

EXHIBIT D

FRANCHISE AGREEMENT

Rapid Refill Ink International Corp.
Franchise Agreement

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**RAPID REFILL INK INTERNATIONAL CORP.
FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the "Agreement") is made and entered into on this _____ day of _____, 200__ (the "Effective Date"), by and between:

- RAPID REFILL INK INTERNATIONAL CORP., a Minnesota corporation, having its principal place of business at 12400 Whitewater Road, Minnetonka, Minnesota 55343 ("Franchisor"); and
- _____ a _____
[resident] [corporation] [limited liability company] having its principal place of business at _____ ("Franchisee").

RECITALS:

A. WHEREAS, Franchisor, as the result of the expenditure of time, skill, effort and money have developed and own a unique system (the "System") relating to the establishment, development and operation of full-service stores that can process Cartridge refills and serve as a retail storefront, that are physically located in malls, streetfronts, and other retail establishments (an "A-Store"), as well as retail-service only stores (without processing capability) that are located in malls, streetfronts, and other retail establishments ("B-Stores"), and unattended branded drop-off boxes located within and outside retail establishments ("Drop Boxes"), and collection bins located in a school or for the benefit of youth groups or other organizations ("Collection Bins"), used for the recovery of Cartridges from customers (except as otherwise provided in this Agreement, the term "Stores" refers to A-Stores, B-Stores, Drop Boxes, and Collection Bins, collectively) which Stores specialize in the sale of ink or toner cartridges for ink-jet and laser printers, copy and fax machines and all-in-one machines ("Cartridges"), printer and related merchandise, services, and products that Franchisor has authorized and approved, and which Stores utilize Franchisor's System and Proprietary Marks (defined below), all of which Franchisor may periodically change, improve, and/or further develop;

B. WHEREAS, the distinguishing characteristics of the System include, without limitation, procedures, techniques, and methods for collection, cleaning, refilling and returning to the consumer cartridges for dispensing ink to be used in ink-jet and laser printers, copy and fax machines and all-in-one machines, as well as merchandising activities; distinct inventory specifications and standards; an operating manual; as well as methods and techniques for inventory and cost controls, record keeping and reporting, personnel management, purchasing, sales promotion, marketing and advertising; all of which may be changed, improved and further developed by Franchisor from time to time;

C. WHEREAS, Franchisor identifies Stores by the RAPID REFILL INK marks and such other proprietary marks as Franchisor may periodically designate in writing (together, the "Proprietary Marks");

Initials	
_____ Franchisee	_____ Franchisor

D. WHEREAS, Franchisor grants to qualified persons franchises to own and operate Stores offering, selling, servicing and refilling Cartridges, and related merchandise, products and services authorized and approved by Franchisor and utilizing Franchisor's System and Proprietary Marks; and

E. WHEREAS, Franchisee desires to operate either an A-Store or a B-Store (as indicated in Section 1.2 below) using Franchisor's System and Proprietary Marks and has applied for a franchise, which application has been approved by Franchisor in reliance upon all of the representations made therein.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, hereby agree as follows:

1 **GRANT**

1.1 *Grant and Acceptance.* Upon the terms and conditions set forth in this Agreement, Franchisor hereby grants to Franchisee the right and franchise, and Franchisee accepts and undertakes the obligation, to:

1.1.1 Establish and operate one (1) Store under the System;

1.1.2 Establish and operate Drop Boxes, subject to, and as further described in, Section 1.7 below;

1.1.3 Establish and operate Collection Bins, subject to, and as further described in, Section 1.8 below;

1.1.4 Use, only in connection with the Stores, the Proprietary Marks and the System as they may be changed, improved, or further developed from time to time by Franchisor; and

1.1.5 Use the Proprietary Marks and System and to operate the Store only at the Approved Location (as defined in Section 1.2 below).

1.2 *Approved Location.* The street address of the location approved for the operation of the A-Store under this Agreement ("**Approved Location**") shall be as written on the Data Sheet that is attached to this Agreement as Exhibit A (the "**Data Sheet**"). The Store that is operated at the Approved Location will be either an A-Store or a B-Store, as specified on the Data Sheet. Franchisee shall not relocate the Store without Franchisor's prior written consent. Franchisor shall have the right to grant or withhold any approvals under this Section 1.2; and if approval is granted, such approval shall not be deemed to be a guarantee, representation, or assurance by Franchisor that Franchisee's Store shall be profitable or successful.

1.3 *Protected Territory.* During the term of this Agreement, except as otherwise provided in Section 1.4 below, Franchisor shall not establish, nor license any other person to establish, another A-

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Store or B-Store at any location within the “**Protected Territory**” that is designated in writing on the Data Sheet in Exhibit A to this Agreement.

1.4 Notwithstanding Section 1.3 above, Franchisor retains all rights that are not expressly granted to Franchisee under this Agreement, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein:

1.4.1 establish, and license others to establish, Stores at any location outside the Protected Territory notwithstanding their proximity to the Protected Territory or the Approved Location or their actual or threatened impact on sales at Franchisee’s Stores;

1.4.2 establish, and/or license others to establish, stores under other systems and/or other marks, which stores may offer or sell products that are the same as, similar to, or different from the products offered at or from the Stores, and which stores may be located within or outside the Protected Territory, notwithstanding such stores’ proximity to the Approved Location or their actual or threatened impact on sales at Franchisee’s Stores;

1.4.3 sell and distribute, directly or indirectly, or license others to sell, distribute, and service, directly or indirectly, any Cartridges, and other products and services offered under the System, from any location or to any purchaser (including, but not limited, to sales made at retail locations, catalog and mail order, and on the Internet), so long as such sales are not conducted from an A-Store or B-Store that is physically located inside the Protected Territory;

1.4.4 acquire and operate any business or store of any kind, whether located within or outside the Protected Territory (but not Stores operated under the System within the Protected Territory), notwithstanding the proximity of any such businesses or stores to the Store, or any Store operated by Franchisee; and/or

1.4.5 do business with national or multi-regional accounts, and to place (and license others to place) Drop Boxes and Collection Bins at any location inside or outside of your Protected Territory to service such accounts.

1.5 *Limit on Sales.* Franchisee shall offer and sell products only from the Stores, and only in accordance with the requirements of this Agreement and the procedures set forth in the Manuals, and only to end-user customers. Franchisee shall not sell to wholesale customers but may request Franchisor’s approval, on a case-by-case basis, to fulfill certain wholesale accounts, which approval Franchisor shall have the right to withhold or grant as it sees fit.. Franchisee shall not offer or sell Cartridges or products through any other means, including without limitation, sales or mail order catalogs, temporary locations, the Internet, or through any other electronic media.

1.6 *Variation of Standards.* Franchisee acknowledges and agrees that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor shall have

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the right to vary standards for any Store (based, among other things, upon Franchisor's right to determine that as to the circumstances applicable to any particular site, such as density of population, business potential, population of trade area, existing business practices, and/or any other condition that Franchisor deems to be of importance to the successful operation of any particular Store). Franchisee shall have no right to require Franchisor to disclose or grant to Franchisee a like or similar variation hereunder; further, nothing in connection with Franchisor's grant of a franchise, or the nature of the franchise relationship with any other franchisee, shall have an effect upon, or constitute a breach of, any obligations under this Agreement (however, this clause shall not supersede Franchisor's obligations with respect to the Protected Territory as specified in Section 1.3 above).

1.7 *Drop-Boxes.*

1.7.1 Franchisee shall purchase at least twenty-five (25) Drop Boxes before opening the Store for business. Franchisee shall install each of these Drop Boxes for use throughout the Protected Territory no later than six (6) months following the date the Store opens for business.

1.7.2 Notwithstanding the provisions of Section 1.4.5 above, Franchisee shall locate Drop Boxes only within the territory that is designated in writing on the Data Sheet in Exhibit A to this Agreement for placement of Drop Boxes (the "**Drop Box Territory**"). Franchisee shall be required to provide Drop Boxes within the Protected Territory in at least the numbers, and in accordance with the standards, specified by Franchisor in the Manuals or otherwise in writing. Franchisee's failure to place the number of Drop Boxes sufficient, in Franchisor's reasonable discretion, to properly service the Protected Territory shall constitute a default under this Agreement for which Franchisor shall have the right, among other things, to terminate this Agreement pursuant to the provisions of Section 18.3 below. Franchisee may place Drop Boxes, at its discretion, and in accordance with Franchisor's standards, outside the Protected Territory but within the Drop Box Territory. Franchisee shall not locate Drop Boxes outside the Drop Box Territory other than in accordance with Section 4.6 below.

1.7.3 If Franchisee has placed a Drop Box outside the Protected Territory but within the Drop Box Territory at a location that later becomes included in the protected territory of another Store operated under the System, then upon written notice from Franchisor, Franchisee shall, at its own expense:

1.7.3.1 Cooperate with the operator of the Store for the area in which the Drop Boxes were located to enable the new operator to take over the account without interruption or inconvenience to the party at which the Drop Boxes are located or to customers;

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- 1.7.3.2 Remove the Drop Box assigned to Franchisee from the locations at which they are operated to enable the new operator to install its Drop Boxes at those locations; and
- 1.7.3.3 Update the information in Franchisee's webpage (on Franchisor's website) immediately.
- 1.7.4 If there is a new operator for an adjacent territory, as provided in Section 1.7.3 above, Franchisor shall endeavor to require, but cannot guarantee, that the new operator will: (a) pay a transfer fee to Franchisee in the amount of Fifty Dollars (\$50) per Drop Box location transferred; and (b) take over all existing Drop Box locations at the rate of one every two (2) days during the initial period of the new operator's operations. Franchisee agrees to fulfill its obligations under Section 1.7.3 above even if the new operator does not do the things described above.
- 1.7.5 Franchisee shall provide such information and reporting to Franchisor as Franchisor may reasonably request, and in such form as Franchisor may reasonably request, with respect to the placement of the Drop Boxes, the contact person(s) for each location at which a Drop Box is placed, the customers serviced through each said Drop Box, and such additional information as Franchisor may reasonably request. Franchisee may place Drop Boxes within the Protected Territory prior to providing such information to Franchisor; provided, however, that Franchisor reserves the right to reject any location for a Drop Box within the Drop Box Territory at any time within thirty (30) days after receipt of all information requested from Franchisee.

1.8 *Collection Bins.*

- 1.8.1 Franchisee shall purchase at least ten (10) Collection Bins before opening the Store for business. Franchisee shall install each of these Collection Bins for use throughout the Protected Territory no later than six (6) months following the date the Store opens for business.
- 1.8.2 Notwithstanding the provisions of Section 1.4.5 above, Franchisee shall locate Collection Bins Boxes only within the Protected Territory. Franchisee shall be required to provide Collection Bins within the Protected Territory in at least the numbers, and in accordance with the standards, specified by Franchisor in the Manuals or otherwise in writing. Franchisee's failure to place the number of Collection Bins sufficient, in Franchisor's reasonable discretion, to properly service the Protected Territory shall constitute a default under this Agreement for which Franchisor shall have the right, among other things, to terminate this Agreement pursuant to the provisions of Section 18.3 below.

Initials	
Franchisee	Franchisor

2 **FEES**

2.1 *Initial Franchise Fee.* If the Store to be established under this Agreement is the first Store to be established by Franchisee, Franchisee shall pay to Franchisor an initial franchise fee (the "**Initial Franchise Fee**") in the amount of Thirty Thousand Dollars (\$30,000). If the Store to be established under this Agreement is the second or subsequent Store to be established by Franchisee, then the Store may be, at Franchisee's discretion, either an A-Store or a B-Store, and Franchisee shall pay to Franchisor a reduced Initial Franchise Fee in the amount of Twenty Thousand Dollars (\$20,000). The Initial Franchise Fee is due, and shall be paid in full, upon execution of this Agreement and shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor in granting this franchise and for Franchisor's lost or deferred opportunity to franchise others.

2.2 *Royalty Fee.* For each Week during the term of this Agreement, Franchisee shall pay Franchisor a continuing royalty fee in an amount equal to six percent (6%) of Gross Revenues; provided, however, that the royalty fee on franchisee's revenues from the verifiable sale of OEM Cartridges shall be reduced to only three percent (3%) of such revenues. For the purposes of this Agreement, "**OEM Cartridges**" shall mean original equipment manufacturer Cartridges (i.e., Cartridges contained in their original equipment manufacturer's packaging) bearing the trademark of a company that manufactures and/or markets printers and Cartridges under the same brand name. Royalty fees shall be paid without offset, credit or deduction of any nature. As used in this Agreement, the following terms shall have the following meanings:

2.2.1 The term "**Gross Revenues**" means all revenue from the sale of all merchandise, products, and/or services, and all other income of every kind and nature related to, derived from, or originating from the Stores, including proceeds of any business interruption insurance policies, whether at retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit; provided, however, that "Gross Revenues" shall exclude any customer refunds, discounts given, and sales or other taxes collected from customers and remitted by Franchisee to the appropriate taxing authorities.

2.2.2 The term "**Week**" means the period starting with the commencement of business on Monday and concluding at the close of business on the following Sunday (or, if the Store is not open on a Sunday, the immediately preceding business day); however, Franchisor shall have the right to designate in writing any other period of not less than seven days to constitute a "Week" under this Agreement.

2.3 *Technology Fee.* Franchisee shall pay to Franchisor a weekly technology fee (the "**Technology Fee**") in the amount of Eighteen Dollars (\$18). Franchisee shall pay the Technology Fee at the same time as the royalty fee payment as set forth in Section 2.4 below. After the first anniversary of the Effective Date of this Agreement, the Technology Fee shall be adjusted (up or down) on an annual basis to reflect changes in the Consumer Price Index (US; All Urban Areas; 1967=100).

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- 2.4 *When Payments Due.* Except as provided in Section 2.3 above, all payments required by this Section 2 and by Section 10 below shall be paid by the close of business on Wednesday of each Week based on the Gross Revenues for the preceding Week (if Wednesday is a bank holiday that prevents payment being made on that day, then payment may be made on the immediately following business day). Franchisee shall establish an arrangement for electronic funds transfer or deposit of any payments required under Sections 2 or 10 of this Agreement or, at Franchisor's written request, by credit card arrangement. Franchisee shall execute Franchisor's current form of "Authorization Agreement for Prearranged Payments (Direct Debits)," a copy of which is attached to this Agreement as Exhibit C, and Franchisee shall comply with the payment and reporting procedures specified by Franchisor in the Manual. (If there is any force majeure reason that electronic fund transfer cannot be used, Franchisee shall comply with Franchisor's reasonable written directions for transmitting payment in a different manner.) Franchisee shall at all times maintain in its bank account as to which the electronic fund transfer authorization applies a balance that is sufficient to pay all then-due charges owed to Franchisor.
- 2.5 *No Subordination.* Franchisee shall not subordinate to any other obligation its obligation to pay Franchisor the royalties and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise.
- 2.6 *Overdue Payments and Reports.* Any payment or report not actually received by Franchisor (or the appropriate advertising fund) on or before such date shall be deemed overdue. If any payment is overdue, Franchisee shall pay Franchisor, in addition to the overdue amount: (a) a fee of Thirty-Five Dollars (\$35) for each overdue payment; and (b) interest on such amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less. Entitlement to such interest shall be in addition to any other remedies Franchisor may have. Franchisee acknowledges that nothing contained in this Agreement constitutes Franchisor's agreement to accept any payments after same are due or a commitment by Franchisor to extend credit to or otherwise finance Franchisee's operation of the Stores. Further, Franchisee acknowledges that its failure to pay all amounts when due shall constitute a material default, and grounds for termination, of this Agreement.
- 2.7 *Allocation of Payments.* Notwithstanding any designation by Franchisee, Franchisor shall have the right to apply any payments by Franchisee to any past due indebtedness of Franchisee for Royalty Fees, Advertising Commitments, purchases from Franchisor and its affiliates, interest or any other indebtedness.
- 2.8 *Additional Payments.* Franchisee shall pay to Franchisor, within fifteen (15) days of any written request by Franchisor which is accompanied by reasonable substantiating material, any monies which Franchisor has paid, or has become obligated to pay, on behalf of Franchisee, by consent or otherwise under this Agreement.
- 2.9 *Sales Reports.* On or before Wednesday of each Week Franchisee shall submit to Franchisor, on a form approved by Franchisor, a correct statement, signed by Franchisee, of Franchisee's Gross

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Revenues for the preceding Week ended Sunday. Franchisor shall have the right to require submission of sales reports electronically via the Computer System (defined in Section 11.1.1 below), and, as described in Section 11.1.5 below, Franchisor shall have the right at any time to retrieve and use such data and information from Franchisee's Computer System that Franchisor deems necessary or desirable.

3 **TERM AND RENEWAL**

3.1 *Term.* This Agreement shall be effective and binding from the date of its execution for an initial term equal to ten (10) years commencing on the date of execution of this Agreement. The term of this Agreement is unaffected by the terms of any agreement other than the lease or sublease for the premises of the Store.

3.2 *Renewal.* Franchisee may, at its option, renew this Agreement for up to three (3) additional terms of ten (10) years each, subject to the following conditions, each of which must be met prior to renewal:

3.2.1 Franchisee maintains possession of the Approved Location for the Store and, before the expiration date of this Agreement, has brought the Store into full compliance with the specifications and standards then applicable for new or renewing Stores (and Franchisee shall comply with its obligations under Section 13.4 below), and Franchisee presents evidence satisfactory to Franchisor that it has the right to remain in possession of the Approved Location for the duration of any renewal term (or, if Franchisee is unable to maintain possession of the Approved Location, Franchisee secures substitute premises (as to which Franchisor has given its prior written approval with respect to the proposed relocation, in the manner specified in Section 1.2 above), and Franchisee has furnished, stocked and equipped such new premises to bring the Store at those premises into full compliance with Franchisor's then-current specifications and standards for a new Stores before the expiration date of this Agreement);

3.2.2 Franchisee shall have maintained Drop Boxes within the Protected Territory in the numbers, and in accordance with the standards, set forth by Franchisor in the Manuals or otherwise in writing;

3.2.3 Franchisee shall give Franchisor written notice of Franchisee's election to renew no fewer than six (6) months nor more than twelve (12) months prior to the end of the initial tem;

3.2.4 Franchisee shall not be in default of any provision of this Agreement, any amendment to this Agreement, any successor to this Agreement, or any other agreement between Franchisee and Franchisor or its subsidiaries and affiliates; and, in Franchisor's reasonable judgment, Franchisee shall have substantially complied with all the terms and conditions of this Agreement, such other agreements, as well as the operating standards prescribed by Franchisor during the term of this Agreement;

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- 3.2.5 Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates and shall have timely met those obligations throughout the term of this Agreement;
- 3.2.6 Franchisee shall pay, in lieu of an initial franchise fee, a renewal fee equal to the greater of: (a) Three Thousand Five Hundred Dollars (\$3,500); or (b) ten percent (10%) of the initial franchise fee then being charged by Franchisor for new full-service franchises;
- 3.2.7 Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its subsidiaries and affiliates, and their respective officers, directors, agents, and employees;
- 3.2.8 Franchisee and its personnel shall comply with Franchisor's then-current qualification and training requirements;
- 3.2.9 Franchisee shall be current with respect to its obligations to its lessor, vendors, and any others with whom it does business; and
- 3.2.10 Franchisee has executed, upon renewal, Franchisor's then-current form of Franchise Agreement (with appropriate modifications to reflect the fact that the agreement relates to the grant of a renewal franchise), which agreement shall supersede this Agreement in all respects, and the terms, conditions, and provisions of which, and the obligations of the parties thereto, may differ from the terms, conditions, provisions and obligations of this Agreement (including, without limitation, a higher percentage royalty fee, Advertising Commitment, and/or a different Protected Territory); provided, however, Franchisee shall not be required to pay the then-current initial franchise fee or its equivalent.

4 **STORE LOCATION**

- 4.1 *Finding a Site.* Franchisee shall be responsible for purchasing or leasing suitable sites for the Stores established under this Agreement. Franchisee shall establish the Store and have it open and in operation no later than twelve (12) months following the Effective Date. Within ninety (90) days after the Effective Date, Franchisee shall submit a letter of intent or other evidence satisfactory to Franchisor, which confirms Franchisee's favorable prospects for obtaining a proposed site for the Store. Franchisee also shall submit to Franchisor, in a form acceptable to (or as specified by) Franchisor, a copy of the site plan and such other information or materials regarding the proposed site as Franchisor may reasonably require. Franchisor shall provide Franchisee written notice of approval or disapproval of the proposed site within thirty (30) business days after receiving Franchisee's written proposal. Franchisee acknowledges that any site selection assistance or approval provided by Franchisor shall not be construed or interpreted as a guarantee of success for said location nor shall any location recommendation or approval made by Franchisor be deemed a representation that any particular location is available for use as a Store.

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4.2 *Leasing or Purchasing the Site.* If Franchisor or its affiliates identify an acceptable site for use as a Store, Franchisor may lease or sublease such site to Franchisee. However, unless Franchisor has agreed in a separate written agreement to purchase or acquire by lease the property in which the Store is to be located, Franchisor shall have no obligation to enter into a lease or sublease with Franchisee and shall only be obligated to act in an advisory capacity to assist Franchisee in acquiring a location. Any real estate and improvement costs associated with the development of the location of the Store shall be the responsibility of Franchisee and may be included in determining the lease or sublease rental payments.

4.3 *Lease Conditions.* After receiving Franchisor's written approval of the location of the Store as provided in Section 4.1 above, Franchisee shall, subject to the prior approval of terms by Franchisor, execute a lease (if the premises are to be leased) for, or a binding agreement to purchase, the site, within thirty (30) days of Franchisor's approval of the site. Franchisor's approval of the lease or purchase agreement shall be conditioned upon inclusion in the lease of terms acceptable to Franchisor, and at Franchisor's option, the lease shall contain such provisions, including, but not limited to:

4.3.1 A provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the franchise grant;

4.3.2 A provision which requires the lessor concurrently to provide Franchisor with a copy of any written notice of deficiency under the lease sent to Franchisee and which grants to Franchisor, in its sole discretion, the right (but not obligation) to cure any deficiency under the lease within fifteen (15) business days after the expiration of the period in which Franchisee had to cure any such default should Franchisee fail to do so;

4.3.3 A provision that evidences Franchisee's right to display the Proprietary Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;

4.3.4 A provision that the premises be used solely for the operation of a franchised Store; and

4.3.5 A provision which expressly states that any default under the lease shall constitute a default under the Franchise Agreement, and any default under the Franchise Agreement shall constitute a default under the lease.

4.4 *Preparing the Site.* Franchisee agrees that, promptly after obtaining possession of the approved site for the Store, it shall:

4.4.1 cause to be prepared and submit for approval by Franchisor a description of any modifications to Franchisor's specifications for a Store (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating materials) required for the development of a Store at the site leased or purchased therefor, provided that Franchisee may modify Franchisor's

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specifications only to the extent required to comply with all applicable ordinances, building codes and permit requirements and with prior notification to and approval by Franchisor;

- 4.4.2 obtain all required zoning permits, all required building, utility, health, sign permits and licenses, and any other required permits and licenses;
 - 4.4.3 purchase or lease equipment, fixtures, furniture and signs as required under this Agreement;
 - 4.4.4 complete the construction and/or remodeling, equipment, fixture, furniture and sign installation and decorating of the Store in full and strict compliance with plans and specifications therefor that Franchisor has approved in writing, as well as all applicable ordinances, building codes and permit requirements;
 - 4.4.5 obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services; and
 - 4.4.6 otherwise complete development of and have the Store ready to open and commence the conduct of its business in accordance with Section 13.3 below.
- 4.5 *Use of the Premises.* Franchisee may use the Approved Location only for the purpose of operating the Store and for no other purpose. Franchisee shall not co-brand or permit any other business to operate at said locations without Franchisor's prior written approval.
- 4.6 *Drop Boxes and Collection Bins.* Franchisee shall select locations for and shall place Drop Boxes and Collection Bins in such locations as meet Franchisor's standards as set forth in the Manuals. Franchisor shall have the right to notify Franchisee, within thirty (30) days after receiving written notice of the placement of a Drop Box or Collection Bin at any location within the Protected Territory, that said Drop Box or Collection Bin should not be placed at that location and for the Franchisee to make arrangements to promptly remove said Drop Box or Collection Bin and make other arrangements to service customers who formerly used said Drop Box or Collection Bin. Franchisee may propose the placement of Drop Boxes outside the Drop Box Territory, but each such location shall be subject to Franchisor's prior written approval, which Franchisor shall have the right to withhold, and any such Drop Boxes placed outside the Drop Box Territory shall need to be removed (under the procedure in Section 1.7.4 above) if another Store is established under the System with a corresponding protected territory and/or drop box territory, that includes the location of Franchisee's Drop Box.

5 TRAINING AND ASSISTANCE

- 5.1 *Initial Training.* Franchisor shall make training available to Franchisee, Franchisee's designated manager and as many of Franchisee's employees as Franchisee reasonably requests. Franchisee and/or its designated manager is required to attend and successfully complete to Franchisor's

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Franchisee	Franchisor

satisfaction prior to opening for business a training and familiarization course to be conducted at Franchisor's headquarters or at such other place as Franchisor shall designate. Such training programs shall cover material aspects of the operation of Stores, including financial controls; general bookkeeping procedures; procedures and techniques regarding the retail sale of print cartridge recycling and refilling services; customer relations techniques; inventory and cost control methods; service and operational techniques; marketing and advertising techniques; training and deployment of labor; and maintenance of quality standards. All expenses incurred by Franchisee and its employees in attending such programs, including without limitation, travel costs, room and board expenses and employees' salaries, shall be the sole responsibility of Franchisee.

- 5.2 *Opening Training.* Franchisor will furnish to Franchisee, at Franchisee's premises and at Franchisor's expense, one (1) of Franchisor's representatives for the purpose of facilitating the opening of Franchisee's Store. During this training, such representative will also assist Franchisee in establishing and standardizing procedures and techniques essential to the operation of a Store and shall assist in training personnel; however, Franchisee acknowledges that Franchisor shall not be responsible for training or offering guidance with respect to compliance with any laws, ordinances or other legal matters. Should Franchisee request additional assistance from Franchisor in order to facilitate the opening of the Store, and should Franchisor deem it necessary and appropriate to comply with the request, Franchisee shall reimburse Franchisor for an agreed upon fee plus the expenses of Franchisor in providing such additional assistance.
- 5.3 *Failure to Satisfactorily Complete Training.* Franchisor shall have the right to: (a) determine that Franchisee is unable to satisfactorily complete the training program described above; and (b) terminate this Agreement in the manner provided in this Section 5.3 by giving written notice of termination to Franchisee. If this Agreement is terminated pursuant to this Section 5.3, then Franchisee and its principals shall execute and deliver to Franchisor a written release, in such form as Franchisor may reasonably provide, of any and all claims or causes of action Franchisee and/or its principals may have against Franchisor, Franchisor's affiliates, and their respective officers, directors, agents, and employees; and, upon execution of the release, Franchisor shall return to Franchisee the greater of: (a) Ten Thousand Dollars (\$10,000), or (b) one-third (1/3) of the Initial Franchise Fee, and Franchisor shall retain the remainder of the Initial Franchise Fee as compensation for its costs, expenses, training expenses, personnel time, for lost development opportunities elsewhere.
- 5.4 *New or Additional Managers.* If Franchisee designates new or additional managers after the initial training program, Franchisor shall provide training to such managers to the extent Franchisor can reasonably accommodate such managers in Franchisor's regularly scheduled training course. Franchisor shall provide such training at no charge to Franchisee, except that Franchisee shall pay all employee salaries and travel and living expenses incurred by Franchisee's managers or employees in attending such training programs.
- 5.5 *Refresher Training.* Franchisor from time to time may provide, and if it does may require that previously trained and experienced Franchisees or their managers or employees attend and

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Franchisee	Franchisor

successfully complete, refresher training programs or seminars to be conducted at such location as may be designated by Franchisor. Attendance at such refresher training programs or seminars shall be at Franchisee's sole expense.

6 **PROPRIETARY MARKS**

6.1 *Franchisee Acknowledgements.*

6.1.1 Franchisee acknowledges that Franchisor owns all right, title and interest, together with all the goodwill, in and to the Proprietary Marks. Franchisee further acknowledges that Franchisee's right to use the Proprietary Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor from time to time during the term of the Franchise. Any unauthorized use of the Proprietary Marks by Franchisee shall constitute a breach of this Agreement and an infringement of Franchisor's rights.

6.1.2 Franchisee acknowledges and agrees that all usage of the Proprietary Marks by Franchisee and any goodwill established by Franchisee's use of the Proprietary Marks shall inure to Franchisor's exclusive benefit and that this Agreement does not confer any goodwill or other interests in the Proprietary Marks upon Franchisee. Franchisee acknowledges, further, that it acquires no right, title or interest in any of the marks or any additional trademark which may be developed unless specifically granted such pursuant to the terms of a separate license agreement. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of the Proprietary Marks or assist any other person in contesting the validity or ownership of the Proprietary Marks.

6.2 *The Proprietary Marks.* Except as otherwise provided in Section 6.1 above:

6.2.1 Franchisee acknowledges that Franchisor owns all right, title and interest, together with all the goodwill, of the Proprietary Marks. Franchisee further acknowledges that Franchisee's right to use the Proprietary Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor from time to time during the term of the Franchise. Any unauthorized use of the Proprietary Marks by Franchisee shall constitute a breach of this Agreement and an infringement of Franchisor's rights in and to the Proprietary Marks.

6.2.2 Franchisee acknowledges and agrees that all usage of the Proprietary Marks by Franchisee and any goodwill established by Franchisee's use of the Proprietary Marks shall inure to the exclusive benefit of Franchisor and its affiliates and that this Agreement does not confer any goodwill or other interests in the Proprietary Marks upon

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Franchisee	Franchisor

Franchisee. Franchisee acknowledges, further, that it acquires no right, title or interest in any of the marks or any additional trademark which may be developed unless specifically granted such pursuant to the terms of a separate license agreement. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Proprietary Marks or assist any other person in contesting the validity or ownership of the Proprietary Marks.

- 6.3 *Usage of the Proprietary Marks.* Franchisee shall not use the Proprietary Marks or any portion of any Proprietary Mark as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium, or with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form. Franchisee shall not use any Proprietary Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by Franchisor. Franchisee agrees to properly attribute the ownership of the Proprietary Marks to Franchisor, or their respective affiliates, in such manner, and including such notices of trademark and service mark registrations, as Franchisor may periodically specify in writing. Franchisee shall obtain and maintain such fictitious or assumed name registrations as may be required under applicable law.
- 6.4 *Actions involving the Proprietary Marks.* Franchisee shall promptly notify Franchisor of any attempt that Franchisee knows of, or should know of, by any other person, firm, or corporation to use the Proprietary Marks or any colorable imitation thereof. Upon receipt of timely notice of such infringement, Franchisor shall have the sole right to determine whether or not any action shall be taken on account of any such infringements or imitations. Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Proprietary Marks and shall exercise such right in their sole discretion. Franchisee shall not institute any suit or take any actions with regards to the Proprietary Marks. In any defense or prosecution of any litigation relating to the Proprietary Marks or components of the System undertaken by Franchisor, Franchisee shall cooperate with Franchisor, in the manner and to the extent requested, and shall execute any and all documents and take all actions as may be desirable or necessary in the opinion of counsel, to carry out such defense or prosecution. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out of pocket costs in doing such acts and things, except that Franchisee shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement.
- 6.5 *Substitution of Proprietary Marks.* If it becomes advisable at any time, in Franchisor's sole discretion, for Franchisor to modify or discontinue use of any Proprietary Mark, and/or use one or more additional or substitute trade names, trademarks, service marks, or other commercial symbols, Franchisee agrees to comply with Franchisor's directions within a reasonable time after notice to Franchisee by Franchisor, and Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of any Proprietary Mark, or the costs associated with changing signs and other indicia at or in connection with the Stores.

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Franchisee	Franchisor

6.6 *Right to Inspect Stores.* In order to preserve the validity and integrity of the Proprietary Marks and copyrighted material licensed herein and to assure that Franchisee is properly employing the same in the operation of its Stores, Franchisor or its agents shall have the right of entry and inspection of Franchisee's premises and operating procedures at all reasonable times. Franchisor shall have the right to observe the manner in which Franchisee is rendering its services and conducting its operations, to confer with Franchisee's employees and customers, to inspect service techniques and procedures, to inspect inventory mix, and to select Products and related merchandise, products, supplies, accessories and other items for and evaluation purposes to make certain that the services, products, materials and supplies are satisfactory and meet the quality control provisions and performance standards established by Franchisor.

7 **MANUAL**

7.1 *The Manual.* Franchisor shall loan to Franchisee, as set forth in Section 7.2 below, the Confidential Operations Manual ("**Manual**"). Franchisor shall have the right to amend and modify the Manual periodically, as Franchisor deems appropriate, to reflect additions to, deletions from, and modifications to, the specifications of those services and products that comprise a part of the System. The Manual shall delineate reasonable and mandatory specifications, standards, operating procedures, and rules prescribed periodically prescribed by Franchisor for Stores, the Cartridges, products and services that Franchisor deems to comprise a part of the System, and other guidelines and recommendations with respect to operational procedures. Franchisor shall have the right to add to and otherwise modify the Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules prescribed by Franchisor for Stores, provided that no such addition or modification shall alter Franchisee's fundamental status and rights under this Franchise Agreement.

7.2 *Furnishing the Manual to Franchisee.* Franchisor shall provide Franchisee with access to one (1) copy of the Manual for Franchisee's use only in connection with the Stores during the term of this Agreement. Franchisor shall have the right to provide the Manual in any format it determines is appropriate, including without limitation paper format or by making the Manual available to Franchisee in electronic form (such as through an internet website). If Franchisor elects to provide the Manual electronically, Franchisee shall immediately return to Franchisor any and all physical copies of the Manual.

7.3 *Manual Remains Franchisor's Property.* The Manual shall at all times remain the sole property of Franchisor and shall promptly be returned upon the expiration or other termination of this Agreement.

7.4 *Manual is Proprietary and Confidential.* The Manual contains proprietary information of Franchisor and shall be kept confidential by Franchisee both during the term of the franchise and subsequent to the expiration and/or termination of the franchise. Franchisee shall at all times insure that its physical copy of the Manual be available at the Store premises in a current and up-to-date manner. Franchisee shall not make any unauthorized use, disclosure or duplication of

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Franchisee	Franchisor

any portion of the Manual. At all times that the Manual is not in use by authorized personnel, Franchisee shall maintain the Manual in a locked receptacle at the premises of the Store, and shall only grant authorized personnel, as defined in the Manual, access to the key or lock combination of such receptacle, or with access to any electronic copies, or online access to, the Manual. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's home office shall be controlling.

8 CONFIDENTIAL INFORMATION

- 8.1 *Acknowledgement and Agreement with respect to Confidentiality.* Franchisee acknowledges that its entire knowledge of the operation of a Stores, including without limitation the Manual, the method of marketing, pricing, servicing and dispensing of Cartridges and related merchandise and products, services, standards and retail store operating procedures of Stores, customer names and addresses, is derived from information disclosed to Franchisee by Franchisor and that such information is proprietary, confidential and the trade secret of Franchisor. Franchisee agrees that it will maintain the absolute confidentiality of all such information during and after the term of the franchise and that it will not use any such information in any other business or in any manner not specifically authorized or approved in writing by Franchisor, whether during or after the term of this Agreement.
- 8.2 *Limits on Disclosing Confidential Information.* Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to operate Stores.
- 8.3 *What is Confidential.* Unless designated otherwise in writing by Franchisor, any and all information, knowledge and know-how, including, without limitation, drawings, materials, computer equipment, other equipment, specifications, techniques, retail store systems, and other data, shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure by Franchisor to Franchisee, had become a part of the public domain, through non-wrongful publication or communication by others; or which, after disclosure to Franchisee by Franchisor, becomes a part of the public domain, through non-wrongful publication or communication by others.
- 8.4 *Remedies for Breach.* Due to the special and unique nature of the confidential information, Proprietary Marks, and Manual of Franchisor, Franchisee hereby agrees and acknowledges that Franchisor shall be entitled to seek immediate equitable remedies, including but not limited to, restraining orders and injunctive relief in order to safeguard such proprietary, confidential, unique, and special information of Franchisor and that money damages alone would be an insufficient remedy with which to compensate Franchisor for any breach of the terms of Sections 7 and 8 of this Agreement. All employees of Franchisee having access to the confidential and proprietary information agreements or other proprietary information of Franchisor shall be required to execute confidential information agreements in the form appended hereto as Exhibit E.

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Franchisee	Franchisor

9 **MODIFICATION OF THE SYSTEM**

Franchisee recognizes and agrees that from time to time hereafter Franchisor may change or modify the System presently identified by the Proprietary Marks, including, without limitation, the adoption and use of new, different or modified trade names, trademarks, service marks or copyrighted materials, new products, new equipment or new techniques. Upon direction of Franchisor, Franchisee shall immediately discontinue its use of any part of the System and accept, use and display for the purpose of this Agreement any additions to the System, as if they were part of this Agreement at the time of execution hereof. Franchisee shall make such expenditures as are reasonably required by such changes or modifications in the System. Franchisee shall not change, modify or alter the System in any way.

10 **ADVERTISING**

10.1 *Franchisee's Advertising Commitment.* For each Week during the term of this Agreement, Franchisee shall contribute an amount which, in the aggregate, is equal to four percent (4%) of the Gross Revenues of the Stores during the preceding Week (the "Advertising Commitment"). The Advertising Commitment shall be paid by Franchisee in the manner required under Section 10.2 below (and as otherwise provided in this Section 10). In addition to the Advertising Commitment, Franchisee shall undertake and complete the Grand Opening Advertising Program, as provided in Section 10.8 below.

10.2 *Allocation of the Advertising Commitment.* Franchisee's Advertising Commitment shall be paid to the Advertising Fund, or to any Regional Ad Fund established pursuant to Section 10.4 below, or on local advertising and promotion, in such proportions as Franchisor shall have the right to designate from time-to-time; provided that Franchisee shall not be required to contribute or expend, in total, more than the amount of the Advertising Commitment.

10.3 *Advertising Fund.* The Advertising Fund shall be maintained and administered by Franchisor or its designee, as follows:

10.3.1 Franchisor or its designee shall have the right to direct all advertising programs, as well as all aspects thereof, including without limitation, the concepts, materials, and media used in such programs and the placement and allocation thereof Franchisee agrees and acknowledges that the Advertising Fund is intended to maximize general public recognition, acceptance, and use of the System; and that Franchisor and its designee are not obligated, in administering the Advertising Fund, to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Advertising Fund.

10.3.2 The Advertising Fund, all contributions thereto, and any earnings thereon, shall be used exclusively (except as otherwise provided in this Section 10.3) to meet any and all costs of maintaining, administering, directing, conducting, and preparing advertising,

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marketing, public relations and/or promotional programs and materials, and any other activities which Franchisor believes will enhance the image of the System, including, among other things, the costs of preparing and conducting media advertising campaigns; direct mail advertising; marketing surveys and other public relations activities; employing advertising and/or public relations agencies to assist therein; purchasing promotional items, conducting and administering visual merchandising, point of sale, and other merchandising programs; and providing promotional and other marketing materials and services to the Stores operated under the System.

10.3.3 Franchisee shall contribute to the Advertising Fund in the manner specified in Section 10.2 above. All sums paid by Franchisee to the Advertising Fund shall not be used to defray any of Franchisor's expenses, except that fifteen percent (15%) of the monies in the Advertising Fund shall be paid to Franchisor as compensation for such reasonable costs and overhead as Franchisor may incur in activities reasonably related to the direction and implementation of the Advertising Fund and advertising programs for franchisees and the System, including, among other things, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs. The Advertising Fund and its earnings shall not otherwise inure to the benefit of Franchisor. Franchisor or its designee shall maintain separate bookkeeping accounts for the Advertising Fund.

10.3.4 The Advertising Fund is not and shall not be an asset of Franchisor, nor a trust, and Franchisor does not assume any fiduciary obligation to Franchisee for maintaining, directing or administering the Advertising Fund or for any other reason. A statement of the operations of the Advertising Fund as shown on the books of Franchisor shall be prepared annually by Franchisor and shall be made available to Franchisee.

10.3.5 Although the Advertising Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate the Advertising Fund. The Advertising Fund shall not be terminated, however, until all monies in the Advertising Fund have been expended for advertising and/or promotional purposes.

10.4 *Regional Ad Fund.* Franchisor shall have the right to designate any geographical area for purposes of establishing a regional advertising fund ("**Regional Ad Fund**"). If a Regional Ad Fund for the geographic area in which the Store is located has been established at the time Franchisee commences operations hereunder, Franchisee shall immediately become a member of such Regional Ad Fund. If a Regional Ad Fund for the geographic area in which the Store is located is established during the term of this Agreement, Franchisee shall become a member of such Regional Ad Fund within thirty (30) days after the date on which the Regional Ad Fund commences operation. In no event shall Franchisee be required to be a member of more than one (1) Regional Ad Fund. The following provisions shall apply to each such Regional Ad Fund:

10.4.1 Each Regional Ad Fund shall be organized and governed in a form and manner, and shall commence operations on a date, approved in advance by Franchisor in writing. Unless

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otherwise specified by Franchisor, the activities carried on by each Regional Ad Fund shall be decided by a majority vote of its members. Any Stores that Franchisor operates in the region shall have the same voting rights as those owned by its franchisees. Each Store owner shall be entitled to cast one (1) vote for each Store owned.

10.4.2 Each Regional Ad Fund shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Franchisor's approval, standardized promotional materials for use by the members in local advertising and promotion.

10.4.3 No advertising or promotional plans or materials may be used by a Regional Ad Fund or furnished to its members without the prior approval of Franchisor, pursuant to the procedures and terms as set forth in Section 10.7 below.

10.4.4 Franchisee shall submit its required contribution to the Regional Ad Fund at the time required under Section 10.2 above, together with such statements or reports as may be required by Franchisor or by the Regional Ad Fund with Franchisor's prior written approval. Any contributions made to the Regional Ad Fund will be credited towards Franchisee's local advertising and promotion expenditures required under Section 10.10 below. If so requested by Franchisor in writing, Franchisee shall submit its payments and reports to the Regional Ad Fund directly to Franchisor for distribution to the Regional Ad Fund.

10.4.5 Although once established, each Regional Ad Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate any Regional Ad Fund. A Regional Ad Fund shall not be terminated, however, until all monies in that Regional Ad Fund have been expended for advertising and/or promotional purposes.

10.5 *Standards for Advertising.* All local advertising and promotion by Franchisee shall be in such media, and of such type and format as Franchisor may approve; shall be conducted in a dignified manner; and, shall conform to such standards and requirements as Franchisor may specify. Franchisee shall not use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 10.7 below.

10.6 *Advertising Materials.* Franchisor shall make available to Franchisee from time to time, at Franchisee's expense, advertising plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, community relations programs, and similar advertising and promotional materials for use in local advertising and promotion. At Franchisee's request, Franchisor may also prepare advertising materials for use by Franchisee. Franchisor reserves the right to charge a reasonable fee to Franchisee for the preparation of such materials.

10.7 *Franchisor's Approval of all Proposed Advertising Plans and Materials.* For all proposed advertising, marketing, and promotional plans, Franchisee (or the Regional Ad Fund, where

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applicable) shall submit samples of such plans and materials to Franchisor (by means described in Section 23 below), for Franchisor's review and prior written approval (except with respect to prices to be charged by Franchisee). If written approval is not received by Franchisee or the Regional Ad Fund from Franchisor within fifteen (15) days of the date of receipt by Franchisor of such samples or materials, Franchisor shall be deemed to have disapproved them. Franchisee acknowledges and agrees that any and all copyright in and to advertising and promotional materials developed by or on behalf of Franchisee shall be the sole property of Franchisor, and Franchisee agrees to execute such documents (and, if necessary, require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision.

10.8 *Grand Opening Advertising Program.* Franchisee shall develop and submit to Franchisor, for Franchisor's prior written approval, a grand opening marketing plan; however, if Franchisor does not approve Franchisee's proposed plan, or if Franchisee does not submit a plan, Franchisor shall have the right (but not the obligation) to prepare a grand opening marketing plan for Franchisee (either way, the "**Opening Plan**"). In addition to (and not in place of) the Advertising Commitment, Franchisee shall expend a minimum of Five Thousand Dollars (\$5,000) for grand opening advertising and promotional programs in conjunction with the Store's initial grand opening, in accordance with the Opening Plan (the "**Grand Opening Advertising Program**"). Franchisee shall execute and complete the Grand Opening Advertising Program within two (2) months after the Store commences operation. For the purposes of this Agreement, the Grand Opening Advertising Program shall be considered local advertising and promotion, as provided under Section 10.10 below.

10.9 *Minimum Standards Only.* Franchisee understands and acknowledges that the required contributions and expenditures are minimum requirements only, and that Franchisee may, and is encouraged by Franchisor to, expend additional funds for local advertising and promotion of a local nature which will focus on disseminating advertising directly related to Franchisee's Stores.

10.10 *Local Advertising and Promotion.* As used in this Agreement, the term "**local advertising and promotion**" shall consist only of the direct costs of purchasing and producing advertising materials (including, but not limited to, camera-ready advertising and point of sale materials), media (space or time), and those direct out-of-pocket expenses related to costs of advertising and sales promotion spent by Franchisee in its local market or area, advertising agency fees and expenses, postage, shipping, telephone, and photocopying; however, the parties expressly agree that local advertising and promotion shall not include costs or expenses incurred by or on behalf of Franchisee in connection with any of the following:

10.10.1 Salaries and expenses of any employees of Franchisee, including salaries or expenses for attendance at advertising meetings or activities, or incentives provided or offered to such employees, including discount coupons;

10.10.2 Charitable, political, or other contributions or donations;

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10.10.3 The value of discounts provided to consumers; and

10.10.4 The cost of Cartridges and products.

10.11 *Yellow Page Listings.* Franchisee shall maintain a business phone and advertise continuously in the classified or Yellow Pages of the local telephone directory under listings deemed appropriate by Franchisor using mats of the type and size approved in advance by Franchisor. When more than one (1) A-Store and/or B-Store serves a metropolitan area, classified advertisements shall list all A-Stores and B-Stores operating in compliance with their franchise agreements (as of the date the advertisement is placed) within the distribution area of such classified directories, and Franchisee shall contribute its equal share in the cost of such advertisement. The requirements of this Section shall be in addition to the requirements with respect to the Advertising Commitment.

11 TECHNOLOGY

11.1 *Computer Systems and Required Software.*

11.1.1 Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among Stores, including without limitation: (a) back office and point of sale systems, data, audio, video, and voice storage, retrieval, and transmission systems for use at Stores, between or among Stores, and between and among Franchisee's Stores and Franchisor and/or Franchisee; (b) Cash Register Systems; (c) physical, electronic, and other security systems; (d) printers and other peripheral devices; (e) archival back-up systems; and (f) internet access mode (e.g., form of telecommunications connection) and speed (collectively, the "Computer System").

11.1.2 Franchisor shall have the right, but not the obligation, to develop or have developed for it, or to designate: (a) computer software programs and accounting system software that Franchisee must use in connection with the Computer System ("**Required Software**"), which Franchisee shall install; (b) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install; (c) the tangible media upon which such Franchisee shall record data; and (d) the database file structure of Franchisee's Computer System.

11.1.3 Franchisee install and use the Computer System and Required Software.

11.1.4 Franchisee shall implement and periodically make upgrades and other changes to the Computer System and Required Software as Franchisor may reasonably request in writing (collectively, "**Computer Upgrades**").

11.1.5 Franchisee shall afford Franchisor unimpeded access to Franchisee's Computer System and Required Software as Franchisor may request, in the manner, form, and at the times requested by Franchisor. Franchisor shall have the right at any time to retrieve and use

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Franchisee

Franchisor

such data and information from Franchisee's Computer System and Required Software that Franchisor deems necessary or desirable. In view of the contemplated interconnection of computer systems and the necessity that such systems be compatible with each other to the greatest practical extent, Franchisee agrees to comply with Franchisor's standards and specifications for all items associated with Franchisee's Computer System and Required Software, and with respect to Computer Upgrades, and to otherwise operate its Computer System in accordance with Franchisor's standards and specifications.

11.2 *Data.* All data provided by Franchisee, uploaded to Franchisor's system from the Franchisee's system, and/or downloaded from the Franchisee's system to Franchisor's system is and will be owned exclusively by Franchisor, and Franchisor will have the right to use such data in any manner that Franchisor deems appropriate without compensation to Franchisee. In addition, all other data created or collected by Franchisee in connection with the System, or in connection with Franchisee's operation of the business (including but not limited to consumer and transaction data), is and will be owned exclusively by Franchisor during the term of, and following termination or expiration of, this Agreement. Copies and/or originals of such data must be provided to Franchisor upon Franchisor's request. Franchisor hereby licenses use of such data back to Franchisee, at no additional cost, solely for the term of this Agreement and solely for Franchisee's use in connection with the business franchised under this Agreement.

11.3 *Privacy.* Franchisor may, from time-to-time, specify in the Manual or otherwise in writing the information that Franchisee shall collect and maintain on the Computer System installed at the Stores, and Franchisee shall provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained. All data pertaining to or derived from the Stores (including without limitation data pertaining to or otherwise about Store customers) is and shall be the exclusive property of Franchisor, and Franchisor hereby grants a royalty-free non-exclusive license to Franchisee to use said data during the term of this Agreement.

11.3.1 Franchisee shall abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information ("**Privacy Laws**").

11.3.2 Franchisee shall comply with Franchisor's standards and policies pertaining to Privacy Laws. If there is a conflict between Franchisor's standards and policies pertaining to Privacy Laws and actual applicable law, Franchisee shall: (a) comply with the requirements of applicable law; (b) immediately give Franchisor written notice of said conflict; and (c) promptly and fully cooperate with Franchisor and Franchisor's counsel in determining the most effective way, if any, to meet Franchisor's standards and policies pertaining to Privacy Laws within the bounds of applicable law.

11.3.3 Franchisee shall not publish, disseminate, implement, revise, or rescind a data privacy policy without Franchisor's prior written consent as to said policy.

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Franchisee	Franchisor

- 11.4 *Telecommunications.* Franchisee shall comply with Franchisor's requirements (as set forth in the Manual or otherwise in writing) with respect to establishing and maintaining telecommunications connections between Franchisee's Computer System and Franchisor's Extranet and/or such other computer systems as Franchisor may reasonably require. The term "**Extranet**" means a private network based upon Internet protocols that will allow users inside and outside of Franchisor's headquarters to access certain parts of Franchisor's computer network via the Internet.
- 11.5 *Extranet.* Franchisor may establish an Extranet (but is not required to do so or to maintain an Extranet). If Franchisor does establish an Extranet, then Franchisee shall comply with Franchisor's requirements (as set forth in the Manual or otherwise in writing) with respect to connecting to the Extranet, and utilizing the Extranet in connection with the operation of Franchisee's Stores. The Extranet may include, without limitation, the Manuals, training other assistance materials, and management reporting solutions (both upstream and downstream, as Franchisor may direct). Franchisee shall purchase and maintain such computer software and hardware (including but not limited to telecommunications capacity) as may be required to connect to and utilize the Extranet.
- 11.6 *Websites.* Unless otherwise approved in writing by Franchisor, Franchisee shall not establish a separate Website, but shall only have one or more references or webpage(s), as designated and approved in advance by Franchisor, within Franchisor's Website (the term "**Website**" is defined to mean a group of related documents that can be accessed through a common internet address). However, if Franchisor approves, in writing, a separate Website for Franchisee (which Franchisor is not obligated to approve), then each of the following provisions shall apply:
- 11.6.1 Franchisee specifically acknowledges and agrees that any Website owned or maintained by or for the benefit of Franchisee shall be deemed "advertising" under this Agreement, and will be subject to (among other things) Franchisor's approval under Section 10.7 above.
- 11.6.2 Franchisee shall not establish or use any Website without Franchisor's prior written approval.
- 11.6.3 Before establishing any Website, Franchisee shall submit to Franchisor, for Franchisor's prior written approval, a sample of the proposed Website domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including, without limitation, meta tags) in the form and manner Franchisor may reasonably require;
- 11.6.4 Franchisee shall not use or modify such Website without Franchisor's prior written approval as to such proposed use or modification.
- 11.6.5 In addition to any other applicable requirements, Franchisee shall comply with the Standards and specifications for Websites that Franchisor may periodically prescribe in the Manuals or otherwise in writing.

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11.6.6 If required by Franchisor, Franchisee shall establish such hyperlinks to Franchisor's Website and others as Franchisor may request in writing.

- 11.7 *Cash Registers.* Franchisee shall record all sales on computer-based point of sale systems approved by Franchisor or on such other types of cash registers as may be designated by Franchisor in the Manual or otherwise in writing ("**Cash Register Systems**"), which shall be deemed part of the Franchisee's Computer System. Franchisee shall utilize computer-based point-of-sale cash registers which are fully compatible with any program or system which Franchisor, in its discretion, may employ, and Franchisee shall record all Gross Revenues and all sales information on such equipment.
- 11.8 *Online Use of Marks and E-mail Solicitations.* Franchisee shall not use the Proprietary Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e mail address, domain name, and/or other identification of Franchisee in any electronic medium. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without first obtaining Franchisor's written consent as to: (a) the content of such e-mail advertisements or solicitations; and (b) Franchisee's plan for transmitting such advertisements. In addition to any other provision of this Agreement, Franchisee shall be solely responsible for compliance with any laws pertaining to sending e-mails including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "CAN-SPAM Act of 2003").
- 11.9 *No Outsourcing without Prior Written Approval.* Franchisee shall not hire third party or outside vendors to perform any services or obligations in connection with the Computer System, Required Software, or any other of Franchisee's obligations without Franchisor's prior written approval therefor. Franchisor's consideration of any proposed outsourcing vendor(s) may be conditioned upon, among other things, such third party or outside vendor's entry into a confidentiality agreement with Franchisor and Franchisee in a form that is reasonably provided by Franchisor. The provisions of this Section 11.9 are in addition to and not instead of any other provision of this Agreement.
- 11.10 *Changes to Technology.* Franchisee and Franchisor acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor shall have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and Franchisee agrees that it shall abide by those reasonable new standards established by Franchisor as if this Section 11 were periodically revised by Franchisor for that purpose.
- 11.11 *E-Mail and Fax Communication.* Franchisee acknowledges and agrees that exchanging information with Franchisor by e-mail and fax is an important way to enable quick, effective, and efficient communication, and that Franchisor is entitled to rely upon Franchisee's use of e-mail and faxes for communicating as part of the economic bargain underlying this Agreement. To facilitate the use of e-mail and fax to exchange information, Franchisee authorizes the

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transmission of e-mail by Franchisor and Franchisor's employees, vendors, and affiliates (on matters pertaining to the business contemplated hereunder) (together, "Official Senders") to Franchisee during the term of this Agreement.

11.11.1 In order to implement the terms of this Section 11.11, Franchisee agrees that: (a) Official Senders are authorized to send e-mails and faxes to those of Franchisee's employees as Franchisee may occasionally designate for the purpose of communicating with Franchisor; (b) it will cause its officers, directors, and employees (as a condition of their employment or position with Franchisee) to give their consent (in an e-mail, electronically, or in a pen-and-paper writing, as Franchisor may reasonably require and in the form appended to this Agreement as Exhibit E or another form that Franchisor may reasonably require) to Official Senders' transmission of e-mails and faxes to those persons, and that such persons shall not opt-out, or otherwise ask to no longer receive e-mails, from Official Senders during the time that such person works for or is affiliated with Franchisee; and (c) it will not opt-out, or otherwise ask to no longer receive e-mails and/or faxes, from Official Senders during the term of this Agreement.

11.11.2 The consent given in this Section 11.11 shall not apply to the provision of notices by either party under this Agreement using e-mail unless the parties otherwise agree in a pen-and-paper writing signed by both parties.

12 ACCOUNTING AND RECORDS

12.1 *Books and Records.* Franchisee shall maintain during the term of this Agreement, and shall preserve for the time period specified in the Manual, full, complete, and accurate books, records, and accounts in accordance with the standard accounting system prescribed by Franchisor in the Manual or otherwise in writing. Franchisee shall retain during the term of this Agreement and for three (3) years thereafter all books and records related to the Stores, including without limitation, sale checks, purchase orders, invoices, payroll records, customer lists, check stubs, sales tax records and returns, cash receipts and disbursement journals and general ledgers.

12.2 *Franchisee's Reports to Franchisor.* In addition to the requirements of Section 2.10 above, Franchisee shall:

12.2.1 Provide to Franchisor on or before the end of each calendar quarter, in the form approved by Franchisor, a balance sheet and profit and loss statement and an activity report for the preceding calendar quarter.

12.2.2 Submit to Franchisor within ninety (90) days after the end of each fiscal year during the term of this Agreement, a profit and loss statement for such fiscal year and a balance sheet as of the last day of such fiscal year, prepared on an accrual basis in accordance with U.S. generally accepted accounting principles ("GAAP"), including but not limited to all adjustments necessary for fair presentation of the financial statements. Franchisee

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Franchisee	Franchisor

shall certify such financial statements to be true and correct. Franchisor reserves the right to require Franchisee to prepare (or cause to be prepared) and provide to Franchisor annual financial statements, prepared in accordance with GAAP, audited by an independent certified public accountant. Franchisee shall provide such additional information, if any, as Franchisor may reasonably require in order for Franchisor to meet its obligations under GAAP.

12.2.3 Franchisee shall maintain its books and records using the templates and categories that Franchisor reasonably provides to Franchisee.

12.2.4 Submit to Franchisor such other periodic reports, forms and records as specified, and in the manner and at the time as specified in the Manual or as Franchisor shall otherwise require in writing from time to time (including without limitation the requirement that Franchisee provide or make available to Franchisor certain sales and financial information in electronic format and/or by electronic means).

12.3 *Franchisor's Right to Inspect and Audit.* Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records, and sales and income tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Franchisee. If an inspection should reveal that any payments have been understated in any report to Franchisor, then Franchisee shall immediately pay Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one-and-one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less. If an inspection is necessitated because Franchisee fails to provide sales reports or if an inspection discloses an understatement in any report of five percent (5%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses, and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

13 STANDARDS OF QUALITY AND PERFORMANCE

13.1 *Details of Operation.* Franchisee understands and acknowledges that every detail of operating the Stores is important to Franchisee, Franchisor, and other franchisees in the System in order to develop and maintain high operating standards, to increase the demand for the services and products sold by all franchisees, and to protect Franchisor's reputation and goodwill.

13.2 *Comply with the Agreement, including the Manual.* Franchisee shall comply with all requirements set forth in this Agreement, the Manual, and other written policies supplied to Franchisee by Franchisor. The specifications, standards, operating procedures, and rules that Franchisor prescribes periodically in the Manual or otherwise in writing shall constitute provisions of this Agreement as if fully set forth in the text of this Agreement; consequently, all references to "the Agreement" in this Agreement shall include all such mandatory specifications, standards, and operating procedures and rules.

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Franchisee	Franchisor

13.3 *Opening of the Store.* Franchisee shall commence operation of the Store not later than one hundred eighty (180) days after the execution of this Agreement. Before opening the Store, Franchisee shall have complied with all of Franchisor's pre-opening standards and specifications. If Franchisee for any reason fails to commence operation within the period of time required in this Section 13.3, such failure shall be considered a default and Franchisor may terminate this Agreement as provided in Section 18 below.

13.4 *Maintenance and Renovation of the Stores.*

13.4.1 Franchisee shall at all times maintain the Stores in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, display cases and racks, and other decor as Franchisor may reasonably direct. If at any time in Franchisor's judgment the general state of repair or the appearance of the premises of the Stores or their equipment, fixtures, signs or decor does not meet Franchisor's quality control and standards therefor, Franchisor shall so notify Franchisee, specifying the action to be taken by Franchisee to correct such deficiency. If Franchisee fails or refuses to initiate within thirty (30) days after receipt of such notice, and thereafter continue, a *bona fide* program to complete any required maintenance, Franchisor shall have the right (but not the obligation), in addition to all other remedies, to enter upon the premises of the Store and effect such repairs, painting, maintenance or replacements of equipment, fixtures or signs on behalf of Franchisee and Franchisee shall pay the entire costs thereof on demand.

13.4.2 Not more than once every five (5) years during the term of this Agreement, and again as a pre-condition to renewal as set forth above in Section 3.2, Franchisee shall refurbish the Stores at its expense to conform to the interior and exterior store design, trade dress, signage, furnishings, decor, color schemes, and presentation of the Proprietary Marks in a manner consistent with the image then in effect for new Stores, including without limitation remodeling, redecoration, and modifications to existing improvements, as Franchisor may require in writing as well as replacement of worn out or obsolete fixtures, floor coverings and signs, and repair to the exterior and interior of the Store (collectively, "**Facilities Remodeling**").

13.4.3 In addition to Facilities Remodeling, Franchisee shall make such Computer Upgrades as may be required by Franchisor pursuant to Section 11.1 above.

13.4.4 Franchisee shall have six (6) months after receipt of Franchisor's written notice within which to complete Facilities Remodeling.

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Franchisee	Franchisor

13.4.5 Franchisee shall make no material alterations to the premises of the Stores nor shall Franchisee make material replacements of or alterations to the equipment, fixtures or signs of the Stores without Franchisor's prior written approval.

13.5 *Merchandise Offered for Sale.* Recognizing that the goodwill and value of the System and the Proprietary Marks are inextricably linked to the character and integrity of the products offered for sale by Franchisee and other franchisees under the Proprietary Marks, Franchisee agrees that it shall maintain the highest standards of care with respect to the identity, nature, character, and provenance of all merchandise that Franchisee offers for sale. In particular, and without limiting the generality of the foregoing, Franchisee agrees that it shall comply with the following requirements:

13.5.1 Franchisee shall offer for sale, sell, and service at the Stores all types, categories and quantities of Cartridges and related merchandise, products and services that Franchisor periodically authorizes in writing.

13.5.2 Franchisee shall not offer for sale or sell at or from Stores or any other premises Franchisee occupies any products that Franchisor has not specifically approved in writing.

13.5.3 Franchisee shall at all times maintain a representative inventory of Cartridges and related merchandise and products, and other products, materials and supplies of such quantities and quality that will permit operation of the Stores at maximum capacity as prescribed by Franchisor.

13.5.4 Any items bearing trademarks, likenesses, copyrighted material, or other proprietary material must be licensed from the proper owner or agent of the owner and evidence of a valid license must be available for inspection by the Franchisor and/or law enforcement authorities.

13.5.5 Franchisee shall maintain in sufficient supply, and to use and/or sell at all times only such products, materials, supplies, and paper goods as conform to Franchisor's written standards and specifications, and Franchisee shall refrain from deviating therefrom by the use or offer of any nonconforming items without Franchisor's specific prior written consent. Franchisee also shall maintain in the Store at least the level of minimum inventory of finished product available for sale as Franchisor may periodically specify in the Manuals or otherwise in writing.

13.5.6 Franchisee shall sell or offer for sale only the items set forth in this Section 13.5; shall refrain from making any changes to the items offered or serviced at the Stores without Franchisor's prior written approval; shall refrain from any deviation from Franchisor's standards and specifications which shall be set forth in the Manual or otherwise in writing, without Franchisor's prior written consent; and shall discontinue selling and offering for sale any items, products, or services which Franchisor may, in its discretion, disapprove in writing at any time. If Franchisee deviates or proposes to deviate from

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Franchisor's standards and specifications, whether or not such deviation is approved by Franchisor, such deviation shall become the property of Franchisor. With respect to the offer, sale and servicing of all items, and products, Franchisee shall have sole discretion as to the prices to be charged to customers.

- 13.5.7 Franchisee shall purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment, decor, and signs as Franchisor shall specify; and to refrain from installing or permitting to be installed on or about the Store premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications.
- 13.5.8 Franchisee shall purchase all Cartridges, as well as supplies, materials, and other products used or offered for sale at the Stores solely from approved vendors (including manufacturers, distributors, and other sources) in accordance with Section 14.1 below. If Franchisee wishes to purchase any Cartridges or products from an unapproved vendor, Franchisee shall submit to Franchisor a written request for such approval in accordance with Section 14.1 below.
- 13.5.9 Franchisee shall be solely responsible for the quality of products that are sold by Franchisee.
- 13.5.10 Franchisee shall require all advertising and promotional materials, signs, decorations, and other items which may be designated by Franchisor to bear the Proprietary Marks in the form, color, location, and manner prescribed by Franchisor.
- 13.5.11 Franchisee grants Franchisor and its agents the right to enter upon the Store premises at any time for the purpose of conducting inspections. Franchisee shall cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, Franchisee shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Franchisee further agrees that Franchisee will reimburse Franchisor for its representative's time and travel expenses if an additional inspection at the Store is required when a violation has occurred and Franchisee has not corrected the violation.
- 13.5.12 Franchisor shall have the right to determine that any particular items offered for sale at the Store do not enhance the Proprietary Marks or the System and/or are incompatible with the standards of the System, and Franchisee shall discontinue the offer, sale, and display of any items so designated by Franchisor in writing.
- 13.5.13 Franchisee agrees to refrain from any merchandising, advertising or promotional practice which is unethical, deceptive, fraudulent, or which may be injurious to the business of Franchisor and/or other Stores or to the goodwill associated with the Proprietary Marks.

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Franchisee	Franchisor

- 13.6 *Licenses and Permits.* Franchisee shall secure and maintain in force and effect all required licenses, permits and certificates relating to the operation of Stores and shall operate the Stores in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all government regulations relating to occupational hazards and health, consumer protection, trade regulation, worker's compensation, unemployment insurance and withholding and payment of Federal and State income taxes and social security taxes and sales, use and property taxes.
- 13.7 *Supplies.* Franchisee shall maintain in sufficient supply, and use and/or sell at all times only such items, supplies, packaging, displays, boxes, bags, labels, forms, other paper products, and materials that conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any nonconforming items without Franchisor's specific prior written consent.
- 13.8 *Trained Staff; Full Efforts.* The Store shall at all times be under the direct, on-premises supervision of Franchisee (or a trained and competent employee). Franchisee shall keep Franchisor informed at all times of the identity of any employee(s) acting as manager(s) of the Store. Franchisee shall at all times faithfully, honestly and diligently perform its obligations hereunder and shall not engage in any business or other activities that will conflict with its obligations hereunder. Franchisee shall conduct business at the Store at all times in a peaceful manner, and shall at all times (and ensure that its employees at all times) treat all customers and vendors of the Store, as well as the Franchisor and other franchisees under the System, with the highest degree of care and respect. Franchisee shall also hire, engage, or utilize the full-time services of an outside salesperson to help promote the products and services provided at the Store.
- 13.9 *Legal Actions.* Franchisee shall notify Franchisor in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance, against Franchisee, any of its principals or employees, or the Stores, of any subpoena, order, writ, injunction, award or decree of any court, agency, or other governmental instrumentality.

14 **FRANCHISEE'S OBLIGATIONS TO PURCHASE FROM APPROVED SOURCES**

- 14.1 *Approved Vendors List.* From time to time, Franchisor shall provide to Franchisee a list of approved manufacturers, vendors and distributors ("**Approved Vendors List**"). Such list shall specify the manufacturer, vendor and distributor and the inventory products, fixtures, equipment, and signs which Franchisor has approved to be carried or used in the System. Franchisor may revise the Approved Vendors List from time to time in its sole discretion and such list shall be submitted to Franchisee as Franchisor deems advisable. If Franchisee proposes to offer for sale at a Store any brand of product, or to use in the operation of a Store any other inventory item or other material or supply which is not then approved by Franchisor as meeting its minimum specifications and quality standards, or to purchase any product from a vendor that is not then designated by Franchisor as an approved vendor, Franchisee shall first notify Franchisor and

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