

**EXHIBIT A TO THE  
RELAX THE BACK CORPORATION  
OFFERING CIRCULAR**

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**FRANCHISE AGREEMENT AND EXHIBITS**

**RELAX THE BACK CORPORATION**  
**FRANCHISE AGREEMENT**

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Franchisee

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Location

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Date of Agreement

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Franchise Agreement Number: \_\_\_\_\_

Location: \_\_\_\_\_, \_\_\_\_\_

**Relax The Back Corporation  
Franchise Agreement**

Date of this Agreement: \_\_\_\_\_

Franchisor: Relax The Back Corporation, a Delaware corporation

Franchisee: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

In a number of places in this Franchise Agreement, you're asked to initial certain items to show that they've been fully discussed with you, and read, understood and agreed to by you. Initialing those areas doesn't lessen the importance of other areas or mean they're not fully enforceable. Please initial below and at all other points indicated.

Your Initials: _____ / _____
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**1. INTRODUCTION, DEFINITIONS, COMPANY PHILOSOPHY AND PRELIMINARY AGREEMENTS.**

**1.1 Introduction.** We've developed methods of operating retail "brick and mortar" stores which offer a wide variety of back related and other products and services as authorized by us, from time-to-time, to be offered through Relax The Back® Stores. We refer to these businesses as "Relax The Back® Stores." We also have created a catalog and website which we use to market back-related products under the Relax The Back brand. We've made a strategic decision to use franchising to create a brand identity and maximize market penetration for the Relax The Back® brand, and to achieve and maintain a competitive edge in relevant marketplaces.

Your Relax The Back® franchise is a licensing arrangement, awarded for a specific, limited period of time, and your rights to use the Relax The Back® brand, the Marks and the System are subject to your remaining in full and constant compliance with this Agreement and the Manuals. Since we, and not you, own the Relax The Back® brand, the Marks and the System, you must use each of them only as permitted by us.

We selectively award franchises for qualified persons only to own and operate, Traditional Relax The Back® Stores using the Relax The Back® System and the Marks. You've applied for a franchise to own and operate a Traditional Relax The Back® Store and your application has been approved by us in reliance on the information you gave us in connection with your application.

You agree that your consistent and uniform presentation of the Relax The Back® brand, and compliance with this Agreement and the System in every detail, will be critical to our and your possible success and that of each Relax The Back® Franchisee, and to achieving a leading position for the Relax The Back® brand, positive top-of-mind awareness among consumers, superior market penetration and a competitive edge for all Relax The Back® Franchisees, as well as positively distinguishing each Relax The Back® outlet from the competition. These are basic business realities, since non-compliance would

adversely affect all Relax The Back® operators and place them in a disadvantageous position with respect to competitors, as well as hurting our image with the public. You also understand, and anticipate, that the System will be changed by us to meet competitive challenges, take advantage of commercial opportunities and for other reasons, in our Business Judgment; provided, however, that the terms of this Franchise Agreement can only be amended as provided in Section 19.9, below. Therefore, you're committed, and agree, to comply with each of your obligations under this Agreement, and follow the System in each and every detail as it's changed by us over time. Without those commitments and promises by you, this franchise would not be awarded to you.

**1.2 Definitions.** When we use various words or phrases in this Agreement, here's what they mean:

**"Affiliate"** – Any person or entity which controls, is controlled by or is under common control with another person or entity, any "immediate family member" of any person and any entity controlled by any of the foregoing.

**"Agreement"** – This Franchise Agreement.

**"Business Judgment"** – When we make a determination in our Business Judgment, it means that our decisions/actions are to be made in a commercially reasonable manner. Decisions/actions will be deemed commercially reasonable if we make them in what we believe is the interests of the Relax The Back® System, even if alternative decisions and/or actions might also be commercially reasonable and/or a particular decision/action may have negative consequences for a particular franchisee or group of franchisees. In any case, you, we and all other Relax The Back® Franchisees have a collective interest in working within a franchise system with the flexibility to adjust to business conditions, including but not limited to the competitive environment, new regulatory developments and emerging business opportunities. Therefore, you and we agree that the ultimate decision-making responsibility for the Relax The Back® system must be vested in us. No franchisee or other party (including any third party acting as an arbitrator or trier of fact) is entitled to substitute its judgment for ours, so long as we act in compliance with all legal requirements in a commercially reasonable manner and in the interests of the Relax The Back® System.

**"Designated Equipment"** – Equipment that meets our requirements and which you must obtain and use in the operation of your Relax The Back® Store.

**"Face-to-Face Meeting"** – A meeting in which all of the disputants are physically present at the same time and place, and does not include teleconferencing or any other electronic form of communication.

**"Franchise"** – The right to operate a single Traditional Relax The Back® Store at the Premises under the terms of this Agreement.

**"Franchisee Association Board" or "FAB"** – The advisory group selected in accordance with Section 7.7 of this Agreement, which shall provide Input as provided in this Agreement and as we may request from time to time.

**"Franchisee Association"** – The association (if any) then representing a majority of Relax The Back Franchisees in Good Standing.

**"Franchised Business"** – A Relax The Back® Store business which provides to customers a wide variety of back-related and other products and services as authorized by us while using the Marks and System, as expressly permitted by us from time to time and in accordance with the terms of this Agreement.

**"Franchisor"** – Relax The Back Corporation, a Delaware corporation.



**"Franchisor-Related Persons/Entities"** – Relax The Back Corporation, the Marketing Fund, the Marketing Committee, the Merchandising Committee, FAB and each and all of the following, whether past, current and/or future: each and all company(ies) and/or person(s) acting through, in concert, affiliated and/or associated in any way with, us and/or any of the foregoing, any persons/entities controlling, controlled by and/or under common control with us and/or any of the foregoing, each and all of the partners, shareholders, officers, directors, agents, attorneys, accountants, and/or employees of us and/or any of the foregoing, as well as each and all of the predecessors, successors and/or assigns of us and/or any of the foregoing.

**"General Release"** – A general release, in form prescribed by us, of any and all claims, liabilities and/or obligations, of any nature whatsoever, including (but not limited to) those arising between the date of this Agreement and the date of any such release, however arising, known or unknown, whether against us and/or any or all of the Franchisor-Related Persons/Entities, and whether by you, any owner of you (if you are or become a business entity) and/or any affiliate of any of the foregoing. A copy of our general releasing language as currently used by us (which is subject to change) is attached as Exhibit 1.2 (A) and is approved by you.

**"Good Standing"** – You are not in "Good Standing" if this Franchise Agreement is subject to being terminated by us.

**"Immediate Family"** – With respect to any person, "immediate family" includes that person's spouse and/or domestic partner and each of their respective parents, grandparents, siblings, children, grandchildren, aunts, uncles, cousins, nieces and/or nephews (including step and/or adoptive family members) years or older. For the purposes of this definition, if the franchisee is a business entity, "any person" includes a person with a 10% or greater interest in the franchisee entity, or who is an officer, director or holds a similar position with such entity.

**"Input"** – When we refer to input (or use a similar word or phrase) from the FAB or any other franchisee group, it means advice and suggestions. We will retain the ultimate decision-making authority and responsibility for all matters for which Input is sought. Input will not be binding on us. Approval or consent by the FAB, the Franchisee Association, or any other franchisee group will not be required as a pre-condition to any decision and/or action we may take except in those specific instances stated in this Agreement.

**"Manuals"** – Written, video, audio and/or software media (including materials distributed electronically), regardless of title, which are produced by us or an agent of ours and which contain specifications, standards, policies and procedures prescribed by us and to be followed by you in the operation of your Relax The Back® Store and your performance under this Agreement, including (but not limited to) all goods and services to be sold and/or provided at or from your Relax The Back® Store and/or in association with the Marks.

**"Marketing Committee"** – The advisory group comprised of members selected in accordance with Section 7.8 of this Agreement, which may be requested by us to provide Input from time to time regarding marketing-related issues.

**"Marks"** – The trademarks, service marks and other commercial symbols now and/or in the future owned by (or licensed to) us and which we designate to be used to identify the services and/or products offered by traditional Relax The Back® Stores, including (but not limited to) the mark "Relax The Back®", the Trade Dress and certain associated logos.

**"Merchandising Committee"** – The advisory group comprised of members selected in accordance with Section 7.8 of this Agreement, which may be requested by us to provide Input from time to time regarding merchandising-related issues.

**"PUA" or "Per Unit Average"** – The average Gross ~~Volume~~ Adjusted Gross Sales for all Relax The Back® Stores during the most recent six (6) month period from the measuring date.

**"Premises"** – The location at which you will operate a single Relax The Back® Store.

**"Products" and "Services"** – Products and services designated by us for use, sale or otherwise provided and/or used at or from your Relax The Back® Store and/or in association with the Marks.

**"Relax The Back® Store"** – The Traditional Relax The Back® Store you're franchised to operate pursuant to this Agreement.

**"Repurchase"** – Repurchase includes (but is not limited to) any acquisition by us (and/or any of the Franchisor-Related Persons/Entities), whether by exercise of right-of-first-refusal or otherwise, of any of your rights in and/or to any of the following: (1) this Agreement; (2) the Franchise; (3) the ownership of the Franchisee; (4) your Relax The Back® Store; or (5) any assets associated with any of the foregoing.

**"Similar Business"** – Any enterprise (including not-for-profit operations) that offers or is otherwise involved or deals with any goods and/or services which are now or in the future authorized by us to be offered at or from Relax The Back® Stores, including any business awarding franchises or licenses to others to operate or be involved with any such business.

**"Store Vicinity"** – The geographical area established by us within which a proposed site must be located as provided in Exhibit 2.2. The Store Vicinity is identified so that we can properly administer our franchise operations and is only for the purposes of ensuring that you seek and locate a site for our approval within a specified geographical area. It is not meant to be, nor is it, a franchise 'territory' of any sort.

**"System"** – The distinctive format and method of doing business developed, used and/or modified by us, in our Business Judgment, for the operation of a Relax The Back® Store, and subject to change by us at any time and in our Business Judgment.

**"Territory"** – The geographical area described in Exhibit 2.2.

**"Trade Dress"** – The Relax The Back® Store design and image authorized by us and subject to change by us at any time and in our Business Judgment.

**"Traditional Relax The Back® Store"** – A "Traditional Relax The Back® Store" means a standard "brick and mortar" retail facility located in a free-standing building or a shopping center accessible to the general public, offering a wide variety of back related and other products and services as authorized by us, from time-to-time, and using the Marks and Relax The Back® System.

**"Us," "We," "Our" or "Franchisor"** – Relax The Back Corporation, a Delaware corporation.

**"You," "Your" or "Franchisee"** – The individual(s) signing this Agreement as Franchisee. (If there's more than one Franchisee, each is jointly and severally obligated under this Agreement and all other agreements with us relating to your Traditional Relax The Back Store (If Franchisee is a corporate entity, then each owner thereof shall be required to sign the then current form of Owners Guaranty, the present form of which is attached to this Franchise Agreement as Exhibit 1.2 (B) and incorporated herein.)

**1.3 Full Performance.** You will perform your obligations under this Agreement faithfully and honestly. You will continuously exert commercially reasonable efforts to promote and enhance your Relax The Back® Store, and maximize its business volume for the full term of this Agreement. You will

not engage in any other business or activity that may conflict with your obligations under this Agreement or reduce the ~~Gross Volume~~**Adjusted Gross Sales** of your Relax The Back® Store. The Franchise awarded to you by this Agreement is to operate the Relax The Back® Store and to use the Marks and the System only for purposes of conducting a business in accordance with the provisions of this Agreement, the Manuals or as otherwise communicated to you from time to time. You will not (without our prior written consent) operate a Relax The Back® Store or any Similar Business at any location, or servicing customers, outside the Territory, without our prior written approval. You must not without our prior written consent: (a) use the System or the Marks at any other location or for any purpose other than to conduct your Relax The Back® Store; or (b) engage in the operation of any wholesale business; or (c) conduct any activities from the Premises other than the operation of your Relax The Back® Store.

**1.4 Importance of Uniformity.** You acknowledge that every detail of your Relax The Back® Store is important—not only to you, but to us and to all Relax The Back® Franchisees and associates—in order to: (a) develop and maintain high and uniform operating standards based on the concepts of consistency, reliability and professionalism; (b) increase the demand for the programs, products and services sold by Relax The Back® Stores; and (c) establish and maintain a reputation for operating uniform and high quality businesses exemplifying high client servicing standards, ethical business practices and integrity. You also acknowledge that a fundamental requirement of this Agreement is the operation of your Relax The Back® Store in accordance with Relax The Back® System Standards. Your operation of your Relax The Back® Store in accordance with the Relax The Back® System Standards is essential to preserve the goodwill of the Marks and of all Relax The Back® Stores. Therefore, during the term of this Agreement, you must at all times develop, maintain and operate your Relax The Back® Store in accordance with each and every Relax The Back® Unit System Standard, as periodically modified and supplemented by us from time to time, in our Business Judgment. Without this commitment by you, we would be unwilling to award you this franchise.

## **2. AWARD OF FRANCHISE.**

**2.1 Award of Franchise; Term, Your Basic Commitment.** i) We're pleased to award you a franchise to operate a single Traditional Relax The Back® Store at a location to be approved by us, and to use the Marks and the Relax The Back® System in the operation of that Traditional Relax The Back® Store. The term of the franchise ends on the date ten (10) years from the date that your Agency is first open to the public as a Relax The Back Store, unless earlier terminated according to the provisions of this Agreement. However, if this franchise is awarded to you as a transfer from another franchisee or in connection with the renewal of an existing and/or prior franchise (a successor franchise), then the term of the franchise begins on the Effective Date of this Agreement and ends on the Expiration Date, both of which dates are noted on the first page of this Agreement. If this Agreement is awarded in connection with a successor franchise, there shall be no further renewals or successor franchises after the term of this Agreement, notwithstanding anything to the contrary in this Agreement, any previous and/or other agreement.

We retain all rights relating to, and you have no rights to use, the Marks and the Relax The Back® System in connection with the Internet, World Wide Web and/or other electronic media. However, we may from time to time permit you to do so subject to our prior written approval. Any such use permitted by us may be restricted by us in our Business Judgment, and we may require you to accept orders only from customers located in the Territory.

You will faithfully, honestly and diligently perform your obligations under this Agreement, and will use commercially reasonable efforts to maximize the business of your Relax The Back® Store and the goodwill of the Marks. You won't conduct the business of the Relax The Back® Store or use the Marks from any location other than the Premises or for any purpose other than as approved by us in writing. You'll use and sell only products and services, and only deal with suppliers, approved by us. You agree to be personally accountable for the performance of your obligations under this and all other agreements.

## **2.2 Territory.**

Subject to our rights as set forth in this Section 2.2 and throughout this Agreement, we will not during the term of this Agreement enter into a Franchise Agreement licensing a Traditional Relax The Back® Store, or open a Franchisor-owned Traditional Relax The Back® Store, to be located inside the area (the "Territory") described on Exhibit "2.2." The Franchise is awarded for a single location only.

Your Territory and other rights are exactly (and only) as expressly set forth in this Agreement. We expressly reserve all other rights, including among them the rights to:

- i) own and/or operate ourselves, and/or authorize others to own and/or operate:
  - a) any kind of business in the Territory, except for a Traditional Relax The Back® Store; and
  - b) any kind of business outside of the Territory, whether or not using the Relax The Back® Marks and System; including without limitation, Traditional Relax The Back® stores;
- ii) sell, and/or authorize others to sell, Relax The Back® brand (or any other brand) products and services (whether or not competitive) to customers located anywhere (including within the Territory) by catalog and internet only, except as provided in subsections iii) through vi), below.;
- iii) develop or become associated with other concepts (including dual branding and/or other franchise systems), whether or not using the Relax The Back® System and/or the Marks, and/or award franchises under such other concepts for locations anywhere; provided that if any such concept development opportunity involves the location of a physical unit inside the Territory for the distribution of competitive, back-related products/services, we will provide you with a right of first refusal for such an operation, subject to the process described in subsection vi), below;
- iv) acquire, be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere. Such transactions may include (but are not limited to) arrangements involving competing outlets and brand conversions (to or from the Relax The Back® Marks and System). Such transactions are expressly permitted under this Agreement, and you agree to participate at your expense in any such conversion as may be required by us. We will permit you a reasonable period of time as determined by us in our Business Judgment in which to complete such a conversion, but in no event will such period be less than twelve (12) months from your receipt of written conversion instructions from us;
- v) "special distribution opportunities", including but not limited to Relax The Back® outlets associated with larger retail facilities such as general merchandise stores (e.g. Wal-Mart) or similar facilities, and limited square footage outlets like an "express" unit and/or kiosk units housed within other retail facilities, such as a department store; provided that if any such distribution opportunity involves the location of a physical unit for the distribution of products/services under the Backsaver and/or Relax The Back® Marks inside the Territory, we will provide you with a right of first refusal for such an operation, subject to the process described in subsection vi), below.
- vi) A right of first refusal regarding a concept development opportunity as described in subsection iii), above, or a special distribution opportunity, as described in subsection v), above, (individually or collectively, the "Territory Opportunity"), will be processed as follows: We will provide you written notice of a Territory Opportunity expected to be physically located in your Territory. You shall have sixty (60) days in which to advise us in writing that you wish to participate in the Territory Opportunity. If you do not notify us within such period, then we may pursue such Territory Opportunity and/or grant any other person/entity the right to participate in such Territory Opportunity without any

liability to you. If you timely notify us in writing that you do wish to participate in the Territory Opportunity, then we may condition your participation on compliance with such terms and conditions as we consider appropriate to the particular Territory Opportunity in our Business Judgment. Such conditions may include, but are not limited to: your execution of such agreements and related documents as are then generally used by us in connection with the award of the applicable Territory Opportunity; payment of all initial fees and any other applicable fees; meeting any eligibility requirements as are then generally applied by us to candidates for a Territory Opportunity; and the execution by you (and any affiliate and owner of yours) of a General Release, as defined in Article 1.2, above. When you provide us with such General Release, we will give to you a release of any and all claims of ours against you and/or any affiliate/ owner of yours which arise out of or relate to this Franchise Agreement (and no other agreement or franchise) and which exist as of the date of the release and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing. If you do not meet the conditions applicable to the award of the Territory Opportunity and/or any opening requirements that may be included in any Territory Opportunity agreements, then we may pursue such Territory Opportunity and/or grant any other person/entity the right to participate in it, without any liability to you.

You understand that a "Traditional Relax The Back® Store" is defined in Section 1.2, above, and subject to the limitations described in Section 2.2 ii. You do not have any and we retain all rights to non-traditional Relax The Back® Stores or other distribution opportunities, including Relax The Back® internet sites and/or Relax The Back® direct mail operations.

You further understand and agree that we and other companies affiliated with us are currently using Relax The Back® and Backsaver™, brands for Internet and mail order offers and sales. Additionally, companies affiliated with us also are using other distribution methods to offer and sell products identical (and/or substantially similar) to those offered and sold (and/or to be offered and sold) by you (except for product exclusive to Relax The Back Stores) to existing and/or potential customers located anywhere, including in the Territory, and expect to continue to do so in the future.

You agree not to offer and/or provide through the Internet, World Wide Web and/or similar venues any Relax The Back®, Backsaver™, or any other competitive products/services as may be designated by us, without our written permission, which we can grant, condition or deny in our Business Judgment. If we sell products and services through a Relax The Back® e-commerce site or a Relax The Back® direct mail catalogue to customers inside your Territory, we'll share with you a portion of any proceeds from such sales. The portion shared will be either a percent of profit or gross sales. For the purposes of this provision, "profit" is calculated by us by subtracting from gross sales related costs of sales, as well as general and administrative expenses. We will use Business Judgment in making such calculations and our determination will be final and controlling. As of the effective date of this Agreement, the portion shared with franchisees is 50% of any profit, but is subject to change by us in our Business Judgment unless otherwise specifically agreed upon in writing signed by us. We will obtain and consider FAB Input prior to making any changes in the portion of such product/service sales shared with you and/or the method of calculation.

Upon request from us, you will provide liaison, support and other services to such customers in exchange for reasonable compensation to be established by us in our Business Judgment after consideration of FAB Input. The amount of any such compensation will be applied as a credit against royalties or, at our option, any other money owed or to be owed by you to us or any Franchisor-Related Person/Entity. We will provide you with a report on at least a quarterly basis of any such sales and corresponding credits due you. For the purposes of this provision, the customer's billing address will determine whether a sale is made inside of a Franchisee's Territory, not the address to which a product may be delivered. Any credits outstanding as of the date of any transfer, termination or expiration of this Agreement will be deemed to have expired, unless you have another Franchise Agreement with us or are granted a successor franchise against which any credits may be applied. We do not guarantee, and you are not assured, that any sales will be made by us or credits realized by you in connection with any Relax The Back e-commerce site or direct mail catalogue.

Our current policy is to allow you to accept orders from any customer located anywhere, but we can change this policy at any time in our Business Judgment. You will comply with any reasonable restrictions we specify as to the customers to whom you may offer or sell outside of the Territory to the extent that such restrictions apply to offers and sales from customers located in another Relax The Back Store's territory. You will not direct market to customers outside of your Territory, except as authorized by us in writing. Any Relax The Back® product catalogue made available to you by us for direct marketing purposes will be distributed by you in compliance with this provision.

If this Agreement is subject to termination by us and the applicable default has not been cured, or if you have failed to meet the performance standards set forth in Section 16.2, we may, in our Business Judgment, reduce, eliminate or otherwise modify your territorial rights.

Exhibit 2.2 will state the location of your Store and your Territory. If the location for your traditional Relax The Back® Store has not been identified by the date of this Agreement, ~~Exhibit 2.2 will state such fact and subject to your compliance with Section 3.1, below, you and we agree to amend Exhibit 2.2 within fifteen days (15) days of our notice to you of our acceptance of a proposed site and of your Territory. and the Territory will be specified by us and identified on a document to be initialed by you and us within fifteen (15) days from our notice to you of our acceptance of the location for your traditional Relax The Back® Store.~~ If you disagree with such Territory and provide us with written notice within fifteen (15) days of our notice to you of the boundaries of the Territory, we may (a) cancel all of our obligations under this Agreement, return your Initial Franchise Fee, and receive from you (and each affiliate of yours) a General Release, and we will, on receipt of such General Release, release you from your obligations under this Agreement, except that your post-termination obligations, including indemnity, non-competition and confidentiality, and the provisions of Articles 19 and 21, will survive such cancellation, or (b) submit the question of the appropriate Territory to mediation and binding arbitration as provided in this Agreement [provided that in no case may the arbitrator or any court award a Territory with a radius from your traditional Relax The Back® Store of more than three (3) miles. ~~Any site proposed by you for our consideration shall be located within the Store Vicinity identified on Exhibit 2.2.~~ The Store Vicinity is not, nor should it be construed as, your Territory.

I have read Sec. 2.1 & 2.2, understand them,  
and agree with them.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

### 3. DEVELOPMENT AND OPENING OF YOUR TRADITIONAL RELAX THE BACK® STORE.

**3.1 Site Selection.** If the site for your Relax The Back® Store has not been identified and purchased (or leased) by you and accepted by us by the time you and we sign this Agreement, then within twelve (12) months from the date of this Agreement you must obtain possession of a site suitable for the operation of your Relax The Back® Store and acceptable to us. You won't make any commitments with respect to any location or operate a Relax The Back® Store and/or use any of the Marks from or at any location until and unless we've accepted the location. We won't unreasonably withhold our acceptance of a site that meets our standards but we can't provide any assurance that appropriate sites will be available, the terms on which possession may be obtained or otherwise, all such matters being your sole responsibility. If you're unable to obtain possession of such a site within such periods, we may terminate our obligations and your rights under this Agreement, provided we refund to you the lesser of (a) one-half (1/2) of the initial franchise fee paid to us or (b) the initial franchise fee less all expenses (including legal fees, broker and other commissions, training costs, etc.) incurred in connection with

such franchising and termination; and you will execute documents acceptable to us, providing for (1) continuation of your indemnification, confidentiality and non-competition obligations and the dispute avoidance and resolution provisions of this Agreement, including those of Articles 19 and 21, and (2) a General Release. We will, on receipt of such General Release, release you from your obligations under this Agreement, except that your post-termination obligations, including indemnity, non-competition and confidentiality, and the provisions of Articles 19 and 21, will survive such cancellation.

In connection with any proposed location, we will supply you with a site evaluation form, which you must promptly complete and return to us prior to our review and possible acceptance of any proposed location. Acceptance by us of any location is in no way a recommendation, approval or endorsement of such location nor a representation or warranty as to its legal or business availability, suitability, appropriateness, success potential or otherwise and we cannot guarantee success for any location.

While we may assist you in your efforts to select, obtain and develop a site, the selection, obtaining and developing of a site, and all other matters related in any way to your site, are your sole responsibility and neither we nor any of Franchisor-Related Persons/Entities nor any other person or company affiliated or associated with us in any way will have any liability or responsibility with respect to any matters related in any way to the site for your Relax The Back® Store, including (but not limited to) site location, identification, evaluation, selection, lease/purchase negotiation, financing, review of documents, construction, build out, plans, compliance with local requirements, suitability for any use or otherwise, all such responsibilities being solely yours. The business realities are such that neither we nor anyone else can assure you that a particular location will be successful and you agree that you'll make no claims against us and/or any of the Franchisor-related Persons/Entities with regard to any matters related in any way to your site.

We will make available to you standard and/or site specific plans and specifications to be utilized by you in the construction or otherwise of your Relax The Back® Store. You'll obtain, at your sole expense, all further qualified architectural and engineering services to prepare surveys, site and foundation plans and adapt any plans and specifications to your location and all applicable laws, regulations and ordinances. Any changes from plans and/or modifications (other than those provided by us) must be submitted to us for our consent, which we may grant, condition or withhold in our Business Judgment. Within 30 days after you open for business, you will provide us with copies of (a) plans showing your Relax The Back® Store as actually built and (b) a full cost accounting of all expenses incurred in connection with construction (and otherwise related to the development and opening) of your Relax The Back® Store.

We make no representations, guarantees or otherwise as to the costs of development and build-out (or otherwise) of your Relax The Back® Store, the date on which your Relax The Back® Store will be open for business or otherwise.

**3.2 Lease of Premises.** Any lease or sublease (and all addenda and other site-related documents) for your Relax The Back® Store must be satisfactory to us in our Business Judgment. You shall submit any lease and all site-related documents to us for our review prior to their execution by you. You agree to use commercially reasonable efforts to arrange for the inclusion of the following provisions through Lease Addendum, Collateral Assignment of Lease or other appropriate site-related documents.

(a) Providing us with the right to receive an assignment of your leasehold interest and take possession of your Relax The Back® Store without any liability for any obligations other than those solely related to our period of occupancy, without the lessor's or sublessor's consent or additional consideration and specifying that the lessor/sublessor will accept us as a substitute tenant on notice from us that we are exercising our rights. Relax The Back Such right shall be exercisable by us only in the event of the termination or expiration of your rights under this Agreement. You agree to do all acts necessary or appropriate to accomplish such assignment and will, when you sign this Agreement, sign the Lease

Addendum Agreement and Collateral Assignment of Lease attached as Exhibit 3.2. In the event of a termination of your rights to the premises in connection with any bankruptcy, the lessor/sublessor will, on our request, enter into a new lease with us on essentially the same terms as the terminated lease;

(b) Evidencing your right to operate your Relax The Back® Store in accordance this Agreement and the Manuals, and providing that the premises will be used only for the operation of a Relax The Back® Store pursuant to a Franchise Agreement with us in Good Standing; provided, however, that if we do not take an assignment of the lease on termination or expiration of the Franchise Agreement, the premises may be sublet for purposes other than a Relax The Back Store;

(c) Prohibiting you from subleasing, assigning or otherwise all or any part of your rights, extending the term or renewing or modifying the lease/sublease without our prior written consent, which we can grant, condition or withhold in our Business Judgment;

(d) Requiring the lessor/sublessor to concurrently provide us with a copy of any written notices (whether of default or otherwise) under the lease/sublease and giving us the right (but with no obligation) to cure any default under the lease/sublease. If you fail to effect such cure, then within thirty (30) days after the expiration of the period in which you can cure the default, we may (at our option) receive an assignment of your leasehold interest but without any liability for any obligations other than those solely related to our period of occupancy;

(e) Providing that the lessor/sublessor consents to the use of the Marks, Trade Dress and other aspects of the System as we may change them from time-to-time and giving us the right to enter the premises during normal business hours for purposes of inspection, to take steps to protect the Marks and Trade Dress and/or prevent/cure any default;

(f) Providing that any material default by you under the lease/sublease may, at our option, constitute a default under this Agreement); and

(g) Providing that no sale, assignment or transfer of your leasehold interest will be approved or otherwise consented to, or any change, addition, or other modification to the lease/sublease or other instruments will be made, without first obtaining our prior written consent, which we may grant, condition or withhold in our Business Judgment.

You won't execute a lease or sublease, or any modification or amendment, without our prior written consent, which we may grant, condition or withhold in our Business Judgment. You'll deliver a copy of the signed lease or sublease to us within five (5) days after it's signed.

If such provisions are not included in the lease or other instruments, (and/or a Collateral Assignment of Lease is not executed by you and the lessor/sublessor), we may, without liability and at our sole option at any time require that if possible you immediately cause such provisions to be inserted.

**3.3 Relax The Back® Store Design Standards.** We'll furnish you with standards, specifications and other requirements (the "Relax The Back® Store Design Standards") for design, decoration, layout, equipment, furniture, fixtures, signs and other items for your Relax The Back® Store, with which you'll comply.

**3.4 Development Schedule for Your Relax The Back® Store.** You must select and employ a licensed contractor reasonably consented to by us and you'll commence construction and/or development as soon as possible and will expeditiously attend to its completion, purchase and pay for all supplies; purchase, pay for and attend to the installation of all fixtures and equipment, train all employees, obtain all required insurance, permits and licenses and do everything necessary for your Relax The Back® Store to open for business within twelve (12) months from the date of this Agreement. We do not warrant or guaranty to you in any way that any contractor (even one referred to you by us) is suitable, competent,



reliable or otherwise able to perform adequately the tasks for which they are hired and you're the only person/company with any responsibility for the selection and work of any contractor selected and/or employed by you.

**3.5 Equipment, Furniture, Fixtures and Signs.** You'll use in the development and operation of your Relax The Back® Store only those (and each of those) brands, types and/or models of equipment, furniture, fixtures and signs as are consented to by us and using only suppliers designated or approved by us, which may include and/or be limited to ourselves and/or our affiliates.

**3.6 Relax The Back® Store Opening.** You won't open your Relax The Back® Store for business until: (1) we notify you that all of your pre-opening obligations have been fulfilled; (2) pre-opening training of all of your personnel has been completed; (3) all amounts then due us (and/or any affiliate) have been paid; and (4) we've been furnished with copies of all insurance policies as required under Section 10.6 of this Agreement, leases/subleases, certificate of occupancy and other documents as required by this Agreement. You'll open your Relax The Back® Store for business within five (5) days after we give notice to you stating that your Relax The Back® Store is ready for opening.

**3.7 Grand Opening Program - Marketing.** You'll spend at least Seven Thousand Dollars (\$7,000) on a grand opening marketing program during the first sixty (60) days of operations, for which you will only use marketing, advertising and public relations programs, media and materials consented to by us. We'll furnish advice and guidance to you with respect to such program, which you will follow.

**3.8 Relocation of Relax The Back® Store Premises.** If your lease or sublease for your Relax The Back® Store expires or terminates without your fault, if your Relax The Back® Store is damaged, condemned or otherwise rendered unusable, or if, in your and our judgment, there is a change in the character of the location of your Relax The Back® Store sufficiently detrimental to its business potential to warrant its relocation, you will provide us with a relocation business plan (including time frames, budget and related re-grand opening marketing expenditures) and will relocate your Relax The Back® Store to a location and premises acceptable to us in our Business Judgment. Permission for any such relocation shall not be unreasonably withheld, but any such relocation will be at your sole expense and you (and each affiliate of yours) will sign a General Release when we grant such consent; provided that if, in such instance, we require you to sign a General Release, we will grant you a release of all known and unknown claims with respect to payments of royalties and/or marketing contributions then past due under this Agreement.

#### **4. COMPUTER HARDWARE AND SOFTWARE SYSTEMS.**

You must purchase, use, maintain and update computer and other systems (including point-of-sale, back-office and other systems) and software programs which meet our specifications as they evolve over time. You must maintain your systems on-line to provide full access for computer systems used by us. You must update and otherwise change your computer hardware and software systems as we require from time-to-time, at your expense. However, we will not require a substantial update of your computer hardware more than once every five years, unless such an earlier update recommended by us is considered and approved by the FAB. For purposes of this provision, "substantial" shall mean a hardware update typically costing in excess of \$10,000. Any hardware update required by us in connection with a franchise transfer and/or a grant to you of a successor franchise will not be subject to the limitations described in this paragraph.

You will continuously comply with each of our then-current terms of use and privacy policies (and all other requirements) regarding all computer and other systems, including (but not limited to) Internet use. You'll pay all amounts charged by any supplier or licensor of the systems and programs used by you, including charges for use, maintenance, support and/or updates.

Neither we nor any of the Franchisor-Related Persons/Entities will have any liability and/or obligation (and neither you, nor any affiliate of yours, will make any claims) with respect to, any failures, errors or otherwise, of or by (and/or any loss, damage, liability, expense or otherwise caused by or related to) any computer systems, software, hardware or otherwise, whether or not provided and/or specified by us, any of the Franchisor-Related Persons/Entities and/or any supplier.

## **5. TRAINING AND GUIDANCE.**

**5.1 Training.** The initial Franchise Fee covers an initial training program for you and your initial Relax The Back® Store manager, at a time and place, and for such period, as we designate in our Business Judgment. You and your initial Relax The Back® Store manager must each attend and complete our training program to our satisfaction (in our Business Judgment) before beginning operation of your Relax The Back® Store. Subsequent managers also must attend and complete our training program to our satisfaction before managing your store operations. In addition, we can require successful completion of training by all of your supervisory personnel at such times and places as we designate. We may charge a reasonable fee for training of subsequent managers and/or other supervisory personnel, unless otherwise expressly agreed by us in writing.

If we, in our Business Judgment, determine that you have not successfully completed (or are not making satisfactory progress in) your initial training, we can cancel all of your rights (and all of our obligations) under this Agreement and/or any other agreements with you and refund to you the lesser of (a) one-half (1/2) of the initial franchise fee paid to us or (b) the initial franchise fee less all expenses (including legal fees, broker and other commissions, training costs, etc.) incurred in connection with such franchising and termination. ~~return the Initial Franchise Fee (less \$10,000 to cover our training costs and expenses, among other things) to you, you~~ You will return all manuals and you (and each affiliate of yours) will execute documentation providing for a General Release, and your indemnity, non-competition, confidentiality obligations, and the dispute avoidance and resolution provisions of this Agreement, including those of Articles 19 and 21, will be preserved. We will, on receipt of such General Release, release you from your obligations under this Agreement, except that your post-termination obligations, including indemnity, non-competition and confidentiality, and the provisions of Articles 19 and 21, will survive such cancellation. Since the possibility of such termination exists, you understand that if you make any investments or sign any documents prior to completion of training, you're at risk. Alternatively, we can require you to hire a substitute manager and arrange for him/her to complete the training program to our satisfaction.

You and your manager must attend additional and/or refresher training programs conducted at location(s) specified by us, including national and regional conferences, conventions and meetings, and your other employees may be required to attend mandatory training programs presented by us at your Relax The Back® Store. You'll be responsible for all travel, living, incidental and other expenses and compensation of you and your personnel attending any training program. We may charge a fee for any optional training programs.

We will offer to provide on an annual, tuition free basis a minimum of one on-site training session of our choosing at your Traditional Relax The Back Store. We also will conduct on an annual basis a minimum of one on-site visit for general business purposes, which may be combined with an on-site training session in satisfaction of both annual obligations.

**5.2 Guidance and Assistance.** We'll furnish guidance to you with respect to: (1) specifications, standards and operating procedures utilized by Relax The Back® Stores, including any modifications; (2) purchasing approved equipment, fixtures, signs, inventory, operating materials and supplies; (3) developing and implementing local marketing and public relations programs; (4)

administrative, bookkeeping, accounting, inventory control, open to buy and general operating and management procedures; and (5) establishing and conducting employee training programs at your Relax The Back® Store. This guidance can, in our Business Judgment, be furnished in the Manuals, extranet site, bulletins, written reports and recommendations, other written materials, refresher training programs and/or telephonic consultations or consultations at our offices or at your Relax The Back® Store. You'll follow and comply with this guidance.

**5.3 Manuals.** During the term of the Franchise, we will loan you (or allow you electronic or other access to) one copy of the Manuals, containing mandatory and suggested specifications, standards and operating procedures prescribed from time-to-time by us. We can, in our Business Judgment, modify any aspect of the Manuals, the Relax The Back® System or otherwise, to, among other things, specify brands, types and/or models of equipment which must be used by you, to specify changes in the Products and Services used and/or offered by you, and/or the decor, format, image, products, services, operations or otherwise of a Relax The Back® Store. You'll promptly and continuously comply, at your sole expense, with all provisions of, and additions/deletions/changes to, the Manuals. However, we will not require more than once every five years a substantial remodel, refurbishment and/or redecoration of the Premises to comply with then-current standards for newly developed Traditional Relax The Back® Stores, unless such an earlier update recommended by us is considered and approved by the FAB. For purposes of this provision, "substantial" shall mean a remodel, refurbishment and/or redecoration in excess of \$15,000. Any update required by us in connection with a transfer and/or a grant to you of a successor franchise will not be subject to the limitations described in this Section 5.3.

Any additions/deletions/changes to the Manuals will take precedence over all prior communications. In the event of a dispute, the master Manuals maintained at our office will control. The mandatory provisions of the Manuals, as added and/or modified from time-to-time, constitute provisions of this Agreement and are binding upon you. The Manuals contain proprietary information of ours and you agree to keep the Manuals confidential at all times and will not make or distribute any copies of any portion of any Manuals without our express written authorization.

## **6. MARKS.**

**6.1 Goodwill and Ownership of Marks.** Your right to use the Marks is derived solely from this Agreement and you'll use the Marks only as expressly authorized by us. Any unauthorized use of the Marks by you is a breach of this Agreement and an infringement of our rights in and to the Marks. You agree that if you breach any obligation regarding the Marks, we would have no adequate remedy at law and that we will be entitled to equitable relief with respect to any such breach. Your rights to the Marks are non-exclusive and we retain the sole right to grant other licenses for the Marks without providing you with any rights subject to the restrictions of Section 2.2, above. You won't oppose, or engage in any acts or omissions inconsistent with, our rights in and to the Marks. This Agreement, and your operation of your Relax The Back® Store, does not confer any goodwill or other interests in the Marks on you, all goodwill (whether relating to the Marks or otherwise) belonging exclusively to us. All provisions of this Agreement relating to the Marks will apply to any other trademarks, service marks and commercial symbols authorized for use by you. Any marks or other forms of identification developed by us in the future will remain our property and you will have no rights in or to them but we may require you to use them as we direct.

**6.2 Limitations and Use of Marks.** You will use the Marks as the sole identification for your Relax The Back® Store. You won't use any Mark in connection with the performance or sale of any unauthorized services or products or at any location or in any other manner not expressly authorized in writing by us. You'll not use any Mark as part of any corporate or trade name or as your primary business name or with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form. You will, before adoption and/or use, submit any proposed corporate and/or trade name to us for our consent, which we may withhold, grant or condition in our Business Judgment. The use of any

geographic or other designation in connection with the Marks will be only as permitted by us, you will have no rights with regard to any geographic or other designation and you will not take any action inhibiting or otherwise affecting the use of the Marks by any Relax The Back® Franchisee or anyone else. You'll display the Marks as we require and you won't use any of the Marks so as negatively affect the goodwill associated with the Marks. You'll give such trademark and other notices (including notices of independent ownership) as we direct and will, at your expense, obtain fictitious or assumed name registrations as may be required under law. You'll sign such documents and act as required by us from time-to-time to protect our interests in the Marks and you won't take any action, or omit to take an action, so as to jeopardize our interests or the validity or enforceability of the Marks.

**6.3 Notification of Infringements and Claims.** You'll immediately notify us of any apparent or actual infringement of, or challenge to, your use of the Marks, or any claim by any person of any rights in the Marks, and you won't communicate with anyone other than us and our counsel in connection with any such matter. We shall take such action as we deem appropriate in our sole discretion in connection with such (or related) matters. We shall have the right to control exclusively any settlement, litigation or proceeding arising out of or related to any such matters. You'll execute any and all instruments and documents, render such assistance, and do such acts and things as may, in our opinion, be advisable to protect and maintain our interests in the Marks.

**6.4 Discontinuance of Use of Marks.** If it becomes advisable at any time in our Business Judgment, for you to modify or discontinue the use of any of the Marks or use one or more additional or substitute trademarks or service marks, you will promptly comply (at your sole expense) with our directions, including (but not limited to) replacement of all signage, etc. We won't have any liability or obligation to you in such an event, whether of defense, indemnity, or otherwise, except and only as specifically provided below in this Section 6.4.) You agree to make no claim, for, or in connection with, any modification, discontinuance or otherwise, and/or any dispute regarding the Marks and/or your and/or our rights in or to them. We make no guaranty that a modification, discontinuance or otherwise may not be required, whether as a result of expiration, termination or limitation of our rights to the Marks or otherwise. You understand that there is always a possibility that there might be one or more businesses, similar to the business covered by the Franchise, operating in or near the area(s) where you may do business or otherwise, using a name and/or marks similar to ours and with superior rights to such name and/or marks as a result of prior use or otherwise. We strongly urge you to research this possibility, using telephone directories, local filings and other means, prior to your signing any documents, expending or paying any sums or making any commitments and you understand that if you fail to do so, you're at risk.

- i) If we require you to discontinue your use of the Relax The Back brand in the operation of your Franchised Business at the Premises, then you will relocate to a mutually acceptable alternative site inside the Territory from which you may lawfully operate your Franchised Business under the Relax The Back brand and Marks; or
- ii) if such an alternative site cannot be found and/or lawfully operated within the Territory, then relocate to a mutually acceptable site in an alternative available territory from which you may lawfully operate your Franchised Business under the Relax The Back brand and Marks; or
- iii) if such a mutually acceptable site cannot be found, we will identify and license to you with a commercially reasonable alternative brand for your operation at the Premises.

We will compensate you for reasonable relocation-related and/or re-branding expenses (as applicable) up to a maximum of \$25,000; provided that you, your owners and affiliates sign a release in a form acceptable to us in our Business Judgment of any and all claims, liabilities and/or obligations, of any nature whatsoever, known or unknown, whether against us and/or any or all of the Franchisor-Related Persons/Entities, arising out of or relating in any way to the Marks, any site relocation or change in Territory, any rebranding, or any other matter directly or indirectly related to your discontinued use of the

Relax The Back brand in the operation of your Franchised Business at the Premises. Any such compensation may in our sole discretion be applied as a credit against royalties, Marketing Fund contributions or, at our option, any other money owed or to be owed by you to us and/or any Franchisor-Related Person/Entities.

I have read Art. 6, understand it, and agree with it.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

## **7. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION.**

**7.1 Independent Contractor.** You'll conspicuously and clearly identify yourself (through prominently placed signage and otherwise as we direct) in all dealings with customers, suppliers, public officials, employees and others as an independent owner of your Relax The Back® Store under a franchise awarded by us and make it clear that the operation of your Relax The Back® Store is separate and distinct from the operation of our business. In particular, you'll place notices of independent ownership on such forms, business cards, stationery, advertising, signs and other materials as we require from time-to-time. Subject to the requirements of this Agreement and the Manuals, you'll have complete operational control of your business, including the right to hire and fire each employee.

**7.2 No Liability for Acts of Other Party.** You won't commit any act or omission that may result in our liability for any indebtedness or obligations of yours, you won't make any express or implied agreements or representations, or incur any debt, in our name, or represent that your and our relationship is other than that of independent Franchisor and Franchisee. Neither you nor we will have any liability under any acts, omissions, agreements or representations made by the other that are not expressly authorized in writing.

**7.3 Taxes.** We'll have no liability for any taxes, whether levied on you, your Relax The Back® Store or your property, or on us, in connection with the sales made and/or business conducted by you (except for any taxes we are required by law to collect from you with respect to purchases from us). Payment of all taxes connected with the Franchised Business is your sole responsibility.

**7.4 Responsibility, Indemnity, etc.** You will indemnify and hold harmless us and all of the Franchisor-Related Persons/Entities from all fines, suits, proceedings, claims, demands, actions, loss, damages, costs, fees (including attorney's fees and related expenses) and/or any other expense, obligation and/or liability of any kind or nature, however arising, to the extent it grows out of or is otherwise connected with and/or related to any act, error and/or omission of yours (including, but not limited to, your ownership and/or operation of your Relax The Back® Store, any act or omission of your employees and/or agents, and/or any transfer of any interest in this Agreement, your Relax The Back® Store or otherwise). We'll have the right to control all litigation, and defend and/or settle any claim, against and/or including us and/or the Franchisor-Related Persons/Entities or affecting our and/or their interests, in such manner as we deem appropriate in our sole discretion, in each case without affecting our rights under this indemnity.

With respect to goods and/or services provided by us and/or the Franchisor-Related Persons/Entities, and other than specific written warranties expressly provided by us in connection with such items, such items are provided without any warranties by us, express or implied, the warranties of merchantability and fitness for a particular purpose being expressly disclaimed.

I have read Sec. 7.4, understand it, and agree with it.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

**7.5 Disclosure.** We can disclose in offering circulars, related exhibits and/or as required by law any information relating to your Traditional Relax The Back® Store, including your name, any address and/or phone number, revenues, expenses, results of operations and/or other information; provided that we will not disclose any such information in a manner that identifies a specific store and its related financial results except as required by law, court order, judicial process or by similar proceedings. We will not for the term of this Agreement or any extension thereof disclose any information about customers of your Traditional Relax The Back Store to any party unrelated to the Relax The Back System, except as may be required by this Agreement, by law or by judicial process.

**7.6 Relationship with Franchisee Association and Board Seat.** We will provide one permanent, non-voting advisory seat on our Board of Directors to be filled by a representative selected by a majority of the governing body of the Franchisee Association (subject to the Franchisee Association providing one permanent non-voting advisory seat on the Franchisee Association's governing body (e.g. Board of Directors) to be filled by a representative selected by us, under terms substantially similar to those set out in this section and with appropriate indemnities from the Franchisee Association in our favor, etc.) Such representative shall act as a liaison between the Franchisee Association and our Board. The term for such representative shall be at least thirty-six (36) months, unless otherwise agreed upon by us and the majority of the governing body of the Franchisee Association. At the end of each 36 month period, a majority of the governing body of the Franchisee Association will designate a new representative, or designate the same representative. It is the intention of the parties that this advisory member shall have no fiduciary responsibility to us and/or the Franchisor-Related Persons/Entities or to any other person. We will provide all of the same insurance and indemnities to this advisory member as we provide to other members of our Board and, in any event, shall indemnify such member to the full extent permitted by law. The advisory member shall execute the same confidentiality agreement as the other members of our Board of Directors, except that the advisory member may disclose any matters presented to the Franchisee Association's governing body. We shall also sign an indemnity agreement whereby we indemnify the Franchisee Association's representative from claims against the representative based upon or relating to such representative's participation as an advisory member of our Board.

**7.7 Franchisee Association Board ("FAB") and Selection Process.** The FAB will consist of the governing board of the Franchisee Association, subject to the following requirements. Each Store will have the right to join and participate in the Franchisee Association in accordance with the Franchisee Association bylaws. With the exception of the non-voting advisory seat member described in Section 7.6, above, Board members shall be elected by Relax The Back Franchisees. All Relax The Back Franchisees who are in Good Standing under the Franchise Agreement are entitled to vote in such an election. Any Relax The Back Franchisee in Good Standing under the Franchise Agreement may nominate, or be nominated as, a candidate in any such election. Each such Franchisee will be entitled to one vote.

If in connection with any given election the franchisee group representing a majority of franchisees does not comply with the foregoing requirements, or if there is no single franchisee group whose members represent a majority of the then existing franchisees, then we shall establish guidelines for such an election by franchisees in our Business Judgment. In establishing any such guidelines, due consideration shall be given to achieving a representative group of Stores, each of which shall have a constituency in their geographical region. Franchisees selected by Stores in Good Standing pursuant to such an election conducted by us shall, for purposes of this Agreement, be deemed to constitute the FAB

Any substantial changes to the bylaws adopted by the FAB shall be subject to our prior written consent, which shall not be unreasonably withheld.

**7.8 Relax The Back® Merchandising Committee (the "Merchandising Committee") and Marketing Committee.** We will meet and consult with the Merchandising Committee, which shall be composed of four (4) members selected by a majority of the governing body of the Franchisee Association and three (3) members selected by us. The Merchandising Committee will provide Input on the content of the Relax The Back® catalog and Relax The Back.com. We will meet with the Relax The Back Merchandising Committee periodically to review such content, initial inventory and model floor stock recommendations, as well as new product introductions. The provisions herein are subject to compliance with applicable law. We will meet and consult with the Marketing Committee, which shall be composed of four (4) members selected by a majority of the governing body of the Franchisee Association and three (3) members selected by us. The Marketing Committee will provide Input on the content of Relax The Back® marketing programs. We will meet with the Relax The Back Marketing Committee periodically to review such programs.

**7.9 Input from Franchisee Association, FAB, Merchandising Committee, Marketing Committee.** We may seek Input from the FAB, the Merchandising Committee, Marketing Committee, and the Franchisee Association or other groups (individually and collectively, "Franchisee Advisory Groups") with regard to certain matters as specified in this Agreement, and as we consider appropriate from time to time. The final decision in such matters will remain ours, unless the provision expressly requires the applicable Franchisee Advisory Group's approval. Any approval of a matter by a majority vote of the FAB will be fully binding on you, regardless of whether or not such approval is required under this Agreement. We will be bound by a majority vote of the FAB on a matter only in those instances in which such FAB approval is required under this Agreement. Nothing in this Agreement will require a vote or other approval by all Relax The Back franchisees and/or all members of the Franchisee Association.

**7.10 Business Planning Input.** On or sixty (60) days before the beginning of each of our fiscal years (~~starting with the fiscal year beginning February 1, 2002~~), we will, with FAB Input, develop a business plan for the forthcoming fiscal year (but the content and otherwise of such business plans will ultimately be determined by us in our sole discretion). We will regularly review our financial statements with the FAB as soon as available, in each case subject to execution of appropriate confidentiality, etc. agreements.

## **8. CONFIDENTIAL INFORMATION; EXCLUSIVE RELATIONSHIP.**

**8.1 Confidential Information - Non-Disclosure and Non-Use.** "Confidential Information" includes all information used or useable in connection with the operation of a Relax The Back® Store or which relates to the System, including, among other things, all current and future: (1) techniques, policies, procedures, information, systems, and knowledge regarding the development, marketing, operation and franchising of Relax The Back® Stores; (2) information regarding, and suppliers of, items used and/or offered by Relax The Back® Stores, including the Products and Services and (3) all information regarding customers, including any statistical and/or financial information and all lists. Of course, the Confidential Information includes all Manuals and their contents, as well as all materials, information, manuals and advice provided by us during training or thereafter. In any dispute between you and us involving any question as to whether or not certain information is, in fact, confidential and/or proprietary to us, or any related issues, the burden of proof and the burden of going forward will be on you. We'll disclose to you parts of the Confidential Information needed for the operation of a Relax The Back® Store, and you may learn additional Confidential Information during the term of the Franchise and/or during the term of a prior franchise relationship with us. Between you and us, we have all rights to the Confidential information. Your only interest in the Confidential Information is the right to use it pursuant to this Agreement.

You agree that you will forever: (1) not use the Confidential Information in any way other than the operation of your Relax The Back® Store under a Franchise Agreement in Good Standing with us; (2) maintain the absolute secrecy and confidentiality of the Confidential Information; (3) not make unauthorized copies of any portion of the Confidential Information; and (4) adopt and implement all procedures prescribed by us to prevent unauthorized use or disclosure of, or access to, the Confidential Information.

You'll fully and promptly disclose to us all ideas, techniques and otherwise relating to a Relax The Back® Store which are conceived or developed by you and/or your employees and we'll have the perpetual right to use, and to authorize others to use, such ideas, etc., without compensation or other obligation. Patented programs or products may be excluded from this provision in our Business Judgment.

You agree to comply with any practices or requirements we may implement through the Manuals or other written instruction that are intended to promote the proper use and nondisclosure of the Confidential Information by your employees, agents or other third parties, including their signing of a form of non-disclosure/confidentiality agreement approved by us.

**8.2 Exclusive Relationship, Restrictions on Similar Businesses During Franchise Term and After Transfer, Termination, Expiration, Repurchase, etc.** You and we share a mutual interest in avoiding situations where persons or companies who are, or have been, Relax The Back® Franchisees operate or otherwise become involved with, a Similar Business, anywhere, either during or after the term of this Agreement.

This mutual interest exists since (1) the operation of a Similar Business, irrespective of location, would inevitably draw on and benefit from the operator's training and experience as a Relax The Back® Franchisee, including methods of operation not known to you or other operators prior to becoming a Relax The Back® Franchisee, (2) operation of such a business would damage both us and other Relax The Back® Franchisees and unfairly limit reasonable expansion alternatives open to us and our Franchisees, particularly in light of the limited number of goods and services provided by us and our Franchisees and the limited number of favorable locations or areas available, thereby placing us and other Relax The Back® operators at a competitive disadvantage, (3) such activities would expose us and our Franchisees to a strategy under which a person could acquire a Relax The Back® franchise, learn all of our methods of doing business, default under the franchise agreement or otherwise obtain termination or expiration and then open an unlimited number of locations drawing on their experience and training as a Relax The Back® Franchisee, including access to favorable locations, (4) the possibility of such occurrences would discourage the free flow of information and innovation within the Relax The Back® System, (5) such activities could reduce your level of time and attention given to your operation of a Relax The Back® Store, and (6) if we were unable to protect Relax The Back® Franchisees from such consequences, it would be substantially more difficult to obtain, and retain, qualified Relax The Back® Franchisees.

You acknowledge that you've considered, as reasonable business alternatives, other franchise opportunities, as well as the possibility of your entering our industry as a non-franchised participant (in each instance not being subject to the restrictions of this Agreement) and that any adverse effect on you resulting from your violation of these restrictions will be entirely self-inflicted. You agree that the restrictions contained in this Section are reasonable and necessary for the protection of us and your fellow Relax The Back® Franchisees (and our and their respective investments), represent a reasonable balancing of legitimate long-term interests, and will not impose any undue hardship on you, since you have other valuable opportunities, skills, experience, education and abilities unrelated to the ownership and/or operation of a Relax The Back® Store and which will provide you with the opportunity to derive significant income from other endeavors.

Therefore, you agree as follows:



A. In Term Restrictions: During the term of this Agreement and any successor franchise, neither you, nor any affiliate of yours, nor any shareholder, member or partner of yours (if you are or become a business entity), nor any Immediate Family member of any of the foregoing, will:

- (i) have any direct or indirect interest anywhere in any Similar Business, or in any entity awarding franchises or licenses or establishing joint ventures or other business enterprises for the operation of Similar Businesses; or
- (ii) perform any services anywhere as an employee, agent, representative or in any capacity of any kind for any Similar Business, or for any entity awarding franchises or licenses or establishing joint ventures to operate Similar Businesses; or
- (iii) employ or try to employ any employee of ours, of a Franchisor-Related Person/Entity or of any other Relax The Back franchisee, without providing notice to the respective employer and obtaining their prior written consent.

B. Post Term Restrictions: For three (3) years after the later of the following terminating events: (i) any transfer, Repurchase and/or termination of this Agreement; (ii) the expiration of this Agreement (if a successor franchise or renewal term is not granted); and/or (iii) the date on which you stop operating your final Relax The Back Store or using the Marks and/or System, you and each of the persons and entities named in such Section 8.2, A., above:

- 1) shall not do Similar Business with or solicit any person, firm or company that has been a Relax The Back customer during the period twelve months prior to termination, nor try to divert any such customers from any Relax The Back Store or Relax The Back enterprise of any kind (including any operations owned by us and/or any Franchisor-Related Persons/Entity); and
- 2) shall be subject to all of the restrictions stated in Section 8.2 A., above, with respect to Similar Businesses located, and/or services to be performed, in the Territory and/or the marketing area of any Traditional Relax The Back Store ("Marketing Area"). For the purposes of this Agreement, a Marketing Area for a franchisee-operated Store is the territory defined by such franchisee's franchise agreement. For a Store owned by us or an affiliate, Marketing Area is defined as the geographic area comprised of those postal/zip code areas representing at least eighty five percent (85%) of such Relax The Back Store's customer base for the twenty-four (24) month period prior to the terminating event (or from the opening date of such Relax The Back Store, if such location has been operating less than twenty-four (24) months).

C. You are responsible for learning whether or not a particular location is within a Relax The Back Store Marketing Area by providing us a written request for such information. In determining the Marketing Area, we generally will follow a process whereby the percentage of the applicable customer base will be calculated for the postal/zip code in which the Relax The Back Store is located, for each postal/zip code immediately surrounding it, and, if necessary, for postal/zip codes contiguous to the surrounding codes, until such codes representing at least eighty-five percent (85%) of the customer base for the appropriate twenty four (24) month period have been identified. In those instances in which varying combinations of surrounding and/or adjacent zip/postal codes may total at least eighty five percent (85%) of the customer base, we may select the combination that we consider in our Business Judgment to most appropriately be the Marketing Area. Any determination that we make regarding the Marketing Area will be final.

In the event of a violation by you of 8.2 A. (iii), above, our remedies will include, at our election, (i) termination of your rights and our obligations under this and all other agreements and (ii) recovery of damages and all other remedies allowed at law and/or equity [or payment to us by you of \$5,000, such amount having been mutually agreed on by you and us in view of the extreme difficulty in accurately

determining the damages suffered by us as a result of your violation (including effects on relationships with other employees, customers, retraining costs, lost sales, etc.) and your and our mutual interest in avoiding a lengthy and costly dispute over damages.], If we do not terminate your rights and our obligations under this and/or all other agreements for such violation, you (and each affiliate of yours) will execute a General Release in consideration thereof. In any case, you will first notify us and the employer before taking any action with respect to any such employment or offer of employment. You will obtain written non-competition commitments in such form as we direct from such persons subject to the non-competition provisions of this Agreement as we may reasonably request.

In the event of a violation by you of any of the foregoing restrictions, our remedies will include, at our election, (i) termination of your rights and our obligations under this and all other agreements and (ii) recovery of damages and all other remedies allowed at law and/or equity, which you expressly agree will include (but not be limited to) all net profits generated (and which would reasonably be anticipated to be generated) in connection with the operation of any Similar Business from the initial date of violation of such restrictions through (a) three (3) years after the date we give you notice of your violation of such restrictions or (b) the date you cease to violate such restrictions, whichever comes first, such amount having been mutually agreed on by you and us in view of the extreme difficulty in accurately determining the damages suffered by us as a result of your violation (including effects on relationships with employees, customers, Relax The Back® Franchisees, retraining costs, lost sales, etc.) and your and our mutual interest in avoiding a lengthy and costly dispute over damages, and, in addition, you (and each affiliate of yours) will execute a General Release. Calculation of the profits to be recovered by us will exclude any costs not reasonably appropriate to the operation of the Similar Business. The foregoing notwithstanding, we shall use Business Judgment in evaluating whether or not the conduct of an Immediate Family member warrants our exercising any rights under this provision, considering your actual relationship to such member and his/her activities, among other factors.

If any of the restrictions of this Section are determined to be unenforceable due to excessive duration, geographic scope, business coverage or otherwise, they will be reduced to the level that provides the greatest restriction but which is still enforceable, notwithstanding any choice-of-law or other provisions in this Agreement to the contrary and may be reduced by us to such level at any time in our Business Judgment. If they are wholly unenforceable, or are reduced to a level which we find unacceptable, we may, in addition to any other remedies available to us, require you to pay a fee (either immediately on a present value basis or over time, as we select) of one-half (1/2) of the royalties and advertising/marketing contributions which would be payable if the business in question was a franchised Traditional Relax The Back Store, for three (3) years. You and we agreed on the amount payable because of (1) the difficulty of accurately predicting actual damages, (2) the fact you will inevitably benefit in the operation of such business from your training and experience as a Relax The Back Franchisee, (3) the possible impact on the expansion and operation of our system, including the expense and difficulty of a sale of a franchise in your area, and (4) you not having any rights, nor we having any obligations, with respect to such business under this Agreement or otherwise during such period.

The time period of the competitive restrictions described in this Agreement will be extended by the length of time during which you or any other person or entity are in breach of any provision of this Agreement (including the limitations of this Section). The restrictions of this Section don't apply to the ownership of shares of a Similar Business (of a class of securities listed on a stock exchange or traded on the over-the-counter market) which represent less than three percent (3%) of the number of shares of that class issued and outstanding.

If you violate any obligations under this Agreement (or otherwise) with respect to a Similar Business, our remedies will include the right to obtain equitable relief, notwithstanding any provisions of this Agreement to the contrary.

I have read Sec. 8.1 & 8.2, understand them,  
and agree with them.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

## 9. FEES.

### 9.1 Initial Franchise Fee, Releases, Consistent Franchise Agreements, etc.

On signing this Agreement, you'll pay us an initial franchise fee of ~~Twenty-Five~~ **Thirty** Thousand Dollars (\$3025,000), which is fully earned by us on such signing and is entirely nonrefundable (as are all amounts paid to us and/or any affiliate), except for possible partial or other refund at our sole option as expressly provided in other Sections of this Agreement. The initial franchise fee (and other amounts charged) may not be same for all franchisees, depending on prior relationship, number of franchises awarded and other factors. If you are acquiring this Franchise in connection with a transfer of an existing franchise and a full ten year franchise term is awarded by us, then we reserve the right to require a payment from you concurrent with the signing of this Agreement. Such payment shall be calculated by multiplying the Initial Franchise Fee by the percentage representing the difference between the full ten year term and the remaining term of the franchise agreement that previously covered the Relax The Back® Store you acquired. By way of illustration, if four years of the initial term of a transferring franchise are remaining at the time of transfer, and if a new ten year term is awarded by us, then we reserve the right to charge the pro-rated fee, which shall be 60% of the Initial Franchise Fee. Any such fee is in addition to any transfer fees owed in connection with such transfer.

If you and/or any of your owners and/or affiliates have had a prior business or any other relationship with us and/or any of our affiliates then the execution of this Agreement by you and us will constitute:

- i) a release of any and all claims, known or unknown, which you (and any affiliate/owner of you) may have against us and/or any of the Franchisor-Related Persons/Entities (including any and all claims related in any way to any franchise currently, or in the past, in which you or any affiliate/owner of yours holds, or has held, any interest), excepting only (where expressly so required by applicable law) those claims solely related to the offer and sale of this Franchise; and
- ii) a release of any and all claims of ours against you and/or any affiliate/owner of yours which exist as of the time of the execution of this Agreement and are known by us, except that any such claims will be preserved by us if they are related to the offer and sale of this Franchise and/or are disclosed to you by us in writing.

You (and each affiliate of yours, together with each owner of you and/or your affiliates, if a business entity) will, as a condition to the awarding of any future, successor or other franchise execute, in a form prescribed by us, a General Release, excepting only (where expressly so required by applicable law) those claims solely related to the offer and sale of the new Franchise. If we fail to require such separate release(s) at any time, the execution of this Agreement, and each Franchise Agreement after this one, will be regarded as the equivalent of the granting of such releases.

**9.2 Royalty, Payment Dates, etc.** Every month (or otherwise as we require from time-to-time in our Business Judgment), you'll pay us a percentage of **Adjusted Gross Sales** as specified by us, up to and including (but not exceeding) five percent (5%) ~~four percent (4%)~~ of the "Gross Volume **Adjusted Gross Sales**" received or earned during the preceding month. "**Adjusted Gross Sales**" is defined in Section 9.3, below. Royalties are to be paid on the 10th day after each month for

the preceding month, commencing with the first month in which your Relax The Back® Store begins operations.

You and we have agreed on the foregoing royalty rates (and the other economic terms of this Agreement) based, in part, on your commitment (and your and our mutual expectation) that you will sell only items supplied by us, an affiliate of ours and/or an approved supplier, and your and our mutual understanding that your failure to do so will not only be a violation of this Agreement but would also adversely affect the core economics of your and our business relationship and would be inconsistent with your and our mutual expectations.

**9.3 "Gross Volume Adjusted Gross Sales".** ~~Gross Volume Adjusted Gross Sales~~ includes all revenues (except sales tax collected and paid when due to the appropriate taxing authority and actual customer refunds, adjustments and credits) which are, or could be, received or earned by you (and/or any affiliate and/or on/for your behalf or benefit) (1) by, at or with respect to your Relax The Back® Store, (2) which relate to the type of goods or services which are or could be provided, sold, rented or otherwise distributed at, through or in association with a Relax The Back® Store, (3) with respect to any goods or services which are, or could be, distributed in association with the Marks or the Relax The Back® System, or the operation of any Similar Business (but our receipt of any royalties with respect to any Similar Business will not constitute approval of your involvement with any Similar Business) and/or (4) with respect to any co-branding activities. You'll not divert any business or take any other actions (or fail to take any actions) which would have the effect of reducing the ~~Gross Volume Adjusted Gross Sales~~ with respect to which royalties are payable and you will use commercially reasonable efforts to maximize Gross Volume Adjusted Gross Sales. All sales and/or billings, whether collected or not, will be included in ~~Gross Volume Adjusted Gross Sales~~, with no deduction for credit card or other charges.

**9.4 Alternative Payment Methods.** We may choose in our sole discretion to implement alternative methods for payment of royalties, advertising/marketing contributions and other amounts due us, including but not limited to an electronic funds transfer program. You agree to participate in any such programs, to comply with any applicable payment procedures and to timely provide such documentation or authorizations as may be required from time to time to accomplish such funds transfer or other program.

**9.5 Interest on Late Payments.** Any amount owing from Franchisee to Company, if not paid when due, shall bear interest, until paid, at —the highest permissible interest rate chargeable under applicable law, but not to exceed eighteen percent (18%) per annum.

**9.6 Application of Payments, Set-Offs, etc.** We can apply any payments received from you to any past due or other indebtedness of yours for royalties, advertising/marketing contributions, purchases, interest or otherwise in our sole discretion, but we will apply your Marketing Fund Contributions only to the Marketing Fund, unless authorized to do otherwise by the FAB. We can set off, from any amounts that may be owed to you, any amount that you owe to us or any Marketing Fund. We can retain any amounts we have received for your account (whether rebates from suppliers or otherwise), as a credit and payment against any amounts that you owe or will owe to us or with respect to any marketing contribution, without notice and at any time.

**9.7 Mandatory Convention Attendance.** Attendance by you at the Relax The Back® annual convention (and/or any other meeting where attendance is designated by us as required) is mandatory; provided that you will be allowed one (1) unexcused absence from all required meetings in each 36-month period. We may excuse you from attendance on a meeting-by-meeting basis in our Business Judgment and we will excuse you in the following cases: You or a member of your immediate family is in the hospital or gravely ill, a death in your family, canceled airline flights with no reasonable alternative transportation arrangements being available or a natural disaster making your attendance impossible. If you (and/or your affiliates) own and/or operate more than one Relax The Back® Store, we may require at least one management-level individual shall to attend on behalf of each store. ~~We will not charge any~~

~~attendance-fee for one person per store but we may charge for materials, meals, entertainment, special programs and otherwise and Y~~ you will bear all other costs of attendance.

**9.8 Initial Marketing Package.** You must purchase from us or our designee prior to opening your Store an initial marketing package containing a minimum inventory of certain core marketing and promotional materials. The current price of the Initial Marketing Package is Three Thousand Five Hundred Dollars (\$3,500). We reserve the right to change the package price and the number and type of materials required to fulfill this requirement to meet changes in marketing methods, promotional purposes, advertising effectiveness, cost adjustments, etc.

## **10. YOUR RELAX THE BACK® STORE — IMAGE AND OPERATION.**

**10.1 System Compliance, Regular Upgrading.** You'll always operate your Relax The Back® Store in full compliance with the then-current Relax The Back® System and the Manuals, as we may modify them in our Business Judgment. In particular, you'll promptly comply at your expense with all of our ongoing requirements, standards and operating procedures relating to the operation, appearance, function, cleanliness, products, services, days and hours of operation, and otherwise of a Relax The Back® Store (including use of specified equipment, products, services, programs and computer software), and with our other requirements for a Relax The Back® Store. You'll purchase, use and offer each of (and only) the systems, services, equipment and products designated by us and will use only suppliers specified by us. Mandatory specifications, standards and operating procedures prescribed from time-to-time by us in the Manuals, or otherwise communicated to you in writing, electronically or otherwise, will constitute provisions of this Agreement as if fully set forth herein. All references to this Agreement include all such mandatory specifications, standards and operating procedures.

Subject to the provisions of Section 5.3, above, your Relax The Back® Store will always be maintained by you in the same first-class condition, and presented to the public with the same features, programs, equipment, decor and otherwise, and offering the same products and services, as new Relax The Back® Stores. You will, on request by us and at your sole expense, promptly undertake all changes as are required by us from time-to-time in our Business Judgment, including new equipment, furniture, furnishings, tenant improvements, decor package, signage, compliance with all then-current standards for facility design, software, changing any products and/or services offered, methods of operation and otherwise as we may require to reflect then-current Relax The Back® System requirements.

Your Relax The Back® Store will be not used for any purposes other than the operation of a Relax The Back® Store in full compliance with this Agreement and the Manuals, you will not make any alterations to your Relax The Back® Store or other items, or to the appearance of your Relax The Back® Store as originally approved by us, or the products and/or services offered by you, without our prior written approval; and you will place or display at your Relax The Back® Store, on vehicles, products and otherwise, only (and all of) such signs, logos and advertising materials as are from time-to-time specified by us.

**10.2 Designated Equipment, Products, Services and/or Suppliers.** Your Relax The Back® Store will purchase, use and offer each of, and only, such types, brands and/or quality of Designated Equipment, Products and Services as we designate and, where we so require, use only suppliers as designated by us. Such suppliers may include, and may be limited to, us and/or companies affiliated with us. We may designate a single supplier or limited number of suppliers, may designate a supplier only as to certain items and may concentrate purchases with one or more suppliers in our sole discretion. Specification of a supplier may be conditioned on requirements relating to frequency of delivery, standards of service, including prompt attention to complaints, as well as payments, contributions or other consideration to us, our affiliates, the Marketing Fund and/or otherwise, and may be temporary, in each case in our Business Judgment. We may, from time-to-time, withhold, condition and/or revoke our approval of particular items or suppliers in our sole discretion. You'll notify us in writing (and submit to us

such information and samples as we request) if you propose to purchase, use or offer any type, brand and/or quality of items that have not been previously specified by us, or if you propose to use any supplier who has not been previously specified by us for the proposed item. We'll notify you within a reasonable time whether or not you're authorized to purchase or use the proposed item or to deal with the proposed supplier. You will not make any claims against us with respect to any supplier (and/or our designation and/or supervision of, our relationship with, such supplier or otherwise), and will make any claims with respect to any supplier-related and/or similar matters only against the supplier in question. You will not take any legal or other action against or with respect to any vendors without our prior written consent, which we may grant, condition or deny in our Business Judgment. We will use diligent efforts to assist you in resolving any disputes with suppliers approved and/or designated by us.

We may require that you join, actively participate in, and make all purchases solely through, a Relax The Back® purchasing cooperative or other entity designated by us (the "Co-op"). You must promptly pay all amounts due any such entity for purchases, dues or otherwise. The Co-op may adopt its own bylaws, rules, regulations and procedures, which you must follow, but the bylaws, rules, regulations and procedures of such Co-op are subject to consent by us in our Business Judgment. If the Co-op cannot reach agreement on any point, we will make the relevant decision, which will be binding on you. Your failure to timely pay amounts due to, or comply with the bylaws, rules, regulations and procedures of, the Co-op constitutes a material breach of the provisions of this Agreement. We may offset against amounts we owe to you the amount of your unpaid Co-op obligations. We can require each such entity to submit monthly and annual financial statements, and can require that the annual financial statements be audited, all at the expense of such cooperative.

**10.3 Compliance with Laws and Ethical Business Practices.** You'll operate your Relax The Back® Store in full compliance with all applicable laws, ordinances and regulations, including all licensing requirements. We make no representations or assurances as to what (if any) licenses, permits, authorizations or otherwise may be required in connection with your establishment or operation of your Relax The Back® Store and it's your sole responsibility to determine what licenses, permits, authorizations or otherwise are required and to obtain them, all at your sole cost. All advertising by you will be completely factual, in good taste, and will conform to high standards of ethical advertising. You will, in all dealings with your customers, suppliers and public officials, adhere to high standards of honesty, integrity, fair dealing and ethical conduct. You'll refrain from any practice which may injure the goodwill associated with the Marks. You'll notify us in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which relates to, or which may affect the operation or financial condition of, you and/or your Relax The Back® Store.

**10.4 Management and Personnel of Your Relax The Back® Store, Training.** Your Relax The Back® Store must be personally managed on a full-time basis by a person who has successfully completed all training required by us and who meets all of our other then-current standards. We strongly recommend, but do not require, that you personally manage your Relax The Back® Store on an "on-premises" basis. Absentee ownership exposes you to a greater risk of failure than if you are personally involved, on a full time basis, in the on-site daily management of your Relax The Back® Store. Training for two persons is included in the initial franchise fee but you'll be responsible for all travel, meals, lodging and similar costs for all persons attending training. We may charge a reasonable fee for training of subsequent managers and/or other supervisory personnel, unless otherwise expressly agreed by us in writing. You'll keep us advised of the identities of the manager and other supervisors of your Relax The Back® Store, and we'll have the right to deal with the manager on matters pertaining to day-to-day operations of, and reporting requirements for, your Relax The Back® Store. We reserve the right to require that each manager and other supervisors meet our then-current standards and sign confidentiality, non-competition and other agreements acceptable to us. You'll hire all employees of your Relax The Back® Store and will be solely responsible for their supervision, possible termination, terms of employment and compensation and proper training. You'll establish and maintain at your Relax The Back® Store an ongoing training program, meeting our standards, for new and continuing employees.

**10.5 Insurance.** You'll maintain in force policies of insurance issued by carriers reasonably approved by us covering various risks, as reasonably specified by us from time-to-time, including (but not limited to): (1) comprehensive general liability insurance against claims for bodily and personal injury, death and property damage caused by, or occurring in conjunction with, your Relax The Back® Store, with minimum amounts of \$1,000,000 combined single limit coverage and a \$2,000,000 aggregate, and (for Stores with annual ~~Gross Volume~~**Adjusted Gross Sales** of \$1,000,000 or more), supplemental "umbrella" coverage of an additional \$1,000,000; and (2) all risk property and casualty insurance for the replacement value of your Relax The Back® Store and all associated items (including, but not limited to, leasehold improvements, furniture, fixtures, equipment, signs, inventory, supplies, and materials) and (3) business interruption insurance providing for continued payment of all amounts due (or to become due) us or any affiliate of ours under this Agreement. We may reasonably specify the types and amounts of coverage required under such policies and require different and/or additional kinds of insurance and/or minimum coverage amounts and/or waive any required coverage at any time. Each insurance policy must name us, our then-current affiliates and any successors and assigns as additional insureds, will contain a waiver of all subrogation rights against us, our then-current affiliates, and any successors and assigns, and will provide for thirty (30) days' prior written notice to us of any material modifications, cancellation, or expiration of such policies. Your obligations to maintain insurance coverage will not be affected by reason of any separate insurance maintained by us, nor will the maintenance of such insurance relieve you of any obligations under this Agreement or otherwise.

Prior to the expiration of the term of each insurance policy, you'll provide us (1) a copy of each renewal or replacement insurance policy to be maintained by you for the immediately following term and (2) evidence of pre-payment of the premium. If you fail to maintain required insurance coverage, or to furnish satisfactory evidence thereof and of payment of premiums, we, may obtain such insurance coverage on your behalf and you'll fully cooperate with us in our efforts to obtain such insurance policies, promptly execute all forms or instruments required, allow any required inspections of your Relax The Back® Store, and pay to us, on demand, any costs and premiums incurred by us.

**10.6 Program Participation.** We may condition your participation in any program, whether with suppliers, referral sources or otherwise (including, but not limited to, any program involving payments from third parties), as we determine in our Business Judgment, including our requiring you to be in compliance with such standards and qualifications as we designate (in our Business Judgment) and/or you not being in default, or under notice of default, under any obligation to us and/or any of the Franchisor-Related Persons/Entities.

**10.7 Continued Payment of Royalties, etc. During Closure.** If any closure of your Relax The Back® Store takes place for any reason, you will immediately notify us, submit a plan for re-opening (with discussion of budget, deadlines, possible relocation and subject to our reasonable approval) and diligently take (at your expense) all steps necessary to fully re-open your Relax The Back® Store for business as soon as possible. Your financial obligations to us and/or any affiliate will remain in full force and effect during any such closure (subject to the exclusions contained in any applicable business interruption policy coverage), and we reserve the right to collect any amounts due, or to become due, to us or any such affiliate, including those calculated upon ~~Gross Volume~~**Adjusted Gross Sales**. During any closure, monthly ~~Gross Volume~~**Adjusted Gross Sales** will be assumed to be the average monthly ~~Gross Volume~~**Adjusted Gross Sales** during the 12 month period (or shorter period if your Relax The Back® Store was not open for such 12 month period) prior to such closure

**10.8 800 Number, Secret Shoppers, etc.** We may institute various programs at our cost for verifying customer satisfaction and/or your compliance with all operational and other aspects of the Relax The Back® System, including (but not limited to) an 800 number, customer comment cards, secret shoppers, "phone phantom" or otherwise. We will share the results of such programs, as they pertain to your Relax The Back® Store, with you.

**10.9 Opening Inventory Requirement.** You are required to open your Store with a minimum inventory of certain core Products identified by us and obtained by you from designated suppliers of ours. We reserve the right to change the number and type of Products required to fulfill this requirement to meet changes in consumer preferences and demand, Product availability, store size, geographic area and other market factors, etc.

## **11. MARKETING.**

**11.1 Marketing Fund.** We've instituted (or plan to institute) an advertising, publicity and marketing fund (the "Marketing Fund") for such advertising, advertising-related, marketing and/or public relations programs, services and/or materials as we deem necessary or appropriate to promote current and/or future Relax The Back® Stores. You'll contribute to the Marketing Fund a percentage of ~~Gross Volume~~**Adjusted Gross Sales** as specified by us, up to and including (but not exceeding) two percent (2%) of ~~Gross Volume~~**Adjusted Gross Sales**. However, if during any calendar year your ~~Gross Volume~~**Adjusted Gross Sales** exceeds One Million Five Hundred Thousand Dollars (\$1,500,000) then for the balance of such calendar year your Marketing Fund contributions shall be one percent (1%) of the amount of ~~Gross Volume~~**Adjusted Gross Sales** in excess of such One Million Five Hundred Thousand Dollars (\$1,500,000). Such advertising/marketing contributions will be calculated and payable at the same time and in the same manner as royalties. Contributions to the Marketing Fund made by any supplier or otherwise, whether made with respect to purchases by you or otherwise, will not count toward your required contributions to the Marketing Fund, any cooperative or otherwise. We'll cause all Relax The Back® Stores owned by us to make contributions to the Marketing Fund as if they were subject to our then-current form of Franchise Agreement. You understand that some Relax The Back® Franchisees may have different Marketing Fund and/or other obligations than in this Agreement. Funds in the Marketing Fund must be expended, prior to termination of the Marketing Fund, only for the purposes authorized by the relevant Franchise Agreement(s.) No profit, gain or other benefit will directly accrue to us from the Marketing Fund.

We'll have sole discretion over all matters of any kind or nature that relate to the Marketing Fund consistent with its purposes, the provisions of this Agreement and with due consideration to FAB Input when required by this Agreement. Such matters may include (but are not limited to) the Fund's management, all financial matters, expenditures, receipts and/or investments, timing of expenditures, creative concepts, content, materials and endorsements for any marketing programs, together with the geographic, market, and media placement and allocation thereof. The Marketing Fund may be used for the benefit of the Relax The Back brand to (among other things) pay costs of marketing programs (including public relations), "brand/image advertising" and other marketing program, in-store and truck signage, preparing, producing, distributing and using marketing, advertising and other materials and programs; administering national, regional and other marketing programs, purchasing media, administrative costs, employing advertising, public relations and other agencies and firms; and supporting public relations, market research and such other advertising and marketing activities to promote current and/or future Stores and the Brand, as well as any reasonable expenses associated with any FAB or other franchisee advisory group meetings and activities as approved by us in our Business Judgment. A brief statement regarding the availability of information regarding the purchase of Relax The Back® franchises may be included in advertising and other items produced and/or distributed using the Marketing Fund.

If approval is granted by the FAB, we can arrange for goods, services, materials, etc. (including administrative services), related to the purposes and activities of the Marketing Fund, to be provided to the Marketing Fund by ourselves and/or any affiliated persons/companies, including persons/entities who may be owned, operated, controlled by, and/or affiliated with, us (such as an "in-house advertising agency.") We may use the Marketing Fund to compensate and reimburse any of such persons/entities (including ourselves) as we deem appropriate (including payment of commissions) and to compensate ourselves and/or others for administrative and other services, materials, etc. rendered to the Marketing



Fund, provided that any compensation to us and/or any persons/entities owned, controlled and/or operated by us must be reasonable in amount. We can arrange without FAB approval for goods, services, materials, etc. (including administrative services), related to the purposes and activities of the Marketing Fund, to be provided by independent persons/companies and all related costs, fees, etc. will be paid by the Marketing Fund, but we will seek Input from the FAB prior to hiring any such person/company for products/services reasonably anticipated to cost more than \$10,000.

~~We may form~~ We have formed a Relax The Back® Marketing Committee ("MC"). T~~he~~ the majority of ~~whose the~~ MC members ~~will~~ shall be franchisees, but ~~which the~~ MC may also include representatives of ours. The MC shall be an advisory group with regard to certain matters/issues/proposals related to the Marketing Fund. We may choose to seek Input from the MC, but the final decision on any such matter will remain ours.

You'll participate in all marketing programs instituted by the Marketing Fund or us but will retain full freedom to set your own prices, except that we may, to the greatest degree permitted by law, specify maximum prices above which you will not provide any goods or services. You will fully honor all coupons, price reduction and other promotions/programs as directed by us. The Marketing Fund may furnish you with copies of marketing, advertising and promotional materials and you will pay the cost of producing/distributing actual items (door hangers, newspaper advertisements, radio ads, etc.) to be used by you plus shipping and handling. We may use in our Business Judgment the Marketing Fund to share with a co-advertiser a reasonable portion of the costs of advertising, marketing and/or public relations programs, services and/or materials with respect to any co-branding, dual franchising or other co-sponsored programs reasonably related to the Relax The Back® brand.

The Marketing Fund will be accounted for separately from our other funds, and we will use commercially reasonable efforts to maintain the Marketing Fund as a distinct taxable entity. All taxes (including, but not limited to, gross receipts, income, value added and/or sales taxes) incurred in connection with or related to the Marketing Fund, whether imposed on us, the Marketing Fund or otherwise, will be the sole responsibility of the Marketing Fund, and we will be reimbursed by the Marketing Fund for any such taxes paid by us.

The Marketing Fund will not be used to defray any of our general operating expenses, except for such salaries, administrative costs, overhead and other expenses as we may incur in activities related to the Marketing Fund and its programs and purposes (including conducting market research, preparing and placing advertising, insurance, legal costs and collecting and accounting for the Marketing Fund). We may charge the Marketing Fund for a *pro rata* share of the reasonable salary and benefits of the Relax The Back® marketing and/or other personnel, based on time spent working on matters related to the Marketing Fund. In addition, we may charge the Marketing Fund for reasonable attorney's fees and other costs (1) related in any way to our defense of any claims against us and/or any of the Franchisor-Related Persons/Entities regarding the Marketing Fund or (2) with respect to collecting amounts owed to the Marketing Fund; provided that if (a) we substantially prevail in any such matters or (b) our actions/non-actions were approved by the FAB then all attorney's fees and other costs shall be reimbursed by the Marketing Fund. However, we shall be required to reimburse the Marketing Fund for any attorneys' fees and/or costs paid by the Marketing Fund in connection with any action in which we are finally found to have acted unlawfully or to be guilty of wrongdoing with respect to the Marketing Fund.

We may in our Business Judgment spend in any fiscal year an amount greater or less than the aggregate contributions to the Marketing Fund in that year and the Marketing Fund may borrow from us or other lenders to cover deficits of the Marketing Fund or cause the Marketing Fund to invest any surplus for future use by the Marketing Fund. In making expenditures, the Marketing Fund will first spend any contributions made by any supplier; second, any earnings on assets held by the Marketing Fund; third, any contributions made by us; and finally any contributions made by Franchisees. We can collect for remission to the Marketing Fund any advertising or promotional amounts offered by any supplier based

upon purchases by you. All interest, etc. earned on monies contributed to, or held in, the Marketing Fund will be contributed to the Marketing Fund.

We will provide the FAB with the opportunity to review and give Input regarding the annual Marketing Fund budget and plan. While we are not required to seek the approval of the FAB in connection with any matter relating to such plan or budget, any approval of a matter by a majority vote of the FAB binds you. Financials statements of the Marketing Fund will be prepared by us and furnished to the FAB. We may elect to produce audited Marketing Fund financial statements, in which case any related costs will be paid by the Marketing Fund and we will distribute a copy of such audited statements to all franchisees obligated to pay Marketing Fund contributions under their respective franchise agreement.

We can cause the Marketing Fund to be incorporated or operated through an entity separate from us. Any such entity will have all rights and duties of ours relating to the Marketing Fund. The Marketing Fund may be combined with any marketing fund(s) otherwise established for Relax The Back® Stores and the funds merged for use in accordance with this Agreement, so long as the restrictions of the relevant Franchise Agreement(s) continue to apply to contributions made by Franchisees under such agreements.

We may (but are not required to) revise marketing and other programs, and/or make separate expenditures from the Marketing Fund, to take account of cultural or other differences (and/or we may delegate management of a portion of the Marketing Fund in connection therewith). We can defer, waive and/or compromise claims for contributions to, and/or claims against or with respect to, the Marketing Fund, and/or waive on a case by case basis any future contributions, using the Marketing Fund to pay any such claims and related legal and other costs. We may or may not take legal or other action against any Franchisee who is in default of their obligations with respect to the Marketing Fund and determine whether a Franchisee may be allowed to make direct advertising expenditures in place of contributions to the Marketing Fund.

We have no obligation to ensure that expenditures by the Marketing Fund are or will be proportionate or equivalent to contributions to the Marketing Fund by Relax The Back® Stores operating in any geographic area or that any Relax The Back® Store will benefit directly, indirectly and/or in proportion to its contributions to the Marketing Fund. We have no obligation to cause other Relax The Back® Stores, licensees or outlets (some of which may be under different arrangements) to contribute to the Marketing Fund, any cooperative or engage in local marketing.

You agree that we, the FAB and the MC (and each of the Franchisor-Related Persons/Entities):

- i) will not have any direct or indirect liability or obligation to you, the Marketing Fund or otherwise with respect to the management or otherwise of the Marketing Fund; and
- ii) will not be liable for any act or omission, whether with respect to the Marketing Fund or otherwise which is consistent with this Agreement or other information provided to you, or which is done in subjective good faith, or which is the result of the exercise of discretion;
- iii) provided that neither i) nor ii), above, shall apply to the extent that we, the FAB and/or the MC (and/or any of the Franchisor-Related Persons/Entities) are finally found to have committed an intentional misrepresentation in connection with Marketing Fund-related activities.

Your and our rights and obligations, whether with respect to the Marketing Fund or otherwise, are governed solely by the express terms of this Agreement and this Agreement (and all rights and obligations with respect to the Marketing Fund) is not in the nature of a "trust," "fiduciary relationship" or similar special arrangement, you and we expressly disavowing any such or similar relationships. We may maintain Marketing Fund assets in one or more accounts designated as "trust accounts" (or similarly designated), for purposes of protecting such assets from claims of third-party creditors, but that will not

create any "trust," "fiduciary relationship" or similar special arrangement. You agree that absent the provisions of this Section, we would not be willing to institute or manage the Marketing Fund.

Subject to the express requirements of this Agreement that your contributions will only be spent as authorized herein, if you are in default of any of your obligations to us, the Franchisor-Related Persons/Entities and/or the Marketing Fund, or your Franchise Agreement is otherwise subject to termination, you will have no rights, and we will have no obligations to you, under the Marketing Fund (and/or related) provisions of this Agreement. We may deny access to any and all programs and/or materials created by, and benefits of, the Marketing Fund to Franchisees who are in default in any obligations to the Marketing Fund.

**11.2 Local Store Marketing.** Beginning during the month in which your first payment of royalties is due and continuing during each month thereafter for the full term of this Agreement, you will spend for local advertising and promotion of your Relax The Back® Store (including classified telephone directory listings and advertising, but excluding discounts, coupon redemptions and the cost of products or services given without charge) not less than three percent (3%) of ~~Gross Volume~~ **Adjusted Gross Sales** each month and, in any event, will so expend in each month a minimum of One Thousand Dollars (\$1000). You'll submit, in form and at times prescribed by us in our Business Judgment, verification of your expenditures for local advertising and promotion for such period.

Prior to their use by you, samples of all advertising and promotional materials and programs (including any use of the Internet, World Wide Web and/or other electronic media) not prepared or previously approved by us must be submitted to us, in the form and manner prescribed by us from time-to-time, for our review and consent, which we may grant, withhold or condition as we see fit in our Business Judgment. If written disapproval is not received by you within fifteen (15) days from the date of receipt by us of such materials, we will be deemed to have given the required consent but we can later retract any consent (whether express or as a result of such failure to respond) by notice to you. You won't use any advertising or promotional materials or programs that we have disapproved or that does not include the copyright, trademark and other notices required by us. We can require that a brief statement regarding the availability of information regarding the purchase of Relax The Back® franchises may be included in all advertising used by you and that a brochure regarding purchase of Relax The Back® franchises be placed in a prominent location in your Relax The Back® Store.

All use of the Internet, World Wide Web or other electronic media by you in connection with your Relax The Back® Store will be as specified by us from time-to-time in our sole discretion, whether in the Manuals or otherwise. Among other things, we may not permit you to advertise/market on the Internet, World Wide Web or other electronic media; or we may reasonably require that all use be through us, using an Internet/Intranet Service Provider selected by us (or which can be us or an affiliate) and that all pages be accessed only through our "home" or other page and meet our design and other specifications, including a possible requirement that any internet site of yours refer to a RTB internet site. We own and have the right to control all URL's used in connection with your Traditional Relax The Back Store.

**11.3 Advertising Co-op(s).** We may, in our Business Judgment, establish and/or recognize one or more cooperative associations and/or sub-associations of Relax The Back® franchisees covering territories that include your Relax The Back® Store. Each such association may adopt bylaws and/or other governing documents, which are subject to our approval in our Business Judgment. We may require that you join the applicable local and/or national association and/or contribute to all such association the amounts determined from time-to-time by the applicable association and/or or comply with the rules, regulations and procedures of any association of which you are a member. Each association may adopt its own rules, regulations and procedures, but the rules, regulations and procedures of each association are subject to consent by us in our Business Judgment, and we are not bound by them. If a association cannot agree on any point, we will make the relevant decision. We may deem your failure to timely contribute the amounts required by an association to constitute a material breach of the provisions of this Agreement. We may offset against amounts we owe to you the amount of your unpaid association

contributions. We can require each such association to submit monthly and annual financial statements, and can require that the annual financial statements be audited at our expense.

## **12. STORE RECORDS AND REPORTING.**

**12.1 Bookkeeping, Accounting and Records, Cash Register, Computer and Other Systems.** You'll establish and maintain at your own expense a bookkeeping, accounting, recordkeeping and records retention system conforming to requirements reasonably prescribed by us from time-to-time. Each transaction related to your Relax The Back® Store will be processed on a computer system (including hardware and software) as prescribed by, and fully accessible to, us. You'll participate in our then-current reporting system covering sales and other items. You will continuously use, maintain and update, at your sole expense, electronic cash register, computer and other systems (including point-of-sale systems) and software programs which meet such specifications as we reasonably designate, from time-to-time and in our Business Judgment and subject to the provisions of Article 4, above. In some cases, such systems and programs may include software or other components only available from us, our affiliates and/or suppliers approved by us

We reserve the right to have full access to all electronic cash register, computer and other systems and the information and data contained therein and to retrieve, analyze, download and use the software and all data contained therein (as well as any other information reported to us) at any time during business hours and as we determine in our sole discretion, subject only to any limitations described elsewhere in this Agreement. You will promptly and fully pay all amounts charged by any supplier or licensor of the systems and programs used by you, including charges for use, maintenance, support and/or update of these systems or programs. We may charge a reasonable fee for the license, modification, maintenance or support of proprietary software that we may license to you and other goods and services that we or any affiliates furnish to you related to the cash register, computer and other systems.

**12.2 Reports, Financial Statements and Tax Returns.** You will provide to us such information regarding the operation of your Relax The Back® Store, and in such forms and formats, as we reasonably specify from time-to-time, including by faxed or mailed copies of reports or documents; through direct, on-line access to your cash register, computer and other systems; by delivering data through our extranet site; or through other means as reasonably designated by us.

Our current information requirements (which we may reasonably expand or otherwise change from time-to-time in our Business Judgment) are as follows:

(1) within ten (10) days after the end of each month (or otherwise as we require from time-to-time in our Business Judgment) a report of ~~Gross-Volume~~**Adjusted Gross Sales**, net sales, product costs, labor costs, inventory activity and copies of the recap for the preceding week via computer modem, together with copies of such other information and supporting records as we reasonably designate;

(2) within thirty (30) days after the end of each fiscal quarter (or otherwise as reasonably determined by us), a period profit and loss statement and a balance sheet for your Relax The Back® Store, together with a report showing amounts spent by you for local advertising and promotions (with detail of how spent, including samples) during the preceding period, in each case prepared, verified and signed by you;

(3) within forty-five (45) days after the end of each fiscal year, an unaudited fiscal year-end balance sheet, income statement reflecting all year-end adjustments and statement of changes in financial position, in each case for your Relax The Back® Store, prepared in accordance with generally accepted accounting principles consistently applied, and verified and signed by you;

(4) within thirty (30) days after such returns are filed, exact copies of your Relax The Back® Store's state sales tax returns and those portions of your income tax returns relating to your Relax The Back® Store; and

(5) on request by us, such other data, information and supporting records for such periods as we from time-to-time reasonably require. Each report and financial statement submitted by you to us will be certified in writing to be correct and complete and signed by you if a sole proprietorship, by a partner if a partnership, or by an executive officer if a corporation.

You'll maintain and furnish to us on a confidential basis and upon, our request, for the term of this Agreement and any successor franchises, plus 5 years, complete copies of (a) all records of or relating to your Relax The Back® Store and (b) all income, sales and other tax returns filed by you reflecting activities of your Relax The Back® Store, you hereby waiving any privileges with regard to any records and/or tax returns.

### **13. ANNUAL IN-PERSON REVIEW, INSPECTIONS AND AUDITS.**

**13.1 Annual In-Person Review.** If so requested by us, once each year, at a time designated by us, you and your director of operations/manager will meet with our representatives at your Store for the purpose of discussing and reviewing your Relax The Back® Store's operations, status, financial performance and other matters.

**13.2 Our Inspections, etc.** We and/or our agents will have the right, at any time during business hours, and without prior notice to you, to: (1) inspect your Relax The Back® Store, the Designated Equipment and other equipment, furniture, fixtures, signs, operating materials and supplies; (2) observe, photograph and video tape (or otherwise record) the operations of your Relax The Back® Store for such periods as we deem necessary in our Business Judgment; (3) remove samples of any items for testing and analysis; (4) interview personnel of your Relax The Back® Store; (5) interview customers of your Relax The Back® Store; (6) inspect, and/or conduct, supervise or observe a physical count of, the inventory and assets of your Relax The Back® Store; and (7) inspect and copy any books, records, documents or otherwise relating to your Relax The Back® Store. You'll cooperate fully with us in connection with such matters. You'll present to your customers such evaluation forms as are periodically prescribed by us (but not more than once each calendar year) and will participate and/or request your customers to participate in any surveys performed by or on behalf of us.

**13.3 Audit and Inspection.** We (and/or our designees) will have the right at any time during business hours, and without prior notice to you, to inspect and/or audit the properties, assets, premises, business records, bookkeeping and accounting records, sales and income tax records and returns (you waiving all privileges with respect thereto), cash register tapes, invoices, payroll records, check stubs and bank deposit receipts, computer files and other records of, and/or relating in any way to, your Relax The Back® Store and the books and records of any person(s), corporation or partnership which holds, or affiliates of yours which do business with, the Franchise. You'll fully cooperate with our representatives and independent accountants/attorneys hired by us to conduct any such inspection or audit. Our right to audit includes the right to access all cash registers, computers and other equipment by electronic means. If any inspection or audit discloses an understatement of ~~Gross Volume~~**Adjusted Gross Sales**, you will pay to us, within five (5) days after receipt of the inspection or audit report, the royalties and advertising/marketing contributions due on the amount of such understatement, plus interest (at the rate and on the terms provided herein) from the date originally due until the date of payment. If any inspection or audit is made necessary by your failure to furnish reports, supporting records, other information or financial statements, or to furnish reports, records, information or financial statements on a timely basis, or if an understatement of ~~Gross Volume~~**Adjusted Gross Sales** for any period is determined by any audit or inspection to be greater than two percent (2%), you will reimburse us for the cost of the inspection or audit, including, without limitation, the charges of any independent accountants, and the reasonable travel

expenses, room and board and applicable per diem charges for our and their employees. Should any audit reveal an intentional understatement of ~~Gross-VolumeAdjusted Gross Sales~~ for any period in any amount, or an understatement (whether intentional or not) of ~~Gross-VolumeAdjusted Gross Sales~~ for any period to be greater than ten percent (10%), we may terminate all of your rights, and our obligations, hereunder, in addition to exercising any other remedies we may have. These remedies are in addition to all other remedies and rights of ours hereunder or under applicable law, including termination.

#### **14. TRANSFER.**

**14.1 Transfers by Us.** This Agreement, and any and/or all of our rights and/or obligations under it, are fully transferable by us in our sole discretion and will inure to the benefit of any person or entity to whom we transfer it, or to any other legal successor to our interest in this Agreement, provided that no such transfer will materially alter your rights under this Agreement and further provided that any such transferee shall appear at the time of the transfer to have financial resources reasonably appropriate to fulfill its obligations under this Agreement. For the purposes of this Section 14.1, we shall be entitled to rely upon audited financial statements provided to us by the transferee. We will seek input from the FAB on such financial statements. If any or all of our obligations under this Agreement are assumed by a third party, then, as to such assumed obligation(s), all past, current and future obligations of ours to you (and of any of the Franchisor-Related Persons/Entities) will cease and be forever extinguished. We may be sold and/or we may sell any or all of our intellectual property and/or other assets (including the Marks) to a competitive or other entity, we may go public, may engage in a private or other placement of some or all of our securities, may merge, acquire other entities and/or assets (competitive or not), be acquired by a competitive or other entity, and/or may undertake any refinancing, leveraged buy-out and/or other transaction. You waive any and all claims, demands and/or damages with respect to any transaction or otherwise allowed under this Section.

**14.2 Transfers by You.** The rights and duties created by this Agreement are personal to you (or your owners if the Franchisee is a partnership or corporation) and we have awarded the Franchise to you relying on the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of you or such owners. Accordingly, no ownership interest of twenty percent (20%) or more in this Agreement the Franchise, the Franchisee or your Relax The Back® Store (or assets associated with any of the foregoing), may be transferred without our prior written consent. We will not unreasonably withhold, delay or condition our consent to any proposed transfer, provided that nothing herein shall be construed to diminish in any way our rights or your obligations in connection with a transfer and/or compliance with the provisions of this Article 14. ~~which we may grant, condition or withhold in our Business Judgment.~~ Any such transfer (or attempted transfer) without such consent will constitute a breach hereof and convey no rights to, or interests in, this Agreement, the Franchise, the Franchisee, your Relax The Back® Store, such assets or otherwise. A series of related transactions resulting in a transfer of combined interests of twenty percent (20%) or more also shall require such written consent. You shall provide us with prompt written notice of any transfer of less than twenty percent (20%).

The term "transfer" includes (but is not limited to); any voluntary, involuntary, partial or whole, direct or indirect assignment, sale, gift, pledge, mortgage of, or any granting of any security or other interest (whether or not controlling) in ; (1) this Agreement; (2) the Franchise; (3) the ownership of the Franchisee; (4) your Relax The Back® Store; or (5) any assets associated with any of the foregoing. A transfer also includes (but is not limited to) the following events: (1) any transfer of ownership of capital stock or any partnership or similar interest; (2) any merger or consolidation or issuance of additional securities representing an ownership interest in the Franchisee; (3) any sale of voting stock of the Franchisee or any security convertible to voting stock of the Franchisee; (4) any transfer in a divorce, insolvency, corporate or partnership dissolution proceeding or otherwise by operation of law; (5) any transfer of any interest in any revenues, profits, rights or assets of your Relax The Back® Store and which is not in the ordinary course of business; or (6) any transfer to a business entity and/or a trust or similar

entity; or (7) the creation or otherwise of any security or similar interest affecting any of the foregoing. Any transfer by the Franchisee (or any of your owners) to a corporation and/or of any interest in the event of your death or the death of an owner of the Franchisee, by will, declaration of or transfer in or to trust, under the laws of intestate succession, or otherwise will be governed by all of the provisions on transfer of this Agreement. We may, in our sole discretion, deny approval to any transfer involving a portion of your Franchise (for example, but not limited to, a portion of any territory) and/or a portion of any of the foregoing items and/or interests.

**14.3 Conditions for Approval of ANY Transfer by Franchisee, etc.** If we consent to any transfer (we having no obligation to do so), such transfer will be subject to all of the conditions specified below and anywhere else in this Agreement (each of which you and we agree are reasonable), together with such other terms and conditions as are reasonable in the specific circumstances of the proposed transfer. Among other things, we may refuse consent to any transfer if, in our Business Judgment, the proposed transferee is, has been or will be associated with a Similar Business or if they do not meet our then-current financial, experience and other standards for issuance of an Relax The Back® Franchise directly by us. A transfer of ownership, possession or control of your Relax The Back® Store or any of its assets may only be made in conjunction with a transfer of the Franchise.

In any case, all of the following conditions must be met prior to, or concurrently with, the effective date of any transfer unless we require you to meet them earlier. We may waive any condition in our sole discretion:

(1) This Agreement must not be subject to termination by us, and you must be in full compliance with this Agreement and all other agreements between you (including any affiliate) and us (including any affiliate), as well as all real estate leases/subleases with any third parties.

(2) The transferee and its owners must have sufficient business experience, aptitude and financial resources to operate your Relax The Back® Store, must be individuals of good moral character and must meet all financial and other standards then-applied by us in evaluating prospects to whom we might award a Relax The Back® Store franchise in the then-current business and competitive environment;

(3) You must pay all royalties, advertising fund/marketing contributions, and other amounts owed by you (including any entity affiliated with and/or related to you) to us (including any entity affiliated with and/or related to us) which are then unpaid (the balances of all promissory notes and other unpaid amounts owed to us and/or any affiliates of ours shall be accelerated and paid in full), all obligations to third parties arising out of the operation of your Relax The Back® Store must be satisfied or assumed by the transferee;

(4) Your Relax The Back® Store and its operations must have been brought into full compliance as we may require to reflect the then-current standards and image of the System, all at your (or the transferee's) sole expense;

(5) You must submit all required reports, financial statements and other documents due us up to the effective date of the transfer;

(6) The transferee and its personnel must (at our option) complete or agree to complete our training program to our satisfaction;

(7) The transferee must obtain, within the time limits set by us, and maintain thereafter, all permits, licenses and insurance required for the operation of the franchised business;

(8) You and the transferor(s) must remain liable for all obligations to us and our affiliates in connection with the Franchised Business prior to and through the effective date of the transfer and shall

execute any and all instruments reasonably required by us to evidence such liability. If we notify you that we do not consent to a transfer based on the transferee's financial condition, and you request that we reconsider granting consent, we may elect to do so; provided that we may then impose, as an additional condition to transfer, the requirement that you and the transferors remain liable to us and our affiliates for all obligations in connection with the franchised business for a period of twenty four months after the effective date of transfer. In such an event, and if you and the transferors have complied with the provisions of this subsection, then such obligations will be discontinued upon the execution and exchange of the releases described in Subsection 14.3 (12), below.

(9) To the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer;

(10) The transferee must assume all of your duties and obligations (including all obligations of any affiliate of yours) to us (and any affiliate of ours) and, at our option, (a) agree to be bound by all terms and conditions of this Agreement (and any lease/sublease) for the remainder of its term or (b) execute our then-current form of franchise agreement and ancillary documents (including lease/subleases and guarantees) as are then customarily used by us in the award of franchises for Relax The Back® Stores (which may, among other things, provide for higher royalties, advertising fund/marketing contributions and materially different rights and obligations than are provided in this Agreement and may not include the terms of any amendments or addenda to this Agreement) provided, however, that the term thereof may not be greater than the remaining term of this Agreement and no initial franchise fee will be required (in our sole discretion, we may require the transferee to sign a Franchise Agreement and other documents for the full term then being offered and pay the pro rated initial fee as provided in Article 9, above.) However, if the transferee is a member of the Immediate Family and has been managing the operations of the Store to be transferred for a period of at least two years prior to the proposed date of transfer, then we will not require such transferee to sign our then-current form of franchise agreement until the expiration of the initial term of this Agreement;

(11) You or the transferee must pay us a transfer fee of ~~Five-Seven Thousand Five Hundred~~ Dollars (\$5,000-007,500), as set forth in this Agreement. Such fee must be deposited with us on your notification to us of the proposed transfer and prior to our undertaking any review, drafting of documents or other activities. Such fee is refundable as provided in Section 14.3 (17), below, or if we exercise our Right of First Refusal as provided in Section 14.7, below. In any event, no such fee shall be payable if the transferee is a member of the Immediate Family, meets our then current requirements for new franchisees and has managed the operations of the Store to be transferred for a period of not less than two years prior to the proposed transfer. We will not be required to provide training to such a transferee, but may require their completion of a standard or modified training program, for which a reasonable training fee may be charged by us;

(12) You and each of your owners and/or affiliates and the transferee (and each owner and/or affiliate of the transferee) must execute a General Release in our then current form, excepting only (in the case of the transferee and then only where so required by applicable law) those claims solely related to the offer and sale of the new Franchise to the transferee. We shall at the time of transfer release any and all claims of ours against you and/or any affiliate/owner of yours arising out of or relating to this Franchise Agreement (and no other agreement) and which exist as of the time of the execution of the release and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing. However, no release will be required of us or of you, your owners and/or affiliates at the time of transfer if you are required to remain liable for the obligations of the Franchisee after the effective date of transfer in accordance with Section 14.3 (8), above. In such an event, the releases contemplated in this Section 14.3 (12) will be provided by the applicable persons/entities as a condition to the elimination of your obligations under 14.3 (8) above.

(13) If you or your owners finance any part of the sale price of the transferred interest or obtains any security interest in the Franchise, the franchised business (or any of its assets) or otherwise,



you and your owners (and the transferee) must agree that all obligations of the transferee under or pursuant to any promissory notes, agreements, security interests reserved and/or held by you or your owners, or otherwise will be subordinate to the obligations of the transferee to pay royalties, advertising fund/marketing contributions, and other amounts due and/or to become due to us and/or any affiliate of ours and otherwise to comply with this Agreement, the franchise agreement and all other agreements executed or to be executed by the transferee; provided that we may refuse to allow you or anyone else to grant or receive a pledge, mortgage, lien or any security or similar interest in and/or to the Franchise or the Franchised Business (or any of its assets) if, after having expended commercially reasonable efforts in discussions with lenders or other applicable parties, we are unable in our Business Judgment to obtain appropriate protections for our rights under this Agreement and/or for Relax The Back System interests;

(14) Notwithstanding any transfer, your non-competition, indemnity and confidentiality obligations, and the provisions relating to dispute resolution (which include, but are not limited to, all of those of Article 19), as well as those of Article 21, of this Agreement will survive any transfer;

(15) The transferee must obtain from you an agreement that, to the maximum extent permitted by law, you will not, for a period of at least three (3) years following the transfer, either directly or indirectly, or as owner, partner, director, officer, employee, consultant, agent, manager or stockholder, disclosed or undisclosed owner, officer, agent, employee or in any other capacity whatsoever, participate or engage, actively or inactive, in any Similar Business or any other business substantially similar to any business then engaged in by us or any of our Franchisees, and we shall be named as a third-party beneficiary of such agreement.

(16) The transfer must be made in compliance with any laws that apply to the transfer, including state and federal laws governing the offer and sale of franchises; and

(17) In any event, we may reasonably withhold or condition our consent to any transfer as we deem appropriate based on the circumstances of the transfer or otherwise; provided that if we elect not to consent to a transfer, then we will refund to you and/or the prospective transferee, as applicable, the transfer fee, subject to our right to set off as stated in Section 9.6, above.

If we believe, in our Business Judgment, that the terms and/or conditions of any transfer (including, but not limited to, the price and/or terms of payment) or any surrounding circumstances would make the transfer not in the best interests of us, the proposed transferee or the Relax The Back® family of Franchisees (for example, if the price to be charged and/or the terms of payment would be so burdensome as to, in our Business Judgment, possibly adversely affect the future operations of a Relax The Back® Store by the proposed transferee) we may (but are not required to) refuse to consent to such transfer. If we refuse to grant consent for any reason and our absolute (or other) rights to deny consent are not held to be enforceable, your (and the proposed transferee's) sole remedy will be to have such matter resolved through arbitration and for the arbitrator, if legally required, to order consent to be granted, with no damages or other relief to be awarded. We may (but are not required to) candidly discuss all matters related to any transfer and/or proposed transfer (including our views of the price to be charged, the terms of payment and/or our views of the prospective franchisee's qualifications) with you, any proposed transferee and/or otherwise at any time (including prior to any offer) and will have no liability to you or anyone else regarding such views, discussions or otherwise. In no case will you or any transferee rely on us to review or evaluate any proposed transaction (our examination and possible consent not being an approval or recommendation) and neither we nor anyone else will have any liability to you, any proposed or actual transferee or otherwise in connection with our examination and/or possible consent or withholding of consent, with respect to any transfer and/or proposed transfer or our exercise of any right of ours (including the right to discuss our views with the proposed transferee and/or withhold consent), you agreeing to indemnify and hold us harmless from any liability to you, the proposed transferee or otherwise.

**14.4 Additional Conditions for Transfer to a Business Entity.** Any transfer to a corporation will be subject to our prior written consent, which we may grant, condition or withhold in our Business Judgment. (The provisions of this Agreement, including this Section, shall apply to any transfer to an LLC, partnership or other business entity.) If we consent to any such transfer (we having no obligation to do so), such transfer will be subject to all of the conditions specified below and anywhere else in this Agreement (each of which you and we agree are reasonable), together with such other terms and conditions as are reasonable in the specific circumstances of the proposed transfer.

Any such transfer will be subject to compliance with all other requirements of this Agreement relating to transfer including, but not limited to, satisfying all payment and transfer fee requirements. If you're in full compliance with all of your obligations to us and/or each of the Franchisor-Related Entities, whether arising under this Agreement or otherwise, and such transfer is (a) made within 90 days of the date of this Agreement and (b) to a corporation wholly controlled by you, the transfer fee will be waived. A transfer to a corporation will not relieve you of your obligations hereunder, and you'll remain jointly and severally liable to us for all of your, and such corporation's, past, current and/or future obligations, under any other agreement(s) (whether past, current and/or future) with us or any affiliate of ours and/or any franchise, lease/sublease and/or other agreement(s) to be executed by such corporation.

In addition, any such transfer will be subject to reasonable restrictions, including but not limited to the following (each of which are agreed to be reasonable):

(a) The transferee corporation must be newly organized, the articles of incorporation, bylaws and other organizational documents of such corporation must recite that the issuance and transfer of any ownership interest in the corporation are restricted by the terms of this Agreement and must provide that its activities are confined solely to acting as a Relax The Back® Franchisee as franchised and in Good Standing under this Agreement;

(b) You must maintain (and continue to maintain) management control of the corporation and ownership of at least fifty-one percent (51%) of the equity and voting power of all issued and outstanding capital stock in the transferee corporation and to personally manage the affairs of such corporation;

(c) The individual Franchisee (or, if the Franchisee is a partnership, at least one of the partners) must be and remain the chief executive officer, chief financial officer or chief operating officer of the corporation. If the Franchisee is or becomes a corporation, LLC, partnership or other business entity, the chief executive officer, chief financial officer or chief operating officer of such entity must always meet all of our then-current training and other standards;

(d) The transferee corporation must enter into a written assignment (in form satisfactory to us) in which such corporation assumes all of your past, current and/or future obligations under this Agreement and any other past, current and/or future agreement(s) with us and/or any affiliate of ours. At our option we may, in addition to requiring such assumptions, require such corporation to execute any ancillary documents (including guarantees by the owners of such corporation) as are then customarily used by us in connection with such an assignment to a corporation;

(e) All current and future shareholders of the transferee corporation must enter into a written agreement (in a form provided or approved by us) agreeing to comply with this Agreement and any other past, current and/or future agreement(s) with us and/or any affiliate of ours and jointly and severally guaranteeing all of the transferee corporation's past, current and/or future obligations under this Agreement, and any other past, current and/or future agreement(s) with us and/or any affiliate of ours;

(f) Each stock certificate of the transferee corporation must bear a legend reciting or referring to the restrictions of this Agreement, including those on the issuance and transfer of stock in the transferee corporation;

(g) No shares of securities of any type in the transferee corporation may be issued without obtaining our prior written consent, which may be subject to the restrictions on transfer herein and other reasonable conditions as we deem appropriate and as are consistent with this Agreement;

(h) All obligations of the Franchisee under this Agreement and/or any other agreement(s) with us and/or any affiliate of ours (including all financial and operational compliance matters) must be satisfied prior to the transfer;

(i) No more than twenty percent (20%), in the aggregate, of the voting rights of the transferee corporation may ever be owned beneficially or of record by institutions or publicly held companies;

(j) There shall never be more than 12 owners ("Owners") with ownership interests in the transferee corporation, or any Franchisee of ours (married couples and family trusts to be considered together as one for these purposes);

(k) There will be no public offerings of debt or equity ownership in or by the transferee corporation without our prior written consent;

Throughout the term of this Agreement, the transferee corporation will not do any act (including any transfer of assets or otherwise) which would reduce its net worth to a level not reasonably acceptable to us and no transfer will take place unless the Franchisee is current in all payments to us, the Marketing Fund and each of the Franchisor-Related Persons/Entities.

**14.5 Death or Disability of Franchisee.** On your death or permanent disability or, if the Franchisee is a business entity, on the death or permanent disability of the owner of a controlling interest in the Franchisee, the executor, administrator, conservator, guardian or other personal representative of such person will transfer his or her interest in this Agreement and the Franchise, or such interest in the Franchisee, to a third party subject to our consent and all of the provisions of this Agreement with respect to a transfer and possible exercise of our right-of-first-refusal. Such disposition of this Agreement and the Franchise, or such interest in the Franchisee (including, without limitation, transfer by bequest or inheritance), will be completed within a reasonable time, not to exceed six (6) months from the date of death or permanent disability and will be subject to all the terms and conditions applicable to transfers contained in this Agreement. Failure to so transfer the interest in this Agreement and the Franchise, or such interest in the Franchisee, within said period of time will constitute a breach of this Agreement. You shall be deemed to have a "permanent disability" if your personal, active participation in management of your Relax The Back® Store is for any reason curtailed for a continuous period of six (6) months. This Section 14.5 is subject to the provisions of 14.3 (10) and (11).

In the event of your death, disability, absence or otherwise, we can (but are not required to) operate the franchised business on your behalf and at your expense for such period of time (and under such terms and conditions) as we determine, including paying out of the assets and/or revenues of the franchised business any or all past, current and/or future obligations of the franchised business (including any amounts owed to us and/or any affiliate) in such priorities as we determine from time-to-time in our Business Judgment. We can pay ourselves a reasonable amount to reimburse us for our management services and other costs. We can obtain approval of a court or arbitrator for any such arrangements, the attorney's fees and other costs incurred in connection with obtaining such approval to be charged against the assets and/or revenues of the franchised business. We'll be indemnified by you (and/or your estate) against any costs and/or liabilities incurred by us in connection with, or related in any way to, the operation (or otherwise) of the franchised business.

**14.6 Effect of Consent to Transfer.** Our consent to a transfer, or failure to exercise any right-of-first-refusal, will not constitute a waiver of any claims we may have against you (or your owners), nor will it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions

of this Agreement or any other agreement by any transferor or transferee. Unless we expressly release you from your obligations under this Agreement, you will remain and be liable under this Agreement and in accordance with the provisions of Subsections 14.3 (8) and (12), above. Any transfer (including any transfer consented to by us and even if the transferee executes a new franchise agreement) will not act as a termination of your confidentiality, indemnity, non-competition or other obligations under this Agreement, including any obligations which by their nature survive the term of this Agreement [your non-competition obligations to expressly continue for the full original term of this Agreement plus any additional period(s) specified in Section 8.2 or otherwise], or affect your and our obligations and rights under the dispute avoidance and resolution provisions of this Agreement, including all of Articles 19 and 21. Your sole remedy in the event of a dispute between you and us regarding any proposed or completed transfer will be an order requiring our consent to such a transfer.

**14.7 Our Right-of-First-Refusal.** If you or any of your owners wish to engage in any transfer subject to this Agreement, (a) you or your owners will obtain a bona fide, executed written offer and earnest money deposit [in the amount of ten percent (10%) or more of the offering price and in the form of a cashier's check] and (b) a true and complete copy of the offer (and any proposed ancillary agreements) will immediately be submitted to us by you, your owners or both, together with a deposit of the transfer fee, which fee will be refunded to you if we exercise our right of first refusal hereunder. (Any transfer to an Immediate Family member will not be subject to the provisions of this Section 14.7) The offer must apply only to an interest in this Agreement, the Franchise, your Relax The Back® Store or the Franchisee and must not include the purchase of any other property or rights of yours (or your owners); but if the offeror proposes to buy any other property or rights from you (or your owners) under a related offer, the price and terms of purchase offered to you (or your owners) for the interest in this Agreement, the Franchise, your Relax The Back® Store, or the Franchisee will reflect the bona fide price offered therefor and will not reflect any value for any other property or rights. If any of the assets to be purchased do not meet the standards we then apply to new Relax The Back® Stores or you are in default, we can require that such assets be replaced and/or brought into compliance with our requirements before the sale is completed, and/or such defaults be cured. The time for us to give notice of intent to exercise our right-of-first-refusal will not begin to run until all such assets have been brought up to such standard and such defaults cured.

We'll have the right, exercisable by written notice delivered to you or your owners within thirty (30) days from the date of delivery of an exact copy of such offer to us, together with your deposit of any transfer fee and satisfaction of all other requirements for our consent to such transfer, to notify you that we have elected to purchase such interest for the price and on the terms and conditions contained in such offer (less any adjustments, as described in the foregoing paragraph)), provided that we may substitute cash, a cash equivalent, or marketable securities of equal value for any form of payment proposed in such offer, our credit will be deemed equal to the credit of any proposed purchaser, and we will have not less than sixty (60) days from the date you receive our notice of intention to exercise such right-of-first-refusal to close. We'll be entitled to purchase any interest subject to all customary representations, warranties and agreements given by the seller of the assets of a business or voting stock of an incorporated business, as applicable including, without limitation, representations and warranties as to ownership, condition and title to stock and/or assets, liens and encumbrances relating to the stock and/or assets, validity of contracts, and liabilities, contingent or otherwise, of the corporation whose stock is purchased and including typical non-competition covenants by the seller and each owner of the Franchisee. In connection with such purchase, you and/or any affiliate/ owner of yours will sign a General Release, and we will sign a release of any and all claims of ours against you and/or any affiliate/ owner of yours arising out of or relating to this Franchise Agreement (and no other agreement or franchise) which exist as of the close of the transaction and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing. If, for any reason, such transaction is not consummated within one hundred and eighty (180) days after the date of delivery of an exact copy of such offer to us, together with your deposit of any transfer fee and satisfaction of all other requirements for our consent to such transfer, or if you seek to effect a transaction on terms and conditions, or to any person or entity, other than as set forth in the offer disclosed to us by you, then the proposed transaction

shall be deemed withdrawn, and all of the provisions of this Section shall again become fully applicable, as if such transaction had not been proposed.

If we do not exercise our right-of-first-refusal, you or your owner may complete the sale to such purchaser pursuant to and on substantially the same terms as those offered to us, subject to the conditions provided in this Agreement; provided that if there is a material change in the terms of the sale, we will have an additional right-of-first-refusal for thirty (30) days on the same terms and conditions as are applicable to the initial right-of-first-refusal. Our rights under this or any other Section may be assigned by us to any person or entity we choose in our sole discretion

## **15. SUCCESSOR FRANCHISE.**

**15.1 Your Rights.** Your rights and our obligations under this Agreement terminate at the expiration of the initial term. If we have not chosen in our Business Judgment to withdraw from the market in which your Premises are located and, subject to the conditions below, you will be eligible at the end of the initial term to be awarded a successor franchise for your Relax The Back® Store which may materially differ, in economic and other areas, from this Franchise Agreement and its requirements. However, such a successor franchise shall provide for a territory which includes the same geographic area as that described in this Franchise Agreement. Such a successor franchise shall be for a single ten (10) year period, without any further term, successor franchise or right of renewal; provided that, in any event, the term of the successor franchise will not exceed the then-current term of the lease (or sublease) for the Premises. If we are the owner or the lessor of the Premises, we shall not be obligated to negotiate or obtain any renewal, extension or otherwise of any lease or sublease, or solicit or accept any proposal from the landlord (or other person/entity controlling the premises) for a renewal, extension or otherwise of any lease or sublease, even if on the same terms and conditions as have previously been applicable to the premises.

**15.2 Your Obligations.** Any award of the successor franchise must meet all of the following conditions, each of which are agreed to be reasonable, together with the then current standards applicable to successor franchisees:

(1) You (and each affiliate of yours) have fully and continuously complied with this Agreement and all other agreements with (and all other obligations to) us (and/or any affiliate of ours), in each case without any defaults, cured or uncured, during the term (including all of the conditions set out below);

(2) You maintain possession of your Premises and by the expiration date of this Agreement (a) your Relax The Back® Store and its operations must have been brought into full compliance with the specifications and standards then-applicable for new Relax The Back® Stores, including a full upgrade to the same first-class condition as new Relax The Back® Stores, which may include (but is not limited to) new equipment, furniture, furnishings, tenant improvements, decor package, signage, compliance with all then-current standards for facility design, software, provision of goods and services, methods of operation and other Relax The Back® System Standards, plus such renovation and modernization of the Relax The Back® Store as we may require to reflect the then-current standards and image of the System, all at your sole expense and (b) you present evidence satisfactory to us that you have the right to remain in possession of your Relax The Back® Store for the duration of the successor franchise; or, in the event you are unable to maintain possession of your Relax The Back® Store, or in our judgment your Relax The Back® Store should be relocated, you secure substitute premises consented to by us and have furnished, stocked and equipped such premises to bring your Relax The Back® Store and inventory into full compliance with our then-current requirements by the expiration date of this Agreement;

(3) You have given written notice of election to obtain the successor franchise to us not less than six (6) months, but not more than twelve (12) months, prior to the expiration of the term of this

Agreement. Within ninety (90) days after our receipt of such timely notice, we will furnish you with written notice of: (a) any reasons which could cause us to not award the successor franchise, including any deficiencies which in our Business Judgment require correction and a schedule for correction thereof by you, and (b) our then-current requirements relating to the image, appearance, decoration, furnishing, equipping, stocking and programs of a Relax The Back® Store, and a schedule for effecting such upgrading, modifications or otherwise, as a condition of receiving the successor franchise. Prior to the expiration date of this Agreement, you will fully cure all such deficiencies and fully satisfy all such requirements and conditions. The award of the successor franchise will be conditioned (among other things) on your (and your affiliates') continued compliance with all the terms and conditions of this Agreement (and all other agreements with us and/or any affiliate) up to the date of expiration and correction of any deficiencies within the periods specified by us.

If, at the time (a) you provide us with notice of your intent to obtain a successor franchise or (b) the successor franchise would be awarded, you are subject to a Correction Process under Section 16.2 or otherwise, we may defer or otherwise condition the award of any successor franchise until and unless you have successfully complied with the applicable Relax The Back® System Standards and Financial Standards.

(4) You (and each affiliate of yours) have satisfied all monetary obligations owed to us and any company affiliated with us and have timely and fully met such and all other obligations throughout the term of this Agreement;

(5) You've executed our then-current form of Franchise Agreement and related documents (with appropriate modifications to reflect the fact that the successor Franchise Agreement relates to the award of a single successor franchise as contemplated by this Agreement without the right to further successor franchises or renewals), including guarantees, as are then customarily used by us in the award of franchises for Relax The Back® Stores, and the economic and other terms of which may materially differ from the terms of this Agreement, including, without limitation, higher royalty fees and/or advertising contributions; provided, however, you will not be required to pay the then-current initial franchise fee and we will not be required to provide you any site location, initial training or other "start-up" services in connection with the award of any successor franchise.

(6) You've complied with our then-current training requirements. We may require your personnel to attend and successfully complete any retraining program(s), and at such times and location(s), as we then specify. There will be no charge for any retraining program(s), but you'll be responsible for all travel, meals, lodging and other expenses of your personnel;

(7) You (and each owner and/or affiliate of yours) have signed a General Release, that has been received by us, at which time we will sign a release of any and all claims of ours against you and/or any affiliate/ owner of yours arising out of or relating to this Franchise Agreement (and no other agreement or franchise) which exist as of the date of the release and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing. If you fail to execute such a General Release, the awarding of a successor franchise will be the equivalent of the granting of such release, since you and we agree that it would be inappropriate and improper for you to continue in a franchise (or other) relationship with us, and have the right to use the Marks and System, if you had any claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against us (or other persons/entities covered by such a release) or otherwise failed to execute such a release, particularly in view of the fact that you are not being charged a full initial franchise fee in connection with the successor franchise; and

(8) You've paid us a non-refundable (unless the successor franchise is denied) successor franchise fee equal to forty percent (40%) of our then-current initial franchise fee for a first franchise. We must receive the fee from you at the time of your signing of the successor franchise.

Failure by you and/or your owners to timely complete such requirements will be deemed an election by you not to obtain the successor franchise.

If, at any time, you or any affiliate is to receive one or more successor, additional, other and/or further franchise(s) from us [we having no obligation to award you any such additional, other and/or further franchise(s)], whether or not a successor franchise, you, each of your affiliates, each owner of the Franchisee, the new franchisee and each owner thereof will at each such time sign a General Release, except (where expressly so required by applicable law) for any claims exclusively related to the offer and sale of the successor, additional, other and/or further franchise(s). Upon receipt of such a General Release, we will sign a release of any and all claims of ours against you and/or any affiliate/ owner of yours arising out of or relating to this Franchise Agreement (and no other agreement or franchise) which exist as of the close of the transaction and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing.

## **16. TERMINATION OF THE FRANCHISE.**

**16.1 Defaults with No Right to Cure.** Your rights and our obligations under this Agreement will automatically terminate on delivery [or, in any event, on three (3) calendar days after mailing] of notice of termination to you (without further action by us and without opportunity to cure) if: (1) you or any of your owners fail, in the time provided in, or otherwise in accordance with, this Agreement to: (a) locate a site accepted by us; (b) obtain lawful possession of your Relax The Back® Store; or (c) develop and open your Relax The Back® Store; (2) you or any of your owners abandons or fails to operate your Relax The Back® Store for more than seven (7) consecutive calendar days, without our prior written approval; (3) you or any of your owners has made any material misrepresentation or omission in your application for the Franchise, including (but not limited to) failure to disclose any prior litigation or criminal convictions (other than minor traffic offenses); (4) you or any of your owners is judged bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay his or her debts as they become due, or a petition under any bankruptcy law is filed against you or any of your owners or a receiver or other custodian is appointed for a substantial part of the assets of your Relax The Back® Store; (5) you or any of your owners is convicted of, or pleads no contest to, a felony, or to any crime or offense that may adversely affect the reputation of the Franchisee or any owner or your Relax The Back® Store or the goodwill associated with the Marks or engages in any misconduct which unfavorably affects the reputation of the Franchisee or any owner or your Relax The Back® Store, us or the goodwill associated with the Marks (including, but not limited to, child abuse or other mistreatment, health or safety hazards, drug or alcohol problems, or allowing unlawful activities or unauthorized or illegal items to be used or distributed at your Relax The Back® Store or in connection with the Franchise); (6) you or any of your owners makes, or attempts to make, an unauthorized "transfer" as defined in this Agreement or surrenders control of the Franchise or Franchised Business without our consent; (7) you or any of your owners makes any unauthorized use or disclosure of or duplicates any copy of any Confidential Information, makes any unauthorized use of the Marks, or uses, duplicates, or discloses any portion of the Manuals or you and/or any other person/entity violates any restriction on ownership, operation, etc. of a Similar Business; (8) you or any of your owners loses the right to possession of your Relax The Back® Store and does not relocate your Relax The Back® Store to other premises in accordance with this Agreement; (9) you [and/or any of your owners (and/or any affiliate of you and/or any affiliate's owners)] make any substantial misrepresentation to us or any affiliate, including (but not limited to) any misrepresentation of ~~Gross Volume~~ **Adjusted Gross Sales** and/or any amounts due us and/or any affiliate and/or commit any other act or omission constituting fraud, misrepresentation or similar act or omission, whether with respect to us, any of the Franchisor-Related Persons/Entities and/or any customer or approved supplier (you agree that such a fraud, misrepresentation or similar act or omission by you, etc. is by its nature incurable, since it would adversely affect the goodwill associated with the Marks and/or irrevocably damage the relationship between you and us); (10) you (and/or any owner and/or affiliate of yours) engage in any legal action (including arbitration, but not including mediation) against us and/or any of the Franchisor-Related Persons/Entities do not receive a final judgment or award

substantially in your favor on the merits, in which case you will be allowed 180 days after notice of termination to transfer the Franchise and the Franchised Business (but this subsection 10 is not applicable to matters resolved by settlement agreement); (11) you have failed to retain (or otherwise fail to produce on request) any material records required to be maintained by our record retention policy or otherwise required for us to confirm your compliance with the provisions of this (or any other) agreement.

**16.2 Defaults with Right to Cure.** Your rights and our obligations under this Agreement will automatically terminate on our mailing of notice of termination to you (without further action by us and without further opportunity to cure beyond that set forth in this section), if you, any of your owners or any affiliate of any of the foregoing:

#### 10 Day Cure

(1) fail to comply with any provisions of the Manuals; (2) fail to maintain required insurance; (3) fail to correct any condition that, in our reasonable judgment, might pose a danger to public health and/or safety; (4) fail to report accurately the ~~Gross Volume~~**Adjusted Gross Sales** of any Relax The Back® Store (or fail to submit, in fully accurate and complete form and when required, any other report due under this Agreement) or fail to make payments of any amounts due us, any affiliate and/or any supplier/creditor of yours and do not correct such failure within ten (10) calendar days after written notice is mailed to you. [With respect to items (1), (2) and/or (3) above, we may require you to immediately cease all operations until such defaults are fully cured.];

#### 30 Day Cure

(2) cause or permit to exist any default under the lease or sublease for your Relax The Back® Store and fail to cure such default within the applicable cure period set forth in the lease or sublease (if such applicable cure period is less than 30 days, then such applicable cure period shall apply, irrespective of the 30 day, or 90 day, cure periods under this section); fail to remain current in your obligations to taxing authorities, landlords, equipment lessors, suppliers or others; or fail to comply with any other provision of this Agreement (or any other agreement with us and/or any affiliate of ours) or any specification, standard or operating procedure or rule prescribed by us in our Business Judgment (including reporting requirements) not providing for a shorter notice period; and, in any such case, do not: (a) correct such failure within thirty (30) calendar days after written notice of such failure to comply is mailed to you; or (b) if such failure cannot reasonably be corrected within such thirty (30) day period, undertake within thirty (30) calendar days after such written notice is mailed to you, and diligently continue until completion, efforts to bring your Relax The Back® Store into full compliance and furnish, at our request, proof acceptable to us of such efforts and the date full compliance will be achieved; provided that, in any event, such defaults must be fully cured within ninety (90) calendar days after such written notice is mailed to you.

#### Performance Standards

You and we have entered into this Agreement based on our expectation, and your promise, that you will continuously and diligently follow all Relax The Back® System requirements and achieve an appropriate level of ~~Gross Volume~~Adjusted Gross Sales and you understand that the success of the Relax The Back® concept, as well as your and our success, and the success of your fellow Relax The Back® Franchisees, depends in part on your following the Relax The Back® System in each and every respect, your vigorous, pro-active marketing efforts and your maximization of all available business.

You and we have, therefore, a shared interest in your Relax The Back® Store not falling to an excessively low level of scores on Relax The Back® System Standards, or failing to achieve an appropriate level of ~~Gross Volume~~**Adjusted Gross Sales**. In particular, you acknowledge that we would never have awarded you this franchise if we had anticipated that your maintenance of Relax The Back® System Standards or your level of ~~Gross Volume~~**Adjusted Gross Sales** would be at an unacceptably low



level. Performance standards include both Relax The Back® System Standards and Gross VolumeAdjusted Gross Sales requirements.

Consistent with this mutual understanding, you and we agree as follows:

#### Relax The Back® System Standards

We may choose from time to time in our Business Judgment to inspect and otherwise evaluate your Relax The Back® Store (including, but not limited to, field service visits, customer comment cards and secret shopper reports) for compliance with Relax The Back® System Standards established by us in our Business Judgment. Your Relax The Back® Store will be assigned a System Standards Score in each evaluation major category (categories to be the same as used in evaluating Relax The Back® Stores owned and/or operated by us and/or our affiliates) and compared with the average scores in each such category as achieved by all Relax The Back® Stores in Good Standing.

#### Relax The Back® Financial Standards

Beginning 24 months after the date of this Agreement, we may choose in our Business Judgment to compare your Gross VolumeAdjusted Gross Sales with the then-current "Financial Standard". We will make any such comparisons on a twelve (12) month basis. [For example, if the date of this Agreement was January 1, 2002, the first comparison could be on January 1, 2004, the next comparison could be on January 1, 2005, etc.] If your results are not above the level of the top performer in the bottom 10% of our then-current Traditional Relax The Back Stores in operation more than 24 months and in Good Standing (the "Financial Standard"), you will be subject to the Correction Process outlined below (and requirements for sale or termination as described below, if so elected by us).

#### Correction Process

If (a) your System Standards Score in any major category is lower than the average System Standards Score achieved by Relax The Back® Stores in Good Standing or (b) Gross VolumeAdjusted Gross Sales for the most recently completed six-month period does not equal the then-current Financial Standard (every six-month adjusted) as of the date of any comparison as specified above, we may (but are not required to) implement the following correction process.

First, we will notify you of your failure to meet the then-current System Standards Score in any major category and/or the Financial Standard and you will have six (6) months after the date of mailing of such notice ["the Six (6) Month Correction Period"] to achieve the then-current System Standards Score in all major categories and/or the Financial Standard, as applicable.

Second, during the Six (6) Month Correction Period, we will actively work with you to (a) identify the reasons for such substandard performance, and (b) suggest means and methods for you to meet then current System Standards Score in each major category and/or the Financial Standard, as applicable.

Third, at one or more times during the Six (6) Month Correction Period, we may meet with you at your Store or require you to meet with us at our headquarters or other location, as we consider in our Business Judgment to be best suited to the purposes of analyzing the reasons for such substandard performance and discussing possible means of correction, and/or re-attend training, in each case at your expense for costs of travel, meals, lodging and otherwise, but we will not charge any fee for such re-training.

Fourth, at the end of the Six (6) Month Correction Period, we may require you to again meet with us at your Store or at our headquarters to analyze the situation. In any case, at the end of the Six (6) Month Correction Period, you will be evaluated for compliance with the Relax The Back® System Standards and Financial Standards and, if your Relax The Back® Store is not in compliance with the

Relax The Back® System Standards for any major category (as evaluated by System Standards Scores ) and/or the Financial Standards, you will indicate in writing, within 10 days after the Six (6) Month Correction Period, whether or not you wish to sell your franchise to a third party. If you indicate that you wish to sell your Franchise, you will have one hundred eighty (180) days after the end of the Six (6) Month Correction Period to complete such sale, subject to all requirements of this Agreement (including our right-of-first-refusal).

Fifth, if you have failed to meet such standards and do not, within such ten (10) days, so advise us of your wish to sell the franchise to a third party, or if no sale meeting the requirements of this Agreement takes place within such one hundred eighty (180) days, your rights, and our obligations, under this Agreement will terminate immediately on mailing of written notice of termination from us to you. In connection with such termination, you will sign a General Release and comply with all post termination obligations under this Agreement. Upon receipt of such a General Release, we will sign a release of any and all claims of ours against you and/or any affiliate/ owner of yours relating to or arising out of this Franchise Agreement (and no other agreement or franchise) which exist as of the date of the release and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing.

We reserve the right to make reasonable revisions to elements of the Financial or System Standards through changes in the Manuals or otherwise, upon six months written advance notice to you. Such revisions may include, but are not limited to, changes in PUA percentages, measurement periods or geographical areas.

Nothing in this Section is intended to limit or diminish in any way any rights or remedies provided us under this or any other agreement, at law or in equity. The fact that any correction process may be ongoing with respect to one default shall not prevent us from exercising any such rights and/or remedies, including any right to terminate this Agreement, for another default.

**16.3 Repeated Defaults.** Your rights and our obligations under this Agreement will automatically terminate on delivery [or, in any event, on three (3) calendar days after mailing] of notice of termination to you (without further action by us and without opportunity to cure) if you or any affiliate have received notice of default and have defaulted, on two (2) or more separate occasions within any period of twelve (12) consecutive months, or on three (3) or more separate occasions within any period of twenty-four (24) consecutive months, in any obligation, whether the same or different, whether under this Agreement, any other agreement with us and/or any of our affiliates, or the Manuals, and whether or not such defaults are timely corrected.

If you (and/or any affiliate) have (a) received notice of default and have defaulted, on two (2) or more separate occasions within any period of twelve (12) consecutive months, or on three (3) or more separate occasions within any period of twenty-four (24) consecutive months, in any obligation(s) to us and/or any of the Franchisor-Related Persons/Entities (whether the same or different), whether or not such defaults are timely corrected, or (b) have committed any default, or have violated any obligation to us and/or any of the Franchisor-Related Persons/Entities, which is incurable or (c) have committed any default, or have violated any obligation to us and/or any of the Franchisor-Related Persons/Entities, which remains uncured after any applicable cure period, whether under this Agreement, any other agreement with us and/or any of our affiliates, or the Manuals, then we may cancel any and/or all of your territorial or similar rights (including, but not limited to, any rights-of-first-refusal), arising under this Agreement.

**16.4 Cross-Defaults, Non-Exclusive Remedies, etc.** Any default by you (or any person/company affiliated with you) under this Agreement may be regarded as a default under any other agreement (including, but not limited to, any non-real estate lease and/or sublease) between us (or any affiliate of ours) and you (or any affiliate of yours.) Any default by you (or any person/company affiliated with you) under any other agreement (including, but not limited to, any non-real estate lease and/or sublease) between us (or any affiliate of ours) and you (or any person/company affiliated with you), or any default by you (or any person/company affiliated with you) under any obligation to us (or any affiliate of

ours), may be regarded as a default under this Agreement. Any material default by you (or any owner or affiliate of yours) that would subject you (or any owner or affiliate of yours) to termination under any lease, sublease, loan agreement, or security interest related to the Franchise or the Franchise Business may be regarded as a default under this Agreement, regardless of whether or not any such agreements are between you (or any owner or affiliate of yours) and us (or any affiliate of ours).

In each of the foregoing cases, we (and any affiliate of ours) will have all remedies allowed at law, including termination of your rights (and/or those of any person/company affiliated with you) and our (and/or our affiliates') obligations. No right or remedy which we may have (including termination) is exclusive of any other right or remedy provided under law or equity and we may pursue any rights and/or remedies available.

**16.5 No Equity on Termination, etc.** Your ownership of the Franchise is controlled by the provisions of this Agreement and you will have no equity or other continuing interest in the Franchise, any goodwill associated with it or otherwise, or any right to compensation, return of amounts paid or otherwise, at the expiration and/or termination of the term of the Franchise.

**16.6 Extended Cure Period.** Notwithstanding anything to the contrary in this Agreement, we reserve the right to grant to you in our Business Judgment an extended cure period for any breach. You acknowledge that our decision to grant such an extended cure period shall not operate as a waiver of any of our rights and that we may choose to condition such any such an extension upon the signing of a General Release by you, each owner and affiliates of yours.

**16.7 System Compliance Review.** You and we understand that there might develop situations in which you and we have a legitimate difference of opinion as to whether or not you are in compliance with various non-financial, operational obligations of yours relating to your compliance with the Relax The Back® System. You and we also agree that the input of other Relax The Back® Franchisees in such matters might be helpful to, but should not be binding on, each of us. Therefore, if we believe that you are not in compliance with your obligations to follow the Relax The Back® System in any non-financial, operational areas, we may submit such issue to the FAB for their review and evaluation. You and we will cooperate with such committee in their deliberations, subject to applicable legal constraints. Any FAB Input will be purely advisory and not legally binding on you or us.

**16.8 Management of the Store After Issuance of Notice of Default.** If we issue a notice of default, we will have the right, in addition to our other rights and remedies, (but no obligation) to appoint a reasonably qualified manager to operate your Relax The Back® Store until you have cured all defaults. All funds from the operation of the Relax The Back® Store during the period of management by us will be kept in a separate fund and all expenses of the Relax The Back® Store, including reasonable compensation, other costs and travel and living expenses of our appointed manager, shall be charged to you and may be paid out of such fund. Operation of the Relax The Back® Store during any such period shall be for and on behalf of you; provided that we shall only have a duty to utilize reasonable efforts in the operation of the Relax The Back® Store and shall not be liable to you for any debts, losses or obligations incurred by the Relax The Back® Store, or to any creditor of yours for any items purchased by the Relax The Back® Store during any period in which it is managed by us. In the event that the fund maintained by us is insufficient to pay the expenses of the Relax The Back® Store in a reasonable business-like manner, we shall so notify you and you shall, within five (5) business days, deposit in the fund such amounts as shall be required by us to attain a reasonable balance in the fund. The provisions of this Paragraph shall not restrict our right to terminate this Agreement as herein provided or affect any of our indemnity or other rights, nor limit your right to cure any default that is capable of cure under this Agreement.

**16.9 Our Right To Discontinue Supplying Items To You After Issuance of Notice of Default.** If we issue a notice of default, we and each of our affiliates will have the right, in addition to our other rights and remedies, to discontinue selling and/or providing any goods and/or services to you until

you have cured all defaults and we and/or our affiliates may cease providing such items to you or require you to pay C.O.D. (i.e., cash on delivery) by certified check until such time as you correct this problem.

**17. RIGHTS AND OBLIGATIONS ON TRANSFER, REPURCHASE, TERMINATION AND/OR EXPIRATION OF THE FRANCHISE OR OTHERWISE.**

**17.1 Termination of Rights and Obligations, Payments of Amounts Owed, etc.** Transfer, repurchase, termination or expiration of this Agreement will constitute a termination or expiration of all of your rights and all of our obligations. You'll pay us and each of our affiliates, within ten (10) days after the effective date of any repurchase, termination or expiration of the Franchise, or such later date that the amounts due are determined, such royalties, advertising/marketing contributions, amounts owed for purchases or otherwise by you (or any affiliate) from us and/or any affiliate, interest due on any of the foregoing, and all other amounts owed to us (or any affiliate) which are then unpaid.

**17.2 Marks, Trade Dress, Phone Listings, etc.** After any transfer, repurchase, termination or expiration of the Franchise, you will: (1) not directly or indirectly at any time or in any manner identify yourself or any business as a current or former Relax The Back® Store, or as a current or former franchisee of or as otherwise associated with us, or use any Mark or any colorable imitation thereof in any manner or for any purpose, or utilize for any purpose any trade name, trademark or service mark or other commercial symbol that suggests or indicates a connection or association with us; (2) remove all signs containing any Mark and return to us or (at our option) destroy all forms and materials containing any Mark or otherwise identifying or relating to a Relax The Back® Store (to the extent they have not been assigned in connection with an authorized Transfer or a Repurchase); (3) take such actions as may be required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark (to the extent they have not been assigned in connection with an authorized Transfer or a Repurchase); and (4) if you retain possession of your Relax The Back® Store, you will, at your expense, make such modifications and alterations, including removal of all distinctive signage, appearance, physical and structural features associated with the Trade Dress of Relax The Back® Stores, as may be necessary or appropriate to distinguish the Premises clearly from its former appearance and from other Relax The Back® Stores as to prevent any possibility that the public will associate the Premises with Relax The Back® Stores and any confusion created by such association.

You acknowledge and agree that (1) we have the sole rights to, and complete ownership of, all telephone or other service (including yellow and white page listings, cellular and fax), numbers, directory listings, Internet or similar connections (including all rights to any "home page" developed and/or used by you) and/or advertising with respect to, and/or used in connection with, your Relax The Back® Store business and/or associated with the Marks, and (2) any direction by us is conclusive evidence of our rights in and to any such service, numbers, directory listings and/or advertising. If this Agreement has terminated and/or expired, and/or we have granted a franchise for your Store to an approved transferee, then you agree to take all actions necessary or appropriate to transfer any telephone number(s), and any telephone directory listings, associated with the Marks and/or your Relax The Back® Store to us or our designee or the approved transferee, as applicable. You hereby appoint us and any officer of ours, as your attorney in fact, to direct the telephone company, other service providers (including internet service providers) and all listing agencies to transfer the same to us or as we direct if you do not comply with our directions in such regard. Such companies may accept this Agreement as conclusive evidence of our exclusive rights in such telephone numbers, directory listings, home pages and otherwise and our authority to direct their transfer.

You'll execute such documents, and do all other acts, as may be required by us and/or any service provider to effect a transfer, call-forwarding or otherwise to us [the transferee, or such person(s) as we designate, as applicable] of all such service (including home page, cellular and fax), numbers, directory listings and/or advertising; provided that we shall hold such documents until the earlier of the time (a) this Agreement expires or is terminated, or (b) an authorized transfer of the Franchise or a

repurchase. If this Agreement is subject to termination by us, then we may choose to require that any accounts covering any telephone or other service, numbers, directory listings and/or advertising be in our name rather than yours, with all billings to be sent to us [or such person(s) as we designates] but to be paid by you within 10 days of submission to you. You'll pay all amounts, whether due and payable or not, that any service provider may require in connection with any such transfer or otherwise and will sign all releases and other documents (including those providing that you indemnify and hold harmless any service provider and us) required by any service provider and/or us in connection therewith. Our then-current Assignment of Phone Number form must be executed prior to corporate training.

You acknowledge and agree that from and after the inception of this Agreement, we own the current and future list of your clients/customers and all transactional and other information relating to them, including addresses and telephone numbers, and may use such list and information after any termination, expiration, repurchase, transfer or otherwise; provided that we will not sell any such customer list and/or information to any person/entity who is not a member of, or related to, either the Relax The Back franchise network or us.

You'll furnish to us, within thirty (30) days after the effective date of termination or expiration, satisfactory evidence of your compliance with the foregoing obligations.

**17.3 Confidential Information.** You agree that on any transfer, repurchase, termination or expiration of the Franchise (without award of a successor franchise): (1) you will immediately cease to use any Confidential Information of ours disclosed to or otherwise learned or acquired by you in any business or otherwise; and (2) you will return to us all copies of the Manuals and any other confidential materials which have been loaned or made available to you by us.

**17.4 Covenant Not to Compete, Continued Confidentiality, etc.** Notwithstanding any termination, transfer, expiration or repurchase, you'll continue to observe the confidentiality, non-competition and other restrictions of this Agreement, including (but not limited to) those of Sections 8.1 and 8.2.

**17.5 Continuing Obligations.** All obligations of yours and rights of ours, including your obligation to pay royalties, advertising contributions and other amounts, and the provisions of this Agreement with respect to dispute avoidance and resolution (including, but not limited to, those of Article 19), together with the provisions of Article 21, and all other obligations of yours and rights of ours which expressly or by their nature survive the transfer, repurchase, expiration or termination of this Agreement or the Franchise (including, but not limited to, your indemnity, confidentiality and non-competition obligations), will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature expire. All these obligations will apply notwithstanding any rejection of this Agreement in a bankruptcy proceeding or otherwise. In any event, our exercise of any rights of termination will not be our sole remedy and where we have terminated our obligations and/or your rights under this Agreement by reason of a default of yours, you will not be released or discharged from, and will be required to pay, your obligations hereunder, including your obligations to pay royalties, advertising contributions and other amounts which would have become due if you had continued in operation as a Relax The Back® Franchisee and our remedies will include (but are not limited to) the right to collect the present value of such amounts as of the date of such termination and to otherwise receive the benefit of our bargain with you, as well as acceleration of the balances of all promissory notes and other unpaid amounts owed to us or any affiliates of ours, you and we agreeing that it would be unjust and damaging to the interests of all Relax The Back® operators and the integrity of the Relax The Back® system if a Relax The Back® Franchisee could utilize a strategy under which he/she would default, have his/her rights to use the Marks and System properly terminated as a result of that default and then entirely escape any financial consequences related to obligations accruing after the date of termination. If you continue to operate your business, after transfer, repurchase, termination or expiration, using any of the Marks or any aspect of the System, our remedies will include (but will not be limited to) recovery of the greater of (a) all net profits earned by you in the operation of your business

after such transfer, repurchase, termination or expiration or (b) all royalties, advertising contributions and other amounts which would have been due if such transfer, repurchase, termination or expiration had not occurred. At any time from the date of this Agreement through and including 120 days after any transfer, repurchase, termination or expiration, for any reason, of your and/or our rights under this Agreement, we may, at our option and without further consideration, receive an assignment of your leasehold interest to the extent permitted under any lease/sublease for your Relax The Back® Store (and/or any other facilities from which you operate your Relax The Back® Store and in each case without the lessor's or sublessor's consent), terminating your rights to the Premises and assuming the balance of any lease or sublease.

**17.6 Our Right to Purchase Any or All of the Assets of Your Traditional Relax The Back® Store on Expiration or Termination at Fair Market Value.** At any of the following points in time: (a) on or within 120 days after termination by us of our obligations and/or your rights under this Agreement, (b) on or within 120 days after any other termination (including rescission) of this Agreement; and (c) on or within 120 days after expiration of this Agreement, we will have the option (but not the obligation) to purchase from you any or all of the assets used in, or in connection with, your Traditional Relax The Back Store, including but not limited to the Designated Equipment. We can exercise any such option by providing you with written notice of the same.

Assets available for purchase by us will include, without limitation, real property, leasehold interests (subject to our obtaining title without purchase as a result of lease assignment or otherwise) and/or improvements, equipment, furniture, fixtures, signs, inventory and/or the lease or sublease for your Traditional Relax The Back Store, to the extent permitted under any such lease/sublease. If the premises were not leased to you by us or our affiliates, the right to an assignment of your lease or sublease for your Traditional Relax The Back Store (or, if assignment is prohibited and to the extent permitted under any lease/sublease, a sublease for the full remaining term and on the same terms and conditions as your lease) will be included as part of the purchase. We'll have the unrestricted right to assign any option to purchase and/or any related rights set forth in this Section. We'll be entitled to all customary representations, warranties and agreements given by the seller of the assets of a business, including, without limitation, representations and warranties as to ownership, condition and title to assets, liens and encumbrances relating to assets, validity of contracts, and liabilities (contingent or otherwise) and including typical non-competition covenants by the seller and each owner/executive of the Franchisee. The purchase price will be fair market value, determined in a manner consistent with reasonable depreciation of leasehold improvements owned by you and the items purchased. In any event, the purchase price will not contain any factor or increment for the Marks or any trademark, service mark or other commercial symbol used in connection with the operation of your Traditional Relax The Back Store or for any goodwill or going concern value related to the Marks and/or the System. We may exclude from the assets purchased any equipment, furniture, fixtures, signs, inventory or otherwise that do not meet quality standards for Traditional Relax The Back Stores. There shall be no provision for payment for leasehold improvements, the title of which shall be governed by the terms of your lease or sublease for your Traditional Relax The Back Store premises. The length of the remaining term of the lease or sublease for your Traditional Relax The Back Store will not be considered in determining fair market value of any lease or sublease to be acquired. If you and we are unable to agree on the fair market value of any assets, fair market value will be determined by an independent appraiser selected by you and us, and if you and we are unable to agree on an appraiser, you and we will each select one appraiser, who together will select a third appraiser, and the fair market value will be deemed to be the average of the three (3) independent appraisals. All sales, transfer and/or similar taxes are to be paid by you. In connection with such purchase, you (and each affiliate of yours) will execute a General Release. Upon receipt of such a General Release, we will sign a release of any and all claims of ours against you and/or any affiliate/ owner of yours arising out of or relating to this Franchise Agreement (and no other agreement or franchise) which exist as of the close of the transaction and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing.

The purchase price may be paid by us or our assignee in cash or marketable securities on closing or as follows, pursuant to an unsecured promissory note: Twenty Percent (20%) of the purchase

price will be paid on closing, the second Twenty Percent (20%) will be paid no later than ninety (90) days after closing, the third Twenty Percent (20%) no later than one hundred eighty (180) days after closing, the fourth Twenty Percent (20%) no later than two hundred ten (210) days after closing, and the final Twenty Percent (20%) no later than two hundred fifty (250) days after closing (with interest payable to you at the then applicable prime rate); provided that if we require non-competition covenants to be given, the final Forty Percent (40%) of the purchase price may be paid out in 36 equal monthly installments (or for such other period as you and we mutually agree upon) beginning 30 days after close (with interest payable to you at the then applicable prime rate). Closing will take place no later than thirty (30) days after receipt by you of notice of exercise of this option to purchase (or as soon thereafter as mutually agreed upon in writing). You will deliver at closing instruments transferring to us or our assignee: (1) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us in our sole discretion), and demonstrating that all sales, transfer and/or similar taxes are to be paid by you through escrow if we so require; (2) all licenses and permits of your Traditional Relax The Back Store which may be assigned or transferred; and (3) the lease or sublease for your Traditional Relax The Back Store, if acquired by us. We may require in our Business Judgment that the closing be made through escrow, including if you cannot deliver clear title to all of the purchased assets or if there are other unresolved issues. You and we will, prior to closing, comply with any applicable bulk sales and/or similar laws. We'll have the right to set off against and reduce the purchase price by any and all amounts owed by you (or any affiliate) to us or any affiliate of ours, and the amount of any encumbrances or liens against the assets or any obligations assumed by us. If we exercise this option to purchase, pending the closing we will have the right to appoint a qualified manager to maintain the operation of your business. You'll maintain in force all insurance policies required pursuant to this Agreement, until the date of closing.

If such option is exercised, you will forever indemnify and hold us harmless against all obligations incurred in connection with your operation of the business. You'll furnish us with a complete list of accounts unpaid by you within ten (10) days of our notice of intent to exercise this option. We may (but are not required to) pay these unpaid bills directly to the parties owed and deduct them from the purchase price in lieu of paying such portion of the purchase price directly to you.

**17.7 Execution of Release on Default, etc.** In our sole discretion, in any case where you have committed a default under this Agreement, any lease/sublease and/or otherwise which would allow us to terminate your rights, we may (but are not required to) waive our rights to collect any royalties, advertising contributions and other amounts which would have become due if you had continued in operation as a Relax The Back® Franchisee and you will, in consideration for such waiver, execute a General Release. Upon receipt of such a General Release, we will sign a release of any and all claims of ours against you and/or any affiliate/ owner of yours arising out of or relating to this Franchise Agreement (and no other agreement or franchise) which exist as of the date of the release and are known by us; except that any such claims will be preserved by us if we disclose them to you in writing. This option may be exercised by us at any time, including before, at the same time as or after termination and whether or not you or we have made any claims, or begun any proceedings, against the other or anyone else.

I have read Sec. 17.1 – 17.7, understand them,  
and agree with them.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

## **18. GRANT OF SECURITY INTEREST.**

For valuable consideration, as security for the payment of all amounts from time-to-time owing or to be owed by you (and/or any affiliate of yours) to us (and/or any affiliate of ours) under this Agreement,

any other agreements or otherwise, and the performance of all the obligations to be performed by you, you hereby grant to us a security interest in all of the assets, including equipment, furniture, fixtures and signs, used by, at or in connection with, your Relax The Back® Store and its related business and all proceeds of your Relax The Back® Store (the "Collateral"). You represent and warrant that the security interest granted is prior to all other security interests in the Collateral except for (a) bona fide purchase money security interests and (b) any security interest approved by us in accordance with Article 14 of this Agreement and granted to a third party in connection with your financing for your Relax The Back® Store, if any. In connection with any request for our approval of a security interest, we will make commercially reasonable efforts to accommodate reasonable lender's requirements, bearing in mind the interests of the borrower, lender, ourselves and the Relax The Back System. You'll not remove the Collateral or any portion thereof without our prior written consent. On the occurrence of any event entitling us to terminate your rights and/or our obligations under this Agreement or any other agreement between the parties, or if we otherwise reasonably determine that we are not assured that all of your (and/or any affiliates') obligations will be timely and fully paid and/or performed, we will have all the rights and remedies of a secured party under the Uniform Commercial Code of the State in which your Relax The Back® Store is located, including, without limitation, the right to take possession of the Collateral. You'll execute and deliver to us financing statements and/or such other documents as we reasonably deem necessary to perfect our interest in the Collateral within ten (10) days of receipt by you of such documents from us.

I have read Art. 18, understand it, and agree with it.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

## 19. DISPUTE AVOIDANCE AND RESOLUTION.

**19.1 Mediation and MANDATORY BINDING ARBITRATION, WAIVER OF RIGHT TO TRIAL BY JURY, etc.** Realizing that in business relationships there's always a possibility of differences of opinion or other disagreements and that what is most important is to resolve any disputes amicably, quickly, inexpensively and professionally and to return to business as soon as possible, it's with that same spirit of cooperation that you and we pledge to resolve differences and to use the procedures specified in this Agreement (and particularly this Article 19), believing that these procedures will reduce instances of possible disputes and make the resolution of any disputes which do arise less expensive, quicker, less subject to public notoriety and achievable in a less formal and antagonistic means than litigation, as well as to increase the opportunities for you and us to maintain a mutually beneficial business relationship. Therefore, you and we agree as follows:

(a) Any litigation, claim, dispute, suit, action, controversy, proceeding or otherwise ("claim") between or involving you (and/or any owner and/or affiliate of yours or which could be brought by, or on behalf of, you, any owner and/or affiliate of yours) and us (and/or any claim against or involving any or all of the Franchisor-Related Persons/Entities or otherwise), except as expressly provided below at Section 19.1 (e), arising out of or relating in any way to this Agreement (including but not limited to the underlying legality of the offer and/or sale of any franchise, any action for rescission or other setting aside of such sale or any transaction, agreement or document and any claim that this Agreement or any portion thereof is invalid, illegal, void, unenforceable or otherwise, any claim of fraud, including fraud in the inducement and any other dispute involving the parties' relationship and/or respective rights and duties) and on whatever theory and/or facts based, will be:

(1) First, discussed in a face to face meeting between you (or an individual authorized to make binding commitments on behalf of the Franchisee) and a corporate executive of ours authorized to make binding commitments on our behalf. This meeting will be held at our then-current



headquarters and within 30 days after either you or we give written notice to the other proposing such a meeting.

(2) Second, if, in the opinion of either you or us, the meeting has not successfully resolved such matters and if desired by any person or entity involved in the claim, submitted to non-binding mediation for a minimum of eight hours before (a) Franchise Arbitration and Mediation, Inc. ("FAM") (or an organization designated by FAM) or (b) any other mediation organization approved by all such persons and/or entities or (c) by Judicial Arbitration and Mediation Service (JAMS) if FAM cannot conduct such mediation and the parties cannot agree on a mediation organization. On election by any party, arbitration and/or any other remedy allowed by this Agreement may proceed forward at the same time as mediation. In the mediation, you and we shall each be represented by an individual authorized to make binding commitments on each parties' respective behalfs and may be represented by counsel. In addition, you and/or we may, with permission of the mediator, bring such additional persons as are needed to respond to questions, contribute information and/or participate in the negotiations. The mediator shall be disqualified as a witness, consultant, expert or counsel for any party with respect to the dispute and any related matters.

(3) Third, if neither you nor we desire mediation (or if such mediation is not successful in resolving such claim), submitted to and finally resolved by binding arbitration before and in accordance with the arbitration rules of FAM (or any successor organization); provided that if such arbitration is unable to be heard by FAM for any reason, the arbitration will be conducted by Judicial Arbitration and Mediation Service (JAMS). In each case, the parties to any mediation/arbitration will execute appropriate confidentiality agreements, excepting only such public disclosures and filings as are required by law.

(b) Any mediation/arbitration (and any appeal of arbitration) will be exclusively conducted at our then-current headquarters (which may be at a different place than our present headquarters), to facilitate participation of important individuals and availability of documents, etc. to the resolution of the matter, and by a mediator/arbitrator experienced in franchising. You and we acknowledge the critical importance of a single source for decisions in arbitration (and in any court actions) to guide you and us, to reduce the possibility of inconsistent decisions and awards which could adversely affect the uniform development and administration of the Relax The Back System and group of companies and to maximize the opportunity for the arbitrator to give due consideration to your and our ongoing practical business needs in this regard. Except as expressly provided in this Agreement, the parties to any mediation or arbitration will bear their own costs, including attorney's fees. The fees and expenses of the mediator(s), arbitrator(s), mediation organization and/or arbitration organization shall be shared equally by the parties to the dispute, unless expressly provided otherwise in this Agreement. Any claim, and any mediation/arbitration, will be conducted and resolved on an individual basis only and not on a class-wide, multiple plaintiff or similar basis. On request of any party to a claim, the arbitrator may be required to issue a written award, specifying the facts found and the law applied, but the party so requesting will bear the fees and charges incurred in connection therewith. The arbitrator (and any arbitration appeal panel) shall follow and apply all applicable law and a failure to do so shall be deemed an act in excess of authority. The arbitrator may award or otherwise provide for temporary restraining orders, preliminary injunctions, injunctions, attachments, claim and delivery proceedings, temporary protective orders, receiverships and other pre-judgment, equitable and/or interim relief as appropriate pending final resolution by binding arbitration of a claim, as well as in connection with any such final resolution, and may issue summary orders disposing of all or part of a claim at any point. Each party consents to the enforcement of such orders, injunctions, etc. by any court having jurisdiction. In no event may offers and/or other communications made in connection with, or related in any way to, mediation, possible settlement or other resolution of a dispute be admitted into evidence or otherwise used in connection with any arbitration or other proceeding, and any arbitration award in violation of this provision shall be vacated by the arbitration appeal panel (described below) and/or any court having jurisdiction. The subpoena powers of the arbitrator with respect to witnesses to appear at the arbitration proceeding shall not be subject to any geographical limitation. The disputants shall have the same discovery rights as are

available in civil actions in the state whose law is chosen under Section 19.14. The arbitrator (rather than a court) shall decide any questions relating in any way to the parties' agreement (or claimed agreement) to arbitrate, including but not limited to applicability, subject matter, timeliness, scope, remedies, claimed unconscionability and any alleged fraud in the inducement, or otherwise. Each participant must submit or file any claim which would constitute a compulsory counterclaim (as defined by the applicable rule under the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed in such proceeding will be forever barred. Any offers, discussions, negotiations, mediations or otherwise in connection with possible settlement or other resolution of any claim may not be introduced in evidence (or for any other purpose) in any arbitration proceeding, court proceeding or otherwise.

(c) If any party to an arbitration wishes to appeal any final award by an arbitrator (there will be no appeal of interim awards or other interim relief), that party can appeal, within thirty (30) days of such final award, to a three (3) arbitrator panel to be appointed by the same organization as conducted the arbitration (the panel to be selected from a field of at least 6 qualified candidates experienced in franchising), such panel to conduct all proceedings at the same location as specified in subsection (b) above. The issues on appeal will be limited to the proper application of the law to the facts found at the arbitration and will not include any trial *de novo* or other fact-finding function. The party requesting such appeal must pay all costs and fees charged by such arbitration appeal panel and/or arbitration organization in connection with such appeal, as well as posting any bond deemed appropriate by such arbitration organization or arbitration appeal panel. A party requesting appeal, and who does not prevail on appeal, will pay the other party's (or parties') attorneys' fees and other costs of responding to such appeal.

(d) Judgment on any preliminary or final arbitration award (subject to the opportunity for appeal as contemplated above) may be entered in any court having jurisdiction and will be binding, final and non-appealable.

(e) Disputes with respect to claims or issues relating primarily to (i) the validity of the Marks or other intellectual property licensed to you, or (ii) any disputant's rights to possession of any real and/or personal property (including any action in unlawful detainer, ejectment or otherwise), shall be subject to court proceedings only.

(f) Notwithstanding any provisions of this Agreement or otherwise relating to which state or provincial laws this Agreement will be governed by and construed under, any provisions of state, provincial or other law to the contrary and/or any statements in our Offering Circular required as a condition of registration or otherwise, you and we mutually intend and agree that (1) all issues relating to arbitrability and/or the enforcement of the agreement to arbitrate contained herein will be (i) decided by the arbitrator (including all claims that this Agreement in general, and/or the within agreement to arbitrate and/or any other agreement, was procured by fraud in the inducement or otherwise) and (ii) governed exclusively by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the federal common law of arbitration and (2) you and we mutually intend and agree (and have expressly had a meeting of the minds) to fully enforce all of the provisions of this franchise agreement and all other documents signed by you and us, including (but not limited to) all venue, choice-of-laws, mediation/arbitration provisions and other dispute avoidance and resolution provisions (including (but not limited to) those relating to arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, shortened periods in which to bring claims or otherwise), and to rely on federal preemption under the Federal Arbitration Act (9 U.S.C. § 1 et seq.)

(g) You and we each knowingly waive all rights to trial by a court or jury, understanding that arbitration may be less formal than a court or jury trial, may use different rules of procedure and evidence and that appeal is generally less available, still strongly preferring, and having mutually selected (for the reasons set forth in this section and the following one), mediation and/or arbitration as provided in this Agreement to resolve any disputes, except as expressly provided in Section 19.1 (e), you and we having had an express meeting of the minds on each these matters as set forth in Articles 19, 21 and/or

otherwise. You and we intend to (and each of us expressly agrees that the other may) fully enforce each of the provisions of this Article 19 (as well as all other provisions of this Agreement), including (but not limited to) those relating to arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, shortened periods in which to bring claims or otherwise, you and we having had an express meeting of the minds regarding each of such matters. You and we mutually intend and agree (and have expressly had a meeting of the minds) that the provisions of this Agreement (including, but not limited to, Articles 19 and/or 21) will control over any provisions of this Agreement or otherwise relating to which state or provincial laws this Agreement will be governed by and construed under, any provisions of state, provincial or other law to the contrary and/or any statements in our Offering Circular or otherwise required as a condition of registration or otherwise.

(h) Nothing in this Agreement shall be construed as limiting your right to seek recourse (but only in the manner set forth in this Section 19.1) for an allegedly wrongful termination by us of your rights under this Agreement. Remedies available to you in the event of a finding of wrongful termination of this Agreement by us are exclusively limited to reinstatement of the franchise and an award of actual damages, consistent with the limitations described in Section 19.2, below.

(i) You understand, agree and anticipate, at the time of being awarded this franchise, that mediation-arbitration-litigation will be (subject only to express provisions otherwise in this Agreement) exclusively at a location at or near our headquarters (which location may change at any time as a result of our possibly moving our headquarters in the future and which may be a substantial distance from your location), waiving any provisions of state law or otherwise to the contrary) and that such provisions in this Agreement (along with other provisions of Articles 19 and 21, such as waiver of jury trial, limitations on damages, prohibitions on class actions, shortened statutes of limitations, etc.) may make it substantially more expensive and/or burdensome for you to make claims against, or to defend against claims by, us and/or the Franchisor-Related Persons Entities. You anticipate that we will (and agree that we may) enforce all such provisions strictly according to their terms and agree that such provisions, when viewed in the context of a diverse franchise system with both large and small, sophisticated and unsophisticated participants, but with a common need for uniformity and predictability, are neither unconscionable, unfair nor oppressive, but are justified by your and our practical business necessities and represent a reasonable balancing of the interests of all participants in the Relax The Back® system. You agree that the provisions of Articles 19 and 21 are vital to (among other things) achieving uniformity in a diverse system, minimizing the risks of inconsistent decisions by numerous arbitrators/courts and that you, as much as we, have an interest in such uniformity and predictability to protect your investment, as well as maintaining the integrity of the Relax The Back system. You also understand and agree that the Federal Arbitration Act applies to all provisions of this Agreement, that such Act will preempt any state or other law to the contrary and, as a result, the provisions of this Agreement will be strictly enforced according to their terms and you acknowledge that you have a full opportunity to review and discuss, and have your questions answered regarding, this section.

#### **19.2 Venue, WAIVER OF RIGHTS TO TRIAL BY JURY, LIMITATION ON DAMAGES, etc.**

Without in any way limiting or otherwise affecting your and our obligations regarding mediation/binding arbitration, you and we agree that any litigation arising out of or relating in any way to this Agreement between you and us (and/or involving any owner and/or affiliate of yours, and/or which could be brought by you or on your behalf, involving any of the Franchisor-Related Persons/Entities), whether to enforce an arbitration award or involving any litigation, dispute, controversy, claim, proceeding or otherwise which is not subject to any agreement regarding mediation/arbitration (or in the event that a court having jurisdiction should hold that any agreement regarding mediation and/or arbitration is not enforceable) or otherwise, and bearing in mind your and our joint interest in having a single court determine issues in a consistent manner for application throughout the Relax The Back® System and not having us or our Franchisees exposed to inconsistent decisions, will be held exclusively before a court in the most immediate judicial district encompassing our then-current headquarters and having subject matter jurisdiction or the United States District Court encompassing our then-current headquarters (where a basis for federal jurisdiction exists, all filings, proceedings and otherwise (other than proceedings to

remove or transfer a matter to such court and/or to compel compliance with the provisions of this Article 19, including compelling a face to face meeting, mediation and/or arbitration) will be exclusively in such Federal court, in preference to state court), excepting only proceedings to remove or otherwise transfer a matter to such court(s) and/or to compel arbitration, as contemplated by this Agreement, **you and we consenting to the exclusive jurisdiction of such court(s) and WAIVING ALL RIGHTS TO TRIAL BY JURY**; provided that any action to obtain possession of any real and/or personal property (including any action in unlawful detainer, ejectment or otherwise) may be brought in a state or Federal court having jurisdiction over the real and/or personal property at issue. Any claim, and any litigation, will be conducted and resolved on an individual basis only and not on a class-wide, multiple plaintiff or similar basis.

So as to achieve many of the advantages which would normally be associated with arbitration (such as lower expense, more rapid resolution of controversies, fewer protracted and complex proceedings, reduced instances of costly and time-consuming appeal, use of a more sophisticated and experienced trier of fact and law, etc.) and for your and our mutual benefit, **you and we agree that in any arbitration, litigation or otherwise, you (and each owner and affiliate of yours) and we each knowingly waive all rights to trial by jury.**

In any arbitration, litigation or otherwise, you and we each waive any right to recover, and any rights to make claims for (whether by claim, counter-claim, offset, way of defense or otherwise), punitive, exemplary, multiple, pain-and-suffering, mental distress, incidental, consequential, special, lost income and/or profits (except as expressly provided below) and/or similar damages under any theory whatsoever, you and we agreeing that such claims are inherently speculative and subject to abuse, often serving as obstacles to the reasonable resolution or settlement of a dispute and frequently operating to primarily benefit the attorneys involved in the claim.

In any event, we may recover the then-current value of any initial franchise fees, royalties, advertising/marketing contributions and/or other payments you are, or would be, obligated to make, or would normally make, in the absence of a breach or termination, to us or any affiliated company, whether under this Agreement or otherwise, it being your and our intention that we receive the full benefit of our bargain with you, as well as any past due payments owed to us and/or any affiliate. However, our maximum liability and that of any and all of the Franchisor-Related Persons/Entities will be limited to \$200,000 total, and your liability and that of any and all affiliates of yours will also be limited to \$200,000 total, for any and all claims, whenever brought, subject to inflation adjustment, but in no event will there be any limitation on indemnity obligations unless otherwise provided in this Agreement. Each party agrees that its only remedy if an injunction or other equitable relief is entered against it will be to obtain dissolution of such injunction, etc. The terms of this paragraph are subject to the provisions of Section 19.4, below.

Notwithstanding the foregoing or anything else in this Agreement or otherwise, nothing shall prevent us from terminating your rights and our obligations under this Agreement in accordance with this Agreement and any applicable law, nor prevent you or us from obtaining any equitable relief to which you and/or we may be otherwise entitled under this Agreement.

You and we expressly acknowledge and agree that the dispute avoidance and resolution provisions of this Agreement [whether relating to arbitration, mediation, waiver of jury trial, venue, limitations on damages, prohibition against multiple plaintiff-class actions, shortened statutes of limitation, and/or otherwise] may require you to travel to a distant location to resolve a dispute, expend additional funds, raise challenges for you and/or us in prosecution of actions against the other or otherwise, and you and we knowingly accept all such and related obligations and limitations as a reasonable balancing of your and our interests and those of the Relax The Back system as a whole, including your and our joint need to, as quickly and inexpensively/informally as possible, determine issues in a consistent manner for application throughout the Relax The Back System and otherwise. You and we intentionally wish to avoid

traditional court litigation methods of dispute resolution (including their attendant attorney's fees and other costs, delay, uncertainty and other disadvantages), which you and we consider inappropriate for our business relationship and which could damage the Relax The Back® franchise system. Notwithstanding any bankruptcy or other proceeding, you and we wish to have the dispute avoidance and resolution provisions of this Agreement strictly enforced according to their terms. Any dispute avoidance and resolution provisions (and/or other) of this Agreement which are unenforceable shall be severed (or, preferably, modified to the minimum degree necessary to make them enforceable, including making them mutual) and the remaining provisions fully enforced.

The dispute avoidance and resolution provisions of this Agreement shall apply to any claims, etc. brought by any owner and/or affiliate of yours, or which could be brought by you or on your behalf, whether against us and/or any or all of the Franchisor-Related Persons/Entities, as well as any claims by us against any of your affiliates (but, with respect to affiliates, only to the extent that any such affiliates of yours or ours are bound by the terms of this Agreement)

**19.3 Prior Notice of Claims by You.** You and we agree, that:

(a) Prior to you taking any legal or other action against us and/or any of the Franchisor-Related Persons/Entities, you will first give us thirty (30) days prior written notice and opportunity to cure such alleged act or omission. If such failure cannot reasonably be corrected within such thirty (30) day period and we diligently undertake to make such correction within thirty (30) calendar days after such written notice is received by us, then we shall have ninety (90) calendar days after such written notice is received to cure such alleged act or omission; provided that any dispute regarding our withholding consent with respect to a proposed transfer by you, or any other dispute in which delay may cause you significant harm or loss, may be immediately submitted to face-to-face meeting, mediation and arbitration as provided in Section 19.1, and any claim for equitable relief with respect to a dispute under Subsection 19.1 (e) shall not be subject to this Section 19.3.

**19.4 Periods In Which to Make Claims.**

(a) You must comply with the provisions of Section 19.3, above, or be barred from bringing any action or proceeding arising out of or relating in any way to this Agreement against us and/or any affiliates of ours. Additionally, and subject to the provisions of this Section 19.4, no arbitration, action or suit (whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense, offset or otherwise) by either you or us will lie or be permitted against the other (nor by you against any of the Franchisor-Related Persons/Entities), whether for damages, rescission, injunctive or any other legal and/or equitable relief, in respect of any alleged breach of this Agreement, or any other claim of any type, unless such party will have commenced such arbitration proceeding, action or suit before the expiration of the earlier of:

(1) One (1) year after the date on which the state of facts giving rise to the cause of action comes to the attention of, or should reasonably have come to the attention of, such party; or

(2) One (1) year after the initial occurrence of any act or omission giving rise to the cause of action, whenever discovered.

(b) Notwithstanding the foregoing limitations, where any federal, state or provincial law provides for a shorter limitation period than above described, whether on notice or otherwise, such shorter period will govern.

(c) Regardless of the limitations described in subsections (a) and (b) above, a claim may be preserved by either of us against the other by providing written notice of such claim to the other within the applicable one (1) year period described above. If either you or we commence an arbitration, suit or other

legal proceeding against the other based upon such preserved claim after the one (1) year period, then the sole remedy available with regard to such a claim shall be termination of the Agreement and/or appropriate injunctive relief, but no claim for damages and/or rescission may be made.

(d) The limitations set forth in this Section 19.4 will not apply to your or our claims arising from or related to confidentiality, non-competition and/or indemnification obligations under this Agreement, and/or your unauthorized use of the Marks.

**19.5 Withholding Consent.** In no event will you make any claim, whether directly, by way of set-off, counter-claim, defense or otherwise, for money damages or otherwise, by reason of any withholding or delaying of any consent or approval by us. Your sole remedy for any such claim is to submit it to an executive meeting, mediation and arbitration as described in this Agreement and, if the executive meeting and mediation fail to resolve the matter, for the arbitrator to order us to grant such consent. Unless otherwise expressly provided in this Agreement, approvals and consents may be withheld by us in Business Judgment.

**19.6 Survival and Construction.** Each provision of this Article 19, together with the provisions of Article 21, will be deemed to be self-executing and continue in full force and effect subsequent to and notwithstanding the expiration, termination, setting aside, cancellation, rescission, unenforceability or otherwise of this Agreement (or any part of it) for any reason, will survive and will govern any claim for rescission or otherwise and will apply to and govern any claim against, or with respect to, the Marketing Fund.

Your non-competition and confidentiality obligations as set forth in this Agreement or elsewhere shall survive the expiration and/or termination of this Agreement according to their terms, and your indemnity/hold harmless obligation as set forth in this Agreement or elsewhere shall forever survive the expiration and/or termination of this Agreement. To the maximum extent permitted by law, you waive the effect of any statute of limitations which would, by lapse of time, limit your duties to observe such obligations and/or so defend and/or indemnify and/or hold harmless.

Each provision of this Agreement (including all dispute resolution provisions) will be construed as independent of, and severable from, every other provision and if any provisions are deemed to be unenforceable in any way, such provisions will be modified or interpreted to the minimum extent necessary to have them comply with the law (including making such provision mutual in effect) and the remaining provisions of this Agreement will remain in full force and effect, the parties agreeing that the unenforceability of any provisions of this Agreement will not affect the remainder of this Agreement, notwithstanding any statutory or decisional law to the contrary.

Each party reserves the right to challenge any law, rule or judicial or other construction which would have the effect of varying or rendering ineffective any provision of this Agreement. The benefits and protections of this Agreement which apply to us (including, but not limited to, all provisions relating to indemnification and/or releases) shall also apply to any past, current and/or future Franchisor-Related Persons/Entities as if they were expressly named beneficiaries of such provisions. In each case where we may exercise any option or other right, we may do so in our sole discretion, without liability or other obligation, unless we have expressly provided otherwise in this Agreement. So as to preserve the flexibility to deal with practical business situations (which you and we agree should benefit your and our businesses in the long term), we may, in our sole discretion, elect to not enforce (or to selectively enforce) any provision of this Agreement, or any other agreement, any policy or otherwise, whether with respect to you and/or any other franchisee or otherwise, and we may apply different policies to any franchisee, all without liability or other obligation and any such acts or omissions will not limit or otherwise affect our rights, whether to strictly enforce this Agreement or otherwise.

The rights and obligations of this Agreement run directly between you and us, are not intended to create any third-party beneficiary or similar rights or obligations (except for benefits to the Franchisor-

Related Persons/Entities) and we do not have any duty to take any legal or other actions against, or with respect to, any other Relax The Back® Franchisees in connection with any alleged violation of their obligations.

Failure by you to initial any provision of this Agreement shall not affect its validity, enforceability or otherwise.

**19.7 Costs and Attorneys' Fees.** Except as expressly provided otherwise in this Agreement with respect to appeal of an arbitration award, or with respect to your and our rights to recover attorneys' fees in connection with your and our indemnification rights hereunder, or as otherwise expressly provided in this Agreement, and based on your and our judgment that attorney's fees provisions often operate to primarily benefit the attorneys involved in any claim and/or to encourage specious claims to the detriment of everyone involved in a franchise system, the parties will each bear their own costs of enforcement and/or defense (including but not limited to attorney's fees) in any claim or dispute between you and us (including any claim by you, or on your behalf, against the Franchisor-Related Persons/Entities or otherwise) and will make no claim with regard thereto; provided that, if you or we file any case (including any arbitration and/or court action but not mediation) against the other (including any claim by you, or on your behalf, against the Franchisor-Related Persons/Entities or otherwise) and the case is disposed of in a manner indicating that it was without substantial merit (such as by summary judgment or award, judgment on the pleadings, judgment n.o.v., non-suit, motion to dismiss, directed verdict or similar disposition in arbitration or court), the party in favor of whom such disposition is made will receive their own reasonable costs of enforcement and/or defense (including but not limited to attorney's fees.)

**19.8 Validity and Execution.** This Agreement will become valid only when executed and accepted by us at our headquarters.

**19.9 Binding Effect, Modification and Representations.** This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns, and successors in interest, and will not be modified or supplemented except by means of a written agreement signed by both you and our President or one of our Vice Presidents, provided that changes to the Manuals may be made by us at any time and will be fully binding on you notwithstanding any provisions of this Section or otherwise. No other officer, field representative, salesperson or other person has the right or authority to sign on behalf of us, to make oral or written modifications to this Agreement, or to make any representations or agreements on behalf of us, and any such modifications, representations and/or agreements shall not be binding on us. You expressly acknowledge that no oral promises, representations or declarations were made to or relied on by you and that our obligations are confined exclusively to the terms herein. You understand and assume the business risks inherent in the franchised enterprise.

**19.10 Construction, etc.** Except as expressly provided otherwise, nothing in this Agreement is intended, nor will be deemed, to confer any rights or remedies on any person or legal entity not a party hereto. The headings of the several Articles and Sections hereof are for convenience only and do not define, limit, or construe the contents of such Articles or Sections. The term "attorneys' fees" will include, without limitation, legal fees, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand or claim, action, hearing or proceeding to enforce the obligations of this Agreement. References to a "controlling interest" in the Franchisee include, but are not necessarily limited to, fifty percent (50%) or more of the voting control of the Franchisee if the Franchisee is a corporation, and any general partnership interest if the Franchisee is a partnership. The term "you" as used herein is applicable to one or more persons, a corporation or a partnership, as the case may be. The singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two or more persons are at any time the Franchisee hereunder, whether or not as partners or joint venturers, their obligations and liabilities to us will be joint and several. This Agreement will be executed in multiple copies, each of which will be deemed an original. Each of the provisions of this Agreement (including Articles 19 and 21) apply to any claim brought (or which could be brought) by any owner and/or affiliate of yours or by or on your behalf. If any limitation on your rights (including, but not limited to, any limitation

on damages, waiver of jury trial, shortened period in which to make any claim or otherwise) is held unenforceable with respect to you, then such limitation will not apply to us. We shall have the sole right to enforce the obligations of this (or any other) Franchise (or other) Agreement and neither you nor any other franchisee of ours shall be deemed a third party beneficiary with respect to this or any other agreement.

You and we, each believing that (1) having written documents as the only basis for our legal relationship benefits each of us equally and reduces the risk of uncertainty in what should be a long-term business relationship and (2) this Agreement should be strictly interpreted according to its express terms, and each of us having a concern with (among other things) an approach whereby a court or arbitrator might impose (or limit or expand) rights and/or obligations with respect to either of us that were not expressly agreed to in writing by you and us, agree that you and we mutually and expressly waive and disavow any "implied covenant of good faith and fair dealing," similar doctrine, rule of interpretation or otherwise and that no such (or similar) doctrine, rule of interpretation or otherwise will have any application to your and our relationship, this Agreement or any other agreement between you and us (or any affiliate or the Franchisor-Related Persons/Entities) nor will affect our ability to make binding changes to the Relax The Back® System, the Manual(s) or otherwise. Neither you nor we have any expectation or agreement that your or our rights and obligations will be otherwise than as expressly set forth in this Agreement or that where any contractual provision allows you or us any discretion in action or otherwise, the exercise of that discretion will be limited in any way, whether by any "implied covenant of good faith and fair dealing," any similar doctrine or rule of interpretation or otherwise. No course of dealing between you and us, nor any course of dealing or agreement between us and anyone else, past, present or future, will affect your or our rights under this Agreement or otherwise. When we use the phrase "sole discretion" (or any similar phrase or concept), whether in this Agreement or otherwise, you agree that there will be absolutely no limitation (including, but not limited to, any "implied covenant of good faith and fair dealing" or otherwise) on our completely unrestrained ability and right to exercise that discretion in any way we choose. If, notwithstanding the provisions of this Section or otherwise, applicable law implies any covenant of good faith and fair dealing in this Agreement (which you and we agree it should not), you and we agree that such covenant shall not (i) imply any rights or obligations on you or us that are inconsistent with this Agreement, (ii) modify any provisions of this Agreement, (iii) create any cause of action in the absence of a violation of the express provisions of this Agreement and/or (iv) imply any rights or obligations that are inconsistent with a fair construction of the express provisions of this Agreement.

The parties acknowledge and agree that:

1. This Agreement (and the relationship between the parties) grants, in a number of instances, the Franchisor the sole discretion to make decisions, take actions and/or refrain from taking actions, and which may favorably or adversely affect the individual interests of any particular Franchisee. The Franchisor and the Franchisee agree that the Franchisor's ability to exercise its judgment and make decisions in its sole discretion in various areas, and without any limitation of any type, is necessary since a nation-wide and international franchise system must (a) retain the flexibility to respond to opportunities, meet competitive challenges and operate in a dynamic (and to some degree unpredictable) business environment that will inevitably generate situations in which individual interests must be subordinated to the interests of the franchise system as a whole and (b) maintain flexibility to respond to evolving business conditions, in each case without limitation;

2. The Franchisor shall exercise such discretion based on its assessment of its own interests and will not be required to consider the individual interests of the Franchisee or any other particular franchisee of the Franchisor, the Franchisee acknowledging that the Franchisor may make decisions based on considerations relating to the franchise system as a whole and which may favorably or adversely affect the individual interests of the Franchisee;

3. The Franchisor shall have no liability or other obligation to FRANCHISEE for the exercise of its discretion in accordance with the provisions of this Agreement;



4. In no event shall any trier of fact, or judge or arbitrator, substitute its judgment for the discretion so exercised by The Franchisor nor impose on the parties any duties or obligations not expressly undertaken by them; and

5. The provisions of this paragraph may be pleaded as a bar and as a complete defence to any action for an alleged breach of any duty.

If a duty of fair dealing in the performance and enforcement of this Agreement (or similar obligation) is imposed on the parties hereto by any applicable statute, court decision or otherwise (which you and we believe should not be so imposed, in consideration of your and our foregoing and other agreements), then the parties hereby acknowledge and agree that (a) any such duty will not (i) impose any rights or obligations on you or us that are inconsistent with this Agreement, (ii) modify any provisions of this Agreement, (iii) create any cause of action in the absence of a violation of the express provisions of this Agreement and/or (iv) imply any rights or obligations that are inconsistent with a fair construction of the express provisions of this Agreement, (b) performance and enforcement of this Agreement in accordance with its terms and in accordance with the exercise of the Franchisor's discretion as described above will meet the requirements of such duty and (c) the Franchisor may terminate its obligations and your rights hereunder, the Franchisor not having anticipated any imposition of obligations it had not expressly agreed to. You and we agree that, in any event and notwithstanding the imposition of any such duty or otherwise, this Agreement (and your and our relationship) gives us, and we retain, the entirely unrestricted right to make decisions and/or take (or refrain from taking) actions, even though such decisions may adversely affect you

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required hereunder, or the taking of some other action not required hereunder, or if under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice and/or other action required by such law or rule shall be substituted for the comparable provisions hereof, and we will have the right, in our Business Judgment, to modify such invalid or unenforceable provision, specification, standard, or operating procedure to the extent required to be valid and enforceable. You agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof, or any specification, standard or operating procedure prescribed by us, any portion or portions which a court may hold to be unenforceable in a final decision to which we are a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and this Agreement shall be enforced as originally made and entered into in all other jurisdictions.

You will have no right to enforce any obligation of ours or any other person/entity (including, but not limited to, any other Relax The Back® Franchisee) under, and you will not be deemed a third party beneficiary of, any other Franchise Agreement, other agreement or otherwise. You agree that neither we (nor any of the Franchisor-Related Persons/Entities) will be liable for any act or omission which is consistent with this Agreement or other information provided to you, or which is done in subjective good faith.

**19.11 Non-Retention of Funds.** You do not have the right to offset or withhold payments owed to us (and/or any affiliate) for amounts purportedly due you (or any affiliate of yours) from us, the Franchisor-Related Persons/Entities and/or any affiliate as a result of any dispute of any nature or otherwise, but will pay such amounts to us (or our affiliate) and only thereafter seek reimbursement in accordance with the provisions of Article 19. If you believe that we or any other person/entity has violated any legal duty to you, you will, notwithstanding such dispute, pay as designated all sums specified under

this Agreement or any other agreement, whether to be paid to us or the Franchisor-Related Persons/Entities (including royalties, any unpaid portion of the initial franchise fee, any advertising/marketing contributions and/or amounts payable to franchisee councils and/or cooperatives, rent or otherwise) and will not withhold any payments except as authorized by an arbitration award in your favor.

**19.12 Severability; Substitution of Valid Provisions.** Except as otherwise stated in this Agreement, each provision of this Agreement, and any portion of any provision, is severable (including, but not limited to, any provision related to dispute resolution), and the remainder of this Agreement will continue in full force and effect. To the extent that any provision is deemed unenforceable, you and we agree that such provisions will be enforced to the fullest extent permissible under governing law. This Agreement will be deemed automatically modified to comply with governing law if such law requires: (a) a greater time period for notice of the termination of, or refusal to renew, this Agreement; or (b) the taking of some other action not described in this Agreement. We may, in our Business Judgment, modify any invalid or unenforceable provision to the extent required to be valid and enforceable and you will be bound by the modified provisions.

**19.13 Waivers; Cumulative Rights.** Subject to the provisions of Section 19.4, no waiver by either party of any breach, default or unfulfilled condition under this or any other agreement between the parties shall be deemed a waiver of any subsequent or other breach, default or unfulfilled condition. No waiver shall be effective unless in writing and signed by an authorized representative of the signing party. The rights and remedies provided in this Agreement are cumulative unless expressly provided otherwise herein. Except as expressly provided in this Agreement, no party will be prohibited from exercising any rights or remedies provided under this Agreement or permitted under law or equity.

**19.14 Choice of Laws.** You and we, both agreeing on the practical business importance of certainty as to the law applicable to your and our relationship and its possible effect on the development and competitive position of the Relax The Back® family of companies, jointly agree that, except with respect to the applicability of the Federal Arbitration Act, 9 U.S.C. § 1 et seq. and the effect of federal pre-emption of state law by such Act and except to the extent governed by the United States Trademark Act and other federal laws, or as provided elsewhere in this Agreement, this Agreement and all matters arising out of or relating to it (including any claims, counter-claims or otherwise by you and/or any affiliate of yours) will be governed by, and construed and enforced in accordance with, the laws of Delaware, without regard to the laws of such state relating to conflicts of laws or choice of law; except that the provisions of any law of that state regarding franchises (including, without limitation, registration, disclosure, and/or relationship, and the regulations thereunder) shall not apply unless such state's jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section.

**19.15 Advice of Lawyers, Alternative Investment Opportunities, etc.** You acknowledge that you've had the opportunity (and we've strongly advised you) to have this Agreement and all other documents reviewed by your own attorney and that you've read, understood, had an opportunity to discuss with us, and agreed to each provision of this Agreement. You agree that you've been under no compulsion to sign this Agreement, that you've carefully reviewed and thought about each provision of this Agreement, that you've considered other franchise opportunities as well as the possibility of your entering our industry as a non-franchised participant and that, therefore, this Agreement will be deemed to have been drafted by you and us in equal parts and that no presumptions or inferences concerning this Agreement's terms, interpretation or otherwise will result by reason of the fact that we prepared this Agreement or may be unwilling (in the interest of consistency of system administration) to change its terms.

I have read Sec. 19.1 – 19.15, understand them, and agree with them.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

**20. NOTICES AND PAYMENTS.**

All written notices and reports permitted or required to be delivered by the provisions of this Agreement or of the Manuals will be deemed so delivered at the time delivered by hand, immediately on transmission by facsimile transmission or other electronic system, including e-mail or any similar means, one (1) business day after being placed in the hands of a commercial courier service for overnight delivery, or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to us at Relax The Back Corporation, 17785 Center Court Drive, Suite 250, Cerritos, CA 90703, (or our then-current headquarters), to the attention of the President, and to you at your Relax The Back® Store. Until your Relax The Back® Store has opened for business, we may send you notices at any address appearing in your application for a franchise or in our records. All payments and reports required by this Agreement will be directed to us at our address as specified above. Any required payment or report not actually received by us during regular business hours on the date due will be deemed delinquent. Notice to any one Franchisee, or owner of the Franchisee, shall be deemed effective as to all Relax The Back® Franchises owned by Franchisee and/or all owners of the Franchisee. Any party may change its address for receipt of notices by providing prior written notice of such change to the other party.

**21. ACKNOWLEDGMENTS AND REPRESENTATIONS, ENTIRE AGREEMENT, NO FIDUCIARY RELATIONSHIP, ETC.**

You and we do not have a fiduciary, agency or similar relationship (any such and/or similar relationships being expressly disavowed). You understand and agree that neither this Agreement nor anything else creates, or is intended to create, a fiduciary or agency relationship between you and us, that no such relationship exists or will exist, that you and we are and will be independent businesses, and that nothing in this Agreement is intended to or will make either you or us a general or special agent, joint venturer, partner, employee or fiduciary of or for the other for any purpose. The relationship between you and us is an ordinary commercial relationship between independent businesspeople intended for mutual but independent economic benefit and is not in any sense, nor is intended to be, a fiduciary, trust or similar special relationship, each party has dealt with each other at arm's length and as businesspersons with equivalent bargaining power, notwithstanding the relationship of Franchisor and Franchisee, and you have alternative business opportunities (some of which are franchised) which you have investigated and in which you can invest.

You acknowledge that you [and each of your owners (if you are a corporation or partnership) and investors] has read this Agreement and our Uniform Franchise Offering Circular and all exhibits and that you and they understand and accept the terms, conditions, and covenants contained in this Agreement as being necessary to maintain our high standards of quality and service and the uniformity of those standards at all Relax The Back® Stores and to protect and preserve the goodwill of the Marks and the System.

You and we, each agreeing on the critical practical business importance of our relationship being governed solely by written documents signed by you and us (including any concurrently executed written personal guarantees, Statement of Prospective Franchisee and/or exhibits - schedules - addenda - promissory note(s) - security agreement(s) or other written documents signed by the party to be bound

thereby, all of which will be deemed to be part of this Agreement for the purposes of this Section 21) and not wishing to create misunderstandings, confusion and possible conflict through reference to any alleged prior and/or contemporaneous oral and/or written representations, understandings, agreements or otherwise, or any legal doctrines such as "good faith and fair dealing" or otherwise which might introduce an element of uncertainty into our relationship, jointly intend, represent, warrant and agree that:

(1) this Agreement contains the final, complete and exclusive expression of the terms of your and our agreement, and the final, complete and exclusive expression of your and our intent, and entirely supersedes and replaces any and all prior and/or concurrent understandings, agreements, inducements, prior course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) between you and us,

(2) there are no prior and/or concurrent understandings, agreements, inducements, course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) which are not fully expressed in this Agreement, and

(3) no prior and/or concurrent understandings, agreements, inducements, course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) of any kind or nature whatsoever have been made by us or anyone else, nor have been relied on by you nor will have any force or effect; excepting only the written representations made by you in connection with your application for this franchise.

You and we each expressly disclaim any understandings, agreements, inducements, course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) which are not fully expressed in writing in this Agreement. This is equally important to you, as well as us, since, just as we do not wish to deal with allegations that we may have made or entered into understandings, representations, etc. not fully expressed in writing in this Agreement (such as alleged earnings claims), you do not wish to deal with allegations that you made or entered into understandings, representations, etc. (such as promises to achieve particular sales or royalty payment levels, would open a particular number of units, etc.) which are not fully expressed in writing in this Agreement.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

In particular, we have not authorized, and you have not been promised, nor have we or anyone else made, nor have you received or relied on, any promises, representations or warranties, that:

- (1) any payments by you are refundable at your option,
- (2) we will repurchase any rights granted hereunder (or any associated business) or will be able to assist you in any resale,
- (3) you will succeed in the franchised business,
- (4) you will achieve any particular sales, income or other levels of performance,
- (5) you will have any exclusive rights of any type other than as expressly set forth herein,

(6) you will receive any level of advertising (television or otherwise), marketing assistance, site location, development or other services, operational assistance or otherwise other than as expressly set forth in this Agreement,

(7) you will not be required to obtain any licenses in order to operate your Relax The Back® Store business,

(8) any location will be successful,

(9) it will be anyone's responsibility other than yours to obtain all licenses necessary in order to establish and operate your Relax The Back® Store business,

(10) you will be awarded additional or further franchises or other rights, except as expressly set forth in a written document signed by a corporate officer of Relax The Back®, Inc. or

(11) we or any affiliate will engage (or not engage) in, or award you rights to, other and/or related businesses, products and/or services; or

(12) you will earn, or are likely to earn or receive, any particular amount, including any amount in excess of your initial franchise fee or other payments to us.

You represent and warrant that no contingency, condition, prerequisite, prior requirement, or otherwise (including but not limited to obtaining financing, obtaining a site or otherwise) exists with respect to you fully performing any or all of your obligations under this Agreement.

You have not received or relied on (nor have we or anyone else provided) any oral or written: sales, income or other historical results, projections or otherwise, of any kind or nature or any statements, representations, data, charts, tables, spreadsheets or mathematical calculations or otherwise which stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise and neither we nor anyone else has made, nor have you relied on, any promises, representations or warranties as to any profits or otherwise you may realize in the operation of a Relax The Back® Store, nor have you received or relied on any representations regarding any working capital or other funds necessary to reach any "break-even" or any other financial level. We can't reliably predict, forecast or project future performance, revenues, profits or otherwise of any Relax The Back® Store, even one owned and/or operated by us, due to the large number of factors outside our control, and we certainly can't reliably predict what your results might be. You understand that results will vary from unit to unit. If any such information, promises, representations and/or warranties has been provided to you, they haven't been authorized, they should not be relied on, we will not be bound by them, and, if you do rely on such information, promises, representations and/or warranties, you do so at your own risk.

You acknowledge and agree that the success of the business venture contemplated to be undertaken by you is speculative, is and will be dependent on your personal efforts, that while we can provide you with systems, methods, procedures, techniques and other "tools," including the Relax The Back® System and otherwise, your success ultimately depends on your efforts, including your proactive, diligent and thorough knowledge and application of the Relax The Back® System, that entry into any business enterprise is always associated with risk and that no assurance of success has been or can be given to you. You acknowledge and represent that you have entered into this Agreement and made an investment only after (1) making an independent investigation of the opportunity, including having received a list, in connection with the presentation of our Uniform Franchise Offering Circular, of (and having spoken with) other franchisees currently operating or who have operated Relax The Back® Stores, (2) having had an opportunity to have this transaction and all related documents reviewed by an attorney and a financial advisor of your choosing, such review having been strongly recommended by us and (3) having independently researched all applicable licensing and other requirements related to the operation of your Relax The Back® Store. You acknowledge that you and each person signing as Franchisee

(and/or having any investment and/or interest in your Relax The Back® Store) has received, reviewed, understood and fully read, and all questions have been answered regarding, (1) a copy of our Uniform Franchise Offering Circular with all exhibits at least ten (10) business days prior to the earlier of your and/or any such person (a) signing any binding documents or (b) paying any sums and (2) a copy of this Agreement and all other agreements complete and in form ready to sign at least five (5) business days prior to the earlier of you and/or any such person (a) signing any binding documents or (b) paying any sums.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

You understand, acknowledge and agree that (1) we may have offered franchises in the past, may currently be offering franchises and/or may offer franchises in the future, on economic and/or other terms, conditions and provisions which may significantly differ from those offered by this Agreement and any related documents and (2) there may be instances where we have varied, or will vary, the terms on which we offer franchises, the charges we (and/or our affiliates) make or otherwise deal with our Franchisees to suit the circumstances of a particular transaction, the particular circumstances of that Franchisee or otherwise, in each case in our sole discretion.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

You understand that we are relying on you to bring forward in writing at this time any matters inconsistent with any of the matters set forth in this Section 21 or otherwise so that we can correct any misunderstandings or inappropriate expectations and you agree that if any of the statements or matters set forth in this Section 21 or otherwise are not true, correct and complete you will make a written statement regarding such next to your signature below so that we may address and resolve any such issue(s) at this time and before either you or we go forward.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

You acknowledge and agree that in all of your dealings with the Franchisor, the officers, directors, employees, and agents of the Franchisor act only in a representative capacity and not in an individual capacity and that no other persons and/or entities other than the Franchisor has or will have any duties or obligations to you. You further represent to us, as an inducement to our entry into this Agreement, that you have made no misrepresentations or material omissions in obtaining the Franchise.

Your Initials: \_\_\_\_\_ / \_\_\_\_\_

IN WITNESS WHEREOF, you and we have executed and delivered this Agreement in \_\_\_\_\_ counterparts on the day and year first above written.

**FRANCHISOR:**

Relax The Back Corporation,  
a Delaware corporation

By: \_\_\_\_\_  
Title: President

**FRANCHISEE (Individual)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**FRANCHISEE (Corp., LLC or Partnership)**

\_\_\_\_\_  
Legal Name of Franchisee Entity

a \_\_\_\_\_  
Jurisdiction of Formation Corporation, LLC or Partnership

By: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_