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FORM OF  
FRANCHISE AGREEMENT

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**FRANCHISE AGREEMENT**

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**Attachments**

A - Franchise Sites, Assigned Area and Development Schedule

B - Form of Confidentiality and Non-Compete Agreement

C - Statement of Ownership Interests and Franchisee's Principals

D - Guaranty

State Amendments

## FRANCHISE AGREEMENT

This Franchise Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by PASSPORT HEALTH, INC, Inc., a Maryland corporation (referred to in this Agreement as "Franchisor," "we," "us," and "our") and \_\_\_\_\_, a \_\_\_\_\_ (referred to in this Agreement as "Franchisee," "you" and "your").

### RECITALS:

A. We have developed and own the System (as defined below) relating to the operation of health travel businesses that, among other things, provide travel immunizations and information to persons traveling to foreign countries, as well as sell travel related products and supplies. These businesses are operated under the Proprietary Marks (including the service mark "Passport Health" and such other names and marks, as defined below).

B. You have indicated a desire to use the System and the Proprietary Marks identifying the System.

C. We are willing to permit your use of the System and Proprietary Marks under the terms and conditions stated in this Agreement.

D. If you are not a natural person, each of your Controlling Principals (as defined below) shall be individually bound by certain obligations stated in this Agreement, and must guaranty, jointly and severally, your obligations under this Agreement.

In consideration of the above, each of us enter into this Agreement to set forth our understanding and agreement as to the terms and condition for your use of the System and the Proprietary Marks.

### AGREEMENTS:

1. **DEFINITIONS**. As used in this Agreement, each of the following terms shall have the meaning indicated below that follows such term:

Administrative Assistant: The employee designated by you pursuant to Section 6(b)(iv) hereof as the individual responsible for coordinating the operations of the Franchised Business.

Affiliate: With respect to any individual or entity, any other individual or entity who, directly or indirectly, is owned or controlled by, owns or controls, or is under common ownership or control with such individual or entity.

Agreement: This Franchise Agreement, together with the exhibits hereto, as each shall be amended or supplemented from time to time.

Assigned Area: The geographic area which is described on Attachment A.

Business Day: Any day other than a Saturday, Sunday or any of the following national holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving and Christmas.

Competing Business: Any business enterprise (regardless of whether it is a sole proprietorship or a corporation, partnership, business association, or other entity) that offers franchises or licenses for, or which develops or operates, health travel businesses or offers health travel services.

Confidential Information: All information disclosed or made known to you or your employees or your Principals as a direct or indirect consequence of or through this Agreement, including all information relating to the Software, whether disclosed in the Training Program, other communications and programs, the Manual, or otherwise in furnishing guidance to you during the term of this Agreement, that is not generally known, including, but not limited to, trade secrets, the elements of the System, and information about customers, suppliers, technology, research, development, and marketing.

Controlling Principals: The term "Controlling Principals" shall include, collectively and individually, any of your Principals who has been designated by us as a Controlling Principal hereunder.

Development Schedule: The time frames within which you must find and develop the remaining Franchise Sites as set forth in the development schedule provided in Attachment A.

Engage: To be a principal, owner, officer, director, shareholder (other than the holder of fewer than five percent (5%) of the outstanding shares of a publicly-traded company), partner, employee, joint venturer, agent, or equity owner of, or to be a consultant to, or to have any other direct or indirect (through an Immediate Family Member or otherwise) interest whatsoever in, any business enterprise.

Franchised Business: The health travel business operated by you using the System and the Proprietary Marks pursuant to and in accordance with this Agreement.

Franchise Sites: The sites (including all improvements and fixtures) within the Assigned Area that serve as the locations for the principal business operations of the Franchised Business, which sites shall be more particularly described on Attachment A.

Gross Revenues: All revenues attributable to and derived from the operation of the Franchised Business, including all revenues derived from the sale of immunizations, and related information, products and services, whether such sales are made for cash or on credit and regardless of collection in the case of credit sales; provided, however, Gross Revenues shall not include the amount of any sales taxes that you collect and remit to the proper taxing authorities or any amounts that you refund to your patients.

Initial Franchise Fee: The one-time fee payable by you as provided in Section 12(a) hereof.

Manual: The operating manual(s), written directives and other materials developed and updated by us that set forth all of the operational standards, policies and procedures for the Franchised Business, as more particularly described in Section 8 hereof.

Nurse Manager: The nurse designated by you pursuant to Section 6(b)(iii) to serve as your chief administrative nurse in connection with the management and operation of the Franchised Business.

Offering Circular: The Uniform Franchise Offering Circular prepared by us with respect to the offering to you of the Passport Health Franchise.

Passport Health Franchisees: The franchisees, including you, who own and operate the Passport Health Franchised Businesses.

Passport Health Franchises: The franchises, including the Franchise, granted by us for the operation of health travel businesses using the System and the Proprietary Marks.

Permanent Disability: For purposes of this Agreement, the term “permanent disability” shall mean, with respect to any person, a mental or physical disability, impairment, or condition that is reasonably expected to prevent such person from undertaking his or her customary duties with respect to managing and supervising the Franchised Business as required under this Agreement or which actually prevents such person from doing so, for a period of ninety (90) days from the onset of such disability, impairment, or condition.

Physician Consultant: The licensed physician that establishes and signs the protocol for the Nurse Manager to use in providing the travel immunizations.

Principals: The term your “Principals” shall include, collectively and individually, your spouse, if you are an individual, all of your officers and directors (including the officers and directors of any general partner of Franchisee) whom we designate as your Principals and all holders of an ownership interest in your and of any entity directly or indirectly controlling your, and any other person or entity controlling, controlled by or under common control with you. The initial Franchisee's Principals shall be listed on Attachment C.

Private Label Supplies: The products and supplies assembled and packaged under the Proprietary Marks by certain third party suppliers licensed by us, all in accordance with Section 7(e) hereof.

Proprietary Marks: At any time, the trade names, service marks, trademarks, symbols, logos, emblems and indicia of origin, that we may develop to identify for the public the source of services and products marketed under those marks and under the System and representing the System's high standards of quality, appearance and service.

Publicly Held Corporation: For purposes of this Agreement, a publicly-held corporation is a corporation registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of such Act.

Required Products and Services: The vaccines, supplies, equipment, and services, that we have designated in the Manual as those products and services that must be sold or provided by the Franchised Business.

Royalty Fee: The monthly fee, representing a percentage of your Gross Revenues, payable by you as provided in Section 12(b).

Software: The proprietary software for use by us and by our Passport Health franchisees in connection with the operation of the Passport Health Franchises, as more particularly described in Section 7(j) hereof, if such is developed for use in the Franchised Business.

Statement of Gross Revenues: The final statement of Gross Revenues approved by us pursuant to Section 7(d) hereof.

System: The confidential, proprietary system relating to the operation of health travel businesses that, among other things, dispense vaccines, provide travel immunizations and information, sell products and supplies, and provide, subject to state law, skilled nursing services associated with the dispensing of vaccines and immunizations to persons traveling to foreign countries, which System was developed and is owned by us and includes (i) certain uniform standards, specifications and procedures for dispensing vaccines and providing travel immunizations to your patients, (ii) certain methods and procedures for gathering and imparting health, risk and other related information to your patients, (iii) certain inventory and equipment requirements and controls, and (iv) certain distinctive and unique training, marketing and management methods, procedures and materials.

Training Program: The basic training program offered by us pursuant to which your Nurse Manager and Administrative Assistant (and any other of your employees that you choose, subject to space availability) are initially trained to operate the Franchised Business. The Training Program shall include instruction on such topics, and be conducted at such location or locations, as we may from time to time designate.

Transfer: The sale, hypothecation, transfer, pledge, encumbrance, gift, donation, assignment or other disposition, whether voluntary or involuntary, and whether during the lifetime of the person making such Transfer or upon or after the death of such person, including, but not limited to, those occurring by merger or consolidation, in bankruptcy, upon dissolution of marriage proceedings, by operation of law, by court order or judicial process, upon permanent disability, upon death, by , declaration, or transfer in trust, or under the laws of intestate succession, or by foreclosure, levy, or attachment; and the act of making any of the foregoing transfers.

2. **GRANT OF FRANCHISE RIGHTS.** Subject to the terms and provisions of this Agreement, we hereby grant you the right (a) to use the System to operate the Franchised Business at and from the Franchise Sites and (b) to use and display the Proprietary Marks, but only in connection with the operation of the Franchised Business. You, in turn, subject to the terms and provisions of this Agreement agree that you shall faithfully, honestly and diligently develop and operate the Franchised Business, perform your other obligations under this Agreement, and continuously exert your best efforts to promote and enhance the business of the Franchised Business.

3. **TERM; RENEWAL OPTIONS.**

(a) Initial Term. Except as otherwise provided herein, the term of this Agreement shall expire ten (10) years from the date you open your first Franchise Site (“Opening Date”).

(b) Renewal Conditions. You may, at your option, renew this Agreement for two (2) additional consecutive terms of five (5) years, subject to the following conditions, any or all of which must be met prior to or as of the date of renewal as determined by us:

(i) You must give us written notice of your election to renew not less than seven (7) months nor more than twelve (12) months prior to the end of the initial term;

(ii) You must make or provide for, in a manner satisfactory to us, such renovation and modernization of the Franchise Sites as we may reasonably require, including, without limitation, renovation of signs, furnishings, fixtures and decor and upgrading of equipment and software, to reflect the then-current standards and image of the System;

(iii) You must not be in material default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between you and us or any of our respective Affiliates; and you must have substantially complied with all the terms and conditions of such agreements during the terms thereof;

(iv) You must have satisfied all accrued monetary obligations owed by you to us and any of our Affiliates and must have timely met those obligations throughout the term of this Agreement;

(v) You must present satisfactory evidence that you have the right to remain in possession of the Franchise Sites for the duration of the renewal term of this Agreement (or such lesser period as is appropriate under the circumstances);

(vi) You must execute our then-current form of renewal franchise agreement, which agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement; provided, however, you shall pay, in lieu of an initial franchise fee thereunder, a renewal fee not to exceed three thousand dollars (\$3,000) or the greater of the costs and expenses we incur in connection with the renewal of your operation of the Franchised Business, and you shall not be required to pay a higher percentage royalty fee;

(vii) You and your Controlling Principals must execute a general release, in a form prescribed by us, of any and all claims, of whatever nature or kind, against us and any of our Affiliates, and our and their respective officers, directors, shareholders, partners, employees, servants, representatives, independent contractors and agents, in their corporate and individual capacities, including without limitation, claims arising under this Agreement and any other agreement between you and us or our Affiliates and under any federal, state and local laws, rules, and ordinances; and

(viii) You must comply with our then-current qualification and training requirements.

#### 4. FRANCHISE SITES.

(a) General. You shall conduct the operations of the Franchise at and from the approved Franchise Sites and you may not relocate the operation of the Franchised Business without our prior consent, which consent shall not be unreasonably withheld. If we consent to a relocation of any of the Franchise Sites, we shall have the right to charge you for all expenses we incur in connection with such relocation, if any. You agree not to make any material alterations to the Franchise Sites affecting the Franchise Business without our prior approval. You shall maintain at all times during the term of this Agreement, at your expense, the Franchise Sites and all furniture, fixtures, and equipment located there in conformity with the high standards and public image of the System as specified herein, in the Manual and in other writings.

(b) Selection and Approval. Except as otherwise provided herein, you shall acquire the first Franchise Site no later than ninety (90) days following the execution of this Agreement. You must find the remaining Franchise Sites within the time frames set forth in the Development Schedule provided in Attachment A. You shall be solely responsible for locating and negotiating the acquisition of each Franchise Site. We shall have the right to inspect and approve each Franchise Site, but not the obligation to do so. We shall also have the right, but not the obligation, to review and approve the form of any contract of purchase or lease agreement, or any amendment thereto, with respect to each Franchise Site prior to your execution thereof. To this end, you shall provide us with a copy of any such contract of purchase or lease upon our request. We reserve the right to reject any proposed Franchise Site in our sole discretion; however, we shall not, without reasonable justification, reject any proposed Franchise Site that (i) satisfies the local zoning laws and ordinances and qualifies for all of the permits and certifications necessary to operate the Franchised Business, (ii) qualifies as Class A space or above (as determined by local standards), and (iii) conforms to the design plans and specifications for "Franchise Sites" set out in the Manual. If we reject any Franchise Site proposed by you, we may in our sole discretion extend the period within which you are hereunder required to acquire the first Franchise Site, as well as any of the other time frames established in the Development Schedule. We also may charge you a reasonable fee to reimburse us for time and expenses incurred in connection with any site inspections we are required to perform with respect to any other than the first proposed Franchise Site. Our approval of any Franchise Site shall in no way constitute or be deemed or construed to represent a warranty or representation from us as to the suitability of such Franchise Site for the operation of your Franchised Business. We shall notify you within thirty (30) days after we receive the information required to be submitted in connection with the proposed site approval request whether such site is approved. If we do not respond within thirty (30) days from the date we receive approval request and information, the proposed site shall be deemed approved.

(c) Supplemental Lease Terms. If we elect to exercise our option to review and approve the form of lease for any of your Franchise Sites as provided under subparagraph (b) hereof, as a condition to approving your lease, we may require your lease to contain provisions that satisfy the following requirements:

(i) That the lessor agrees to furnish us with copies of any and all letters and notices sent to you pertaining to the lease and the Franchise Site, at the same time that such letters and notices are sent to you;

(ii) That the lessor and you shall not amend or otherwise modify the lease in any material respect without our prior written consent; and

(iii) That the lessor and you shall permit us to enter the premises without being guilty of any trespass or tort for purposes of modifying or removing any signs, products, equipment, supplies or materials related to the Franchised Business without requiring us to obtain any additional consent.

(d) Finish-out of Franchise Sites. If any finish-out is required for any Franchise Site, you shall diligently pursue such finish-out and, during the pendency thereof, you shall provide us with such periodic reports regarding your progress as we may reasonably request. In addition, before commencing any finish-out of the Franchise Sites, you shall certify to us in writing and otherwise provide us evidence to our satisfaction that the insurance coverage specified in Section 13(d) is in full force and effect. At our option, we may make such on-site inspections during such time as we may deem reasonably necessary to evaluate your progress and you shall notify us of the scheduled date for completion of the finish-out no later than ten (10) days prior to such date. Within a reasonable time after the date of completion of the finish-out we may, at our option, conduct an inspection of the Franchise Site.

(e) Design Plans. You must independently obtain any architectural, engineering, and design services that you deem necessary for the finish-out (including remodeling, if applicable) for the Franchise Sites at your own expense. We shall provide you with specifications for the finish-out of the Franchise Site, as we deem appropriate. You shall adapt your design plans to comply with our specifications as necessary and shall submit such adapted plans to us for our review, if we request. If we determine, in our sole discretion, that any such plans are not consistent with the best interests of the System, we shall have the right to prohibit the implementation of such plans. In the event that we desire to prohibit the implementation of any plan, or part thereof, we shall notify you within thirty (30) days of receiving such plans that we object to the plans. If we fail to notify you of an objection to the plans within thirty (30) days of our receipt of the plans, you may use such plans. In the event we object to any such plans, we shall provide you with a reasonably detailed list of changes necessary to make the plans acceptable. We shall, upon a resubmission of the plans with such changes, notify you within ten (10) days of receiving the resubmitted plans whether the plans are acceptable. If we fail to notify you of any objection within such ten (10) days, you may use such resubmitted plans.

(f) Zoning, Permits and Local Ordinances. You shall obtain, within thirty (30) days after a Franchise Site is acquired, subject to any extension of time approved by us in writing, all permits, licenses, and certifications with respect to the Franchise Site required to commence operation of the Franchised Business at the Franchise Site. You also shall be responsible for obtaining all zoning classifications and clearances which may be required by state, provincial, or local laws, ordinances, or regulations. In addition, prior to commencing operation of the Franchised Business at the Franchise Site, you shall certify in writing to us that all required approvals, clearances, permits, and certifications have been obtained. Upon request, you shall provide to us copies of all such approvals, clearances, permits, and certifications.

(g) Failure to Timely Perform. If you are unable to acquire the Franchise Sites for the Franchised Businesses within the time period specified in Section 4(b) and the Development Schedule (including any extensions, if any, approved by us in writing) or, if after acquiring a Franchise Site you are unable to obtain the permits, licenses, and certifications required to commence operation of the Franchised Business at the Franchise Site within the time period

specified in Section 4(f) and the Development Schedule (including any extensions, if any, approved by us in writing), we may terminate this Agreement in accordance with Section 19(b), or exercise any other remedies available to us in Section 19 (d). As a condition to granting any extension to the Development Schedule, we have the right to charge a reasonable extension fee not to exceed three thousand dollars (\$3,000).

## **5. TERRITORIAL RIGHTS AND OBLIGATIONS.**

(a) **General.** Except as otherwise expressly provided herein, we retain the right to use the System and the Proprietary Marks and to grant licenses to use the System and the Proprietary Marks to operate Passport Health Franchises at such locations as we, in our sole discretion, deem appropriate.

(b) **Assigned Area.** So long as you are in full compliance with this Agreement, you have the right to locate your Franchise Sites within the Assigned Area and we agree not to operate any health travel businesses in the Assigned Area or permit the franchise site for any other Passport Health Franchises to be located within the Assigned Area. As noted in Attachment A, two (2) years after the Opening Date for the first Franchise Site, the Assigned Area shall be revised to include and consist of only those Subdivisions (as such term is defined in Attachment A) in which you have established, opened, and are then-operating a Franchise Site. However, we and our Affiliates, the other Passport Health franchisees and any other persons or entities authorized by us may, at any time, (i) advertise and promote the System within the Assigned Area, (ii) subject to Sections 5(c), 5(d) and 5(f), offer and sell health travel related products and services (excluding immunization and travel counseling services) under the Proprietary Marks within the Assigned Area through any means other than through a health travel business, including through mail order, Internet, retail stores, or otherwise, or (iii) offer and sell similar products and services under other trademarks, trade names or service marks within the Assigned Area (with the exception of travel immunization services).

(c) **Reserved Area Sales.** Subject to the right of first refusal granted to you in Section 5(e), we and our affiliates may offer and sell health travel related products and services under the Proprietary Marks within the Assigned Area through any permanent, or temporary service facility (e.g., a kiosk, concession, or multi-brand facility) that shall provide a limited number or representative sample of the Required Products and Services and Private Label Supplies normally offered by a full-service Franchised Business ("Alternative Distribution Sites") in any Reserved Area. A "Reserved Area" is defined as any transportation facility (e.g., airports, train stations, bus terminals and port authorities).

(d) **Sales to Negotiated Accounts.** Subject to the right of first refusal granted to you in Section 5(e), we and our Affiliates may, at any time, offer and sell health travel related products and services under the Proprietary Marks within the Assigned Area to any Negotiated Account with which we have developed a relationship or shall develop a relationship pursuant to any Negotiated Account Program, as defined in Section 7(i) below. As described in Section 7(i), you shall receive the revenue from your sale of immunization services that you perform for the Negotiated Account in your Assigned Area. If, with our approval, you sell to a Negotiated Account the right to participate in the Negotiated Account program in your Assigned Area (and maintain that account), the initial and annual fees charged to the Negotiated Account to participate in the Negotiated Account program in the Assigned Area shall be paid to and retained by you.

(e) Right of Refusal. Before we conduct or authorize any other person or entity to conduct the business at Alternative Distribution Sites or to offer products and services to any Negotiated Account located in your Assigned Area, we shall offer you the opportunity to offer and sell the health travel services and products in the Reserved Area or to the Negotiated Account within the Assigned Area. You must be in substantial compliance with this Agreement and meet each of the conditions, criteria and qualifications deemed necessary by us, or any other third party involved in the arrangement such as an airport or port authority, or other facilities operator ("Facilities Operator"), to offer and sell the Passport Health products and services in the Reserved Area or to the Negotiated Account. If you do not meet all of the criteria and qualifications required by us or the Facilities Operator, we, the Facilities Operator, our Affiliate or any other authorized third party shall have the right to offer and sell such products and services within the Reserved Area or to the Negotiated Account. If you meet all the conditions, criteria and qualifications, we shall offer to you the right to offer and sell such products and services on such terms and conditions as such arrangements may be offered by us or third parties, and as determined by us, the Facilities Operator or Negotiated Account, as applicable. Once such offer has been made to you in writing, you shall have the right to accept such offer within thirty (30) days after receipt of such written notification. If you fail to notify us in writing of your intent to accept the offer within the thirty-day time period, we may conduct such business ourselves, or authorize any other person or entity to do so.

(f) Catalog or Internet Sales. If we provide catalogs to your potential customers or conduct marketing on the Internet for purposes of soliciting catalog or Internet sales in your Assigned Area, such catalogs or Internet advertisements shall either direct the customers to purchase from franchisees in the local market, or we shall rebate to you a portion of the Gross Revenues derived from the sale of products that are the same as those offered by the Franchised Business that are sold by us through the Internet or catalog in your Assigned Area (or credit a portion of the sales price of such products towards future royalties due) based on the amount of catalog or Internet sales from your Assigned Area. The amount of the rebate or credit shall be determined by us based on the profit margin of the products sold, in our sole discretion. This Section does not require us to maintain a catalog sales program or Internet sales program. Credit for catalog or Internet sales shall be based upon the billing address for products shipped. Further, this Section does not require us to pay any rebate to you on products that we sell through the catalog or Internet that are different than those offered through the Franchised Business.

(g) Patient Care and Advertising. You agree that the operation of your Franchised Business shall be primarily devoted to providing travel immunizations and information, and related products and services to individuals that reside or are employed within the Assigned Area. You also agree that, except as otherwise approved in advance in writing by us, you shall direct substantially all of your advertising and promotional activities with respect to your Franchised Business toward obtaining patients who reside or are employed within the Assigned Area. Notwithstanding the foregoing, we acknowledge that this Section 5(g) shall not prohibit you from providing products and services to individuals residing or employed outside of the Assigned Area that may choose to patronize Franchise Sites within your Assigned Area.

## 6. OPENING THE FRANCHISE.

(a) Timing. You shall have the first Franchise Site ready to open for business in the ordinary course and in compliance with the System no later than the earlier of (i) sixty (60) days after the date the Franchise Site is acquired or (ii) one hundred twenty (120) days after the date this Agreement is executed. The remaining Franchise Sites shall be open for business in

accordance with the Development Schedule. You shall not open any Franchise Site for business until we give you notice that we believe the Franchise Site, if opened and operated by you, shall be in compliance with the System, and you shall open the Franchise Site for business in the ordinary course within thirty (30) days after we give you such notice.

(b) Pre-Opening Obligations. Prior to opening the Franchise Site for business you shall accomplish each of the following:

- (i) Inventory. You shall acquire an inventory of vaccines, travel related products and supplies in such variety and quantity as required to open the Franchise Site for operation, all as set forth in the Manual.
- (ii) Furniture, Fixtures and Equipment. You shall acquire all of the furniture, fixtures and equipment, including hardware and software, required for the operation of the Franchise, all as set forth in the Manual.
- (iii) Executive Personnel. Within thirty (30) days following the date of this Agreement, you shall designate the Nurse Manager for the Franchised Business. The Nurse Manager must be fully licensed as a registered nurse under applicable state law. You must have access to a physician licensed under applicable state law to act as the Physician Consultant, who must be qualified to approve the immunization protocol and sign any necessary prescriptions.
- (iv) Staff. You shall hire such other personnel (including an Administrative Assistant) with such qualifications and in such numbers as are reasonably needed for the operation of the Franchised Business, as set forth in the Manuals, or otherwise in writing.
- (v) Training. You shall cause your Nurse Manager, and Administrative Assistant, and such other of your employees that you and we determine, to participate in and complete the Training Program to our satisfaction.
- (vi) Professional Licenses, Permits and Certifications. In addition to the permits, licenses and certifications required under Section 4(f) hereof, you shall obtain and cause each of your employees to obtain all of the professional licenses, permits and certifications necessary for the operation of the Franchised Business (including a Yellow Fever license, and all other required physician and nursing licenses and permits). If you fail to obtain or cause each of your employees to obtain all of such professional licenses, permits and certifications prior to the time you are required to open the first Franchise Site for business pursuant to Section 6(a), we shall have the right to terminate this Agreement in accordance with Section 19(b) hereof. Once obtained, you shall maintain or cause each of your employees to maintain all such professional licenses, permits and certifications during the term of this Agreement. We shall have the right to terminate this Agreement in accordance with Section 19(b) if you fail to do so.

- (vii) Other Action. You shall take any and all other actions that we reasonably request in order to permit the Franchise Sites to be opened for business in the ordinary course within the time period specified in subsection (a) above and the Development Schedule.

## 7. OPERATING THE FRANCHISE.

(a) General. At all times during the term hereof, you shall operate the Franchise in accordance with this Agreement and in accordance with the standards, policies and procedures set forth in the Manual, and in particular you agree:

- (i) To sell and provide all of the Required Products and Services; to comply with our standards, policies and procedures and shall not offer or sell any unapproved products or services without our prior written consent; and to discontinue offering such Required Products and Services as we may disapprove in writing at any time.
- (ii) To maintain an inventory of vaccines, supplies, and equipment that, under the circumstances, is adequate to fulfill your anticipated needs for such vaccines, supplies and equipment in the Assigned Area and that satisfies our standards and specifications for such vaccines, supplies and equipment as specified in the Manual.
- (iii) To comply with all of our standards and specifications relating to the purchase of all vaccines, supplies, products, materials, fixtures, furnishings, equipment (including computer hardware and software systems) and other products used or offered for sale at the Franchised Business. You shall obtain such items from suppliers (including, us, manufacturers, distributors and other sources) who continue to demonstrate the ability to meet our then-current standards and specifications for vaccines, supplies, products, materials, fixtures, furnishings, equipment and other items used or offered for sale at the Franchised Business and who possess adequate quality controls and capacity to supply your needs promptly and reliably; and who have been approved in writing by us prior to any purchases by you from any such supplier; and who have not thereafter been disapproved by us, unless we state otherwise in writing. If you desire to purchase, lease or use any products or other items from an unapproved supplier, you shall submit to us a written request for such approval, or shall request the supplier itself to do so. You shall not purchase or lease from any supplier until and unless such supplier has been approved in writing by us. We shall have the right to require that our representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to us or to an independent laboratory designated by us for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by you or the supplier. We reserve the right, at our option, to re-inspect from time to time the facilities and products of any such approved supplier and to revoke our approval upon the supplier's failure to continue to meet any of our then-current criteria. Nothing in the foregoing shall be construed to require us to approve any particular supplier. We

shall respond to your requests for supplier approval within a reasonable time period, not to exceed sixty (60) days.

(b) Our Guidance and Assistance. We shall furnish to you such guidance and assistance as we believe appropriate, related to the following:

(i) advice and written materials concerning methods, standards, and operating procedures that you should be using in the operation of your Franchised Business as such are developed by us from time to time, including new developments and improvements in product marketing and delivery of services;

(ii) methods, standards, and operating procedures for you to follow in purchasing and selling approved goods and services, as such are developed and modified by us from time to time;

(iii) negotiation of supplier arrangements on behalf of the Passport Health system and franchisees conducting business thereunder, including system-wide discounts where available, and a list of approved suppliers from whom you may purchase;

(iv) articles, information and sources of information for use in connection with the Health Travel Business in preparing itineraries and advising travelers of health risks, as such materials are developed and improved by us from time to time;

(v) formulation and implementation of advertising and promotional materials and programs for you and other franchisees to use in the operation and promotion of the Franchised Business in local advertising and promotion (as more fully described in Section 15);

(vi) establishment and administration of an advertising fund and/or advertising cooperatives, if and when the cooperatives and funds are established (as more fully described in Section 15);

(vii) an initial training program for your Nurse Manager and Administrative Assistant (and other personnel) and other training programs (as described in Section 10);

(viii) on-site post-opening training at the first Franchise Site in accordance with the provisions of Section 10(b);

(ix) on loan, one copy of the Manual and such other manuals and written materials as we shall have developed for use in the Franchised Business, as the same may be revised by us from time to time (as more fully described in Section 8);

(x) administrative, bookkeeping, accounting, inventory control, and general operating and management procedures for the operation of your Franchised Business;

(xi) certain computer software to be used in the operation of the Franchised Business which shall be licensed to you by third parties. If we develop proprietary software, we shall make it available to you at a reasonable cost (as described in Section 7(j));

(xii) visits to the Franchise Sites and evaluations of the products sold and services rendered therein from time to time at your request and as reasonably determined by us (as more fully described in Section 16);

(xiii) solicit, negotiate and maintain corporate accounts on behalf of the Passport Health System, which shall be made available to you to the extent customers are located within your assigned area (as described in Section 7 (i));

(xiv) develop and make available to you Private Label Products for sale in the Franchised Business (as described in Section 7(e)); and

(xv) develop and publish a periodic newsletter for use and distribution to franchisees and to your customers (as described in Section 15(i)).

Such guidance shall, in our discretion, be furnished in the form of our Manual, bulletins, and other written materials; national, regional, and other group meetings; and telephone consultations or consultations at our offices or at the Franchise Site (and as more specifically described in the referenced Sections of this Franchise Agreement). In addition, if requested by you and deemed appropriate by us, we shall furnish additional guidance and assistance without charge (except as provided in Section 10); provided, however, we may require you to reimburse us for all out-of-pocket expenses reasonably incurred by us in connection with furnishing such additional guidance and assistance. All guidance and assistance given by us to you shall be based on our experience in the health travel business. The success of such guidance and assistance is not guaranteed or warranted.

(c) Staff. You shall maintain a competent, conscientious, trained staff and shall be solely responsible for all employment decisions and functions. You shall employ during the term of this Agreement, such number and types of nurses, administrative personnel, marketing representatives, and other employees as necessary for the proper operation of your Franchised Business under the Agreement.

(d) Statements of Gross Revenues. Each month during the term of this Agreement, on or before the tenth (10th) day of such month, you shall prepare and deliver to us a Statement of Gross Revenues specifying in such detail and format as we shall reasonably request the Gross Revenues attributable to and derived from the operation of the Franchise during the immediately preceding calendar month. This Statement of Gross Revenues shall serve as the basis for calculating (i) the monthly Royalty Fee that you are required to pay to us pursuant to Section 12(b) hereof, and (ii) any advertising contributions you are required to pay to us pursuant to Section 15 hereof. Upon our receipt of the Statement of Gross Revenues from you, we may independently verify such Statement based on our review of your books, which books and records you shall make available to us upon or request in accordance with Section 17(a) hereof.

(e) Private Label Products and Supplies. We reserve the right to license certain third party suppliers to assemble and package certain products and supplies under the Proprietary Marks (collectively, the "Private Label Supplies"). The Private Label Supplies shall consist

primarily of travel related supplies (e.g., insect repellent, water purification kits, first aid kits, syringe kits and other travel related supplies). The Private Label Supplies shall be competitively priced and shall be available for purchase from us or from our designees. Subject only to availability, you shall be required, and hereby agree, to purchase all of the Private Label Supplies necessary to satisfy the operating needs of your Franchise Business for such products and supplies. If you purchase Private Label Supplies from us on open account, the payment terms for which shall be in accordance with our standard commercial billing practices.

(f) Patient Care. You shall be available to provide immunization services and shall staff the Franchise sites for such minimum hours per day and days per year as necessary to meet the needs of your patients, all as provided in the Manual.

(g) State and Federal Laws and Regulations. You shall comply with, and cause each of your employees to comply with all federal, state, and local laws, rules, and regulations in connection with the operation of the Franchised Business. In addition, you shall maintain and cause each of your employees to maintain all required medical and business records, professional licenses, permits and certifications.

(h) Governmental Reports. Any inspection report, warning or rating issued by any governmental entity during the term of this Agreement in connection with the conduct of the Franchised Business which cites or indicates your failure to meet or maintain the highest governmental standards or less than full compliance by you with any applicable law shall be forwarded to us within three (3) days of your receipt thereof and you shall remedy the same within the time period specified in the citation, report, or other notice or within ten (10) days if no time period is so specified. If the cure cannot be completed within ten (10) days, you must have initiated the cure and be using all commercially reasonable efforts to cure within that time period (or a longer time period to which we expressly consent in writing). You shall notify us in writing within three (3) days of the commencement of any action, suit, or proceeding and within three (3) days of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of you or the Franchised Business.

(i) Negotiated Accounts. From time to time during the term of this Agreement, we may negotiate on behalf of all Passport Health Franchises one or more provider agreements with certain corporations, partnerships, limited liability companies, other business entities, charitable organizations, government agencies, health maintenance organizations (“HMO’s”), preferred provider organizations (“PPO’s”) or other third party payers, universities and other educational institutions, and other groups and organizations (“Negotiated Accounts”), pursuant to which the participating Passport Health franchisees shall agree to provide the health travel-related products and services offered by them as Passport Health franchisees in accordance with a pre-negotiated fee schedule. We shall notify you in writing of the specific terms of any such agreements that we negotiate, and shall give you the option to participate as a provider under the agreements. You shall not be required to participate in, or provide travel immunizations, or related products or services in accordance with, any such Negotiated Accounts, unless you notify us in writing of your election to participate in any such agreements. If you elect to participate as a provider under one or more Negotiated Accounts, you may only terminate your participation therein as permitted in the provider agreements. With our approval you also may solicit Negotiated Accounts located within your Assigned Area to participate in our Negotiated Account program. You shall receive the revenue from your sale of immunization services that you perform for the Negotiated Account in your Assigned Area. If, with our approval, you sell to a Negotiated

Account the right to participate in the Negotiated Account program, the initial fees charged to the Negotiated Account to participate in the Negotiated Account program shall be paid to and retained by you. If you continue to maintain and perform the services required under the Negotiated Account program for the Negotiated Account in your Assigned Area, you shall receive the annual Negotiated Account program fees for those accounts which you maintain and service. If we sell to a corporate account located in your Assigned Area the right to participate in the Negotiated Account program, the initial and annual fees charged to the Negotiated Account shall be paid to and retained by us. All initial or annual fees paid by any Negotiated Account outside of your Assigned Area shall be paid to us or the appropriate franchisee, as applicable.

(j) Software Agreements. We reserve the right to require you to use the Software we develop, or have developed for us, for use in the Franchised Business. Such software shall be made available to you at a reasonable cost. Prior to receiving the Software, you shall be required to execute a license agreement (the "License Agreement") in the form prescribed by us, pursuant to which you shall obtain under license from us certain proprietary software (the "Software") developed for use by us and by our Passport Health franchisees in connection with the operation of the Passport Health Franchised Businesses. We also may require you to execute a support agreement (the "Support Agreement") in the form prescribed by us, pursuant to which you shall obtain training, maintenance and related support services with regard to the Software. In addition to, or instead of, requiring you to obtain the Software from us, we have the right to require you to obtain and use certain software developed by third parties. You shall maintain any license agreements, and the support agreements in full force and effect at all times during the term of this Agreement for any third party software we require you to obtain and maintain.

(k) Compliance with Agreement. You shall comply with all of the terms and conditions of this Agreement.

(l) Information Provided by Governmental Agencies or other Authoritative Sources. You acknowledge and agree that you, we and all other health care providers rely on information provided by governmental agencies and other authoritative sources such as the Center for Disease Control, National Institute of Health, the American Medical Association, and other similar organizations in the operation of their health related businesses. Information developed by these and other similar sources shall be included in information provided to you by us for use in the operation of the Franchised Business. You acknowledge and agree that we are not responsible for, and shall have no liability for any injuries resulting from, any information that we collect from governmental agencies or other similar authoritative sources that we accurately reproduce and provide to you in connection with the Franchised Business.

(m) Telecommunication. We reserve the right to require you to install and maintain equipment in accordance with our standards and specifications to permit (i) us to access and retrieve by telecommunication, including a direct Internet connection with us, any information stored on computer hardware and software that we require you to utilize at the Franchised Business premises as specified in the Manuals, thereby permitting us to inspect and monitor electronically information concerning the Franchised Business, including, Gross Sales and such other information as may be contained or stored in such equipment and software, and (ii) you and us to communicate via the Internet, or such other electronic form of communication which we specify. Accordingly, if we require, you shall (x) install and maintain a telephone line and modem in accordance with our specifications to permit us to access the computer hardware and software and to communicate via the Internet, and (y) maintain, at your expense, an Internet or other service contract, in a form and manner which we may specify, with a service provider approved by us in writing. We shall have access as provided herein at such times and in such manner as we shall from time to time specify.

(n) Powers of Attorney. Upon execution of this Agreement and during the term hereof, you shall execute such forms and documents as we deem necessary to appoint us your true and lawful agent and attorney-in-fact with full power and authority for the purpose of: (i) assigning to us all rights to the telephone number of, or any advertising relating to the Franchised Business and any Yellow Pages and other business listings and advertising related to the Franchised Business, including e-mail addresses, domain names, Internet accounts, web sites or other search engines or systems of the Internet or World Wide Web, upon termination or expiration of this Agreement; and (ii) obtaining any and all returns and reports filed by you with any state and/or federal taxing authority related to the Franchised Business.

## **8. HEALTHCARE –RELATED LEGAL REVIEW AND COMPLIANCE.**

(a) Regulatory Review. Within 45 days after the date first above written and before the Opening Date, you shall obtain from an attorney approved by us and licensed to practice law in the Assigned Area and shall deliver to us a written opinion (the “Opinion”) addressing (a) whether your prospective operation of the Franchised Business in accordance with the terms of this Agreement complies with applicable law (including laws regarding the corporate practice of medicine, fee splitting, and health care rules and regulations), and (b) the agreement and operational modifications necessary, if any, for such compliance. The Opinion shall also address such other related issues as we may designate from time to time in the Manual or otherwise in writing. Immediately upon our request, you shall obtain from such attorney such additional legal opinion or opinions as we may request, regarding the above (such additional opinions shall also be referred to herein as the “Opinion”). If the Opinion concludes that it is impossible for you to operate the Franchised Business in compliance with applicable law, or if we conclude that the agreement and operational modifications necessary for such compliance are impractical, we may terminate this Agreement immediately upon written notice to you. If we conclude that the agreement and operational modifications necessary, if any, for such compliance are practical, we shall have the right to modify this Agreement and make such operational modifications immediately upon written notice to you.

(b) Compliance with Healthcare-Related Laws. Without limiting your obligations under this Agreement to comply with applicable law, you must ensure that your operation of the Franchised Business and your relationship with the Physician Consultant and all nurses and other medical professionals and the manner in which the Franchised Business provides services comply with all applicable rules, regulations, ordinances and standards of professional conduct. We shall have the right to require you to restructure your compensation arrangements with us, the Physician Consultant and all nurses and other medical professionals in order to comply with applicable law.

(c) No Interference. We may not and shall not interfere with, supervise or assume any responsibility for you or your Physician Consultant’s or other employees’, contractors’ or agents’ exercise of their medical professional judgment with respect to the operation of the Franchised Business. This provision controls and modifies any other contrary provision of this Agreement that would in any manner affect or purport to limit the independent exercise of medical professional judgment by you, your Physician Consultant’s or employees, contractors or agents or that would require us to engage in any activity that would constitute the Practice of Medicine or any other form of a Practice of a Profession, as such or comparable terms as defined under applicable law. All medical decisions, acts or omissions made by, or in connection with, any person in any way associated with the Franchised Business in the course of the Practice of Medicine or any other Practice of a Profession shall be the decisions of the individual

professionals involved and shall not be affected by or attributed to us.

(d) Responsibility for Treatment. You acknowledge and agree that we shall in no way be responsible for and you shall indemnify us against any decisions, acts or omissions related to the medical treatment of, Practice of Medicine or any other Practice of a Profession in relation to, or violation of the private interests of any person in any way whatsoever associated with the Franchised Business. You agree to take all measures prescribed by us in the Manual or otherwise in writing to inform all individuals associated with and potential customers of the Franchised Business that we have no control over or responsibility for any person's or persons' Practice of Medicine or any other Practice of a Profession.

## 9. THE MANUAL.

(a) General. You hereby acknowledge and agree that the operation of the Franchised Business and the use of the Proprietary Marks in accordance with the standards, practices and procedures set forth in the Manual is essential to preserve the goodwill of the Proprietary Marks and System. Therefore, you agree that, at all times during the term of this Agreement, you shall maintain and operate the Franchised Business and use the Proprietary Marks in accordance with such standards, practices and procedures, as periodically modified and supplemented by us.

(b) Coverage. The Manual shall govern any and all matters relating to the maintenance and operation of your Franchised Business and the use of the Proprietary Marks, including but not limited to the following:

- (i) the Franchised Businesses' design, layout, decor, appearance, and lighting; periodic maintenance, cleaning, and sanitation; replacement of obsolete or worn-out improvements, fixtures, equipment, and signs; periodic painting, decorating, and remodeling; the use of interior and exterior signs, emblems, lettering, and logos and the illumination thereof; and periodic modification of the Franchise Site in accordance with our plans, specifications, and directions, at such time or times as we require;
- (ii) the types, models, brands, maintenance, and replacement of equipment, fixtures, and signs used in the operation of the Franchised Business;
- (iii) the Required Products and Services; the types, categories, and brands of products and services offered for sale to patients, including our Private Label Supplies; minimum levels of inventory, product mix, and displays to be maintained by your Franchised Business from time to time; physical inventory methods, frequency of physical inventories, and other inventory requirements;
- (iv) the marketing, advertising, and promotional activities and materials that the Franchised Business is required or authorized to use or conduct, and methods by which the Franchised Business is authorized to solicit sales of and sell products and services and any prohibitions on such solicitations and sales;
- (v) the bookkeeping, accounting, data processing, communications, and record keeping systems, methods, and forms that the Franchised Business is required to utilize;

- (vi) the method, format, content, and frequency of reports to us of sales, revenues, expenses, capital expenditures, and other operating and financial information relating to the Franchised Business, and financial information and tax returns;
- (vii) the days and hours of operation of the Franchise Sites and the use and non-use of telephone answering services, machines and other similar or comparable devices. Unless otherwise indicated to the contrary in the Manual, all Franchise Sites shall be open to the public and in full operation during the hours of 9:00 am through 5:00 pm on all Business Days and the Franchise Sites' telephone shall at all such times be staffed by an employee of the Franchised Business (and not an answering service, machine or similar or comparable device); and
- (viii) such other elements and aspects of the appearance, operation, and conduct of business by the Franchised Business as we determine from time to time, in our sole discretion, require regulation to maintain the image of the Franchise site as a professional, modern, sanitary, clean, attractive, and efficiently operated health travel business, offering the highest quality products and services and to maintain our ownership of and the goodwill associated with the Proprietary Marks.

(c) Your Copy. Following the execution of this Agreement and the payment of the Initial Franchise Fee we shall provide to you, on loan and at no expense to you, one copy of the Manual for your reference and use. You shall be responsible for keeping your copy of the Manual current at all times. If a conflict arises as to the content of the Manual, the master copy of the Manual maintained by us at our principal business office shall be controlling. In the event your copy of the Manual is lost, stolen, destroyed or otherwise rendered unfit for regular use, we shall provide to you, on loan, a replacement copy of the Manual for which we may require you to pay us a reasonable replacement fee not to exceed five hundred dollars (\$500).

(d) Modification. You acknowledge and agree that the Manual may be periodically modified when, in our reasonable judgment, modification is appropriate and that such modifications may obligate you to invest additional capital in the Franchised Business or incur higher operating costs.

(e) Inconsistency with Regulations. Notwithstanding our right to require you to conduct business at the Franchise Site in accordance with the Manual, you and we recognize that the operation of health related businesses (including a health travel business) are governed in many particulars by state and federal laws and authorities. Any inconsistency between the Manual or any business advice we give you, on the one hand, and any requirement of law, on the other hand, is inadvertent and not an effort to cause you to deviate from proper practices. Therefore, you and we understand and agree that (i) in all cases, requirements of law take precedence over both any inconsistent advice, counsel, or other guidance, whether written or oral, given by us on any topic and any inconsistent standards, policies or procedures we prescribe in the Manual; and (ii) you and the Manager are solely responsible for the operation of the Franchise at the Franchise Site and the results of that operation.

(f) Right to Cure. If you fail to comply with any of the standards, policies or procedures prescribed by us in the Manual or in this Agreement or otherwise relating to the appearance or condition of the Franchised Business or the use of the Proprietary Marks, we may (but are not obligated to), take or cause to be taken such actions, without being guilty of any trespass or tort, including entering the Franchise Site, as we deem necessary or appropriate to re-establish compliance with such standards, policies and procedures and you agree to pay us, upon our request for payment, all costs incurred by us in taking such action. Generally, you shall be provided notice and opportunity to cure any such noncompliance prior to any remedial action by us; however, we reserve the right to take any action we deem appropriate in our sole discretion, including without advance notice to you.

## 10. TRAINING.

(a) Training Program. Following the execution hereof and prior to the opening of the Franchised Business, we shall provide through our Training Program basic training in the organization and operation of the Franchised Business to your Nurse Manager. Your Nurse Manager shall attend and complete the Training Program to our satisfaction before the opening of the Franchised Business to the public. If the Nurse Manager fails to complete the Training Program to our satisfaction, you must replace that person with another Nurse Manager who shall be required to attend and complete the Training Program to our satisfaction. We may also require your Administrative Assistant to attend and satisfactorily complete such training. In addition, such other of your employees as you may choose may attend the Training Program, subject to space availability and payment of our then-current training fee as provided in 9(c) below.

(b) Additional Training. Your Nurse Manger must attend the post-opening training to be provided at your first Franchise Site within six (6) weeks after your first Franchise Site opens for business. Your Nurse Manager, Administrative Assistant, and other employees may from time to time during the term of this Agreement be required to attend and participate in certain additional training programs, including training in the use of the Software (if developed). Among other things, these additional training programs may be designed to review then current practices and procedures or highlight new practices and procedures. In addition, we may from time to time offer to your Nurse Manager, Administrative Assistant and other employees optional additional training programs and instruction relating to certain aspects of the operation of your Franchised Business. Training films and other instructional materials developed by us may also be made available to you for purchase from time to time.

(c) Training Fees and Associated Costs. Except with respect to your Nurse Manager and Administrative Assistant as provided in Section 10(a) hereof, you shall be required to pay our then-current reasonable training fee for each of your employees, including any replacement or successor Nurse Managers and Administrative Assistants, who enroll in the Training Program or any other mandatory or optional training course offered by us, all as provided in Section 10(b) hereof. You shall also pay all expenses, including the cost of travel, lodging, meals and wages, incurred by your Nurse Manager, Administrative Assistant and other employees in connection with any such training.

## 11. PROPRIETARY MARKS.

(a) Ownership and Goodwill of Proprietary Marks. You acknowledge that we are the owner of the Proprietary Marks and that your right to use the Proprietary Marks is derived solely from this Agreement and is limited to the conduct of business pursuant to and in compliance with

this Agreement. You acknowledge and agree that your usage of the Proprietary Marks and any goodwill established thereby shall inure to our exclusive benefit and that this Agreement does not confer any goodwill or other interest in the Proprietary Marks upon you (other than the right to use the Proprietary Marks in connection with the operation of the Franchised Business in compliance with this Agreement).

(b) Your Use of Proprietary Marks. You agree to use the Proprietary Marks in the identification of the Franchised Business, provided that you shall identify yourself as the independent owner thereof in the manner we prescribe, including, but not limited to (a) uses on invoices, order forms, receipts, and contracts, (b) in a notice of such content and form and at such conspicuous locations on the premises of the Franchise Sites and on any motor vehicles used in the operation of the Franchise as Franchisor may designate in writing. You agree to display the Proprietary Marks prominently on or in connection with all advertising and marketing materials and on all supplies, packaging materials, and other items we designate. You agree to give, in the manner we prescribe, such notices of trademark and service mark registrations as we specify and to obtain such fictitious or assumed name registrations as may be required under applicable law. You agree that you shall not establish or use any of our Proprietary Marks in any Internet listing, search engine, web site, or other electronic medium without our express written consent.

(c) Certain Uses Prohibited. Neither we nor our Affiliates have authorized or empowered you to use the Proprietary Marks, except as provided by this Agreement. You agree that you shall not, during the term of this Agreement or thereafter, register or attempt to register any of the Proprietary Marks in your own name or the name of anyone else or contest, or aid in contesting, our ownership of the Proprietary Marks. You agree not to use any Proprietary Mark as part of any corporate, partnership, or trade name or with any prefix, suffix, or other modifying word(s), term(s), design(s), or symbol(s) (other than logos licensed to you under this Agreement), or in any modified form, nor to use any Proprietary Mark on, or in connection with the sale of, any unauthorized merchandise or service or in any other manner not expressly authorized in writing by us.

(d) Notice of Infringement. You agree to notify us immediately of any apparent infringement of or challenge to your use of any Proprietary Mark or any claim by any person other than us of any rights in any Proprietary Mark or any similar commercial symbol of which you become aware. You or the Controlling Principals shall not communicate with any person other than us, our designated affiliate, our or their counsel, and your counsel in connection with such infringement, challenge or claim.

(e) Our Right to Control. We shall have the sole discretion to take such action as we deem appropriate with respect to, and to retain counsel and otherwise control exclusively, any litigation or Patent and Trademark Office or other proceeding arising out of any apparent infringement, challenge, or claim of the type described in Section 11(e) or otherwise relating to any Proprietary Mark. We, at our option, may assume, at our sole cost and expense, the defense of any such litigation or proceeding. We shall indemnify you against and reimburse you for all damages for which you are held liable in any proceeding arising out of your use of any of the Proprietary Marks (including settlement amounts), provided that your and your Controlling Principals' conduct with respect to such proceeding and use of the Proprietary Marks is in full compliance with the terms of this Agreement.

(f) Our Right to Access and Cure. We shall have the right to enter the Franchise Site and make any modification or alteration necessary to protect the System or the Proprietary Marks or to cure any default under this Agreement or under your lease covering the Franchise Site, without being guilty of trespass or any other crime or tort.

(g) Your Further Assurances to Protect Mark. You agree to execute any and all documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in the Proprietary Marks.

(h) Your Discontinuance of Use of Proprietary Marks. If we notify you that we have elected during the term of the Agreement, for any reason in our sole discretion, to modify or discontinue use of any Proprietary Mark, you agree to comply with our instructions to modify or discontinue the use of such Proprietary Mark immediately upon being notified of our election to modify or discontinue use of the Proprietary Mark or at such other time as we state in our notice to you. You also agree to return to us at your expense any items then in your possession bearing the old Proprietary Mark, except that you may retain and continue to use any existing Private Label Supplies bearing the prior Proprietary Mark to the extent you are not prohibited from doing so by applicable law. You acknowledge that, in connection with the use of a new or modified Proprietary Mark, we may require you to purchase and install or use new signs, catalogues, advertising materials, forms, letterhead, invoices and other items containing such Proprietary Mark and to remove from the Franchise Site any items inconsistent therewith. We shall reimburse you five hundred dollars (\$500) towards the cost of new signage, if we require you to substitute signs within the first five (5) years of operation.

## 12. FEES.

(a) Initial Franchise Fee. You shall pay us an Initial Franchise Fee of \_\_\_\_\_ dollars (\$\_\_\_\_\_). Such amount shall be paid upon execution of this Agreement. The Initial Franchise Fee shall be fully earned by us when paid and shall be nonrefundable.

(b) Royalty Fees. You shall pay us each month a Royalty Fee in an amount equal to seven percent (7%) of the Franchise's Gross Revenues for the preceding month, based on your Statement of Gross Revenues for such month. The Royalty Fee shall be paid on or before the tenth (10th) day of each month beginning with the first month the Franchised Business is operating. Any adjustment in the amount of such Royalty Fee resulting from any adjustments required by us in the Statement of Gross Revenues shall be taken into account in calculating the next month's Royalty Fee and shall either be paid at the time you pay the next month's Royalty Fee or credited as a partial or complete prepayment of the next month's Royalty Fee, as the case may be. The Royalty Fee shall be reduced from seven percent (7%) to five percent (5%) of the Franchise's Gross Revenues for annual Gross Revenues in excess of One Million Dollars (\$1,000,000).

(c) Training Fee. Except for your initial Manager and Nurse Manager, you shall be required to pay our then-current reasonable training fee for each of your employees who participates in the Training Program. In addition to the foregoing, you may be required to pay a reasonable training fee for any other mandatory or optional training provided to any of your employees, including training in the use of the Software (if required).

(d) Software License Fee. If we require you to obtain a license to use the Software, we reserve the right to charge you a reasonable license fee and annual update charge to compensate us for our costs in developing and maintaining the Software. At our option, instead of paying the software license fee to us, we may require you to pay license fees and any costs to obtain annual updates to third party licensors of software to be used in the Franchised Business.

(e) Payments. All payments required to be made to us under this Agreement, including the payments specified in this Section 12, shall be paid to us on the date specified herein, unless such date is not a Business Day, in which case, such payment shall be due and payable on the next succeeding Business Day. All payments required to be made to us under this Agreement shall be personally delivered, or mailed, postage prepaid, certified or registered mail, or delivered by a nationally recognized overnight delivery service, charges prepaid, addressed to the attention of the President at the address to which notices are to be sent or at such other address as we may from time to time specify.

(f) Interest on Late Payments. All fees, amounts due for purchases by you from us or our Affiliates, and other amounts which you owe us under this Agreement shall bear interest after their due date at the highest applicable legal rate for business credit, compounded monthly, not to exceed the greater of one percent (1%) per month or the prime rate of interest, as published in the Wall Street Journal (or such other publication we designate), plus four percent (4%).

(g) Limitation on Interest. All agreements between the parties hereto, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency shall any interest contracted for, charged or received by us hereunder exceed the maximum amount permissible under applicable law. If, from any circumstances whatsoever, interest would otherwise be payable to us hereunder in excess of the maximum lawful amount, interest payable to us hereunder shall be reduced to the maximum amount permitted under applicable law, and if from any circumstance we shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied as a prepayment of one or more of the other amounts due hereunder and not as a payment of interest, or if such excessive interest exceeds all remaining amounts due to us under this Agreement, such excess shall be refunded to you.

(h) Application of Payments. Notwithstanding your designation to the contrary, we shall have sole discretion to apply any of your payments to any of your indebtedness or obligations to us.

### 13. INSURANCE.

(a) Obligation to Obtain. You shall procure, prior to acquiring the Franchise Site, and shall maintain in full force and effect at all times during the term of this Agreement and for a period of two years after the termination or expiration of this Agreement, at your expense, an insurance policy or policies protecting you and us and our Affiliates and any of our and their respective officers, directors, shareholders, partners, employees, servants, representatives, independent contractors and agents, against any demand or claim with respect to bodily injury, death, or property damage, or any loss, liability, or expense whatsoever arising out of or occurring upon or in connection with the operation of the Franchised Business and the condition, use, or occupancy of the Franchise Site.

(b) Required Coverage. Unless we otherwise agree in writing, such policy or policies shall be written by a responsible carrier or carriers acceptable to us (e.g., with a Best's Insurance Guide rating "A" or better) and shall include, at a minimum (except as additional coverage may reasonably be specified by us from time to time), in accordance with standards and specifications set forth in the Manual or other written directives, such as the following:

- (i) commercial general liability insurance policy, including insurance against assumed or contractual liability under this Agreement to afford protection with limits, per occurrence, of not less than one million dollars (\$1,000,000), combined single limit, with respect to personal injury, bodily injury, including death, and property damage and two million dollar (\$2,000,000) aggregate (occurrence form);
- (ii) all-risk property insurance policy, including theft, written at replacement cost value and with replacement cost endorsement, covering all of your property in the Franchise Site related to the Franchised Business, and covering loss of income resulting from casualty;
- (iii) comprehensive automobile liability Insurance, including, owned, non-owned, and hired vehicles, with limits of not less than one million dollars (\$1,000,000), combined single limit, with respect to bodily injury and/or property damage;
- (iv) professional liability coverage to apply to all claims or suits for personal injury by reason of any actual or alleged breach of duty, neglect, error or misstatement, or misleading statement, or omission committed in the conduct of the Franchised Business. Errors and omissions coverage shall include communications liability to cover injury sustained by any person or organization arising out of the collection, acquisition, utterance or dissemination of communications by or with the permission of Franchisee or its subsidiary during the term of this Agreement. Such coverage shall be in the amount not less than one million dollars (\$1,000,000) per claim;
- (v) worker's compensation insurance or similar insurance offering statutory coverage containing limits, which policy shall also provide Employer's Liability Coverage of not less than one hundred thousand dollars (\$100,000) per occurrence; and

- (vi) any insurance which may be required by statute or rule of the state or locality in which the Franchised Business shall be operated.

All such policies shall also include a waiver of subrogation in favor of us and our directors, officers, shareholders, partners, employees, servants, representatives, independent contractors and agents.

(c) Deductibles. You may, with our prior written consent, elect to have reasonable deductibles in connection with the coverage required under Sections 13(b)(i), (ii), (iii) and (iv) hereof.

(d) Special Coverage. You shall require any finish-out renovation, refurbishment, or remodeling of the Franchise Site to be covered by Builder's All Risks insurance and performance in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to us.

(e) Additional Insurance. Your obligation to obtain and maintain the foregoing policy or policies in the amounts specified by us shall not be limited in any way by reason of any insurance which may be maintained by us, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Section 23(c) of this Agreement. In addition, each of the policies specified in Sections 13(b)(i), (ii), (iii) and (iv) shall contain a contractual coverage endorsement specifically insuring your performance of the indemnity provisions set forth in Section 23(c) of this Agreement.

(f) Primary Coverage. All public liability, property damage, and motor vehicle liability policies shall contain a provision that your insurance coverage shall be primary to any coverage maintained by us and we shall be entitled to recover under your policies for any loss occasioned to us, our Affiliates, successors, and assigns, and our and their respective officers, directors, shareholders, partners, employees, servants, representatives, agents and independent contractors, for whatever reason.

(g) Proof of Insurance. At such time as you acquire the Franchise Site and thereafter at least thirty (30) days prior to the renewal date for any insurance policy maintained pursuant hereto, you shall deliver to us Certificates of Insurance and, if requested by us, copies of the applicable insurance policies evidencing the existence and continuation of proper coverage with limits not less than those required hereunder. All insurance policies and Certificates required hereunder with the exception of Workers' Compensation (or any legally appropriate alternative), shall name us, our Affiliates, and any of our or their respective officers, directors, shareholders, partners, employees, servants, representatives, independent contractors, and agents as additional insureds, and shall expressly provide that any interest of same therein shall not be affected by any breach by you of any policy provisions. Further, all insurance policies and Certificates shall expressly provide that no less than thirty (30) days' prior notice shall be given to us in the event of a material alteration to or cancellation of the policies.

(h) Failure to Obtain. Should you, for any reason, fail to procure or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by us in the Manual or otherwise in writing, we shall have the right and authority (without, however, any obligation to do so) immediately to procure such insurance and to charge same to you, which charges, together with a reasonable fee for our expenses incurred in so acting, shall be payable by you immediately upon notice. The foregoing remedies shall be in addition to any other remedies in law or in equity that we may have.

#### 14. NONCOMPETITION AND NONDISCLOSURE COVENANTS.

(a) Covenant Not to Compete. During the Effective Period (as defined in Section 14(c) below) for the covenant set forth in this Section 14(a), you and each of your Controlling Principals agree that neither you nor your Controlling Principals shall Engage in a Competing Business. You acknowledge that, notwithstanding the restrictions of this Section, you and each of your Controlling Principals shall be able to earn a living within the Assigned Area.

(b) Covenant Not to Disclose. Except to the extent that any Confidential Information becomes public knowledge without any action or disclosure by you or any of your Controlling Principals, you and each of your Controlling Principals agree that you and your Controlling Principals shall not use the Manual, the System, the Software, or any other Confidential Information other than to operate the Franchised Business in accordance with and during the term of this Agreement; shall maintain the absolute confidentiality of the Manual, the System, the Software and the other Confidential Information except to the extent disclosure to employees is necessary to permit the operation of the Franchised Business in accordance with and during the term of this Agreement; shall not make unauthorized copies of any portion of the Manual, the System, or the Software or of any other Confidential Information otherwise disclosed in written, visual, auditory, or other tangible form; shall adopt and implement reasonable procedures, including those we prescribe from time to time, to prevent unauthorized use or disclosure of the Manual, the System, the Software and the other Confidential Information; and shall comply with the obligations set forth in Section 20(e).

(c) Effective Period. The Effective Period for the covenant set forth in Section 14(a) above shall be:

- (i) with respect to you, the period commencing on the effective date of this Agreement and ending on the earlier to occur of (A) the effective date of the termination of this Agreement, or (B) in the event you Transfer all of your interest in the Agreement or Franchisee to another individual or entity in accordance with this Agreement, the effective date of any such Transfer.
- (ii) with respect to each of your Controlling Principals, the period commencing on the effective date of this Agreement (or the date on which such individual or entity first becomes a Controlling Principal, if subsequent to the effective date of this Agreement) and ending on the earliest to occur of (A) the effective date of the termination of this Agreement, (B) in the event you Transfer all of your interest in the Agreement to another individual or entity in accordance with this Agreement, the effective date of such Transfer, or (C) if such individual or entity ceases to be a Controlling Principal within the meaning of that term as defined herein, the date on which such individual or entity ceases to be a Controlling Principal.
- (iii) for the two (2) years after the termination, expiration or Transfer of the Agreement or an interest in this Agreement or Franchisee, you and each of your Controlling Principals agree that neither you nor your Controlling Principals shall Engage in a Competing Business in or within a ten (10)

mile radius of the Assigned Area or within a ten (10) mile radius of the assigned area of any other Passport Health franchisee or Health Travel Business we operate during that period.

(d) Others To Execute Agreements. You shall obtain the written agreement of each of your current and future employees who have access to the Manual, the Software, or any other Confidential Information or shall receive training, and, upon our request, the written agreement of all of your current and future Principals, that did not sign this Agreement as a Controlling Principal. Notwithstanding the foregoing, individuals or entities owning exclusively a limited partnership interest in you shall not be required to execute a covenant not to compete pursuant to Section 14(a) above. Any such agreements with your employees or such other persons shall be substantially in the form of the Noncompetition and Confidentiality Agreement attached hereto as Attachment B. You shall provide us with copies of any and all such agreements.

(e) Specific Performance. You acknowledge and agree that we shall suffer irreparable harm and that monetary damages shall be inadequate to compensate us for any breach of the terms of this Section. Accordingly, you agree that we shall be entitled to injunctive relief for any breach or threatened breach of this Section in addition to all other remedies to which we may be entitled.

(f) Survival. Subject to Section 14(c) hereof, the provisions of this Section shall survive the termination, expiration or assignment of this Agreement, and we shall at all times be entitled to recover all reasonable attorneys fees incurred by us in connection with enforcing this Section 14.

## 15. ADVERTISING.

(a) Grand Opening Promotion. You must spend a minimum of three thousand (\$3,000) in implementing a grand opening advertising and promotional program for the Franchise. Such opening advertising and promotional program may consist of your initial purchase of promotional and advertising materials and products, direct mail advertising and such other promotional activities as we determine.

(b) Annual Funding Requirement for Local Advertising. During the term of this Agreement, you shall be obligated to spend one and one-half percent (1.5%) of your annual Gross Revenues on appropriate local advertising approved by us for the benefit of the Franchised Business and directed primarily in the Assigned Area. We reserve the right to increase your required expenditures for Local Advertising up to an amount not to exceed three percent (3%) of your annual Gross Revenues, until an Advertising Fund is established as described in Section 15 (c) below. In the event we establish an Advertising Fund applicable to the Franchised Business (as described in Section 15(c) below), the percentage of your Gross Revenues that you are required to spend on local advertising pursuant to this Section 15(b) may be reduced by us based on the amount of the contributions we require you to make to the Advertising Fund in our sole discretion. We shall have the right to require reasonable documentation, on a monthly basis, as evidence that your required expenditures have been made or contracted for. You shall have the discretion to expend such funds as and when you reasonably deem appropriate, so long as your expenditure schedule is acceptable to us in our reasonable discretion. Notwithstanding the above, in the event such funds have not been spent or committed by you as hereby required, we may require you to remit such funds to us to be spent on local advertising for the benefit of the Franchised Business.

(c) Advertising Fund.

(i) General. You agree that we shall have the right, in our discretion, to establish an advertising fund (the "Advertising Fund") for the purpose of conducting regional or national advertising, promotional and marketing-related efforts that benefit all Passport Health franchisees. All Passport Health franchisees shall be required to contribute to any such Advertising Fund.

(ii) Organizational and Operational Requirements. You agree that any such Advertising Fund shall be maintained and administered by us or our designee, as follows:

(A) We shall oversee all advertising and promotional programs with sole discretion to approve or disapprove the creative concepts, materials and media used in such programs, and the placement and allocation thereof. You agree and acknowledge that any such Advertising Fund shall be intended to maximize recognition and acceptance of the Proprietary Marks for the benefit of the System.

(B) The Advertising Fund, all contributions thereto, and any earnings thereon shall be used to meet the costs of maintaining, administering, directing and preparing advertising, promotional or marketing-related activities (including, among other things, the cost of preparing and conducting advertising campaigns, direct mail advertising, marketing surveys and other public relations activities, employing advertising agencies to assist therein, employing national and regional marketing consultants, and providing promotional brochures and other marketing materials to Passport Health franchisees.)

(C) You shall make your contributions to the Advertising Fund by separate check made payable to the Advertising Fund or by such other means as we shall determine. All sums paid by you to the Advertising Fund shall be maintained in an account separate from our other monies and shall be used to defray any of our reasonable administrative costs and overhead, if any, that we may incur in activities reasonably related to the administration or direction of the Advertising Fund and advertising programs for Passport Health franchisees and the System. The Advertising Fund and its earnings shall not otherwise inure to our benefit. We or our designee shall maintain separate bookkeeping accounts for the Advertising Fund. The Advertising Fund shall be operated solely as a conduit for collecting and expending the advertising fees specified herein.

(D) The Advertising Fund shall not be an asset of ours or of our designee. A statement of the operations of the Advertising Fund as shown on our books or our designee's shall be prepared annually by an independent certified public accountant selected by us and shall be made available to you upon request. You acknowledge and agree that we have no fiduciary duty with respect to the administration or operation of any advertising fund. We shall, with respect to any Passport Health Travel business we operate, contribute to the Advertising Fund generally on the same basis as you. In administering the Fund, we and our designees undertake no obligation to make expenditures for you which are equivalent or proportionate to your contributions to the Advertising Fund or to ensure that any particular franchisee benefits directly or pro rata from the

placement of advertising.

(E) Although the Advertising Fund is intended to be of perpetual duration, we maintain the right to terminate the Advertising Fund at any time. The Advertising Fund shall not be terminated, however, until all monies in the Advertising Fund have been expended for advertising, promotional or marketing-related purposes or returned to contributing Passport Health franchisees pro rata.

(iii) Franchisee Contributions. On the tenth (10th) day of each month during the term of this Agreement, you shall contribute to the Advertising Fund for advertising and promotional and/or marketing-related purposes an not to exceed two percent (2%) of your Gross Revenues for the preceding month as we shall determine from time to time. We may require you to allocate to the Fund all or any portion of your required contributions to a Cooperative as described in Section 15(d). You shall also submit to the Advertising Fund and to us by such date, such other statements or reports as may be required by us or by the Advertising Fund. Each Passport Health franchisee shall be required to contribute such percentage of its Gross Revenues to the Advertising Fund.

(d) Advertising Cooperative. You agree that we shall have the right, in our sole discretion, to designate any geographic area in which two (2) or more Franchised Businesses are located as a region for purposes of establishing an advertising cooperative ("Cooperative"). The members of the Cooperative for any area shall, at a minimum, consist of all Franchised Businesses located in that area. Each Cooperative shall be organized and governed in a form and manner, and shall commence operation on a date, determined in advance by us in our sole discretion. Each Cooperative shall be organized for the exclusive purposes of administering advertising programs and developing, subject to our approval pursuant to Section 15(e), promotional materials for use by the members in local advertising. If at the time of the execution of this Agreement a Cooperative has been established for a geographic area that encompasses the Franchised Business, or if any such Cooperative is established during the term of this Agreement, you shall execute such documents as are required by us immediately upon our request and shall become a member of the Cooperative pursuant to the terms of those documents. You shall participate in the Cooperative as follows:

- (i) Subject to any allocation of your contribution to a Cooperative to the Fund as described in Section 15(c)(iii), you shall contribute to the Cooperative such amounts required by the documents governing the Cooperative; provided, however, you shall not be required to contribute more than two percent (2%) of your Gross Sales during each month to the Cooperative unless, subject to our approval, the members of the Cooperative agree to the payment of a larger fee. Notwithstanding the above, the payment of any such Cooperative fee may be applied by you toward satisfaction of its local advertising requirement set forth in Section 15(b);
- (ii) You shall submit to the Cooperative and to us such statements and reports as may be required by us or by the Cooperative. All contributions to the Cooperative shall be maintained and administered in accordance with the documents governing the Cooperative. The Cooperative shall be operated solely as a conduit for the collection and expenditure of the Cooperative fees for the purposes outlined above; and

- (iii) No advertising or promotional plans or materials may be used by the Cooperative or furnished to its members without the prior approval by us. All such plans and materials shall be submitted to us in accordance with the procedure set forth in Section 15(e).

(e) Advertising Standards. All advertising and promotion by you in any medium shall be conducted in a dignified manner and shall conform to our standards and requirements as set forth in the Manual or otherwise. You shall obtain our prior approval of all advertising and promotional plans and materials that you desire to use and that have not been prepared or previously approved by us within one (1) year of proposed use. You shall submit such unapproved plans and materials to us, and we shall approve or disapprove such plans and materials within fourteen (14) days from the date of our receipt thereof. You shall use no such plans or materials until they have been approved by us and shall promptly discontinue use of any advertising or promotional plans or materials upon notice from us.

(f) Advertising and Promotional Materials. We may from time to time in our sole discretion produce and make available to you certain advertising and promotional materials. You may, but shall not be required to, purchase any such materials from us at prices established by us. The payment terms for any such advertising and promotional materials purchased from us shall generally be on open account subject to our standard commercial billing practices, unless we financed the acquisition of such items and materials through third parties in which case the payment terms may vary.

(g) Cap on Advertising Expenditures. If we establish a Fund and a Cooperative applicable to your Franchised Business, your total required contribution to the Fund and Cooperative, and payments for local advertising, shall not exceed three (3%) of your Gross Sales.

(h) Yellow Pages or other Business Listings. We may require you to place a Yellow Pages trademark or other business listing in your local market area, or we may place one on behalf of all Franchised Businesses in your local market area, unless we determine that placement of a Yellow Pages trademark or other business listings for the local market area is not economically justified. You must pay the cost for the listing, or your pro rata share of the cost of the listing. Any amount you pay for the Yellow Pages trademark or other business listings that we require may be applied by you toward satisfaction of your Local Advertising requirement.

(i) Newsletter. We shall prepare and publish on a periodic basis a newsletter for distribution to our franchisees (including you) and for use is distribution to your customers. We have the right to charge our reasonable expenses for copies provided to you for distribution to your customers, to the extent such costs are not reimbursed by approved suppliers.

**16. INSPECTIONS.** To determine whether you and the Franchised Business are complying with this Agreement, including the standards, policies and procedures set forth in the Manual, we and our representatives shall have the right, at any reasonable time, as frequently and for such length of time as we, in our sole discretion, determine, to inspect the Franchise Sites and all aspects of the Franchised Business, including its premises and inventory, but not including, confidential patient records. Such inspections shall generally be conducted during normal business hours and in a manner that does not unreasonably affect the conduct of business; however, we have sole discretion with respect to the conduct of such inspections. You and your employees shall cooperate with our representatives and agents in connection with any such

inspections by rendering such assistance as they shall reasonably request. Upon notice from us, you shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Should you fail to correct any such deficiencies within reasonable time as determined by us, we shall have the right (without, however, any obligation), to correct such deficiencies and to charge you a reasonable fee for our expenses in so acting, payable by you immediately upon demand.

## 17. AUDIT.

(a) Access to Information. We and our representatives shall have the right at any time during business hours, and without prior notice to you, to enter each of the Franchise Sites and inspect, audit, and make copies of, or cause to be inspected, audited, and copied, the business records, cash control devices, cash register tapes, bookkeeping and accounting records, bank statements, sales and income tax records and returns, and other records of the Franchised Business and your books and records (other than confidential patient records). You shall fully cooperate with us and our representatives in making all such items available for examination at the Franchise Site or such other location as you and we may mutually determine.

(b) Payment for Audit. You shall reimburse us, within ten (10) days after our request for such reimbursement, for the cost of each such audit or inspection including, without limitation, the charges of any independent accountants and the travel expenses, room and board, and compensation of our employees and representatives if we caused such inspection or audit to be performed with respect to any period for which you failed, within the time period required by this Agreement, to furnish reports, supporting records, or other information required by this Agreement or the Manual, regardless of the results of such audit or inspection, or if such audit or inspection demonstrates that you have furnished us information that understated your Gross Revenues for the period covered by such audit or inspection by at least two percent (2%). The foregoing remedies shall be in addition to all our other remedies and rights under this Agreement or applicable law.

(c) Payment of Deficiency. In addition to the payments required to be made under Section 17(b), if it is determined that you have previously furnished us information that understated your Gross Revenues, you shall pay the Royalty Fee and advertising contributions due on the amount of the understatement and interest thereon from the date originally due until payment, as provided in Sections 12(b) and (f), respectively, and shall promptly pay upon request the amount of the resulting deficiency in any advertising contributions required to be made under Section 15 hereof.

(d) Delivery of Independent Audit Reports. If you or the Franchised Business is ever audited by an accountant, you shall furnish a copy of the audit report to us without charge within ten (10) days of your receipt thereof.

## 18. ASSIGNMENT AND TRANSFER.

(a) By Us. We shall have the right to transfer or assign this Agreement and all or any part of our rights or obligations hereunder to any person or legal entity without your consent. Specifically, and without limitation of the foregoing, you expressly confirm and agree that we may sell our assets, the Proprietary Marks or the System to a third party; may merge, acquire other corporations or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. With regard to any of the foregoing, you expressly and specifically waive any claims, demands or damages