

10.9 Transportation Authority. It is your responsibility to investigate the requirements for the Smartbox Business concerning both interstate and intrastate authority to operate the Smartbox Business. You also must be in compliance with all requisite levels of transportation related authorization and to acquire the appropriate insurances for such authorizations. We reserve the right to review this status and to insure that you and your Smartbox Business are in complete compliance with these rules.

11. BUY BACK PROGRAM

We may in the future establish a program that permits the sale and resale of Containers that have been financed by third-party lenders. In the event we create such a program (and we do not have an obligation to do so), the program will not be a guarantee or suretyship.

12. MARKETING AND ADVERTISING

Recognizing the value of marketing and advertising, and the importance of the standardization of marketing and advertising programs to the furtherance of the goodwill and public image of the System, you and we agree as follows:

12.1 Marketing Contribution. For each Accounting Period during the term of this Agreement, you must make a contribution (the "**Marketing Contribution**") to our system-wide marketing and advertising program fund (the "**MAP**") in the amount of: (a) two percent (2%) of Net Sales for the immediately preceding Accounting Period. You must pay the Marketing Contribution in the manner required under Section 6.3 above (or as otherwise provided in this Section 12).

12.2 Directory Listings. You must also obtain and maintain directory listings in the classified and other directories that we designate from time to time, including the primary Yellow Pages covering the Territory. The listings must be placed in such categories as we specify from time to time.

12.3 Marketing Fund. The MAP will be maintained and administered by us or our designee, as follows:

(a) We or our designee will have the right to direct all marketing and advertising programs, as well as all aspects thereof, including without limitation, the concepts, materials, and media used in such programs and the placement and allocation thereof. We agree and acknowledge that the MAP is intended to maximize general public recognition, acceptance, and use of the System; and that we and our designee are not obligated, in administering the MAP, to make expenditures for you which are equivalent or proportionate to your contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the MAP.

(b) The MAP, all contributions thereto, and any earnings thereon, shall be used exclusively (except as otherwise provided in this Section 12.3) to meet any and all costs of maintaining, administering, directing, conducting, creating and/or otherwise preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities which we believe will enhance the image of the System, including, without

limitation, the costs of preparing and conducting media advertising campaigns, direct mail advertising, marketing surveys and other public relations activities; employing advertising and/or public relations agencies to assist therein; purchasing or developing promotional items; conducting and administering visual merchandising, point-of-sale, and other merchandising programs; creating and placing advertising and other promotional materials to create brand awareness and develop the brand; and providing promotional and other marketing materials and services to the Smartbox Businesses operated under the System. The MAP may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, approved in advance by us, which products, services, or improvements we will have the right to determine will promote general public awareness and favorable support for the System.

(c) You must contribute to the MAP in the manner specified in Section 6.3 above. All sums paid by franchisees to the MAP will be maintained in an account separate from our other monies. We will have the right to charge the MAP for such reasonable administrative costs and overhead as we may incur in activities reasonably related to the direction and implementation of the MAP and advertising programs for franchisees and the System, including, without limitation, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs. The MAP and its earnings shall not otherwise inure to our benefit. We or our designee shall maintain separate bookkeeping accounts for the MAP.

(d) The MAP is not and shall not be our asset, nor a trust, and we do not assume any fiduciary obligation to you for maintaining, directing or administering the MAP or for any other reason. We will prepare a statement of the operations of the MAP as shown on our books annually by us, and it will be made available to you.

(e) Although the MAP is intended to be of perpetual duration, we maintain the right to terminate the MAP. The MAP will not be terminated, however, until all monies in the MAP have been expended for marketing, advertising and/or promotional purposes.

12.4 Marketing Cooperatives. We will have the right, in our discretion, to designate any geographical area for purposes of establishing one (1) or more regional advertising and marketing cooperatives (“**Cooperative**”), and you agree to take appropriate steps to establish and participate, including making the required contributions, in a Cooperative if required to do so by us. If a Cooperative for the geographic area or market in which the Facility is located has been established at the time you commence operations hereunder, you will immediately be bound by the obligation to become a member of such Cooperative under the terms of the then-existing Cooperative agreement. If a Cooperative for the geographic area or market in which the Smartbox Facility is located is established during the term of this Agreement, you must immediately become a member of such Cooperative, and take all steps necessary to become such member. In no event will you be required to be a member of more than one Cooperative as to the Franchised Business. The following provisions shall apply to each such Cooperative:

(a) Each Cooperative will be organized and governed in a form and manner approved by us in writing, and will commence operations on a date specified by us. Any disputes arising among or between you, other franchisees in the Cooperative, and/or the Cooperative, will be resolved in accordance with the rules and procedures set forth in the

Cooperative's governing documents. If a Cooperative is created, we intend to establish initial rules and procedures that provide that each Smartbox Business that participates in the Cooperative will have a vote.

(b) Each Cooperative will be organized for the exclusive purpose of administering regional marketing and advertising programs, and developing, subject to our approval, standardized promotional materials for use by the members in regional marketing, advertising and promotion.

(c) No marketing, advertising or promotional plans or materials may be used by a Cooperative or furnished to its members without our prior approval, pursuant to the procedures and terms as set forth in Section 12.8 hereof.

(d) In addition to, but not in lieu of the Marketing Contribution, we may require you to contribute up to three percent (3%) of Net Sales to the Cooperative. If you are required to contribute to a Cooperative, then your contribution to the Cooperative will be credited toward your required expenditures for local advertising and promotion (as set forth in Section 12.5). The specific amount of your contribution to the Cooperative will be determined solely by the Cooperative, and the Cooperative may vote, by agreement of the majority of its members, to raise the required contribution (including your contribution) to the Cooperative, and such amount may be more than 3% of Net Sales. You must submit to the Cooperative the amount required at such times as determined by the Cooperative, but no later than the third (3rd) day of each Accounting Period for the preceding Accounting Period, together with such other statements or reports as we may require, or the Cooperative may require, with our prior written approval.

(e) We, in our sole discretion, may grant to any franchisee an exemption for any length of time from the requirement of membership in a Cooperative, or from the requirement to pay all or a portion of the contribution (described in this Section 12.4(e)) to the Cooperative upon written request of such franchisee stating reasons supporting such exemption. Our decision concerning such request for exemption shall be final.

12.5 Local Advertising and Promotion. In addition to, but not in lieu of, the Marketing Contribution, you must expend on local advertising and promotion on an annual basis a minimum of the greater of (a) three percent (3%) of Net Sales, or (b) fifty thousand dollars (\$50,000) if your Territory has a population of 1,000,000 or less (and for populations greater than 1,000,000, the minimum expenditure shall be \$50,000, plus \$30,000 for each additional 1,000,000 people, adjusted pro rata for amounts less than or greater than 1,000,000 people. By way of example only, if your Territory has 1,500,000 people, your expenditure level will be \$65,000 (based on \$50,000, plus $500,000/1,000,000$ multiplied by \$30,000). If you belong to and are required to contribute to a Cooperative, all of your Cooperative contributions shall be considered local advertising and promotion, and such amounts paid to the Cooperative shall be credited toward your required local advertising expenditures. All of your local advertising and promotion must be in such media, and of such type and format as we may approve; must be conducted in a dignified manner; and must conform to such standards and requirements as we may specify. You will not use any advertising or promotional plans or materials unless and until you have received written approval from us, pursuant to the procedures and terms set forth in

Section 12.8 below. The minimum local advertising and promotional expenditure may be increased annually according to the Index.

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

- (a) Salaries and expenses of any of your employees, including salaries or expenses for attendance at advertising meetings or activities, or incentives provided or offered to such employees, including discount coupons;
- (b) Charitable, political, or other contributions or donations;
- (c) The value of discounts provided to customers; or
- (d) Yellow Pages advertising.

12.7 Promotional Materials. We will make available to you from time to time, at your expense, marketing and advertising plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, community relations programs, and similar advertising and promotional materials for use in local advertising and promotion.

12.8 Approvals. For all proposed advertising, marketing, and promotional plans, you must submit samples of such plans and materials to us (by means described in Section 23 below), for our review and prior written approval (except with respect to prices to be charged by you). If written approval is not received by you from us within fifteen (15) days of the date of receipt by us of such samples or materials, we will be deemed to have approved them. You acknowledge and agree that any and all copyright in and to marketing, advertising and promotional materials developed by or on your behalf will be our sole property, and you agree to execute such documents (and, if necessary, require your independent contractors to execute such documents) as may be deemed reasonably necessary by us to give effect to this provision.

12.9 Grand Opening Program. In addition to and not in lieu of the Marketing Contribution and any expenditures for local advertising and promotion, you must expend the amount set forth in Exhibit B for grand opening advertising and promotional programs in conjunction with the Franchised Business's initial grand opening, pursuant to a grand opening advertising and marketing plan developed by us or developed by you and approved in writing by us (the "**Grand Opening Program**"). The Grand Opening Program must be commenced within one (1) day of the Opening Date, and must be executed and completed within three hundred sixty (360) days after the Opening Date. You must submit to us, for our prior written approval, a marketing plan and samples of all advertising and promotional material not prepared or previously approved by us. For the purpose of this Agreement, the expenditures for the Grand

Opening Program will not be considered as part of the required expenditures for local advertising and promotion, as provided under Section 12.5 above. We reserve the right to require you to deposit with us the funds required under this Section 12.9 to distribute as may be necessary to conduct the Grand Opening Program.

12.10 Minimum Requirements Only. You understand and acknowledge that the required contributions and expenditures are minimum requirements only, and that you may, and are encouraged by us to, expend additional funds for local advertising and promotion of a local nature which will focus on disseminating advertising directly related to the Franchised Business.

12.11 Websites. You specifically acknowledge and agree you will not establish a Website (as defined below), nor offer, promote, or sell any products or services, or make any use of the Mark, through the Internet without our prior written approval. As a condition to granting any such consent, we will have the right to establish such requirements as we deem appropriate, including but not limited to the requirement that your only presence on the Internet shall be through a webpage established by us on our website. Any Website shall be deemed "advertising" under this Agreement, and will be subject to (among other things) our approval under Section 12.8 above. (As used in this Agreement, the term "Website" means an interactive electronic document, contained in a network of computers linked by communications software. The term Website includes, but is not limited to, Internet and World Wide Web home pages.)

12.12 Promotional Programs. You acknowledge that promotions and programs are an integral part of the System. Accordingly, you, at your sole cost and expense, from time to time must issue and offer such promotions and customer loyalty programs (in accordance with any reasonable advertising programs) established by us, and further shall honor other promotions and programs, issued by other franchisees and approved by us, as long as all of the above do not contravene regulations and laws of appropriate governmental authorities.

13. RECORDS AND REPORTS

13.1 Records. With respect to the operation and financial condition of the Franchised Business, you must adopt, until otherwise specified by us, a fiscal year consisting of fifty-two (52) one-week accounting periods, which coincides with our then-current fiscal year, as specified by us. You will maintain for a period of not less than three (3) years during the term of this Agreement, and, for not less than three (3) years following the termination, expiration, or non-renewal of this Agreement, full, complete, and accurate books, records, and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by us from time to time in the Manuals or otherwise in writing.

13.2 Periodic Reports. You must, at your expense, provide to us, in a format specified by us, a complete annual financial statement (prepared according to generally accepted accounting principles, that includes a fiscal year-end balance sheet, an income statement of the Franchised Business for such fiscal year reflecting all year-end adjustments, and a statement of your changes in cash flow), in the format specified by us (which may include preparation on a review basis, prepared by an independent certified public accountant satisfactory to us), no later than April 15th of each year for the preceding fiscal year of the Franchised Business, showing the results of operations of the Franchised Business during the most recently completed fiscal year.

In addition, no later than the twentieth (20th) day of each calendar month during the term of this Agreement after the Opening Date, you must submit to us, for the preceding calendar month, in a format acceptable to (or, at our election, specified by) us: (i) a fiscal period and fiscal year-to-date profit and loss statement and a monthly balance sheet (which may be unaudited) for the Franchised Business; (ii) reports of those income and expense items of the Franchised Business which we specify from time to time for use in any revenue, earnings, and/or cost summary we choose to furnish to prospective franchisees, provided that we will not identify to prospective franchisees any specific financial results of the Franchised Business; and (iii) copies of all state sales tax returns for the Franchised Business. If required by us, you must use on-line or other electronic accounting and reporting systems as Franchisor may specify periodically.

13.3 Reporting Requirements. You must also submit to us in addition to the Sales Reports required pursuant to Section 6.2, for review or auditing, such other forms, reports, records, information, and data as and when we may reasonably designate, in the form and format, and at the times and places reasonably required by us, upon request and as specified from time to time in the Manuals or otherwise in writing, including, without limitation, via computer diskette, via the Internet or other electronic transmission, or otherwise in electronic format, and/or restated in accordance with our financial reporting periods, consistent with our then-current financial reporting periods and accounting practices and standards. The reporting requirements of this Section 13.3 shall be in addition to, and not in lieu of, the electronic reporting that may be required in connection with the Computer System.

We may use and disclose data from reports and statements to the extent required or permitted under applicable law. We may use such data to provide financial performance data for franchise disclosure purposes and to provide information throughout the System to other franchisees and operators of Smartbox Businesses. We also have the right to utilize such information, data and reports internally and in efforts to assist you with your operation of the Franchised Business. However, we will not treat your data any differently than we treat the data we receive from other franchisees in terms of making it available to others.

14. INSPECTIONS OF THE FACILITY

14.1 Inspections. We and our designated agents have the right at any reasonable time and without prior notice to: (a) inspect the Franchised Business including any Containers and other equipment; (b) observe, photograph, audio-tape and/or video tape the operations of the Franchised Business; (c) remove samples of products and equipment for testing and analysis; and (d) interview personnel and customers of the Franchised Business. You agree to cooperate fully with such activities.

14.2 Audits. We have the right at any time during business hours, and without prior notice to you, to inspect, copy and audit the books, records, tax returns and documents relating to the development, ownership, lease, occupancy or operation of the Facility and the Franchised Business. You must cooperate fully with our representatives and independent accountants conducting such audits. If any inspection or audit discloses an understatement of Net Sales, you must pay us, within 30 days after receipt of the audit report (but within 10 days if it is not the first time), the royalties due on the amount of such understatement, plus interest from the date originally due until the date of payment. Further, if such inspection or audit is made necessary

by your failure to furnish reports, records or information on a timely basis, or if we determine any understatement of Net Sales for the period of any audit to be greater than 2%, you must reimburse us for the cost of such audit or inspection, including the charges of any attorneys and independent accountants and the travel expenses, room and board and compensation of our employees. In the event the audit proves you are in at least 98% compliance of statement values, we will pay the amount of the audit.

15. FRANCHISEE'S RIGHT TO TRANSFER

15.1 Franchisor's Approval. The rights and duties created by this Agreement are personal to you or, if you, as franchisee, are a corporation, partnership, limited liability company, or other legal entity, your Owners. Accordingly, neither you nor any of your Owners may Transfer the Franchise without our approval and without complying with all of the provisions of this Section. Any transfer without such approval or compliance constitutes a breach of this Agreement and is void and of no force or effect.

15.2 Conditions for Approval. If we have not exercised our right of first refusal, we will not unreasonably withhold our approval of a Transfer of the Franchise that meets all of the reasonable restrictions, requirements and conditions we impose on the transfer, the transferor(s) and/or the transferee(s), including the following:

(a) you have completed development of the Facility and are operating the Franchised Business in accordance with this Agreement;

(b) you and your Owners and Affiliates are in compliance with the provisions of this Agreement and all other agreements with us or any of our Affiliates;

(c) the proposed transferee, or its Owners (if the proposed transferee is a legal entity), must provide us on a timely basis all information we request, including completion of our standard Franchise Application, must be individuals acting in their individual capacities who are of good character and reputation, who must have sufficient business experience, aptitude and financial resources to operate the Franchised Business, and who must otherwise meet our approval;

(d) the proposed transferee may not be an entity, or be affiliated with an entity, that is required to comply with reporting and information requirements of the Securities Exchange Act of 1934, as amended;

(e) the transferee (or its operating partner) and its managers must have completed our initial training programs to our satisfaction;

(f) the transferee (and its owners) must agree to be bound by all of the provisions of this Agreement for the remainder of its Term or, at our option, execute our then-current standard form of franchise agreement and related documents used in the state in which the Franchised Business is located (which may provide for different royalties, advertising contributions and expenditures, duration and other rights and obligations than those provided in this Agreement);

(g) you or the transferee must pay us a transfer fee equal to the greater of 25% of our then-current standard initial franchise fee or our costs incurred in connection with the transfer; provided, however, that you must pay us the greater of (a) 50% of the transfer fee, or (b) \$10,000 at the earlier of (i) when you notify us of the proposed transfer or (ii) you provide notice to us under Section 15.6 below, and this initial payment of a portion of the transfer fee shall be non-refundable even if we do not approve the transfer, or if you and the transferee do not close on the transaction;

(h) you and your Owners and Affiliates must, except to the extent limited or prohibited by applicable law, execute a general release, in form and substance satisfactory to us, of any and all claims against us and our Affiliates, stockholders, officers, directors, employees, agents, successors and assigns;

(i) we must not have disapproved the material terms and conditions of such transfer (including the price and term of payment) on the basis that they are so burdensome as to be likely, in our judgment, to adversely affect the transferee's operation of the Franchised Business or its compliance with its franchise agreements and any area development agreements;

(j) if you (or any of your Owners or Affiliates) finance any part of the sale price of the transferred interest, you and/or your Owners or Affiliates must agree that all obligations of the transferee, and security interests reserved by any of them in the assets of the Franchised Business, will be subordinate to the transferee's obligations to pay all amounts due us and our Affiliates and to otherwise comply with this Agreement or the new franchise agreement executed by the transferee;

(k) you and your Owners must execute and otherwise comply with a non-competition covenant, in form and substance satisfactory to us, in favor of us and the transferee agreeing that, for a period of 2 years, starting on the effective date of the transfer, you and your Owners will not directly or indirectly (such as through members of his or their Immediate Families) own any legal or beneficial interest in, or render services or give advice to: (1) any Competitive Business operating or providing services: (a) at the Premises or any Facility owned or operated by you; (b) within the Territory; (c) within a thirty (30) mile radius of the Premises or any Facility owned or operated by you; or (d) within a thirty (30) mile radius of any other Smartbox Businesses operating under the System as of the commencement of the post-term period; or (2) any entity which grants franchises, licenses or other interests to others to operate any Competitive Business. In addition, you and your Owners, during the two (2) year period described above, may not contact, directly or indirectly, or solicit for new business or services or a continuation of business or services from, any National Account with whom you or your Franchised Business offered or sold services during the one (1) year period prior to the transfer described above.

(l) you and your Owners and Affiliates must execute such other documents and do such other things as we may reasonably require to protect our rights under this Agreement and under any area development agreement.

15.3 Effect of Approval. Our approval of a Transfer of the Franchise does not constitute: (a) a representation as to the fairness of the terms of any agreement or arrangement

between you or your Owners and the transferee or as to the prospects of success of the Franchised Business by the transferee; or (b) a release of you and your Owners, a waiver of any claims against you or your Owners or a waiver of our right to demand the transferee's exact compliance with this Agreement. Any approval shall apply only to the specific transfer of the franchise being proposed and shall not constitute an approval of, or have any bearing on, any other transfer of the franchise.

15.4 Special Transfers. Neither Section 15.6 nor Section 15.2(a), (c), (f) or (g) shall apply to any Transfer of the Franchise (a "Special Transfer"): (i) among any of your then-current Owners; or (ii) to any member of your Immediate Family or the Immediate Family of a then-current Owner of Franchisee (if a business corporation, partnership, limited liability company or other entity). On 30 days' notice to us, you (if you are an individual or partnership) may transfer this Agreement in conjunction with a transfer of all of the assets of the Franchised Business, by an agreement in form and substance approved by us, to a corporation or limited liability company which conducts no business activities other than the Franchised Business (and other Smartbox Businesses under franchise agreements granted by us), and of which you own and control all of the equity and voting power of all issued and outstanding capital stock. None of the foregoing assignments shall relieve you or your Owners of your respective obligations hereunder, and you and your Owners remain jointly and severally liable for all obligations hereunder. We have the right to reject any Special Transfers proposed, but should we approve such a transfer, you or the owners will be relieved of the responsibility for obligations on a going-forward basis, but will not be relieved of any responsibility or obligations for anything that has arisen or accrued prior to the date of such Special Transfer. In the event that a Special Transfer results in you not having three fully-trained Highly Trained Personnel, you must promptly send an appropriate person, subject to our approval, to our training session, at your expense, and such person(s) must successfully complete the required training program to our satisfaction.

15.5 Death or Disability. Upon your death or permanent disability, or the death or permanent disability of the Operating Partner or an Owner of a controlling interest in Franchisee, the executor, administrator or other personal representative of such person shall transfer his interest in this Agreement or his interest in Franchisee to a third party approved by us in accordance with all of the applicable provisions of this Section within a reasonable period of time, not to exceed 9 months from the date of death or permanent disability. However, no transfer will be required if a replacement Operating Partner or manager, satisfactory to us, is obtained within such time period.

15.6 Our Right of First Refusal. If you or any of your Owners desire to Transfer the Franchise or any of its assets for legal consideration, you or such Owner must obtain a bona fide, executed written offer and earnest money deposit in the amount of at least 5% of the offering price from a responsible and fully disclosed purchaser who has completed our standard franchise application and must deliver immediately to us a complete and accurate copy of such offer and franchise application. If the offeror proposes to buy any other property or rights from you or any of your Owners or Affiliates (other than rights under other franchise agreements for Smartbox Businesses) as part of the bona fide offer, the proposal for such property or rights must be set forth in a separate, contemporaneous offer that is disclosed to us, and the price and terms of purchase offered to you or your Owner for the Transfer of the Franchise or any of its assets must

reflect the bona fide price offered therefor and may not reflect any value for any other property or rights.

We have the option, exercisable by notice to you or your Owners within 30 days from the date of delivery of a complete and accurate copy of such offer to us, as well as any additional documents, contracts or information made available to or involving the offeror, to purchase such interest or assets for the price and on the terms and conditions contained in such offer, provided that: (a) we may substitute cash for any form of payment proposed in such offer; (b) our credit shall be deemed equal to the credit of any proposed purchaser; and (c) we will have not less than 90 days from the option exercise date to consummate the transaction. We have the right to investigate and analyze the Franchised Business, assets and liabilities and all other matters we deem necessary or desirable in order to make an informed investment decision with respect to the fairness of the terms of our right of first refusal. We may conduct such investigation and analysis in any manner we deem reasonably appropriate and you and your Owners must cooperate fully with us in connection therewith.

If we exercise our option to purchase, we are entitled to purchase such interest subject to all representations and warranties, closing documents and indemnities as we reasonably may require. If we do not exercise our option to purchase, you or your Owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to our approval of the transfer as otherwise provided in this Section, provided that if the sale to such offeror is not completed within 180 days after delivery of such offer to us, or if there is a material change in the terms of the offer, you must promptly notify us and we will have an additional option to purchase (on the terms of the revised offer, if any, and otherwise as set forth herein) during the 30 day period following your notification of the expiration of the 180-day period or the material change to the terms of the offer.

15.7 Securities Offerings. Neither you nor any of your Owners may issue or sell, or offer to issue or sell, any of your securities or any securities of any of your Affiliates, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction, without obtaining our prior consent and complying with all of our requirements and restrictions concerning use of information about us and our Affiliates. Under no circumstances may you or any of your Owners issue or sell your securities or the securities of any of your Affiliates, if: (a) such securities would be required to be registered pursuant to the Securities Act of 1933, as amended; or (b) after such issuance or sale, you or such Affiliate would be required to comply with the reporting and information requirements of the Securities Exchange Act of 1934, as amended.

15.8 Sale of Business Assets; Our Right of First Offer. If you or any of your Owners desire to sell, assign or transfer (“Sell” or a “Sale”) for legal consideration a portion, but not all nor substantially all, of the Business Assets, not in the ordinary course of business (but which would not constitute a Transfer of the Franchise that is subject to the terms and conditions of this Section 15, including Sections 15.1, 15.2, and 15.6), you must provide written notice to us of your intent to Sell, including the proposed price and all other material terms of such offer.

We will have the option, exercisable within 30 days after receipt of such written notice from you (the "Asset Purchase Period"), to purchase the assets that are the subject of the offer, on the same terms and conditions as set forth in said offer. If we decline, or do not accept the option in writing within 30 days, you may, within 60 days from the expiration of the Asset Purchase Period, Sell the assets that are the subject of the offer, on the same, or substantially the same, terms as set forth in your written notice to us; provided that such Sale shall not be at a price that is less than the price set forth in your written notice to us, nor on terms that are more favorable to the buyer than terms offered to us. Any material change in the terms of the offer prior to the closing of the Sale to a third party shall constitute a new offer, subject to the same right of first offer by us, as in the case of an initial offer. Our failure to exercise the option afforded by this Section 15.8 shall not constitute a waiver of any other provision of this Agreement, including all the requirements of this Section with respect to Transfers of the Franchise.

15.9 Franchisor Transfers. We have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of ours will become solely responsible for all of our obligations under this Agreement from the date of assignment.

16. TERMINATION OF AGREEMENT

16.1 Immediate Termination. This Agreement will automatically terminate without notice, at our discretion: (a) if you become insolvent by reason of your inability to pay your debts as they mature; (b) if you are adjudicated bankrupt or insolvent; (c) if you file a petition in bankruptcy, reorganization or similar proceedings under the bankruptcy laws of the United States or have such a petition filed against you which is not discharged within 30 days; (d) if a receiver or other custodian, permanent or temporary, is appointed to the Franchised Business, assets, property; (e) if you request the appointment of a receiver or make a general assignment for the benefit of creditors; (f) if final judgment against you in the amount of \$25,000 or more remains unsatisfied of record for 30 days or longer; (g) if your bank accounts, property or accounts receivable are attached; (h) if execution is levied against your Franchised Business or property; (i) if suit is filed to foreclose any lien or mortgage against any of your assets and such suit is not dismissed within 30 days. This item may be exempt if the amount is bonded against by an insurance company with a Best rating or better; or (j) if you voluntarily dissolve or liquidate or have a petition filed for corporate or partnership dissolution and such petition is not dismissed within 30 days.

16.2 Termination Upon Notice. In addition to our right to terminate pursuant to other provisions of this Agreement and under applicable law, we have the right to terminate this Agreement, effective upon delivery of notice of termination to you, if you or any of your Owners or Affiliates:

(a) fail to open the Facility and commence operation of the Franchised Business, unless otherwise authorized by us;

(b) abandon or fail to actively operate the Franchised Business for 3 consecutive days unless otherwise authorized by us;

(c) fail to operate the Franchised Business on 3 or more occasions, within a six month period, on one or more days within a month which were specified as operational days on the Operations Calendar you submitted to us unless otherwise authorized;

(d) surrender or transfer control of the operation of the Franchised Business without our prior consent;

(e) make any material misstatements or omissions in an application for a Smartbox franchise or in any other written information provided to us that we have relied upon either in granting the franchise to you or in evaluating whether to approve, consent or agree to a course of action;

(f) suffer cancellation or termination of the lease or sublease for the Facility without alternative leasing arrangements in place;

(g) are convicted of, or plead no contest to, a felony or other crime or offense that we reasonably believe may adversely affect the goodwill associated with the Marks;

(h) make an unauthorized Transfer of the Franchise or its assets or fail to Transfer the Franchise or the interest of a deceased or disabled principal Owner of Franchisee as herein required;

(i) make any unauthorized use or disclosure of any Confidential Information or use, duplicate or disclose any portion of the Manual in violation of this Agreement;

(j) fail or refuse to comply with any mandatory specification, standard or operating procedure prescribed by us or our Affiliates in the Manuals or otherwise relating to the operation of the Franchised Business or violate any law, ordinance or regulation and do not correct such failure, refusal or violation within 72 hours after written notice thereof is delivered to you (all Specifications, Standards and operating procedures in the Manual are mandatory unless specifically stated otherwise in the Manual);

(k) fail to report accurately Net Sales or to make payment of any amounts due us or any of our Affiliates, and do not correct such failure within 10 days after written notice of such failure is delivered to you;

(l) fail to make a timely payment of any amount due to a supplier unaffiliated with us (other than payments which are subject to bona fide dispute), and do not correct such failure within 30 days after we deliver to you notice of failure to comply with any material provision of this Agreement and do not correct such failure within 30 days after notice of such failure to comply is delivered to you;

(m) fail on 3 or more separate occasions within any period of 12 consecutive months: (i) to submit when due reports or other data, information or supporting records, or (ii) to pay when due royalties, contributions to local or regional advertising cooperatives, or other payments due us, any of our Affiliates or any unaffiliated suppliers, or (iii) to comply with the same provision of this Agreement, or any mandatory specification, standard or operating procedure, whether or not such failure is corrected after notice is delivered to you; or

(n) are in default or suffer termination of any other agreement with us or Affiliates except in the case of bankruptcy.

16.3 Curable Defaults. When you have been notified of a breach of your Franchise Agreement, unless otherwise stated in your agreements you will have no more than 30 days to cure the breach. Breaches must be cured in whichever is the lesser amount of days agreed to. Failure to cure in the allotted period will result in a fine of up to \$5,000 and/or the termination of your Franchise Agreement. If another breach of any kind occurs again within twelve month from a previous breach, we reserve the right to fine up to \$10,000 and/or terminate your Franchise Agreement. If you should breach your Franchise Agreement more than two times within a 24-month period, we reserve the right to terminate your Franchise Agreement for the cumulative defaults. Failure to pay the fine may result in a termination of your Franchise Agreement.

17. RENEWAL RIGHTS

17.1 Your Right To Acquire Successor Franchises. You have the right, subject to the conditions contained in this Section, to acquire successor franchises for the Franchised Business on the terms and conditions of our then-current form of franchise agreement for Smartbox Businesses, if upon expiration of the Term: (a) you and your Owners and Affiliates have been in compliance with this Agreement and any other agreements with us or any of our Affiliates for at least the immediately preceding 12 months, and you and your Owners have been in substantial compliance with this Agreement throughout the Term; and (b) we have not notified you of our decision that any federal or applicable state legislation, regulation or rule, which is enacted, promulgated or amended after the date hereof, may have an adverse effect on our rights, remedies or discretion in franchising Smartbox Businesses; and (c) you maintain the right to possession of the Premises and Facilities for the term of the successor franchise agreement and enter into an agreement with us whereby you agree within a specified time period, starting on the signing of a successor franchise agreement, to remodel the Facility, add or replace improvements, fixtures, furnishings, equipment and signs and otherwise modify the Facility to upgrade the Facility to the specifications and standards then applicable for new Smartbox Facilities. We will not assess any successor fee, renewal fee, or initial franchise fee upon your signing a successor franchise agreement.

17.2 Notices. You must give us written notice of your desire to acquire a successor franchise at least 6 months, but no sooner than 12 months, prior to the expiration of this Agreement. We will give you notice, not later than 90 days after receipt of your notice, of our decision whether or not you have the right to acquire a successor franchise. Notwithstanding any notice of our decision that you have the right to acquire a successor franchise for the Facility, your right will be subject to your continued compliance with all the provisions of this Agreement up to the date of its expiration.

17.3 Agreements. If you have the right to acquire a successor franchise and state your desire to exercise that right, we and you (and your Owners) will execute our then-current standard form of franchise agreement used in the state in which the Franchised Business is located (which may provide for different royalties, advertising contributions and expenditures, duration and other rights and obligations than those provided in this Agreement, except that your

successor franchise rights will be consistent with this Agreement) and all related documents (including, personal guarantees by your Owners and a remodeling agreement on such terms as we determine to be appropriate) which we then customarily use in granting renewal franchises for the operation of Smartbox Businesses. You are limited to four renewal terms of 5 years each, following the expiration of the Term of this Agreement, even if the then-current form of franchise agreement contains additional terms. To avoid confusion or doubt, you may operate the Franchised Business under this Agreement and any successor agreement for a maximum of 30 years (the 10-year Term, and four 5-year renewal terms). Your eligibility is governed by this Section and any successor agreement. You and your Owners must execute general releases, in form and substance satisfactory to us, of any and all claims against us, and our Affiliates, officers, directors, employees, agents, successors and assigns. Failure by you (and your Owners) to sign such agreements and releases within 30 days after delivery to you shall be deemed an election by you not to acquire a successor franchise for the Franchised Business.

18. EFFECT OF TERMINATION OR EXPIRATION

18.1 Payment of Amounts Owed to Us. Within 30 days after the effective date of termination or expiration (without renewal) of this Agreement, you must pay us and our Affiliates all Royalty Fees, amounts owed for purchases from us or our Affiliates, interest due on any of the foregoing and all other amounts owed to us or our Affiliates which are then unpaid.

18.2 Discontinue Use of Marks and Confidential Information. Upon the termination or expiration (without renewal) of this Agreement, you will:

- (a) not directly or indirectly at any time or in any manner use any Improvement, Mark, any colorable imitation, or other indicia of a Smartbox Business;
- (b) take such action as may be required to cancel all fictitious or assumed name registrations relating to your use of any Mark;
- (c) notify the telephone company and all telephone directory publishers of the termination or expiration of your right to use any telephone number and any regular, classified or other telephone directory listings associated with any Mark and to authorize transfer of the number to us or at our direction;
- (d) if we do not exercise our right to purchase the Franchised Business, promptly remove from the Facilities, and discontinue using for any purpose, all signs, fixtures, furniture, décor items, advertising materials, forms and other materials and supplies which display any of the Marks or any distinctive features, images, or designs associated with Smartbox Businesses and, at your expense, make such alterations as may be necessary to distinguish the Facilities and Premises so clearly from its former appearance as a Smartbox Business and from other Smartbox Businesses as to prevent any possibility of confusion by the public;
- (e) immediately cease to use all Confidential Information and return to us all copies of the Manual and any other confidential materials which have been loaned to you; and
- (f) within 30 days after the effective date of termination or expiration; furnish us evidence satisfactory to us of your compliance with the foregoing obligations.

18.3 [Intentionally Omitted]

18.4 Option to Purchase Business Assets. Upon termination or expiration (without renewal) of this Agreement, we have the right, exercisable by giving notice thereof (“**Appraisal Notice**”) within 10 days after the date of such termination or expiration, to require a determination of the “**Fair Market Value**” (as defined below) of all or a portion of the tangible assets of the Franchised Business including Containers, Forklifts, trucks, inventories of non-perishable products, materials, supplies, furniture, equipment, signs, and any and all leasehold improvements, fixtures, building and land, but excluding any cash and short-term investments and any items not meeting our specifications for Smartbox Businesses (the “**Business Assets**”). Upon such notice, you may not sell or remove any of the tangible assets of the Franchised Business from the Facility and must give us, our designated agents and the “**Appraiser**”(as defined below) full access to the Franchised Business and all of your books and records at any time during customary Franchised Business hours in order to conduct inventories and determine the purchase price for the Business Assets.

The Fair Market Value shall be determined by good faith negotiations between you and us to establish the amount which an arm’s length purchaser would be willing to pay for the Business Assets, assuming that the Business Assets would be used for the operation of a Smartbox Business under a valid franchise agreement reflecting the then-current (or if we are not offering franchises at that time, then the most recent) standard terms upon which we offer franchises for Smartbox Businesses, less the cost of any required remodeling in the event that it is reasonably determined that remodeling is required. Under no circumstances will any value be attributed to any goodwill associated with any Mark. If you and we are unable to agree on the Fair Market Value of the Business Assets within 30 days after the Appraisal Notice, then Fair Market Value will be determined by a member of a nationally recognized accounting firm (other than a firm which conducts audits of your or our financial statements) selected by us who has experience in the valuation of similar Franchised Businesses (the “**Appraiser**”). If you do not agree to our selection of an Appraiser within 15 days after being informed of our selection, then you will independently select another appraiser and the two selected appraisers will appoint a third appraiser who shall become the “**Appraiser.**” The Appraiser (as determined by either method described above) will determine the Fair Market Value. The Appraiser will make his determination and submit a written report (“**Appraisal Report**”) to you and us as soon as practicable, but in no event more than 60 days after his appointment. Each party may submit in writing to the Appraiser its judgment of Fair Market Value (together with its reasons therefore); however, the Appraiser shall not be limited to these submissions and may make such independent investigations as he reasonably determines to be necessary. The Appraiser’s fees and costs shall be borne equally by the parties hereto.

We have the option, exercisable by delivering notice thereof within 30 days after submission of the Appraisal Report (or the date that an agreement is reached, if the parties agree to the Fair Market Value), to purchase the Business Assets at the Fair Market Value. We shall have the unrestricted right to assign this option to purchase separate and apart from the remainder of this Agreement.

If we exercise our option to purchase, 100% of the purchase price for the Business Assets will be paid in cash at the closing, which will occur at the place, time and date we designate, but

not later than 90 days after the exercise of our option to purchase the Business Assets. At the closing, we will be entitled to all warranties, title insurance policies and other closing documents and post-closing indemnifications as we reasonably require, including: (a) instruments transferring good and merchantable title to the Business Assets, free and clear of all liens, encumbrances, and liabilities, to us or our designee, with all sales and other transfer taxes paid by you; and (b) an assignment of all leases of tangible assets used in the operation of the Franchised Business, including land, building and/or equipment (or if an assignment is prohibited, a sublease to us or our designee for the full remaining term and on the same terms and conditions as your lease, including renewal and/or purchase options), provided, however, that if any of your Owners or Affiliates directly or indirectly owns the land, building and/or equipment of the Franchised Business, you will, at our option, cause such Owner or Affiliate to grant to us a lease at reasonable and customary rental rates and other terms prevailing in the community where the Franchised Business is located. Any dispute concerning the rental rates and terms of such lease shall be resolved by the Appraiser.

If you cannot deliver clear title to all of the assets, or if there are other unresolved issues, the closing of the sale may, at our option, be accomplished through an escrow on such terms and conditions as we deem appropriate, including the making of payments, to be deducted from the purchase price, directly to third parties in order to obtain clear title to any of the Business Assets. Further, you and we shall comply with any applicable Bulk Sales provisions of the Uniform Commercial Code as enacted in the state where the Premises are located and all applicable state and local sales and income tax notification and/or escrow procedures. We have the right to set off against and reduce the purchase price by any and all amounts owed by you or any of your Owners or Affiliates to us or any of our Affiliates.

Upon delivery of the Appraisal Notice and pending (1) determination of Fair Market Value, (2) our option period, and (3) the closing of the purchase, we may authorize continued temporary operation of the Franchised Business pursuant to the terms of this Agreement, subject to the supervision and control of one or more of our appointed managers.

18.5 Option to Acquire Forklifts, Trucks and Containers. Notwithstanding any of the foregoing, upon termination or expiration (without renewal) of this Agreement, we have the right, exercisable by giving notice to you (the "**Option Notice**") within 30 days after the date of such termination or expiration, to acquire any or all of the Forklifts, trucks, and/or Containers and covers (referred to for this Section 18.5 collectively as "**Equipment**") you are utilizing in the Franchised Business. If the Equipment is leased, we will be able to acquire the Equipment by assuming such lease. If you purchased the Equipment, we will have the right to buy it at book value as of the date we exercise such option. If we buy the trucks, lifts, covers or Containers, the price will also be their book value. Book value will mean the price you paid for them less all depreciation you have taken on the Equipment for federal income tax purposes.

Furthermore, notwithstanding the provisions of this Section, you will have the right to sell any and all of the Equipment to another Smartbox Business in good standing as long as you and the other Smartbox franchisee obtain our approval in advance; such approval will not be unreasonably withheld. Additionally, a statement that gives us the right to purchase the Equipment from them under the conditions on the terms of this Section must be on file with us.

18.6 Asset Purchase Option. You grant us the option (but we do not have the obligation) to purchase all of the assets of your Franchised Business (which we may assign to an affiliate) anytime after the 60th month of operation of your Smartbox Business on the following terms and conditions:

(a) **Option Period:** Unless otherwise provided for in the agreement we may exercise our option to acquire your Franchised Business at any time after your 60th month of operation.

(b) **Exercise:** To exercise our option, we must give you written notice (the "Acquisition Notice") of our intention to acquire your Franchised Business. The Acquisition Notice must be sent to you at least 120 days prior to the anticipated closing date.

(c) **Purchase Price:** The purchase price will be the Fair Market Value of the Franchised Business, with Fair Market value to be determined in the manner set forth in Section 18.4 above. Note: At the time of the acquisition, the Owner of the Franchised Business would receive the enterprise value less any liabilities, in accordance with generally accepted accounting principles, on the balance sheet of the Franchised Business at the time of acquisition which are assumed by the buyer, and this calculation will be factored into the determination of Fair Market Value.

(d) **Representations and Warranties:** We will be entitled to all customary representations and warranties to ensure that we get full and complete title to all of the assets we purchase, in such form and content, as we reasonably require.

(e) **Cooperation:** You must cooperate with us in preparing for the sale of your Franchised Business if we exercise our option. Moreover, you must cooperate with us in furnishing us with the necessary information to accurately calculate the purchase price.

(f) **Continuing Obligations.** All obligations under this Agreement which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect until they are satisfied in full or by their nature expire.

19. RELATIONSHIP OF THE PARTIES

19.1 Independent Contractors. It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them; that you will be an independent contractor; and, that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

19.2 Identification as Independent Contractor. At all times during the term of this Agreement and any extensions hereof, you will hold yourself out to the public as an independent contractor operating the business pursuant to a franchise from us. You must display signs and notices of this fact, in the form and manner as we specify, at the Smartbox Facility, on trucks and equipment, and on contracts, invoices, and stationery as we specified.

19.3 No Agency. It is understood and agreed that nothing in this Agreement authorizes you to make any contract, agreement, warranty, or representation on our behalf, or to incur any debt or other obligation in our name; and that we will in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor will we be liable by reason of any act or omission of you in your conduct of the Franchised Business or for any claim or judgment arising therefrom against you or us.

19.4 Indemnification. You will indemnify and hold us and our Affiliates, and their respective officers, directors, employees, and agents harmless against any and all claims, obligations, and damages arising directly or indirectly from, as a result of, or in connection with your operation of the Franchised Business, the business conducted under this Agreement, or your breach of this Agreement, including, without limitation, those alleged to be caused by our negligence, unless (and then only to the extent that) the claims, obligations, and damages are determined to be caused solely by our gross negligence or willful misconduct according to a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction, as well as the costs, including attorneys' fees, of defending against them. In the event we incur any costs or expenses, including, without limitation, legal fees, travel expenses, and other charges, in connection with any proceeding involving you in which we are not a party, you must reimburse us for all such costs and expenses promptly upon presentation of invoices. You acknowledge and agree that your indemnification and hold-harmless obligations under this Section 19.4 shall survive the termination or expiration of this Agreement.

20. TAXES, PERMITS, AND INDEBTEDNESS

20.1 Taxes. You must promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind that you incur in the conduct of the Franchised Business. You must pay us an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on us with respect to any payments to us required under this Agreement, unless the tax is credited against income tax otherwise payable by us.

20.2 Tax Disputes. In the event of any bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event will you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Smartbox Facility, or any improvements thereon.

20.3 Notification of Claims. You must notify us in writing within three (3) days of receipt of notice of any health or safety violation, 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, or within three (3) days occurrence of any accident or injury which may adversely affect the operation of the Franchised Business or your financial condition, or give rise to liability or a claim against you or us.

21. **FORCE MAJEURE**

Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of God; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties; and/or (d) our inability and/or our Affiliates' or suppliers' inability to manufacture, purchase, and/or cause delivery of any products used in the operation of the Franchised Business. The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of this Section.

22. **APPROVALS AND WAIVERS**

22.1 **Approvals.** Whenever this Agreement requires our prior approval or consent, you must make a timely written request to us therefor, and such approval or consent must be obtained in writing.

22.2 **No Warranties.** You acknowledge and agree that we make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you, by providing any waiver, approval, consent, or suggestion to you in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

22.3 **Waivers.** No delay, waiver, omission, or forbearance on our part to exercise any right, option, duty, or power arising out of any breach or default by you or any other franchisee under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, will constitute a waiver by us to enforce any such right, option, duty, or power as against you, or as to subsequent breach or default by you. Subsequent acceptance by us of any payments due to us hereunder will not be deemed to be a waiver by us of any preceding or succeeding breach by you of any terms, provisions, covenants, or conditions of this Agreement.

23. **NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, sent by a recognized overnight delivery service (e.g., UPS, FedEx, etc.) or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on Exhibit B of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

24. **ENTIRE AGREEMENT AND AMENDMENT**

This Agreement and the exhibits referred to herein constitute the entire, full, and complete Agreement between us and you concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced you to execute this Agreement. Except for those permitted to be made unilaterally by us hereunder, no amendment, change, or

variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

25. SEVERABILITY AND CONSTRUCTION

25.1 Severability. If any of the provisions of this Agreement may be construed in more than one way, one of which would render the provision illegal or otherwise voidable or unenforceable, such provision shall have the meaning which renders it valid and enforceable. The language of all provisions of this Agreement shall be construed according to its fair meaning and not strictly against any party. In the event any court or other government authority shall determine any provision in this Agreement is not enforceable as written, the parties agree that the provision shall be amended so that it is enforceable to the fullest extent permissible under the laws and public policies of the jurisdiction in which enforcement is sought and affords the parties the same basic rights and obligations and has the same economic effect. If any provision in this Agreement is held invalid or otherwise unenforceable by any court or other government authority or in any arbitration proceeding, such findings shall not invalidate the remainder of the agreement unless in our reasonable opinion the effect of such determination has the effect of frustrating the purpose of this Agreement, whereupon we will have the right by notice in writing to the other party to immediately terminate this Agreement.

25.2 No Other Rights. Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, us, and such of your and our respective successors and assigns as may be contemplated (and, as to you, permitted) by Section 15 above, any rights or remedies under or by reason of this Agreement.

25.3 Enforceability of Covenants. You expressly 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 of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions 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.

25.4 Construction. All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof. The language of this Agreement will be construed according to its fair meaning and not strictly against any party. The introduction, personal guarantees, exhibits, and riders (if any) to this Agreement, are a part of this Agreement, which constitutes the entire agreement of the parties. The word "including" will be construed to include the words "without limitation." The term "Franchisee" or "you" is applicable to one or more persons, a corporation, limited liability company, or a partnership and its owners, as the case may be. If two or more persons are at any time Franchisee hereunder, whether as partners, joint venturers, or otherwise, their obligations and liabilities to us will be joint and several. References to a controlling interest in an entity shall mean more than fifty percent (50%) of the equity and voting control of such equity.

25.5 Survival of Provisions. All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

26. APPLICABLE LAW AND DISPUTE RESOLUTION

26.1 Governing Law. This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the Commonwealth of Virginia, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Virginia choice-of-law rules); provided, however, that if the covenants in Section 7 of this Agreement would not be enforceable under the laws of Virginia, and the Smartbox Facility is located outside of Virginia, then such covenants shall be interpreted and construed under the laws of the state in which the Smartbox Facility is located. Nothing in this Section 26.1 is intended by the parties to subject this Agreement to any franchise, business opportunity, consumer protection, or similar law, rule, or regulation of the Commonwealth of Virginia to which this Agreement would not otherwise be subject.

26.2 Venue. Subject to Section 26.3 and 26.4 below, the parties agree that any action brought by you against us in any court, whether federal or state, shall be brought within such state and in the judicial district in which we have our principal place of business at the time the action is commenced. Any action brought by us against you in any court, whether federal or state, may be brought within the state and judicial district in which we have our principal place of business at the time the action is commenced. The parties agree that this Section 26.2 shall not be construed as preventing either party from removing an action from state to federal court; provided, however, that venue shall be as set forth above. You hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

26.3 Mediation. Before any party may bring an action in arbitration or in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 26.3 shall not bar either party from obtaining judicial or injunctive relief for claims that are based solely on demands for money owed, or from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation; including, without limitation, claims involving the Marks.

(a) The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation (the “**complainant**”) providing written notice of the request for mediation (the “**request**”) to the party with whom mediation is sought (the “**respondent**”). The request shall specify with reasonable particularity the matter or matters on which non-binding mediation is sought. A copy of the request shall be given by the complainant simultaneously to us if we are not a complainant or respondent.

(b) Non-binding mediation commenced hereunder shall be concluded within sixty (60) days of the issuance of the request or such longer period as may be agreed upon by the parties in writing. All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatever. Complainant and respondent shall each bear its own costs of mediation, and each shall bear one-half the cost of the mediator or mediation service.

26.4 Arbitration. You and we agree that all controversies, disputes, or claims between us, our Affiliates, and our respective owners, officers, managers, agents, and employees, as applicable, and you (and your owners, guarantors, affiliates, and employees, as applicable) arising out of or related to:

- (a) this Agreement or any other agreement between you (or your owners) and us or any provision of any such agreements;
- (b) the relationship between you and us;
- (c) the scope or validity of this Agreement or any other agreement between you (or your owners) and us or any provision of any such agreements (including the validity and scope of the arbitration obligation under this Section, which we and you acknowledge is to be determined by an arbitrator, not a court); or
- (d) any System standard;

must be submitted for arbitration to the American Arbitration Association. The arbitration proceedings will be conducted by one arbitrator and according to the then-current Commercial Arbitration Rules of the American Arbitration Association. All proceedings will be conducted at a suitable location to be chosen by the arbitrator which is within thirty (30) miles of Franchisor's then-existing principal business address. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. Sections 1 *et seq.*) and not by any state arbitration law. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

(e) The arbitrator has the right to award or include in his or her award any relief which he or she deems proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive and declaratory relief, and attorneys' fees and costs, provided that the arbitrator may not declare any Mark generic or otherwise invalid and, except as Section 26.9 below otherwise provides, we and you (and your owners, if you are not a sole proprietorship) waive to the fullest extent permitted by law any right to or claim for any exemplary, punitive damages, and treble and other forms of multiple damages against the other. The arbitrator's award and decision are conclusive and binding upon all parties, and shall be enforceable by a court of competent jurisdiction.

(f) We and you agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. You and we further agree that, in any arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to

which it relates. Any claim which is not submitted or filed as required shall be barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us. We reserve the right, but have no obligation, to advance your share of the costs of any arbitration proceeding in order for such arbitration proceeding to take place and by doing so shall not be deemed to have waived or relinquished our right to seek the recovery of those costs in accordance with Section 26.10 below.

(g) You and we agree that arbitration will be conducted on an individual, not a class-wide, basis, that only we (and our Affiliates, and our respective owners, officers, managers, agents, and employees, as applicable) and you (and your owners, guarantors, affiliates, and employees, as applicable) may be the parties to any arbitration proceeding described in this Section 26.4, and that any such arbitration proceeding shall not be consolidated with any other arbitration proceeding between us and any other natural person, association, corporation, partnership, limited liability company or other entity. Notwithstanding the foregoing or anything to the contrary in this Section 26, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 26.4, then all parties agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Section 26 (excluding this Section 26.4).

(h) Notwithstanding anything to the contrary contained in this Section, we and you each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; provided, however, that we and you must contemporaneously submit the dispute for arbitration on the merits as provided in this Section 26.4.

(i) The provisions of this Section 26.4 are intended to benefit and bind certain third-party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

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

26.6 Injunctive Relief. Nothing herein contained shall bar our right to obtain injunctive relief against threatened conduct that will cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

26.7 Waiver of Jury Trial. **WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF US AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.**

26.8 Limitation of Actions. **ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF YOU**

AND US, OR YOUR OPERATION OF THE FRANCHISED BUSINESS, INCLUDING ANY ARBITRATION PROCEEDING, OR ANY CLAIM IN ARBITRATION (INCLUDING ANY DEFENSES AND ANY CLAIMS OF SET-OFF OR RECOUPMENT), MUST BE BROUGHT OR ASSERTED BEFORE THE EXPIRATION OF THE EARLIER OF (A) THE TIME PERIOD FOR BRINGING AN ACTION UNDER ANY APPLICABLE STATE OR FEDERAL STATUTE OF LIMITATIONS; (B) ONE (1) YEAR AFTER THE DATE UPON WHICH A PARTY DISCOVERED, OR SHOULD HAVE DISCOVERED, THE FACTS GIVING RISE TO AN ALLEGED CLAIM; OR (C) TWO (2) YEARS AFTER THE FIRST ACT OR OMISSION GIVING RISE TO AN ALLEGED CLAIM; OR IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES THAT SUCH CLAIMS OR ACTIONS SHALL BE IRREVOCABLY BARRED. ANY CLAIMS THAT WE MAY HAVE DUE TO YOUR UNDERREPORTING OF SALES, AND CLAIMS OF EITHER PARTY FOR FAILURE TO PAY MONIES OWED AND/OR INDEMNIFICATION, WILL BE SUBJECT ONLY TO THE APPLICABLE STATE OR FEDERAL STATUTE OF LIMITATIONS.

26.9 Waiver of Damages. We and you hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by such party.

26.10 Costs and Attorneys' Fees. If either we or you seek to enforce this Agreement in an arbitration, judicial or other proceeding, the prevailing party shall be entitled to recover its reasonable costs and expenses (including attorneys' fees, arbitrators' fees and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such arbitration, judicial or other proceeding.

27. ACKNOWLEDGMENTS

27.1 Acknowledgements. You acknowledge that you have conducted an independent investigation of the business franchised hereunder, recognize that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon your abilities, and if you are a corporation or a partnership or other business organization, your Owners as independent businesspersons. We expressly disclaim the making of, and you acknowledge that you have not received from us or any employee, representative, or other party purporting to act on your behalf, any warranty, promise or guarantee, express or implied, as to the potential sales volume, profits, or success of the business venture contemplated by this Agreement.

27.2 Receipt of Documents. You acknowledge that you received a copy of this Agreement, the exhibit(s) hereto, and agreements relating hereto, if any, with all of the blank lines therein filled in, at least five (5) business days prior to the date on which this Agreement was executed. You further acknowledge that you received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule at least ten (10) business days prior to the date on which this Agreement was executed.

27.3 Representations and Warranties. You and your Owners represent and warrant to us that: (a) neither you nor any of your Owners have made any untrue statement of any material fact nor omitted to state any material fact in obtaining the rights granted herein; (b) neither you nor any of your Owners have any direct or indirect legal or beneficial interest in any business that may be deemed a Competitive Business, except as otherwise completely and accurately disclosed in its franchise application materials; and (c) neither you nor your Owners have been designated as suspected terrorists under U.S. Executive Order 13244. You recognize that we approved you in reliance on all of the statements you and your Owners have made in connection therewith, and that you have a continuing obligation to advise us of any material changes in these statements and representations made to us in this Agreement or in the franchise application.

27.4 Consultation. You acknowledge that you have read and understood this Agreement, the exhibits hereto, and agreements relating thereto, if any, and that we have accorded you ample time and opportunity to consult with advisors of your own choosing about the potential benefits and risks of entering into this Agreement.

27.5 No Other Obligations. Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.

27.6 No Other Representations. You acknowledge that you will have sole and complete responsibility for the choice of the Premises and the Facilities; that we have not (and will not be deemed to have (and will not be deemed to have, even by our approval of the site that is the Premises and Facility) given any representation, promise, or guarantee of your success at the Premises and Facility; and that you will be solely responsible for your own success at the Premises and Facility.

27.7 Modification of Offers. You acknowledge and agree that we may modify the offer of our franchises to other franchisees in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

SMARTBOX Portable Self-Storage, LLC

Franchisor

Franchisee

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____