territory"). Population figures will be based upon the most recent available U.S. Census data at the time the Protected Territory is designated. Franchisee shall not operate the Franchised Business within a protected territory licensed to another franchisee of Franchisor.

E. Franchisor's Rights

Notwithstanding any other provision of this Agreement to the contrary, Franchisor expressly retains all rights and discretion with respect to the Marks and System, including the right:

1. To establish and operate, and to license others to establish and operate, NITELITES Businesses at any location outside the Protected Territory;
2. To establish and operate, and to license others to establish and operate, other businesses for the sale of products or provision of services, other than those services described herein, using other trademarks, service marks and commercial symbols at any location both within and outside the Protected Territory;
3. To sell or otherwise distribute, both within and outside the Protected Territory, products and/or services similar to those offered through the Franchised Business through alternate channels of distribution (other than franchised outlets, but including, without limitation, e-commerce, direct mail, and catalog sales) under terms and conditions that Franchisor deems appropriate; and
4. To engage in any activities not expressly forbidden by this Agreement.

F. National Accounts

If Franchisor contracts with a major purchaser such as a national or regional chain ("National Account") to distribute and install NITELITES Products and Equipment for a location within the Protected Territory, Franchisor reserves the right to engage or contract with individuals or entities other than Franchisee ("third parties"), to perform installation and service for the National Account; provided, however, if Franchisee is in compliance with this Agreement, Franchisee shall have a right of first refusal to perform the installation and services for the National Account located within the Protected Territory at the cost equivalent (all terms and conditions subject to consideration) contained in the Franchisor's third-party contract. Upon Franchisor's development of a proposal with a third-party to perform installation and services for a National Account located within the Protected Territory, Franchisor shall provide a notice along with a copy of the third party proposal to Franchisee. Franchisee shall be required within five (5) business days [Monday through Friday] to exercise its right of first refusal to perform the installation and services at the same price and on the same terms and conditions as contained in the notice of the third party proposal. Franchisee's notice of its right of first refusal to perform, pursuant to this Section, must be in writing to be effective. If Franchisee exercises its right of first refusal, Franchisor shall contract with Franchisee for the installation and services for Franchisor's National Account within the Protected Territory. If Franchisee fails to exercise its right of first refusal within the time allotted or if Franchisee waives its right of first refusal, Franchisor may proceed with the proposed third party contract according to the original stated terms. If the price or any other terms and conditions differ in any material respect from those set forth in the proposed contract (in which case such changes shall constitute a new proposed contract, Franchisee's right of first refusal is reinstated. In the event, Franchisee fails to exercise its right of first refusal within the allotted time, or waives its right of first refusal, then NITELITES may service its National Accounts, in its sole discretion, and such shall not constitute a breach of this Agreement.

G. Acquisition of Competing System

Franchisor may own, acquire, establish and/or operate, and license others to establish and operate, businesses under other proprietary marks and other systems, whether such businesses are similar to or different from franchises operating under the System, at any location within or outside the Protected Territory. Provided that Franchisee is in compliance with this Agreement and any other agreement with Franchisor or any Affiliate, if, during the term of this Agreement, Franchisor acquires a system of Competitive Businesses (an "Acquired System"), the following terms shall apply:

1. Franchisor shall offer Franchisee the option to purchase and operate, as NITELITES Franchise, any unit of the Acquired System (an "Acquired Unit") that is both purchased by Franchisor for operation by Franchisor or an Affiliate (*e.g.*, the unit will not be operated by a licensee of the Acquired System) and is located within the Protected Territory. Franchisor shall provide Franchisee with written notice of Franchisor's purchase of the Acquired System, the terms and conditions applicable to Franchisee's option to purchase the Acquired Unit(s), and such other information that Franchisor deems necessary to include in the notice. The terms and conditions offered to Franchisee shall include, without limitation, the following: (i) the purchase price will reflect Franchisor's purchase costs of the Acquired Unit, including a per-unit allocation of Franchisor's costs in purchasing the Acquired System; and (ii) the requirement that Franchisee enter into Franchisor's then-current form of System franchise agreement for the Acquired Unit, provided that Franchisee shall not be required to pay an initial franchisee fee for an Acquired Unit. If Franchisee does not elect to purchase, or fails to complete the purchase of, an Acquired Unit, Franchisor shall have the right to operate itself, or through an Affiliate or third party licensee, the Acquired Unit under any trade name or trademark other than the Marks.
2. Franchisee has no right to purchase, and Franchisor is not obligated to offer Franchisee any option to purchase, any Acquired Unit that is operated by a licensee under the Acquired System. Franchisor may license such unit to be operated under any trade name or trademarks other than the Marks, and may also license additional units of the Acquired System to be developed and operated within the Protected Territory.
3. For any Acquired Unit that is located within the Protected Territory, but which either (a) Franchisee does not purchase as provided in Section 2.G.1 above, or (b) is not offered for sale to Franchisee in accordance with Section 2.G.2 above, then for a period of two (2) years following the date of Franchisor's purchase of the Acquired System, Franchisor shall pay Franchisee a reverse royalty in an amount equal to two percent (2%) of the Gross Sales for the preceding quarter of (i) the Acquired Unit(s) and (ii) any additional units of the Acquired System in operation during the two-year period, which are located within the Protected Territory. Franchisor shall make such distributions to Franchisee on the twentieth (20th) day of the month immediately following each quarterly period.

3. FEES

Franchisee agrees to pay Franchisor the following fees and amounts at the times specified herein:

A. Franchise Fee

Upon execution of this Agreement, Franchisee shall pay a Franchise Fee to Franchisor of _____ Dollars (\$_____). The amount of the Franchise Fee is based on the population of the Protected Territory (see fee schedule chart below). Population figures will be based upon the most recent available U.S. Census data at the time the Protected Territory is designated. The Franchise Fee shall be deemed fully earned upon execution of this Agreement and is nonrefundable, except under the conditions set forth under Section 9.B of this Agreement. The Franchise Fee is payment, in part, for expenses incurred by Franchisor in furnishing assistance and services to Franchisee as set forth in this Agreement and for costs incurred by Franchisor including, but not limited to, general sales and marketing expenses, training, legal, accounting and other professional fees.

| <i>Protected Territory Population</i> | <i>Franchise Fee</i> |
|---------------------------------------|----------------------|
| Less than 500,000 | \$50,000 |
| 500,001 to 1,000,000 | \$65,000 |
| 1,000,001 to 2,000,000 | \$75,000 |
| 2,000,001 to 3,000,000 | \$85,000 |
| 3,000,001 to 4,000,000 | \$95,000 |
| 4,000,001 to 5,000,000 | \$105,000 |
| Over 5,000,000 | \$115,000 |

B. Initial Inventory Package Fee

Franchisee shall pay to Franchisor or its Affiliate, prior to commencing operation of the Franchised Business, a one (1) time fee representing the purchase price of an Initial Inventory of NITELITES Products and Equipment ("Initial Inventory Package Fee") as set forth in further detail in Section 5.D of this Agreement.

C. Start-up Kit Fee

Franchisee shall pay to Franchisor or its Affiliate, prior to commencing operation of the Franchised Business, a one (1) time fee representing the purchase price of a package of supplies, including a product demonstration kit, tools, vehicle graphics package, trade show display, yard signs, uniforms and other ancillary supplies ("Start-up Kit Fee") as set forth in further detail in Section 5.E of this Agreement.

D. Royalty Fee

After the commencement of the Franchised Business, Franchisee shall pay to Franchisor, on or before the 15th of each month, a "Royalty Fee" equal to five percent (5%) of Franchisee's Gross Sales in the previous calendar month. All Royalty Fees shall be paid in accordance with the electronic transfer provision in Section 2.G.J hereof.

E. Marketing Fund Contribution

On or before the fifteenth (15th) day of each month, Franchisee shall contribute, to the NITELITES Marketing Fund established in accordance with Section 10.B of this Agreement, two percent (2%) of the aggregate amount of NITELITES Products and Equipment purchased by Franchisee and invoiced by Franchisor in the previous calendar month. Franchisee's required Marketing Fund Contributions shall be made in accordance with the electronic transfer provision in Section 2.G.J, and maintained and administered by Franchisor or its designee in accordance with Section 10 of this Agreement. The Marketing Fund Contribution may be collected by an Affiliate of Franchisor in Franchisor's discretion.

F. Internet Marketing Fee

So long as this Agreement is in effect, Franchisee shall pay to Franchisor an Internet marketing fee as directed by Franchisor or as set forth in the Manual ("Internet Marketing Fee"). Franchisee's required Internet Marketing Fee shall be made in accordance with the electronic transfer provision as set forth in Section 2.G.J hereof. Franchisor reserves the right, in its sole discretion, from time to time to adjust the amount of the Internet Marketing Fee. The current Internet Marketing Fee is *One Hundred Fifty-Six Dollars (\$156.00)* per one-half (½) year billed in February and August of each year.

G. Call Center Service Fee

Franchisee shall pay to Franchisor a fee for call center services as directed by Franchisor or as set forth in the Manual ("Call Center Service Fee"). Franchisee, upon execution of this Agreement, shall also execute the Call Center Service Agreement attached as Exhibit D to this Agreement. Franchisee's required Call Center Service Fee shall be made in accordance with the electronic transfer provision as set forth in Section 2.G.J hereof. Franchisor reserves the right, in its sole discretion, to make adjustments in the amount of the Call Center Service Fee. Franchisee is responsible for any and all applicable long distance fees associated with forwarding calls to the call center. The Call Center Service Fee does not include any outbound telemarketing for Franchisee.

H. Taxes

All payments required to be made by Franchisee to Franchisor pursuant to this Agreement shall be the gross amount determined according to the applicable paragraph, without deduction for any sales, use, withholding, gross receipts, income (except for income

taxes assessed on Franchisor for doing business in the state where the Franchised Business is located), or other taxes (referred to as "Taxes" for purposes of this paragraph) that may be levied or assessed on amounts paid by Franchisee to Franchisor by any state, county, or municipality in which the Franchised Business is located or operates, in which Franchisee resides, or which otherwise possesses the power to tax Franchisee or the Franchised Business. Franchisee shall pay to Franchisor (for Taxes which would otherwise be payable by and/or due from Franchisor) or remit to the appropriate taxing authorities (for Taxes required to be withheld and/or paid by Franchisee) all Taxes, shall promptly deliver to Franchisor receipts of applicable governmental authorities showing that all Taxes were properly paid in compliance with applicable law, and shall indemnify and defend Franchisor and hold Franchisor harmless from and against all liability for Taxes (including interest and penalties thereon). Franchisee shall fully and promptly cooperate with Franchisor to provide such information and records as Franchisor may request in connection with any application by Franchisor to any taxing authority with respect to any tax credits.

I. Interest

All Marketing Fund Contributions, amounts due for purchases by Franchisee from Franchisor or any Affiliate and other amounts due Franchisor, that are not received by Franchisor within five (5) days after the due date, shall bear interest at the highest applicable rate permitted by law not to exceed one and one-half percent (1.5%) per month. Franchisee acknowledges that this Section 2.G.I shall not constitute an agreement by Franchisor or any Affiliate to accept any payments after they are due or a commitment by Franchisor to extend credit to or otherwise finance the operation of the Franchised Business. Further, Franchisee acknowledges that its failure to pay all amounts when due shall also constitute grounds for termination as provided in Section 17 of this Agreement.

J. Electronic Transfer

Franchisor may require that all Royalty Fees, Marketing Fund Contributions, amounts due from purchases by Franchisee from Franchisor or its Affiliate, and other amounts that Franchisee owes Franchisor or its Affiliate be paid through an Electronic Depository Transfer Account established at a national banking institution approved by Franchisor. When requested, Franchisee shall establish the account providing for electronic funds transfer as approved by Franchisor, and Franchisor shall have access to such account for the purpose of receiving payment for Royalty Fees, Marketing Fund Contributions, amounts due for purchases by Franchisee, and any other amounts that Franchisee owes Franchisor or its Affiliate. Franchisee shall execute any documents as Franchisor's or Franchisee's bank requires to establish and implement the Electronic Depository Transfer Account. Once established, Franchisee shall deposit funds sufficient to meet its obligations to Franchisor and may not close the Electronic Depository Transfer Account without Franchisor's consent. Every week, Franchisee shall make deposits to the account sufficient to cover amounts owed to Franchisor or its Affiliate.

K. Application of Payments

Notwithstanding any designation by Franchisee, Franchisor may apply any payments by Franchisee to any past due indebtedness of Franchisee for Royalty Fees, Marketing Fund Contributions, purchases from Franchisor or any Affiliate, interest or any other indebtedness.

4. TERM AND RENEWAL

A. Initial Term

This Agreement shall be effective and binding for an initial term of five (5) years from the Execution Date, unless sooner terminated under Section 17.

B. Renewal Term

Franchisee shall have the right to obtain a successor franchise at the expiration of the initial term of the Franchise for three (3) additional successive terms of five (5) years each, provided that all of the following conditions have been fulfilled and remain true as of the last day of the initial term and each renewal term of this Agreement:

1. Franchisee has, during the entire term of this Agreement, substantially complied with all its provisions and is not in default at time of renewal;
2. Franchisee has access to and the right to remain in possession of the Franchise Premises, or a suitable substitute location, which is in compliance with Franchisor's then-current specifications and standards for the duration of the renewal term;
3. Franchisee has given notice to Franchisor of its decision to renew not less than nine (9) months nor more than twelve (12) months prior to the end of the initial term in accordance with Section 4.C hereof;
4. Franchisee has executed Franchisor's then-current form of the Franchise Agreement or has executed renewal documents at Franchisor's election (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise), which Franchise Agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a different percentage Marketing Fund Contribution; provided, however, Franchisee shall not be required to pay the then-current initial Franchise Fee or its equivalent;
5. Franchisee has, at its expense, made such capital expenditures as were necessary to maintain uniformity with any Franchisor required System modifications in accordance with Section 12.B, such that the Franchised Business reflects Franchisor's then-current standards and specifications;
6. Franchisee has complied with Franchisor's then-current qualifications for a new franchisee and any training requirements;

7. Unless prohibited by the law of the state where the Franchised Business is located, Franchisee has executed a general release of any and all claims against Franchisor and any Affiliate and their respective officers, directors, agents and employees arising out of, or related to, this Agreement or any related agreement; and
8. Franchisee has satisfied all monetary obligations owed by Franchisee to Franchisor, or any Affiliate of Franchisor, and has timely met these obligations throughout the term of this Agreement.

C. Notice

If Franchisee desires to obtain a successor franchise at the expiration of this Agreement, Franchisee shall give Franchisor written notice of its desire to renew at least nine (9) months, but not more than twelve (12) months, prior to the expiration of the initial term of this Agreement. Within thirty (30) days after its receipt of such timely notice, Franchisor shall furnish Franchisee with written notice of Franchisee's right to obtain a successor franchise. If, during the term of this Agreement, Franchisee has failed to substantially comply with this Agreement, Franchisor may refuse to grant Franchisee a successor franchise. If Franchisor determines that Franchisee is not eligible to obtain a successor franchise, but that the nature of the noncompliance may be cured so that Franchisor is willing to consider granting Franchisee a successor franchise, Franchisor will notify Franchisee accordingly. Franchisee will be eligible for a successor franchise if Franchisee has cured the noncompliance within thirty (30) days of Franchisor's notice of noncompliance to Franchisee.

D. Continued Operation Following Expiration

Franchisee has no right to continue to operate the Franchised Business after the expiration of the initial term of this Agreement. Without waiving any rights or remedies it may have, Franchisor may permit Franchisee to continue to temporarily operate the Franchised Business after the expiration of the initial term but before the execution by Franchisee of a new Franchise Agreement for a renewal term as required by Section 4.B.4 above, in which case the temporary continuation of the Franchised Business will be on a month-to-month basis, and will be terminable at the will of Franchisor by giving Franchisee written notice of termination at least thirty days before the termination is effective. If the laws of the jurisdiction in which Franchisee or the Franchised Business are located require a longer notice period, the thirty-day period will be deemed modified to be the shortest notice period required by the laws of such jurisdiction.

5. FRANCHISE PREMISES

A. Selection of Franchise Premises

Franchisee shall lease, purchase or otherwise secure suitable premises for the operation of the Franchised Business (the "Franchise Premises"). The Franchise Premises must be located within Franchisee's Protected Territory. Franchisee may operate the Franchised Business from Franchisee's residence (whether or not Franchisee resides within Franchisee's

Protected Territory) if permitted by, and so long as Franchisee fully complies with, all applicable building, zoning and licensing laws, ordinances, requirements and restrictions. If Franchisee resides outside of Franchisee's Protected Territory, Franchisee must obtain, prior to opening the Franchised Business, and maintain at all times during the term of this Agreement, a mailing address located within the Protected Territory. Franchisee shall provide Franchisor with the address of the Franchise Premises prior to opening the Franchised Business, and shall notify Franchisor promptly of any change in the location of the Franchise Premises.

B. Lease of Franchise Premises

After the designation of the Franchise Premises, if the Franchise Premises is not within Franchisee's principal residence and Franchisee shall execute a lease for, or a binding agreement to purchase, the Franchise Premises, Franchisee must obtain Franchisor's approval of the terms. Franchisor shall not unreasonably withhold its approval. Franchisor shall be entitled to require that nothing therein contained is contradictory to, or likely to interfere with, Franchisor's rights or Franchisee's duties under this Agreement. Franchisee shall take all actions necessary to maintain the lease of the Franchise Premises in effect while this Agreement is in effect. Any default for which said lease may be terminated shall also be deemed a default hereunder, and the time to cure the same shall expire when said lease is terminated. Franchisor may require that the lease for the Franchise Premises be collaterally assigned by Franchisee to Franchisor to secure the performance by Franchisee of its obligations under this Agreement. *Franchisor's review of any lease or any advice or recommendations offered by Franchisor shall not constitute a representation or guarantee that Franchisee will succeed at the Franchise Premises nor an expression of Franchisor's opinion regarding the terms of the lease.* Franchisor's approval of the lease shall be conditioned upon inclusion in said lease of terms acceptable to Franchisor and, at Franchisor's option, the lease shall contain such provisions as Franchisor may reasonably require, including:

1. A provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the Franchise grant;
2. A provision which expressly permits the lessor of the premises to provide Franchisor all sales and other information lessor may have obtained or received relating to the operation of the Franchised Business, as Franchisor may request;
3. A provision which requires the lessor concurrently to provide Franchisor with a copy of any written notice of deficiency under the lease sent to Franchisee and which grants to Franchisor, in its sole discretion and sole option, the right (but not the obligation) to cure any deficiency under the lease should Franchisee fail to do so within fifteen (15) days after the expiration of the period in which Franchisee may cure the default;
4. A provision which evidences the right of Franchisee to display the Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;

5. A provision that the premises shall be used only for the operation of the Franchised Business;
6. A provision which expressly states that any default under the lease shall constitute a default under this Agreement, and any default under this Agreement shall constitute a default under the lease; and
7. A provision which states that upon default of this Agreement and in accordance with this Agreement, Franchisor or its nominee may take possession of the premises and operate the Franchised Business.

C. Development of Franchise Premises

Once Franchisor and Franchisee have agreed upon the site and designated the Franchise Premises, its development is to be conducted as more particularly described below:

1. Obtain all permits and licenses for the installation of fixtures and equipment in, and any improvements to, the Franchise Premises, including, without limitation, those required by applicable zoning, access, safety, environmental, building, utility, sign, health, sanitation and business laws, rules, ordinances and regulations;
2. Purchase or lease service vehicles and the equipment and tools to outfit such vehicles according to Franchisor's specifications and requirements;
3. Purchase and install the required vehicle signs, computer hardware and software, furniture, fixtures, tools, and equipment according to Franchisor's plans and specifications for equipping the Franchised Business;
4. Construct all required improvements;
5. Purchase sufficient office supplies and materials as may be prescribed by Franchisor;
6. Obtain a telephone number solely dedicated to the Franchised Business. The telephone number shall be listed in telephone directories only under an address or other location within Franchisee's Protected Territory. Franchisor has the sole right and interest in all telephone numbers and directory listings used in connection with Franchisor's Marks. If Franchisee's rights to use the System are terminated, Franchisee must transfer the telephone number to Franchisor or Franchisor's designee. Franchisee may not disconnect, transfer, or assign any telephone number used in connection with the System to any person or entity without Franchisor's written consent; and
7. Satisfactorily complete initial training as prescribed in Section 9.A.

D. Initial Inventory Package

Prior to commencing operation of the Franchised Business, Franchisee agrees to purchase from Franchisor or its Affiliate, and install at the Franchise Premises, an initial inventory of NITELITES Products and Equipment ("Initial Inventory Package"). The Initial Inventory Package contains necessary NITELITES Products and Equipment including, but not limited to, transformers, fixtures, bulbs, lighting systems, and the like, which Franchisee will utilize for sales demonstration and display purposes. The exact size and composition of the Initial Inventory Package and corresponding Initial Inventory Package Fee will vary depending on such factors as the amount of available storage space within the Franchise Premises, the number and character of National Accounts Franchisee services and other like factors.

E. Start-up Kit

Prior to commencing operation of the Franchised Business, Franchisee agrees to purchase from Franchisor or its Affiliate a package of supplies and other items necessary for the operation of the Franchised Business ("Start-up Kit"). The Start-up Kit consists of a product demonstration kit, tools, vehicle graphics package, trade show display, yard signs, uniforms and other supplies to be utilized in the operation of the Franchised Business. The exact size and composition of the Start-up Kit and corresponding Start-up Kit Fee will vary depending on such factors as the amount of available storage space within the Franchise Premises, the number and character of National Accounts Franchisee services and other like factors.

F. Opening

Franchisee may not open the Franchised Business and commence operations until:

1. All of the obligations pursuant to the other provisions of Section 4.D of this Agreement have been fulfilled;
2. Franchisee has satisfactorily completed initial training as described in Section 9.A;
3. Franchisee has furnished Franchisor with evidence satisfactory to Franchisor that all required building, utility, sign, health, sanitation, safety, environmental, business and other permits and licenses have been obtained from any applicable governmental authority, including any certificate of occupancy, lien waiver from general and/or subcontractors and approvals necessary to operate the Franchised Business;
4. Franchisor has been furnished with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor may request as described in Section 15;
5. Franchisee has paid in full all amounts due to Franchisor; and

6. Franchisee shall comply with these conditions and be prepared to open and continuously operate the Franchised Business no later than six (6) months from the Effective Date. Time is of the essence.

G. Destruction of Franchise Premises; Relocation

Franchisee may operate the Franchised Business only at the Franchise Premises. If the lease for the site of the Franchise Premises expires or terminates without fault of Franchisee or is otherwise rendered unusable or as otherwise may be agreed upon in writing by Franchisor and Franchisee, Franchisee shall relocate the Franchised Business to a new location within thirty (30) days. Any such relocation shall be at Franchisee's sole expense and Franchisor shall have the right to charge Franchisee for any costs incurred by Franchisor including, but not limited to, legal and accounting fees incurred in providing assistance to Franchisee. Notwithstanding the foregoing, Franchisor is under no obligation to provide relocation assistance if Franchisee relocates the Franchised Business in accordance with the terms of this Section 4.D.G. If the site of the Franchised Business is rendered unusable and Franchisee fails to relocate the Franchised Business to a substitute site within thirty (30) days, this Agreement will terminate as provided in Section 17.B.

H. Administration of the Franchised Business

Subject to local zoning rules and local ordinances, Franchisee may manage and administer the Franchised Business from an office located within Franchisee's principal residence or another location suitable for such purposes. Franchisee shall have sole responsibility for access to facilities necessary for the management and administration of the Franchised Business. If the Franchised Business is managed from a residential office, Franchisee will be required to obtain dedicated telephone and fax lines and an e-mail address, which are solely dedicated to the purpose of managing the Franchised Business.

I. Conversion

In its sole discretion, Franchisor may permit the conversion of an existing NITELITES distributorship into a Franchised Business using the System and the Marks. If Franchisor permits such a conversion, Franchisor and Franchisee shall concurrently execute a Conversion Addendum (a copy of which is attached as Exhibit C) that sets forth certain necessary modifications or additions to this Agreement. If executed, the Conversion Addendum shall form an integral part of this Agreement as if fully set forth herein.

6. MARKS

A. Ownership

Franchisee acknowledges that its right to use the Marks is derived solely from this Agreement, is nonexclusive and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications and operating procedures prescribed by Franchisor. Franchisee agrees that its every use of the

Marks and any goodwill created shall inure to the benefit of Franchisor and that Franchisee shall not at any time acquire rights in the Marks by virtue of any use it may make of the Marks. This Agreement does not confer any goodwill, right, title or interest in the Marks to Franchisee.

B. Limitations on Franchisee's Use of Marks

Franchisee shall not use any Mark or portion of any Mark as part of any corporate or trade name, with any prefix, suffix or other modifying words, terms, designs or symbols or in any modified form, without the prior written consent of Franchisor. Franchisee shall not use any Mark in connection with the sale of any unauthorized service or product or in any other manner not expressly authorized in writing by Franchisor. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of any of the Marks. Franchisee agrees it will not register or seek to register as a trademark or service mark, either with the United States Patent and Trademark Office or any state or foreign country, any of the Marks or a trademark or service mark that is confusingly similar to any Mark licensed to Franchisee.

C. Notification of Infringements and Claims

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

D. Right of Inspection

In order to preserve the validity and integrity of the Marks licensed herein and to ensure that Franchisee is properly employing the Marks in the operation of the Franchised Business, Franchisor and its agents shall have the right of entry and inspection of the Franchise Premises at all reasonable times and, additionally, shall have the right to observe the manner in which Franchisee is rendering its services and conducting its activities and operations and to inspect inventory, equipment, accessories, products, supplies, reports, forms and documents and related data to make certain that the Franchised Business is being operated in accordance with the quality control provisions and performance standards established by Franchisor.

E. Discontinuance of Use of Marks

Should it become necessary, in Franchisor's sole discretion, for Franchisee to modify or discontinue use of any of the Marks or other commercial symbols, Franchisee shall, upon receiving written notice from Franchisor, immediately modify or discontinue use of any Marks and adopt any such modified or substitute trademark or trade name as Franchisor may require. Franchisor shall not be required to reimburse Franchisee for its expenses in modifying or discontinuing the use of a Mark or any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by Franchisee to promote a modified or substitute trademark or service mark.

F. Franchisor's Sole Right to Domain Name

Franchisee shall not establish an Internet site using a domain name or uniform resource locator containing the words "NITELITES" or any variation thereof without prior written consent from Franchisor. Franchisor retains the sole right to advertise on the Internet and create a website using the "NITELITES" domain name. Franchisee acknowledges that as between Franchisor and Franchisee, Franchisor is the owner of all right, title and interest in and to such domain names as Franchisor shall designate in the Manual.

7. CONFIDENTIAL INFORMATION

A. Requirement of Confidentiality

Franchisor shall disclose Confidential Information to Franchisee in the training program, the Manual and in guidance furnished to Franchisee during the term of this Agreement. Franchisee shall not acquire any interest in the Confidential Information, other than the right to utilize it in performing its duties and obligations pursuant to and during the term of this Agreement, and Franchisee acknowledges that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. Franchisee acknowledges and agrees that the Confidential Information is proprietary, includes Franchisor's trade secrets, and is disclosed to Franchisee solely on the condition that Franchisee (and its legal and beneficial owners, including shareholders, officers, partners, members, managers or trustees, if Franchisee is a corporation, partnership, limited liability company, business trust or other business entity) does hereby agree that it: (a) shall not use the Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement; (c) shall not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information. Franchisee agrees to enforce the preceding provisions of this Section as to its employees, agents, representatives and prospective purchasers of the Franchised Business, and shall be liable to Franchisor for any unauthorized disclosure or use of Confidential Information by any of them.

B. Improvements Developed by Franchisee

All ideas, concepts, techniques or materials concerning the Franchised Business, whether or not protectable intellectual property and whether created by or for Franchisee or its owners or employees, must be promptly disclosed to Franchisor and will be deemed the sole and exclusive property of Franchisor, may be made part of the System and shall be considered works made-for-hire for Franchisor, and no compensation will be due to Franchisee or its owners or employees therefor. To the extent that any item does not qualify as a "work made-for-hire" for Franchisor, Franchisee shall assign ownership of that item, and all related rights to that item, to Franchisor and must sign whatever assignment or other documents Franchisor requests to show Franchisor's ownership or to assist Franchisor in obtaining intellectual property rights in the item. Likewise, Franchisor agrees to disclose to Franchisee ideas, concepts, techniques or materials developed by other franchisees, which are made a part of the System.

C. Exclusive Relationship

Franchisee specifically acknowledges and agrees that Franchisor would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among NITELITES franchisees, if owners of Franchised Businesses, and members of their immediate families or households were permitted to hold interest in or perform services for any Competitive Business. Franchisee, therefore, agrees that during the term of this Agreement, neither Franchisee nor any member of its immediate family or household or any holder of a legal or beneficial interest in Franchisee will: (a) have any direct or indirect ownership interest in any Competitive Business located or operating anywhere in the world; or (b) perform services as a director, officer, manager, employee, trustee, consultant, representative, agent or otherwise for any Competitive Business or any entity which is granting franchises or licenses to others to operate a Competitive Business located or operating anywhere in the world.

D. Third Party Nondisclosure

Franchisee shall require each of its management and professional staff and, if Franchisee is a business entity, each of its shareholders, officers, directors, partners, members, managers, employees, trustees or professional staff, to execute a nondisclosure and non-competition agreement in a form approved by Franchisor at the time this Agreement is executed or prior to such persons becoming shareholders, officers, partners, directors, members, managers, employees, trustees or professional staff, whichever is earlier. Franchisee shall require each prospective purchaser of the Franchised Business, of the license granted under this Agreement, or of any interest in Franchisee, prior to disclosing any confidential information to such person, to execute a nondisclosure and confidentiality agreement, in a form approved by Franchisor, requiring that all proprietary or confidential information that may be disclosed to such person in connection with his or her investigation of Franchisee or the Franchised Business will be held in strict confidence and used solely to evaluate the contemplated transaction. Franchisor shall be a third party beneficiary with the right to enforce the covenants contained in such agreements.

E. Injunctive Relief

As any breach by Franchisee of any of the covenants contained in this Section would result in irreparable injury to Franchisor, and as the damages arising out of any such breach would be difficult to ascertain, Franchisee agrees that, in addition to all other remedies provided by law or in equity, Franchisor shall be entitled to seek an injunction against any such breach, whether actual or contemplated.

8. MANUAL

A. Operation in Conformity with Manual

While this Agreement is in effect, Franchisor will loan to Franchisee one (1) copy of the Manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by Franchisor and information relative to other obligations of Franchisee. Franchisee agrees to conduct the Franchised Business strictly in accordance with all of the provisions set forth in the Manual. The Manual may consist of one (1) or more separate manuals and other materials as designated by Franchisor and may be in written or electronic form.

B. Revisions of Manual

Franchisor shall have the right to add to and otherwise modify the Manual from time to time; provided, however, that no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Franchisor may make such additions or modifications without prior notice to Franchisee. Franchisee shall immediately, upon notice, adopt any such changes.

C. Confidentiality of Manual

The Manual contains proprietary information and certain Confidential Information of Franchisor. Franchisee agrees to maintain confidentiality both during the term of this Agreement and subsequent to the expiration or termination of the Franchise. Franchisee shall at all times maintain its copy of the Manual at the Franchise Premises in a current and up-to-date manner. Franchisee shall not make any disclosure, duplication or other unauthorized use of any portion of the Manual. At all times that the Manual is not in use by authorized personnel, Franchisee shall maintain the Manual in a locked receptacle and shall only grant authorized personnel access to the key or combination of such receptacle. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's headquarters shall be controlling.

D. Ownership of Manual

The Manual shall, at all times, remain the sole property of Franchisor and shall promptly be returned upon the expiration or termination of this Agreement.

9. TRAINING AND OPERATIONS ASSISTANCE

A. Initial Training

Franchisor shall make an initial training program available to Franchisee (or, if Franchisee is a corporation, limited liability company, partnership, business trust or other business entity, its Designated Manager) and up to one (1) assistant. Prior to the opening of the Franchised Business, Franchisee (or its Designated Manager, if applicable) must attend and successfully complete, to Franchisor's satisfaction, an initial training program consisting of approximately one (1) week of classroom and on-the-job instruction pertaining to the operation of the Franchised Business including, but not limited to, administrative, operational, sales/marketing matters, financial controls, other management and operational techniques and maintenance of quality standards. Franchisor shall conduct the initial training program at such facility or facilities as Franchisor may designate from time to time. Franchisor shall not charge tuition or similar fees for initial training; however, all expenses incurred by Franchisee in attending such program including, but not limited to, travel costs, room and board expenses and employees' salaries, if applicable, shall be the sole responsibility of Franchisee. Franchisee shall be responsible for training its management and other employees.

B. Failure to Complete Initial Training Program

If Franchisor determines, in its sole discretion, that Franchisee is unable to satisfactorily complete initial training described above, Franchisor shall have the right to terminate this Agreement. If this Agreement is terminated pursuant to this Section 9.B, Franchisor shall return to Franchisee fifty percent (50%) of the Franchise Fee paid by Franchisee pursuant to Section 3.A. Upon return of said amounts, Franchisor shall be fully and forever released from any claims or causes of action Franchisee may have under or pursuant to this Agreement, except to the extent prohibited by the laws of the state where the Franchised Business is located. In the event Franchisee is a business entity and the Designated Manager of the Franchised Business fails to complete the initial training program to Franchisor's reasonable satisfaction, in Franchisor's sole discretion, Franchisee may be permitted to select a substitute manager and such substitute manager must complete the initial training to Franchisor's reasonable satisfaction. Franchisee may be required to pay Franchisor's then-current rates for additional training, if any, for providing an initial training program for such substitute manager.

C. New Designated Manager

If, after beginning operations, Franchisee names a new Designated Manager, the new Designated Manager must complete the initial training program to Franchisor's satisfaction within sixty (60) days. Franchisee will be solely responsible for all travel and living expenses as well as any salary expenses incurred by Franchisee in sending a new Designated Manager to attend Franchisor's initial training program. Franchisee may be required to pay Franchisor's then-current rates for additional training, if any, for providing an initial training program for such new Designated Manager.

D. Operations Assistance

For three (3) consecutive days after the opening of the Franchised Business, Franchisor shall furnish to Franchisee, at the Franchised Business and at Franchisor's expense, one (1) of Franchisor's representatives for the purpose of providing general assistance and guidance in connection with opening and the day-to-day operations of the Franchised Business. If Franchisee requests additional assistance from Franchisor in order to facilitate the opening of the Franchised Business, and Franchisor deems it necessary and appropriate to comply with such request, Franchisor shall provide such additional assistance at Franchisor's then-current standard rates, plus expenses.

E. Ongoing Training Meetings

Franchisor may require Franchisee to attend additional refresher training and/or seminars. Attendance at such training programs or seminars shall be at Franchisee's sole expense including, without limitation, travel costs, room and board expenses and employees' salaries. Franchisor, at its option, may charge Franchisee a fee for such additional refresher training and/or seminars. Franchisor shall not require attendance at more than two (2) sessions in any calendar year and Franchisee shall not be required to attend more than four (4) days of refresher training or seminars in any calendar year.

10. MARKETING AND PROMOTION

Recognizing the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of the NITELITES Marks and System, Franchisee agrees as follows:

A. Local Advertising

Franchisee shall spend seven and one-half percent (7.5%) of its Gross Sales on advertising, promotions and public relations within the local area to be serviced by the Franchised Business ("Local Advertising"). Such expenditures shall be made directly by Franchisee. Within thirty (30) days after the end of each calendar quarter, Franchisee shall furnish to Franchisor a detailed report of the Local Advertising expenditures for such quarter. The failure of Franchisee to achieve the minimum Local Advertising expenditure for two (2) consecutive quarters shall constitute a material breach of this Agreement. Franchisee shall submit to Franchisor, for its prior approval, all advertising and promotional materials to be used by Franchisee including, but not limited to, circulars, flyers, local newspaper and direct mail advertising. Franchisor shall use reasonable efforts to provide notice of approval or disapproval within ten (10) days from the date all requested material is received by Franchisor. In the event written approval is not received by Franchisee within ten (10) days of receipt, Franchisor shall be deemed to have not given the required approval.

B. Systemwide Marketing Fund

Franchisor has established a systemwide marketing fund, to which Franchisee shall pay, on or before the fifteenth (15th) day of each month, the Marketing Fund Contribution required by

Section 3.E above. The Marketing Fund shall be maintained and administered by Franchisor or its designee as follows:

1. Franchisor shall oversee all advertising programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof. Franchisor cannot and does not ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising or other activities conducted by the Marketing Fund.
2. Franchisee's Marketing Fund Contribution may be used to meet any and all costs of producing, maintaining, administering and directing consumer advertising (including, without limitation, the cost of preparing and conducting television, radio, Internet, magazine and newspaper advertising campaigns and other public relations activities; developing and/or hosting an Internet web page of similar activities; employing advertising agencies to assist therein; and providing promotional brochures and other marketing materials to franchisees). All contributions by Franchisee to the Marketing Fund shall be maintained in a separate account from the funds of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Franchisor may incur in activities reasonably related to the administration of the Marketing Fund.
3. Although Franchisor intends the Marketing Fund to be of perpetual duration, Franchisor maintains the right to terminate the Marketing Fund. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes or returned to Franchisee and other franchisees based upon their respective Marketing Fund Contributions during the one (1) year period immediately preceding the termination of the Marketing Fund.
4. An accounting of the operation of the Marketing Fund shall be prepared annually and shall be made available to Franchisee upon request. Franchisor reserves the right, at its option, to require that such annual accounting include an audit of the operation of the Marketing Fund prepared by an independent certified public accountant selected by Franchisor and prepared at the expense of the Marketing Fund.
5. Each Franchisor or Affiliate-owned business utilizing the System and the Marks shall make contributions to the Marketing Fund equivalent to the contributions required of franchisees within the System.
6. Franchisee agrees that Franchisor (and any designee of Franchisor) shall not have any direct or indirect liability or obligation to Franchisee, to the Marketing Fund, or otherwise with respect to the management, maintenance, direction, or administration of the Marketing Fund. Franchisee further agrees that Franchisor shall not be liable for any act or omission, whether with respect to the Marketing

Fund or otherwise, which is consistent with this Agreement or other information provided to Franchisee, or which is done in subjective good faith. Franchisee and Franchisor, each having a mutual interest and agreeing on the critical practical business importance of their relationship being governed solely by written instruments signed by the parties to be bound (and not having either party subject to the uncertainty inherent in the application of legal or other concepts not expressly agreed to in writing by both parties), agree that their rights and obligations with respect to the Marketing Fund and all related matters are governed solely by this Agreement and that neither this Agreement nor the Marketing Fund are in the nature of a "trust," "fiduciary relationship" or similar special arrangement, but is only an ordinary commercial relationship between independent businesspersons for their independent economic benefit.

C. Cooperative Advertising

Although not obligated to do so, Franchisor may create a Cooperative Advertising program for the benefit of Franchisee and Franchisor-owned NITELITES Businesses if two (2) or more franchisees are established in a common market. Franchisor has the right to (a) allocate any portion of the Marketing Fund to the Cooperative Advertising program; and (b) collect and designate all or a portion of the Local Advertising for a Cooperative Advertising program. Franchisor has the right to determine the composition of all geographic territories and market areas for the implementation of each Cooperative Advertising program and to require that Franchisee participate in such Cooperative Advertising program when established within Franchisee's region. If a Cooperative Advertising program is implemented on behalf of a particular region, Franchisor reserves the right to establish an advertising cooperative for a particular region to enable the cooperative to self-administer the Cooperative Advertising program. Franchisee agrees to participate in such cooperative according to the cooperative's then-current rules and procedures and to abide by the cooperative's then-current decisions.

D. Grand Opening Advertising

Franchisee must spend at least *Ten Thousand Dollars (\$10,000.00)* during the first three (3) months of operation of the Franchised Business on Local Advertising and promotion conducted in accordance with the beginning of operations of the Franchised Business ("Grand Opening Advertising"). All advertising and other materials used in conducting Grand Opening Advertising shall be subject to Franchisor's prior approval. Grand Opening Advertising shall be in addition to the Local Advertising required in Section 10.A.

E. Telephone Directory Advertising

Franchisee must list and advertise the telephone number for the Franchised Business in the "white pages" telephone directory and the classified or "yellow pages" telephone directory distributed in its trade area and in such directory heading or category as specified by Franchisor ("Telephone Directory Advertising"). Franchisee must place the classified directory advertisement and listings together with other NITELITES Businesses operating within the distribution area of the directories. If a joint listing is obtained, the cost of the advertisements

and listings will be apportioned among NITELITES Businesses that are placed together. Telephone Directory Advertising expenditures shall be in addition to the Local Advertising required in Section 10.A and the Grand Opening Advertising required in Section 10.D.

F. Internet Advertising

Franchisor has established and maintains an Internet website at the uniform resource locator ("URL") *www.nitelites.com* that provides information about the NITELITES System and the services that Franchisor and its franchisees provide. Franchisor may (but is not required to) include at the NITELITES website an interior page containing information about the Franchised Business. If Franchisor includes such information on the NITELITES website, Franchisor may require Franchisee to prepare all or a portion of the page, at Franchisee's expense. All such information shall be subject to Franchisor's approval prior to posting. Franchisor retains the sole right to market on the Internet, including all use of websites, domain names, URL's, linking, meta-tags, marketing, auction sites, e-commerce and co-branding arrangements. Franchisee may be requested to provide Franchisor content for Franchisor's Internet marketing and shall be required to follow Franchisor's Intranet and Internet usage rules, policies and requirements. Franchisor retains the sole right to use the Marks on the Internet, including on websites, as domain names, directory addresses, search terms, meta-tags, and in connection with linking, marketing, co-branding and other arrangements. Franchisor retains the sole right to approve any linking or other use of the NITELITES website. Franchisee may not establish a presence on, or market using, the Internet in connection with the Franchised Business unless Franchisee has obtained Franchisor's express prior written consent and subject to Franchisor's specifications in connection with the same. In the event Franchisor approves an independent Franchisee website, Franchisor may require that such site shall be accessed only through Franchisor's home page.

11. BOOKS AND RECORDS

A. Requirement to Maintain

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

B. Sales Reports

Franchisee shall maintain an accurate record of daily Gross Sales and shall deliver to Franchisor, by the fifteenth (15th) day of each month, a signed and verified statement of monthly Gross Sales of the Franchised Business for the preceding calendar month, using such

form as Franchisor approves or provides in the Manual, which may either be in written or electronic form

C. Monthly and Annual Financial Reports

Franchisee shall, at its own expense, supply to Franchisor on or before the tenth (10th) day of the following calendar month, in a form approved by Franchisor, a balance sheet as of the last day of the preceding month, an income statement for the preceding month and fiscal year-to-date, and an electronic back-up of Franchisee's bookkeeping records, in such format and on such medium as may be specified in the Manual. Additionally, Franchisee shall submit to Franchisor within ninety (90) days after the end of each fiscal year during the term of this Agreement, an income statement for the fiscal year and a balance sheet as of the last day of the fiscal year, prepared in accordance with generally accepted accounting principles, certified by Franchisee or by an officer of Franchisee as accurately reflecting the results of operations and the financial condition of the Franchised Business and, if required by Franchisor, reviewed or audited by a certified public accountant. Franchisee shall also submit to Franchisor, on or before April 30 of each year, signed copies of Franchisee's federal income tax return for the previous tax year as filed with the Internal Revenue Service. If Franchisee has received an extension of time to file and Franchisee submits to Franchisor a signed, file-stamped copy of IRS Form 4868 or 2688, as applicable, by April 30, then Franchisee shall submit the tax returns within fifteen days after the final due date for such return, but in no event later than October 30 of each year. In addition, Franchisee shall submit to Franchisor such other periodic reports, forms and records in the manner and at the time specified in the Manual or otherwise in writing.

D. Computer System/Point-of-Sale System

Franchisee shall install, maintain, and at all times operate such computer hardware and software, including a point-of-sale system, as Franchisor may specify in the Manual or otherwise in writing as reasonably necessary for the efficient management and operation of the Franchised Business and the transmission of data to and from Franchisor. Franchisee agrees to permit Franchisor to access, by modem, Internet or otherwise, the computer system for the purpose of downloading information from Franchisee's computer system.

E. Right of Franchisor to Perform Inspection

Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records and tax returns of Franchisee. In addition, the same shall have the right to interview customers, employees, vendors and/or suppliers and, at any time, to have an independent audit made of Franchisee's books and records at Franchisor's expense. If an inspection should reveal that the Gross Sales or any fees or payments to Franchisor have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated plus interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law. If an inspection discloses an understatement in any payment report of three percent (3%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all reasonable costs and expenses in connection with the inspection

including, without limitation, travel expenses, reasonable accounting and legal fees. The foregoing remedies shall be in addition to any other remedies Franchisor may have.

F. Release of Records

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

12. FRANCHISE SYSTEM

A. Uniformity of System

Franchisee shall comply with all requirements set forth in this Agreement, the Manual and other policies as required by Franchisor. Mandatory specifications, standards, operating procedures and rules prescribed from time to time by Franchisor in the Manual, or otherwise communicated to Franchisee in writing, shall constitute provisions of this Agreement as if fully set forth herein. Franchisee shall comply with all such mandatory specifications, standards and operating procedures and rules.

B. Modification of the System

Franchisee recognizes that from time to time, Franchisor may introduce, as part of the System, certain System modifications including, without limitation, the adoption and use of new computer hardware and software, equipment or signs. Franchisee agrees to make all required upgrades and modifications at its expense as may be required by Franchisor; provided, however, that Franchisor shall not require any expenditures which are unreasonably disproportionate to Franchisee's original investment to establish the Franchised Business. No additional investment will be required during the first year of the initial term; if such additional investment is required to be made in the last year of the initial term, Franchisee may avoid making the investment by providing notice of intent not to renew the Franchise. Franchisee acknowledges that any required expenditures for changes or upgrades to the System shall be in addition to expenditures for repairs and maintenance as required in Section 13.F of this Agreement.

C. Variance

Franchisee acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right

and privilege, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary System standards for any franchisee based upon any condition which Franchisor deems to be of importance to the successful operation of such franchisee's business. Franchisee shall not be entitled to require Franchisor to disclose or grant to Franchisee a like or similar variation hereunder.

13. OPERATING STANDARDS

A. General Operation

Franchisee will use the Marks and the System in strict compliance with the standards, procedures, specifications and requirements, which are required of all NITELITES franchisees.

B. Authorized Services and Products

Franchisee acknowledges that the reputation and goodwill of the NITELITES System is based upon offering high quality services and products and the satisfaction of its customers. Accordingly, Franchisee shall offer for sale and use at the Franchised Business only authorized products and services specified in the Manual or that Franchisor has expressly approved from time to time and which are not thereafter disapproved, and shall not offer for sale or sell or provide through the Franchised Business, any products or services which Franchisor has not approved. Franchisee shall not use the Franchise Premises for any purpose other than the operation of the Franchised Business in full compliance with this Agreement and the Manual. Franchisor shall notify Franchisee of services and products, which are authorized in the Manual and subsequent revisions to the Manual.

C. Approved Suppliers

1. All computer hardware and software, equipment, forms, marketing materials, stationery, supplies, NITELITES products, tools, and other materials used in the Franchised Business shall comply with Franchisor's specifications and, if required by Franchisor, shall be purchased only from Approved Suppliers that Franchisor designates or approves. If Franchisor or an Affiliate is an Approved Supplier, Franchisee shall execute a standard form purchase, lease, supply or license agreement for the items to be supplied by Franchisor or its Affiliate. Franchisor shall provide Franchisee, in the Manual or other written or electronic form, with a list of specifications for equipment, supplies, and other materials and, if required, a list of designated or Approved Suppliers for some or all of these items, which may include Franchisor or its Affiliates.
2. Upon Franchisor's request, or if Franchisee desires to utilize any services or products that Franchisor has not approved (for services and products that require supplier approval), Franchisee shall first send Franchisor sufficient information, specifications and/or samples for Franchisor to determine whether the service or product complies with its standards and specifications or the supplier meets its Approved Supplier criteria. Franchisee shall bear all reasonable expenses incurred

by Franchisor in connection with determining whether it shall approve an item, service or supplier. Franchisor will decide within a reasonable time (usually thirty [30] days) after receiving the required information whether Franchisee may purchase or lease such items or services or from such supplier. Approval of a supplier may be conditioned on requirements related to the frequency of delivery, standards of service, consistency, availability, quality, reliability, and general reputation. Notwithstanding anything contrary in this Agreement, Franchisor reserves the right to review from time to time its approval of any items or suppliers. Franchisee acknowledges and agrees that Franchisor may revoke its approval of any item, service or supplier at any time, in its sole discretion, by notifying Franchisee and/or the supplier. Franchisee agrees, at its own expense, to promptly cease using, selling or providing any items or services disapproved by Franchisor and to promptly cease purchasing from suppliers that Franchisor disapproves. Franchisee acknowledges that Franchisor may receive volume rebates, markups and other benefits from suppliers, or in connection with the furnishing of supplies, and Franchisee agrees that all such benefits shall accrue to the benefit of Franchisor and that Franchisee shall have no entitlement or interest therein. Nothing in this Section shall be construed to require Franchisor to approve any particular supplier, or to require Franchisor to make available to prospective suppliers, standards and specifications that Franchisor, in its discretion, deems confidential.

D. NITELITES Products and Equipment

1. Franchisor and its Affiliate have developed and manufacture a proprietary line of superior-quality exterior illumination products and equipment, referred to as the NITELITES Products and Equipment including items such as transformers, fixtures, bulbs, timers, outlets, lens covers, connectors, and lighting systems for path, spot, deck, grill and water lighting and other items specially suited for use in connection with the Franchised Business. In order to maintain the consistency, quality and uniformity of the System, Franchisor shall make the NITELITES Products and Equipment available to Franchisee in reasonable quantities in accordance with the procedures for ordering, handling and shipping that Franchisor may determine from time to time, provided that Franchisee is in compliance with this Agreement and all other agreements with Franchisor and its Affiliate. Franchisor's current standard form of Supply Agreement is attached hereto as Exhibit E to this Agreement.
2. Franchisee acknowledges and agrees that the NITELITES Products and Equipment developed by Franchisor and its Affiliate are distinctive as a result of being developed pursuant to Franchisor and its Affiliate's experience and are inextricably interrelated with the Marks. Franchisee shall order and purchase all of its requirements of NITELITES Products and Equipment exclusively from Franchisor, its Affiliate or a supplier designated by Franchisor, and may not purchase, sell, or use any other competing or substitute products or equipment in

connection with the operation of the Franchised Business. Franchisee agrees to, at all times, maintain an inventory of NITELITES Products and Equipment as necessary to operate the Franchised Business at full capacity.

3. Franchisor commits to provide the NITELITES Products and Equipment supplied by Franchisor or its Affiliate at competitive prices; however, Franchisee acknowledges that Franchisor and its Affiliate have the right to earn a reasonable profit on the sale of its NITELITES Products and Equipment

E. Minimum Annual Purchase Requirement

During each year of the term of this Agreement, Franchisee shall purchase at least the quantity of NITELITES Products and Equipment listed in the following table (the "Minimum Annual Purchase") from Franchisor, an Affiliate or an Approved Supplier that Franchisor may designate. The Minimum Annual Purchase is based upon the population of the Protected Territory:

| <i>Protected Territory Population</i> | <i>Minimum Annual Purchase First 12 Months</i> |
|---|--|
| Less than 500,000 | \$50,000 |
| 500,000 to 1,000,000 | \$65,000 |
| 1,000,001 to 2,000,000 | \$80,000 |
| 2,000,001 to 3,000,000 | \$95,000 |
| 3,000,001 to 4,000,000 | \$115,000 |
| 4,000,001 to 5,000,000 | \$135,000 |
| Over 5,000,000 | \$155,000 |

The Minimum Annual Purchase increases by fifteen percent (15%) after the first twelve (12) months and continued to increase by fifteen percent (15%) for five (5) years. Franchisee's failure at any time to meet the Minimum Annual Purchase constitutes grounds for termination as provided in Section 17 of this Agreement.

F. Appearance and Condition of the Franchised Business

During the term of this Agreement, Franchisee agrees to maintain the Franchised Business in "like new" condition, including the equipment and vehicles used therein. Franchisee shall repair or replace damaged, worn out or obsolete equipment, computer hardware and software, fixtures, and signs at the Franchised Business if, at any time in Franchisor's reasonable judgment, the general state of repair or safety of the premises or any service vehicle does not meet with Franchisor's specifications or standards. Franchisor will notify Franchisee specifying the action(s) which needs to be taken to correct the deficiency and Franchisee agrees to take such action(s) promptly.

G. Employees and Subcontractors

Franchisee is solely responsible for the hiring of all employees and/or subcontractors to be employed or engaged in the operation of the Franchised Business. Franchisee shall be

exclusively responsible for the terms of their compensation and for the training of such employees required for the proper operation of the Franchised Business. Franchisee acknowledges and understands that Franchisee's employees will be entering clients' residences for the purpose of selling and providing authorized products and services. Accordingly, in order to ensure the safety of Franchisee's clients, prior to hiring any prospective employee, Franchisee shall conduct a background review of each prospective employee's criminal, motor vehicle, medical and/or credit histories. Franchisee shall not hire any prospective employee for any position involving entrance to a client's residence if such prospective employee's background review indicates, in Franchisee's reasonable discretion, a propensity for violence, dishonesty, negligent, reckless or careless behavior, or a conviction for any crime within the past seven (7) years. Franchisor shall not be liable to Franchisee, any employee or prospective employee of Franchisee, or any third party for any act or omission of Franchisee or any employee or agent of Franchisee, and Franchisee shall indemnify, hold harmless and defend Franchisor against and from any and all claims, demands or actions arising from any act or omission of Franchisee or any employee or agent of Franchisee (including, without limitation, refusal to hire or discrimination claims or claims asserted by third parties for intentional torts allegedly committed by any employee or agent of Franchisee).

H. Management and Operation of the Franchised Business

The Franchised Business shall, at all times, be under the direct full-time supervision of Franchisee (or a Designated Manager if Franchisee is a corporation, limited liability company, business trust or partnership). Full-time means the expenditure of at least thirty-five (35) hours per week, excluding vacation, sick leave, etc. Franchisee shall keep Franchisor informed, in writing, at all times of the identity of its Designated Manager of the Franchised Business. The Designated Manager is not required to have an ownership interest in the Franchised Business.

I. Best Efforts

Franchisee shall use its best efforts to promote and increase the sales and recognition of services offered through the Franchised Business. Franchisee shall require all of Franchisee's employees, managers, officers, agents and representatives to make a good faith effort to enhance and improve the System and the sales of all services and products provided as part of the System. Franchisee must at all times faithfully, honestly and diligently perform its obligations under this Agreement and must not engage in any business or other activities that will conflict with its obligations under this Agreement.

J. Licenses and Permits

Franchisee shall secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchised Business and shall operate the Franchised Business in full compliance with all applicable laws, ordinances, rules and regulations including, without limitation, all government regulations. Without limiting the generality of the foregoing, Franchisee shall fully comply with all laws of each state in which the Franchised Business operates requiring the registration of fictitious or assumed names, and

shall provide Franchisor with evidence of compliance within thirty (30) days after opening the Franchised Business.

K. Compliance with Good Business Practices

Franchisee acknowledges that each and every detail of the quality of appearance and demeanor of Franchisee and its employees, equipment and materials utilized by Franchisee is important to Franchisor and to other franchisees. Franchisor shall endeavor to maintain high standards of quality and service by all franchisees. To this end, Franchisee agrees to cooperate with Franchisor by maintaining such high standards in the operation of the Franchised Business. Franchisee shall at all times: (i) give prompt, courteous and efficient service to customers of the Franchised Business; (ii) use its best efforts to ensure the satisfaction of each customer; (iii) use good faith in all dealings with customers and potential customers; (iv) respond to customer complaints in a courteous, prompt, and professional manner; (v) use its best efforts to promptly and fairly resolve customer disputes in a mutually-agreeable manner; and (vi) honor, in accordance with their terms, all written product and service warranties provided by Franchisee in connection with its Franchised Business. All services provided by the Franchised Business shall be performed competently and in a professional manner. The Franchised Business shall in all dealings with its customers, potential customers, suppliers, creditors and the public adhere to the highest standards of honesty, fair dealing, moral and ethical conduct. If, in any situation, Franchisor deems that Franchisee did not fairly handle a customer complaint, Franchisor has the right to intervene and satisfy the customer, for the sole purpose of protecting the goodwill and reputation of the Marks. Franchisee shall reimburse Franchisor for all costs incurred by Franchisor in servicing a customer of the Franchised Business.

L. Payment of Liabilities and Taxes

Franchisee shall pay its distributors, lessors, contractors, suppliers, trade creditors, employees, and other creditors promptly as the debts and obligations to such parties become due, and pay all taxes on real and personal property, leasehold improvements and fixtures and equipment, and all sales and use, income, payroll and other taxes promptly when due and hold Franchisor harmless therefrom. Franchisee's failure to do so shall constitute a breach of this Agreement. All taxes shall be paid directly to the taxing authorities prior to the delinquent date. If Franchisee shall fail to pay any such obligations promptly as the debts to such parties become due, or if any taxes become delinquent, Franchisor, in addition to its other remedies provided in this Agreement, may elect to pay any such obligation or delinquent tax on behalf of Franchisee, together with late charges, penalties and interest, if any, and Franchisee shall, upon demand, reimburse Franchisor for any sums so paid by Franchisor, together with interest at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is less, from the date of payment by Franchisor to the date of reimbursement by Franchisee.

M. Notification of Proceedings

Franchisee shall notify Franchisor, in writing, within five (5) days 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, including action against

professional services/credentials of any employee associated with Franchisee, which may adversely affect the operation or financial condition of the Franchised Business. Franchisee shall deliver to Franchisor, within five (5) days of Franchisee's receipt thereof, a copy of any inspection report, warning, certificate or rating by any governmental agency relating to any health or safety law, rule, or regulation that reflects Franchisee's failure to meet and maintain the highest applicable rating or Franchisee's noncompliance or less than full compliance with any applicable law, rule or regulation.

N. Right to Inspect

In addition to the rights described in Section 6.D, Franchisor, or its agents, shall have the right, at any reasonable time, to remove product samples from the Franchised Business in amounts reasonably necessary for testing by Franchisor to determine whether such samples meet Franchisor's then-current standards.

O. Days of Operation

Franchisee shall keep the Franchised Business open for business during normal business hours and on such days as specified in the Manual, or as otherwise required by Franchisee's lease agreement, if any, for the Franchise Premises.

P. Vending Machines

Franchisee agrees not to install nor use at its Franchised Business or the Franchise Premises any vending machines, amusement devices, video machines or other similar devices unless the installation and use of such devices has been approved in writing by Franchisor.

Q. Credit Cards

Franchisor requires that Franchisee have arrangements in place with Visa, MasterCard, American Express and such other credit card issuers as Franchisor may designate from time to time in order that the Franchised Business may accept such methods of payment from its customers.

R. Uniforms

Franchisee agrees to abide by any uniform requirements stated in the Manual. All required uniforms, if any, must be purchased from Franchisor or a designated supplier who meets Franchisor's specifications and quality standards.

14. FRANCHISOR'S ONGOING OPERATIONS ASSISTANCE

A. General Advice and Guidance

Franchisor will be available by telephone, e-mail or facsimile to discuss any problem and to render advice and guidance with respect to planning, opening and operation of the Franchised Business. Franchisor does not charge for these services, however, Franchisor

retains the right to discontinue this service should Franchisee, in Franchisor's discretion, be deemed to be utilizing this service too frequently or in an unintended manner. Franchisor's advice or guidance to Franchisee relative to prices for products and services that, in Franchisor's judgment, constitute good business practice is based upon the experience of Franchisor and its franchisees in operating NITELITES Businesses and an analysis of the costs of such services and prices charged for competitive services and products. Franchisee shall have the sole right to determine the prices to be charged by the Franchised Business.

B. Periodic Visits

Franchisor or Franchisor's representative shall make periodic visits to the Franchised Business, at its expense, for the purposes of consultation, assistance and guidance of Franchisee in various aspects of the operation and management of the Franchised Business. Franchisor and Franchisor's representatives who visit the Franchised Business may prepare, for the benefit of both Franchisor and Franchisee, written reports with respect to such visits outlining any suggested changes or improvements in the operations of the Franchised Business and detailing any defaults in such operations which become evident as a result of any such visit. A copy of any such written report may be provided to Franchisee.

C. Advertising and Promotional Materials

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

D. System Improvements

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

15. INSURANCE

A. Types and Amounts of Coverage

Franchisee shall procure within sixty (60) days of the Effective Date of this Agreement, at its sole expense, and maintain in full force and effect, during the term of this Agreement, the following insurance naming Franchisor as additional insured and/or loss payee, in addition to any other insurance that may be required by applicable law, any lender or lessor. In addition, each insurance policy shall contain a waiver of all subrogation rights against Franchisor and its successors and assigns.

1. Comprehensive general public liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Franchised Business, or Franchisee's conduct of business pursuant to this Agreement providing minimum liability coverage for claims, as

specified by Franchisor from time to time; currently the minimum is *Two Million Dollars (\$2,000,000.00)*.

2. "All Risk" coverage insurance on all contents including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of the Franchised Business for full "replacement cost" coverage.
3. Workers' Compensation that complies with the statutory requirements of the state in which the Franchised Business is located and employer liability coverage with a *One Hundred Thousand Dollar (\$100,000.00)* minimum limit or, if greater, the statutory minimum limit if required by state law.
4. Automobile Liability Insurance for owned, hired and non-owned vehicles with a combined single limit of at least *One Million Dollars (\$1,000,000.00)*.
5. General property damage insurance, including fire and extended coverage, vandalism and malicious mischief insurance.
6. Such insurance as necessary to provide coverage under the indemnity provisions set forth in Section 22.B of this Agreement.
7. Such other and further insurance as Franchisor may require.

B. Carrier Standards

Such policy or policies shall be written by an insurance company licensed in the state in which Franchisee operates and having at least an "A" Rating Classification as indicated in A.M. Best's Key Rating Guide in accordance with standards and specifications set forth in the Manual.

C. Evidence of Coverage

Franchisee's obligation to obtain and maintain the foregoing policy or policies shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 22.B of this Agreement. Franchisee agrees to provide annually a certificate of insurance showing compliance with the foregoing requirements. Such certificate shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days prior written notice to Franchisor and shall reflect proof of payment of premiums.

D. Failure to Maintain Coverage

Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this Agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) to immediately procure such insurance coverage and to charge same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.