

**EXHIBIT B**  
**TO**  
**THE SPORTS SECTION, INC.**  
**FRANCHISE OFFERING CIRCULAR**  
**FRANCHISE AGREEMENT**

**FRANCHISE AGREEMENT**  
**BY AND BETWEEN**  
**THE SPORTS SECTION, INC.**  
**AND**

---

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. PART OF A FRANCHISE PROGRAM.....	2
2. LICENSE.....	2
2.1 Grant.....	2
2.2 Acceptance of License.....	2
2.3 Reservation of Rights.....	2
2.4 Acknowledgement.....	3
3. TERM AND RENEWALS.....	3
3.1 Initial Term.....	3
3.2 Renewals.....	3
4. INITIAL FRANCHISE FEE.....	4
5. REPRESENTATIONS OF FRANCHISOR.....	5
5.1 Due Organization.....	5
5.2 Marks.....	5
6. REPRESENTATIONS/ACKNOWLEDGMENTS OF FRANCHISEE.....	5
6.1 Ownership.....	5
6.2 Truth of Information.....	6
6.3 Due Authority.....	6
6.4 Compliance with Applicable Laws.....	6
6.5 Suits; Proceedings.....	6
6.6 Information Provided.....	6
6.7 Receipt of Agreement and Offering Circular.....	6
6.8 Representations by Franchisor.....	6
6.9 Risks.....	7
6.10 Advisors.....	7
6.11 Variances.....	7
6.12 Restrictions on Actions.....	7
6.13 Patriot Act Compliance.....	7
7. RESPONSIBILITIES OF FRANCHISOR.....	8
7.1 Initial Materials and Supplies.....	8
7.2 Initial Photographic Equipment Set-Up.....	8
7.3 Processing and Developing.....	8
7.4 Franchise Manual.....	9
7.5 Franchisee’s Territory.....	9
7.6 Instruction: Sales and Marketing.....	10
7.7 Instruction: Photography Training.....	10
7.8 Optional Additional Training.....	10
7.9 Scanning and Uploading.....	11
7.10 E-Commerce/Fulfillment.....	11
7.11 Website.....	11
7.12 Electronic Mail Address.....	11
8. COVENANTS AND AGREEMENTS OF FRANCHISEE.....	11
8.1 Expenses of Franchised Business.....	11
8.2 Office.....	12
8.3 Processing and Delivery of Digital Files and/or Images or Submittal of Subjects..	12
8.4 Equipment.....	12
8.5 TSS Express Program.....	13
8.6 Minimum Productivity.....	14
8.7 Compliance with Laws.....	15

8.8	Compliance with Franchise Manual and Training Requirements .....	15
8.9	Advertising .....	15
8.10	Limitation on Competition .....	16
8.11	Standards of Performance .....	17
8.12	Maintenance of Staff .....	17
8.13	Best Efforts/Guaranty .....	18
8.14	Use of Marks .....	18
8.15	Proprietary Information .....	19
8.16	Prohibition on Assignment .....	20
8.17	Indemnification .....	23
8.18	Records and Right to Audit .....	23
8.19	Insurance .....	23
8.20	Taxes .....	24
8.21	Websites .....	24
8.22	Electronic Mail Address .....	24
8.23	Advertising Standards .....	24
9.	TERMINATION .....	24
9.1	Events of Default .....	24
9.2	Franchisor's Remedies .....	26
9.3	Third Default .....	27
9.4	Statutory Restrictions .....	27
10.	COVENANTS ON EXPIRATION OR TERMINATION OF FRANCHISE .....	27
10.1	Payment of Amounts Owed to Franchisor .....	27
10.2	Confidential Information .....	27
10.3	Cease Identification with Franchisor .....	27
10.4	Promote Separate Identity .....	28
10.5	Customer List .....	28
10.6	Injunctive Relief .....	28
10.7	Rights of Franchisor .....	28
10.8	Continuing Obligations .....	28
11.	ENFORCEMENT .....	29
11.1	Irreparable Harm .....	29
11.2	Arbitration .....	29
11.3	Limitation of Claims .....	30
11.4	Costs and Attorneys' Fees .....	30
12.	MISCELLANEOUS .....	30
12.1	Survival of Representations .....	30
12.2	Entire Agreement .....	30
12.3	Notices .....	30
12.4	Waiver .....	31
12.5	Amendments and Modifications .....	31
12.6	Cumulative Remedies .....	31
12.7	Independent Contractor Relationship .....	31
12.8	Singulars and Plurals; Pronouns .....	31
12.9	Execution in Counterparts .....	32
12.10	Interpretation .....	32
12.11	Successors and Assigns .....	32
12.12	Severability .....	32
12.13	Force Majeure .....	32
12.14	Governing Law .....	32
12.15	Limitation on Certain Liability .....	33
12.16	Time of Performance .....	33

Schedules

- A. Miscellaneous
- B. State Addendum
- C. Non-Solicitation and Non-Disclosure Agreement
- D. Franchise Plans
- E. Guaranty
- F. Telephone Listing Agreement

**THE SPORTS SECTION, INC.**  
**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THE SPORTS SECTION, INC. (“Franchisor”), a Georgia corporation with its principal place of business at the address stated on Schedule A hereto (Schedule A and all other schedules hereto being hereby incorporated herein by this reference), and \_\_\_\_\_ (“Franchisee”), a \_\_\_\_\_ with a principal place of business at the location stated on Schedule A.

W I T N E S S E T H:

WHEREAS, through the expenditure of considerable time, effort and money, Franchisor and its corporate parent, have developed a special and unique expertise and system for establishing and operating businesses specializing in promoting, marketing and selling specialty photographic products to individuals and groups associated with youth sports and special events, including, without limitation, processing photographs generated from on-site image capturing photographic equipment (the “Franchised Business”). In support of the Franchised Businesses, Franchisor has developed trade secrets, proprietary and other confidential information, standards, specifications, trademarks and/or service marks, which are intended to create, promote and maintain a uniform image of high quality products and services associated with the Franchised Businesses (hereinafter, as amended, modified or supplemented from time to time, being sometimes referred to as “Franchisor’s Methods”). For purposes hereof, “Products” refer to either the specialty photographic products generated from digital files as listed on Franchisor’s Product Price List, digitally produced photographic prints associated with youth sports and special events and other products Franchisor develops and integrates into Franchisor’s Methods and which Franchisor requires or authorizes its franchisees to offer for sale within the Franchised Business.

WHEREAS, Franchisor owns certain trademarks, service marks, trade names, logotypes, and copyrights including, but not limited to, the marks “SPORTS SECTION” and “TSS PHOTOGRAPHY,” which are associated with the operation of the Franchised Business and which constitute an integral part of the Franchisor’s Methods (such trademarks, service marks, trade names and logotypes are referred to as the “Marks”).

WHEREAS, Franchisee desires to obtain a franchise to operate the Franchised Business, to market the Products and use the Franchisor’s Methods and Marks in the Territory (as defined below).

WHEREAS, Franchisor offers prospective franchisees four different franchise programs which differ in a number of areas including initial franchise fee, population within a protected trading territory, equipment requirements and Product processing and development fees. The distinctions between these plans are highlighted on Schedule D and the Franchisee will designate the plan it desires to purchase on Schedule A contemporaneously with the execution of this Agreement. Franchisor’s franchise plans will be referred to individually as a “Plan” and collectively as the “Plans”.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties do covenant, agree, represent, warrant, acknowledge and stipulate as follows:

**1. PART OF A FRANCHISE PROGRAM.**

Franchisee acknowledges that by executing this Agreement and paying the applicable initial franchise fee, it is joining a franchise program, a significant feature of which is uniform image and consistent business operations by all franchisees within the program. Franchisor, in granting this license to the Franchisee to establish a Franchised Business is relying upon the Franchisee's agreement to operate consistently its business operation and affairs in accordance with Franchisor's Methods and such other controls that Franchisor imposes upon its franchisees on an ongoing basis in order to enhance the demand for the Products, ensure a high quality of customer service, and enhance the image associated with the Franchisor's franchise program and the Marks. As a result and as is typical of franchise systems in general, Franchisee acknowledges and agrees that its primary responsibility under this Agreement is to operate its Franchised Business in accordance with the Franchisor's Methods and to otherwise adhere to the Franchisor's standards, specifications and operating procedures and, as a franchisee, to do so even though there may be situations during the term of this Agreement when Franchisee may not always agree with the Franchisor's Methods or other operational aspects of Franchisor's franchise program.

**2. LICENSE.**

2.1 Grant. Subject to the terms and conditions of this Agreement and all related agreements, Franchisor hereby grants to Franchisee the right and license to operate a Franchised Business and to use Franchisor's Methods, as Franchisor may change, improve, modify or further develop from time to time. The grant of rights under this Agreement is limited to the geographic territory (the "Territory") specified on Schedule A. Franchisor also grants to Franchisee a non-exclusive license to use and display the Marks solely in connection with the operation of the Franchised Business and the products and services offered and sold in connection with the Franchised Business. Franchisee acknowledges that its license to the Marks is limited to the Territory.

2.2 Acceptance of License. Franchisee hereby accepts the right and license herein granted and agrees to operate the Franchised Business in accordance with the provisions of this Agreement including, without limitation, devoting all of its attention and effort and its business activities to the best of its ability to develop and promote the Franchised Business and the Products within the Territory. Franchisee understands and agrees that its operation of the Franchised Business must strictly comply with the Franchisor's Methods and that it must offer the Products specified by Franchisor and may not offer products or services except with Franchisor's consent.

2.3 Reservation of Rights. Nothing herein is intended to be construed so as to grant Franchisee any right, title or interest in or to the Marks, Franchisor's Methods, the Products or the proprietary or confidential information or goodwill of Franchisor, except such rights as may be specifically granted herein. Franchisee understands and agrees that its license to be a Sports Section franchisee does not preclude Franchisor from operating or licensing others to operate, businesses utilizing the Franchisor's Methods, the Products and the Marks so long as it does not violate Franchisee's rights as specified herein. Consistent with Section 7.5 herein, the aforementioned license grants Franchisee a limited exclusive area to operate the Franchised Business in the Territory and, as such, Franchisor may (i) own, operate, purchase or license or in any manner authorize the operation of a Franchised Business at any location outside the Territory; (ii) operate or grant others the right to operate the Franchised Business on terms and conditions Franchisor deems appropriate; (iii) develop, license, market and sell, under the Marks and under other trademarks, service marks or logotypes, the Products through similar or dissimilar channels of distribution, pursuant to terms and conditions Franchisor deems appropriate; (iv) develop and establish other franchise or license programs for the same or similar products utilizing the Marks or similar such trademarks, service marks or logotypes or other marks not now or hereafter designated as part of the Franchisor's Methods and to grant franchises or licenses in connection therewith without

providing the Franchisee any right therein; (v) upon the termination or expiration of this Agreement, offer and sell within the Territory (either by itself or through franchisees) the Products which this Agreement contemplates Franchisee will offer and sell; and (vi) offer and sell those Products and services which this Agreement contemplates Franchisee will offer and sell, from and to any location anywhere in the world, including in close proximity to the Territory, through a number of alternative distribution channels including mail order, catalogs, computer transmission, the Internet or World Wide Web or other e-commerce or on-line networks. Notwithstanding anything to the contrary in this Agreement, Franchisee acknowledges and agrees that if Franchisee should fail for any reason to provide Products or services to a National Account (as defined in Section 7.5) as required by this Agreement after being offered the opportunity to do so, Franchisor has the right itself to provide the Products and services to the National Account or to authorize another Sports Section franchisee to do so even if it means operating on a limited basis in the Territory. Further, if Franchisee does not participate in the TSS Express Program (see Section 8.5) for any reason, Franchisor shall have the right to itself operate or to permit another Sports Section franchisee to operate the TSS Express Program within the Territory, but solely to address the demand for photographs associated with the TSS Express Program and only until Franchisee is authorized to participate in the TSS Express Program, if ever.

2.4 Acknowledgement. Franchisee acknowledges and agrees that Franchisor shall have the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities. Further, Franchisee understands and agrees that the Franchisor's Methods must not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, and other marketplace variables, and if it is to best serve the interests of Franchisor, Franchisee, and Sports Section franchisees. Accordingly, Franchisee expressly understands and agrees that Franchisor may from time to time (i) change the components of the Franchisor's Methods including, but not limited to, altering the products, services, methods, standards, policies and procedures of the Franchisor's Methods, (ii) add to, delete from or modify those products, programs and services which the Franchised Business is authorized and required to offer, and (iii) change, improve, modify or substitute the Marks. In effecting (i), (ii) or (iii) above, Franchisor agrees not to place unreasonable burdens on Franchisee. Franchisee expressly agrees to comply with any such modifications, changes, additions, deletions, substitutions and alterations and, Franchisee shall accept, use and affect any such changes or modifications to, or substitution of, the Franchisor's Methods as if they were part of the Franchisor's Methods at the time that this Agreement was executed. Except as otherwise provided herein, Franchisor shall not be liable to Franchisee for any expenses, losses or damages sustained by Franchisee as a result of any of the modifications contemplated hereby.

### 3. TERM AND RENEWALS.

3.1 Initial Term. The initial term of this Agreement will be for ten years commencing on effective date designated on Schedule A (the "Effective Date") (the "Initial Term"), unless earlier terminated in accordance with the terms of this Agreement.

#### 3.2 Renewals.

(a) Subject to the terms and conditions of this Section 3.2, Franchisee may, at Franchisee's option, renew this Agreement for consecutive ten year additional terms ("Renewal Term") by:

(i) Notifying Franchisor in writing not less than 60 days prior to the expiration date of the Initial Term or any subsequent additional term of this Agreement of Franchisee's desire to renew this Agreement;



(ii) Executing and delivering to Franchisor the then-current Sports Section Franchise Agreement used by Franchisor with other franchisees who wish to renew the term of their franchise agreements. Franchisee acknowledges that the provisions of Franchisor's then-current form of Franchise Agreement may be substantially different than those herein contained, but such agreement shall not provide for the payment of any additional Initial Franchise Fee, as herein defined;

(iii) If Franchisee purchased either a Plan 2, Plan 3 or Plan 4 franchise as designated on Schedule A, paying Franchisor a renewal fee of \$1,000 at the earlier of the time Franchisee executes the then-current franchise agreement or on commencement of the subsequent term;

(iv) Executing a general release, in a form satisfactory to Franchisor's counsel, of any and all claims against Franchisor, its subsidiaries, affiliates, successors and assigns and their respective officers, directors, shareholders, partners, agents, representatives, employees and attorneys, in their corporate and individual capacities including, without limitation, claims arising out of or related to this Agreement and federal, state and local laws, rules and ordinances (the "Laws"). The release will not purport to release Franchisor from any future claims arising out of or related to the renewal franchise agreement entered into between Franchisee and Franchisor; and

(v) Complying with Franchisor's then-current qualification and training requirement.

(b) Notwithstanding the provisions of Section 3.2 (a) hereof, Franchisee shall have no right to renew this Agreement unless, as of the expiration date of the Initial Term or any subsequent additional term, as the case may be, Franchisee has fully performed and complied with the provisions of this Agreement and no Event of Default, as herein defined, or event which with the giving of notice or passage of time or both will constitute an Event of Default, exists as of such expiration date.

#### **4. INITIAL FRANCHISE FEE.**

The initial franchise fee (the "Initial Franchise Fee") payable by Franchisee for the right and license herein granted shall be as follows:

(a) If Franchisee has selected Plan 1, as designated on Schedule A, the Initial Franchise Fee shall be \$33,900, payable in cash on the execution of this Agreement;

(b) If Franchisee has selected Plan 2, as designated on Schedule A, the Initial Franchise Fee shall be \$25,900, payable in cash on the execution of this Agreement;

(c) If Franchisee has selected Plan 3, as designated on Schedule A, the Initial Franchise Fee shall be \$18,900, payable in cash on the execution of this Agreement; and

(d) If Franchisee has selected Plan 4, as designated on Schedule A, the Initial Franchise Fee shall be \$12,900, payable in cash on the execution of this Agreement.

The Initial Franchise Fee shall become fully-earned and non-refundable on the execution of this Agreement by Franchisee. If Franchisee paid a deposit prior to its execution of this Agreement, Franchisor agrees to apply the deposit (less any refund previously issued to Franchisee) towards the payment of the Initial Franchise Fee. The Initial Franchise Fee for additional franchises purchased by Franchisee will have a reduced Initial Franchise Fee as specified on Schedule D to this Agreement.

## **5. REPRESENTATIONS OF FRANCHISOR.**

In order to induce Franchisee to enter into this Agreement, Franchisor represents and warrants as follows:

5.1 Due Organization. Franchisor is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia, and has full corporate right, power and authority to execute, deliver and perform this Agreement.

5.2 Marks. If Franchisor determines that any Mark designated as part of Franchisor's Methods, conflicts with any other trademark, service mark or logotype of a third party, or that the use of such Marks in Franchisor's franchise system may conflict with another party's trademark, service mark or logotype, Franchisor may, at its election, substitute other marks therefor. Franchisee acknowledges that the value of the Marks or any substitute mark results or will result primarily from their collective use by Franchisor and its franchisees and accordingly consents to any such substitution therefor by Franchisor. If Franchisee shall be adjudicated liable for any damages resulting from a claim of infringement or unfair competition based on Franchisee's use of any of Marks in accordance with this Agreement or written derivatives from Franchisor, then Franchisee's sole and exclusive remedy against Franchisor shall be promptly to terminate this Agreement, but only after Franchisor has been afforded the opportunity, and has declined, to indemnify Franchisee for such damages. No portion of any fee (including, without limitation, any Initial Franchise Fee) shall be or become refundable upon any such termination.

## **6. REPRESENTATIONS/ACKNOWLEDGMENTS OF FRANCHISEE.**

In order to induce Franchisor to enter into this Agreement, Franchisee represents, warrants and acknowledges the following:

6.1 Ownership. Schedule A lists all owners of the Franchisee and the ownership interest held by each owner. As used in this Agreement, "Owner" consist of all persons or entities holding a legal or beneficial ownership interest or voting rights in the Franchisee, directly or indirectly. Franchisee agrees to give Franchisor prompt notice of any change or additions to the list of Owners on Schedule A. Simultaneously with the execution of this Agreement and as an inducement to Franchisor to enter into this Agreement, each person shown on Schedule A as holding any ownership interest in the Franchisee, and any person acquiring any future ownership interest in the Franchisee, shall execute in his/her individual capacity the Non-Solicitation and Non-Disclosure Agreement in Schedule C which shall constitute an agreement requiring such person to be bound personally by the terms of Section 8.10 below. Further, Franchisee shall require and obtain the execution of the Non-Solicitation and Non-Disclosure Agreement from all of the following persons: (i) prior to employment or prior to any promotion, all executive employees, managers, trainers, salespersons and all other employees other than clerical staff; (ii) if Franchisee is a corporation, all officers and directors of Franchisee and any corporation directly or indirectly controlling Franchisee; and (iii) if Franchisee is a partnership, the general partners and any limited partners, including any corporation which controls, directly or indirectly, any general or limited partner along with the officers and directors; and (iv) if Franchisee is a limited liability company, all members of Franchisee.

6.2 Truth of Information. The information [including, without limitation, the information set forth in Franchisor's Franchise Application Form (the "Franchise Application")] furnished or to be furnished to Franchisor by Franchisee or any Owner or executive employee or manager, is and shall be, as of the date such information is furnished to Franchisor, true and correct in all material respects and shall include all material facts necessary to make such information not misleading in light of the circumstances made. Franchisee acknowledges and agrees that Franchisor has approved its Franchise Application in

reliance on the information provided in the Franchise Application and that, but for the information provided therein, Franchisee would not have been granted Franchisee the right and license to operate a Franchised Business.

6.3 Due Authority. If Franchisee is a corporation, limited liability company or partnership, this Agreement has been duly authorized by all necessary actions required on behalf of Franchisee and constitutes the valid and binding obligation of Franchisee enforceable in accordance with its terms, subject to applicable bankruptcy, moratorium, insolvency, receivership and other laws affecting the rights of creditors generally. If Franchisee is a corporation or limited liability company, it is duly organized and validly existing in good standing under the laws of the state of its incorporation or organization.

6.4 Compliance with Applicable Laws. Franchisee has complied, and will continue to comply, with all applicable Laws with respect to the establishment, operation and conduct of the Franchised Business.

6.5 Suits; Proceedings. Except as may otherwise be specified in the Franchise Application, there are no actions, suits, claims or proceedings pending or threatened against Franchisee.

6.6 Information Provided. Franchisee has investigated Franchisor and has had ample opportunity to contact other franchisees of Franchisor or others engaged in business dealings with Franchisor or its officers or employees and to ask of, and have answered by, officers of Franchisor such questions as Franchisee deemed appropriate. Franchisee has received such other information from Franchisor as Franchisee has requested.

6.7 Receipt of Agreement and Offering Circular. Franchisee received a copy of Franchisor's franchise offering circular by the earliest of: (i) the first personal meeting to discuss a Sports Section franchise or (ii) 10 business days before signing a binding agreement, or (iii) 10 business days before making any payment to us relating to this Agreement. Further, the Franchisee has received execution originals of this Agreement (including all Schedules) as required by such Laws, at least five business days before its execution, and has read and understands same.

6.8 Representations by Franchisor. EXCEPT TO THE EXTENT AS MAY BE SET FORTH IN FRANCHISOR'S FRANCHISE OFFERING CIRCULAR PREVIOUSLY DELIVERED TO FRANCHISEE, NEITHER FRANCHISOR NOR ANY OFFICER OR REPRESENTATIVE OF FRANCHISOR HAS MADE ANY REPRESENTATION, WARRANTY, GUARANTEE, EXPRESS OR IMPLIED, TO FRANCHISEE AS TO THE POTENTIAL VOLUME, SUCCESS, ANTICIPATED REVENUES, INCOME, EXPENSES, EARNINGS OR PROFITABILITY OF THE BUSINESS LICENSED TO FRANCHISEE, ANY SPORTS SECTION FRANCHISE OR RELATED TO FRANCHISOR ITSELF.

6.9 Risks. FRANCHISEE ACKNOWLEDGES THAT THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED TO BE UNDERTAKEN UNDER THIS AGREEMENT IS SPECULATIVE, INVOLVES BUSINESS RISKS, THAT THERE IS NO GUARANTEE AGAINST POSSIBLE LOSS, THAT NO ASSURANCE OF SUCCESS HAS BEEN OR CAN BE GIVEN TO FRANCHISEE AND THAT THE MOST IMPORTANT FACTORS IN SUCCESS OF THE FRANCHISED BUSINESS ARE THE SKILL, EFFORT AND BUSINESS ACUMEN OF FRANCHISEE. AS A RESULT, THE FRANCHISEE HAS CONDUCTED A THOROUGH INDEPENDENT INVESTIGATION OF THE FRANCHISOR'S METHODS INCLUDING ANALYZING THE BUSINESS OPPORTUNITY BEING OFFERED BY THIS AGREEMENT AND THE TERMS AND CONDITIONS OF THIS AGREEMENT. FRANCHISEE AGREES TO USE ITS

**BEST EFFORTS AND ADEQUATE TIME TO ATTEMPT TO ACHIEVE SUCCESS AND IT WILL FOLLOW ALL OF THE ELEMENTS OF FRANCHISOR'S METHODS.**

6.10 Advisors. Franchisee acknowledges that it has been given the opportunity to consult with its own advisors with respect to the legal, financial and other aspects of this Agreement and the Franchised Business and, if so requested, Franchisor has fully and adequately explained each provision of this Agreement and the franchise offering circular to the satisfaction of Franchisee. Prior to the execution of this Agreement, Franchisee had the opportunity to contact existing franchisees of Franchisor to inquire about the Franchisor, Franchisor's Methods and the system of Franchised Business.

6.11 Variations. Franchisee acknowledges that Franchisor may from time to time approve exceptions or changes from the uniform standards of the Franchisor's Methods or franchise system which Franchisor, in its sole absolute discretion, believes necessary or desirable under particular circumstances. Franchisee understands that it has no right to object to or automatically obtain such variations, and that any exception or change must be approved in advance by Franchisor in writing. Franchisee also understands that other existing and/or future franchisees may operate under different forms of agreements, and consequently the rights and obligations of such franchisees may differ materially from Franchisee's.

6.12 Restrictions on Actions. Franchisee acknowledges that the covenants set forth in Section 8.10 which are applicable during the term of this Agreement and thereafter for a specified period of time, are fair and reasonable, and will not impose any undue hardship on Franchisee or its Owners, officers, directors or employees since Franchisee and its Owners, officers, directors or employees have other considerable skills, experience and education which afford Franchisee and its Owners, officers, directors or employees the opportunity to earn a living from other endeavors.

6.13 Patriot Act Compliance. Franchisee hereby represents, warrants, and certifies to Franchisor that neither Franchisee nor any of its directors, officers, shareholders, partners, members, employees, or agents, nor any of its affiliates or their directors, officers, shareholders, partners, members, employees, or agents, nor any other direct or indirect interest holders of any of the preceding: (i) are or have been listed on any Government Lists (as defined below); (ii) are or have been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001), or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof; (iii) have been indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any offenses under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA Patriot Act"); (iv) are or have been under investigation by any Governmental Authority (as defined below) for alleged criminal activity; or (v) have or have had a reputation in the community for criminal or unethical behavior. As used in this Section 6.13, the following definitions apply:

(a) "Government Lists" means any of the following lists: (i) the "Specially Designated Nationals and Blocked Persons List" maintained by OFAC; (ii) any other list of terrorists, terrorist organizations, or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC; or (iii) any similar list maintained by the United States Department of State, the United States Department of Commerce, or any other Governmental Authority, or pursuant to any Executive Order of the President of the United States of America.

(b) "OFAC" means the Office of Foreign Assets Control, United States Department of the Treasury, or any other office, agency, or department that succeeds to the duties of OFAC.

(c) “Governmental Authority” means all federal, state, national, territorial, county, local, foreign, or other governmental or regulatory agencies, authorities (including self-regulatory authorities), instrumentalities, commissions, boards, and bodies.

## **7. RESPONSIBILITIES OF FRANCHISOR.**

Franchisor covenants and agrees as follows:

7.1 Initial Materials and Supplies. Within 30 days after the execution of this Agreement by Franchisor, Franchisor shall provide to Franchisee, at no additional charge, the materials and supplies listed on Schedule D corresponding to the Plan designated by the Franchisee. These supplies are for Franchisee’s use only in connection with the Franchised Business. If the Franchisee needs additional quantities of these items (or desires to purchase items distributed in connection with other Plans) Franchisor shall sell such materials and supplies to Franchisee at Franchisor’s then-current prices, which will be subject to change without notice at Franchisor’s sole discretion. Notwithstanding the foregoing, Franchisee shall be charged for all Product samples provided by Franchisor which are generated from digital files and/or images supplied by Franchisee in accordance with the terms of Franchisor’s Product price list (the “Product Price List”), as updated and revised by Franchisor.

7.2 Initial Photographic Equipment Set-Up. Franchisee acknowledges and agrees that it is responsible for purchasing, at its expense, all photographic equipment necessary to operate the Franchised Business, which equipment must meet Franchisor’s specifications and standards. If Franchisor is the sole supplier of such photographic equipment, Franchisor agrees to make such equipment available to Franchisee and to charge Franchisee its then-current prices for such equipment.

7.3 Processing and Developing of Digital Files. Franchisor or its designee (typically its parent corporation) shall process and develop all the digital files submitted to it by Franchisee for the purpose of processing such files into Products. Franchisor shall send to Franchisee the requested number and variety of Products to be generated from each digital file delivered by Franchisee not later than 25 days after the digital files are received by Franchisor, provided that: (i) the quality of the file submitted is suitable for processing into Products (as determined by Franchisor or its designee); (ii) Franchisor or its designee determines that the images that can be produced from such files will be of a suitable quality for processing into Products; (iii) all paperwork required by Franchisor has been properly completed and submitted to Franchisor with Franchisee’s order; (iv) Franchisee has registered a photography shoot and properly transmitted it through the Corporate Software to Franchisor at least seven days in advance of Franchisor’s receipt of such order; and (v) full payment for processing and developing has been submitted with the order. If Franchisor shall fail to meet the aforementioned 25 day requirement, then Franchisee shall be entitled to a credit against its order in an amount equal to 50% of the processing fee charged with respect to the Products associated with that order. Credits will be issued by the 15<sup>th</sup> day of the month following the month in which notification is provided that the credits have been earned. Franchisor agrees to notify Franchisee within seven days of its receipt of any order if the order does not comply with conditions (i)-(v) set forth above. Franchisor or its designee reserve the right to process and develop any negative or image that Franchisor or such designee determines is of poor quality, damaged, not resellable or otherwise defective.

7.4 Franchise Manual. Within 30 days after the execution of this Agreement by Franchisor, Franchisor shall loan to Franchisee one copy of Franchisor’s Franchise Operations Manual (the “Manual”) in hard copy format or on a CD-ROM, Franchisee agrees to operate the Franchised Business in strict compliance with the operational systems, policies, procedures, methods, specifications and requirements prescribed from time to time in the Manual. Franchisor retains the right to prescribe additions to, deletions from or revisions of the Manual, all of which will be deemed a part of the Manual.

Franchisee agrees to adopt and use the Products, services, standards, specifications, policies, methods and requirements set forth in such Manual supplements promptly upon receiving them. Franchisor agrees that the Manual will not materially alter Franchisee's rights and obligations under this Agreement or place an excessive economic burden on its operations. Franchisee acknowledges that Franchisor is the owner of the Manual and all proprietary rights therein and it will at all times remain the property of the Franchisor.

7.5 Franchisee's Territory. Except as otherwise permitted in Section 2.3 or in this Section 7.5, during the term of this Agreement, Franchisor shall not grant any other license to use the Marks or Franchisor's Methods from an office or place of business which is located within the Territory. Franchisor also agrees that during the term of this Agreement, it shall not establish or operate any office or place of business within the Territory for purposes of promoting or marketing the Products, and shall not otherwise promote or market the Products within Territory, on behalf of itself or any of its affiliates; provided, however, that Franchisor reserves the right to promote, market and sell Products through its website or to any potential or actual customer that requires, or that Franchisor reasonably believes will require, that the photographic services rendered in connection with providing Products be undertaken within multiple franchisees' territorial boundaries (such customers being hereinafter referred to as "National Accounts"). By signing this Agreement, Franchisee agrees to participate in all programs Franchisor develops for National Accounts and to comply with all rules and regulations associated with National Account programs. If Franchisee fails or refuses to comply with, or otherwise participate in, any National Account program, and the rules and regulations established for them, Franchisee agrees that other Sports Section franchisees may provide Products and services to customers within the Territory within the parameters of the National Accounts program, without any compensation to Franchisee and without such activities constituting a breach of this Agreement. Similarly, if Franchisee does not participate in the TSS Express Program for any reason, Franchisee agrees that Franchisor or other Sports Section franchisees may undertake the TSS Express Program within the Territory, without compensation to Franchisee and without such activities constituting a breach of this Agreement. The right of such other franchisees or of Franchisor itself to operate the TSS Express Program shall continue only until such time as Franchisee is authorized to participate in the TSS Express Program within the Territory, if ever.

7.6 Instruction: Sales and Marketing. Either prior to execution of this Agreement or within 30 days after the execution of this Agreement by Franchisor, Franchisor shall cause one of its employees or representatives to consult with Franchisee (no more than two representatives) for approximately two and one-half days, including making sales calls with Franchisee in the Territory and instructing Franchisee and its employees regarding sales techniques and guidelines, contact procedures and the detailed format of a sales presentation. Provided the training dates initially agreed upon by Franchisor and Franchisee are not altered, Franchisor's expenses incurred in connection with such training within the Territory, including preparation for training, shipping costs, travel, meals and lodging expenses of its employees or representatives, shall be the sole responsibility of Franchisor. In the event of cancellation or re-scheduled training dates, Franchisor's expenses in connection with such training including the travel, meals and lodging expenses of its employees or representatives shall be the sole responsibility of Franchisee and Franchisee agrees to reimburse Franchisor promptly upon receipt of supporting documentation evidencing that Franchisor incurred such expenses.

7.7 Instruction: Photography Training. In order to ensure that Franchisee provides Franchisor with quality digitally captured images which are sufficient to produce consistently high quality of Products bearing the Marks, Franchisor agrees to provide instruction to Franchisee (and up to two of Franchisee's representatives unless Franchisor agrees otherwise) with respect to photographic techniques used to generate digital files for processing into Products. This training shall be conducted by employees or representatives of Franchisor and shall consist of preparation for, assistance during and the partial participation in, a photographic session, and a follow-up paperwork session to be held immediately following the photographic session. Such training shall take place at the photographic shoot arranged and

conducted by Franchisee of a group totaling at least 150 subjects, and shall be held pursuant to 21 days written notice to Franchisor. If Franchisee provides Franchisor with less than 21 days written notice, and Franchisor and its employees or representatives are available, Franchisee agrees to pay the additional travel costs and related expenses Franchisor incurs because of the shortened notice period. Franchisee agrees to complete this training within 120 days after completion of sales and marketing training. If the training is held within such this period, Franchisor's expenses in connection with such instruction including the travel, meals and lodging expenses of its employees and representatives, shall be the sole responsibility of Franchisor. Otherwise, if Franchisee fails to complete such training within such time period, then subsequent to Franchisor providing such training, Franchisee agrees to reimburse Franchisor for such expenses promptly upon receipt of supporting documentation evidencing that Franchisor incurred such expenses. Franchisor reserves the right to decide whether the group assembled as training subjects is sufficient to allow Franchisor to conduct its training program. In the event a scheduled training shoot is cancelled for any reason, any fees or charges incurred by Franchisor as a result of changes, transfers, exchanges, cancellations or the like, will be reimbursed promptly by Franchisee. Training for the TSS Express Program is offered on a per diem basis separate from the initial training provided to all new franchisees.

7.8 Optional Additional Training. In addition to the instruction provided for above, Franchisee may, at its option and expense at any time during the term of this Agreement, obtain from Franchisor additional training regarding the day-to-day conduct and operation of the Franchised Business. If such training requires special on-site consultation by employees or representatives of Franchisor, Franchisee shall promptly pay to Franchisor the amount of Franchisor's then-current consultation fee (which is currently as listed on Schedule A, but the amount of which is subject to change without notice in Franchisor's sole discretion) for each day that an employee or representative of Franchisor provides such consultation and for all actual expenses incurred with respect to such consultation including, without limitation, expenses for travel, meals and lodging, and Franchisor shall have the right to demand payment thereof in advance. Expenses of any trips by Franchisee to Franchisor's offices for purposes of receiving such training, including travel, meals and lodging expenses, shall be the sole responsibility of Franchisee.

7.9 Scanning and Uploading. To facilitate the sale of Products by Franchisee through its website, which sales will be fulfilled by Franchisor, Franchisor will upload to Franchisee's website, digital photographs Franchisee has transferred to a compact disk. Franchisor reserves the right to charge a reasonable fee for such scanning and uploading services. Due to the expense and time involved for Franchisor to undertake this activity, Franchisor intends to scrutinize carefully any request by Franchisee for this service and, therefore, Franchisee acknowledges and understands that Franchisor may not agree to scan or upload all of Franchisee's digital files and/or images.

7.10 E-Commerce/Fulfillment. Franchisor agrees to process and fulfill Products orders received by Franchisee through its website upon receipt of payment from Franchisee's customers, and to remit to Franchisee, on a quarterly basis, its then-current percentage share of the purchase price for such Products as set forth in the Manual or other written directive issued to Franchisee, but no percentage less than 50% for Products generated from digital photos. On a regular basis, Franchisor (or its designee) will generate reports establishing and itemizing such web-based sales. Franchisor agrees to provide Franchisee with access to the reports to review and verify the payments Franchisee receives.

7.11 Website. Franchisor, at its expense, shall create a customized website for the Franchisee's Franchised Business consistent with the websites it creates for other Sports Section franchisees. Franchisor will maintain, store and update Franchisee's website as needed in conjunction with the Franchised Business.

7.12 Electronic Mail Address. Franchisor, at its expense, shall create a custom electronic mail ("e-mail") address for Franchisee consistent with the electronic mail addresses it creates for all Sports Section franchisees. Franchisor will maintain, store, and update Franchisee's electronic mail information as needed in conjunction with the Franchised Business. Franchisor reserves the right to monitor Franchisee's electronic mail under such address for the purpose of evaluating its use with the Franchised Business. Franchisee agrees to use the e-mail address solely in connection with the Franchised Business and to ensure Franchisor has unlimited access to the electronic mail address and communication and information distributed and disclosed among users of the electronic mail address.

## **8. COVENANTS AND AGREEMENTS OF FRANCHISEE.**

Franchisee understands and acknowledges that every detail of the Franchised Business is important to Franchisor in order to maintain uniform standards of quality, service and techniques, to increase the demand for the Products and to protect the reputation and goodwill of the Franchisor, the Franchisor's Methods, its franchisees and the Marks. Accordingly, Franchisee covenants and agrees as follows:

8.1 Expenses of Franchised Business. Franchisee shall be responsible for the payment of all costs and expenses required for the efficient operation of the Franchised Business, including, but not limited to, expenses of obtaining appropriate business licenses, advertising and vehicular maintenance, and purchasing necessary photographic and marketing materials not required by any provision hereunder to be supplied by Franchisor.

8.2 Office. At all times during the term of this Agreement, unless otherwise agreed to by Franchisor, Franchisee shall establish and maintain an office and telephone within the Territory. Such office shall be located initially at the address indicated on Schedule A.

### 8.3 Processing and Delivery of Digital Files and/or Images or Submittal of Subjects.

(a) Franchisee acknowledges and understands the importance to the Franchised Business and businesses operations of other Sports Section franchisees, of providing to the public finished Products bearing the Marks which are of a consistently high quality, and that Franchisor or its corporate parent reserve the right to refuse production of any negative or image that Franchisor or the corporate parent determines is of poor quality, damaged, not resellable or otherwise defective. Franchisee further acknowledges and understands Franchisor's and its corporate parent's experience and special expertise in producing Products from digital files and, in order to ensure a consistently high quality finished Product, Franchisee agrees to deliver to Franchisor (or its designee) all of its archived images or digital files which are to be developed or processed for all of its customers and that Franchisee may not use any other digital file development facility without Franchisor's express written consent. All costs and expenses of delivering those images to Franchisor (or its designee) and of delivering Products or any other items from Franchisor to Franchisee shall be the responsibility of Franchisee.

(b) The fees for processing and developing Franchisee's digital files and digital files associated with the TSS Express Program into Products will be based on Franchisor's (or its designee's) Product Price List in effect on the date of receipt of the digital files and/or images from Franchisee, including a fee for each digital image associated with same digital images, as periodically set by Franchisor. Franchisor's prices as of the date hereof, which are subject to change at the sole discretion of Franchisor with 60 days' notice, Prices are listed on Franchisor's Product Price List or, for the TSS Express Program, as specified by Franchisor in a written directive. Notwithstanding the foregoing, the price increase of any item on the Product Price List shall be limited during each calendar year during the term of this Agreement to the greater of 15% or (b) 1.15 times the increase in Franchisor's (or its



designee's) cost of producing such item. The processing and developing fees as provided hereunder shall be paid by Franchisee upon delivery of the digital files to Franchisor, and Franchisor or its designee shall have no obligation to process or develop such digital files until such fees have been paid in full. For digital files associated with the TSS Express Program which are sold through the Franchisor's or Franchisee's website, Franchisee acknowledges and understands that Franchisor shall fulfill such sales, collect fees from customers for the Products and remit Franchisee's share of such fees in accordance with the Manual or other written directive pertaining to Franchisor's e-commerce/fulfillment activities (see Section 7.10). Franchisee hereby acknowledges and agrees that such image processing contemplated hereunder may be conducted by an independent entity designated by Franchisor. Currently, Franchisor's parent corporation is its designee to perform image processing and its parent corporation receives all fees related thereto.

8.4 Equipment. Franchisee shall at all times maintain an amount of photographic equipment and supplies, including cameras, image file storage, flashes and lenses, computers, and paper sufficient for the efficient conduct of the Franchised Business as specified by Franchisor. In connection therewith, Franchisee shall use only those brands, types and/or models of equipment and supplies that Franchisor has approved or designated and, to the extent Franchisor so designates, the equipment and supplies shall only be purchased from approved suppliers, which may include or be limited only to Franchisor. If Franchisee desires to purchase equipment or supplies of a brand, type and/or model that has not been approved by Franchisor, Franchisee shall so notify Franchisor and submit samples of such equipment or supplies to Franchisor so that Franchisor may determine whether such items comply with the applicable standards and specifications established by Franchisor from time to time, or whether Franchisor can support such equipment. Franchisor shall have no obligation to approve purchases of any equipment or supplies unless such brand, types and/or model conforms to Franchisor's standards and specifications, and Franchisee shall not make purchases of any such brand, types and/or model until Franchisor's approval has been obtained. For equipment and supplies purchased by Franchisee from Franchisor, Franchisor agrees to sell them at the same price as it sells them to other franchisees similarly situated. Franchisor has the right to demand payment in full for such equipment and supplies at the time Franchisee places an order and before the equipment and supplies are loaded for shipment. Franchisor reserves the right to earn a reasonable profit from the sale to Franchisee of such equipment and supplies. Franchisee's exclusive remedy and Franchisor's exclusive liability for any and all claims as to any equipment and supplies delivered under this Agreement or for a delayed delivery or non-delivery of any such equipment and supplies, will be limited to the purchase price of the equipment and supplies with respect to which the claim is made or, at Franchisor's option, it may replace the equipment and supplies. Neither party will be liable for special, incidental, indirect or consequential damages, whether or not caused by or resulting from that party's negligence. Franchisor warrants that any equipment and supplies purchased by Franchisee meets Franchisor's specifications for such equipment and supplies. Franchisor neither makes nor intends, nor does it authorize any agent or representative to make, any other express or implied warranties with respect to equipment and supplies delivered under this Agreement. FRANCHISOR EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO EQUIPMENT AND SUPPLIES DELIVERED BY IT UNDER THIS AGREEMENT. In connection with one or more items of equipment, it may be necessary for Franchisee to license certain proprietary computer software from one or more approved sources. If so, Franchisee agrees to execute the appropriate license agreements for such software and to fully and completely comply with all applicable licensing terms.

8.5 TSS Express Program. Franchisee understands and acknowledges that the optional TSS Express Program is an ancillary part of the Franchised Business which, if Franchisee is permitted to participate, must be performed consistent with the portions of the Manual which relate to the TSS Express Program. In connection with the TSS Express Program, Franchisee shall at all times adhere and fully

comply with all standards, operating procedures and rules as specified in the Manual or by written directive from Franchisor to Franchisee and to implement and maintain subsequent to its introduction of the TSS Express Program any promotional campaign for the sale of Products connected with the TSS Express Program in an amount and manner set forth in the Manual or by written directive from Franchisor to Franchisee. Franchisee, or if Franchisee is not an individual, the two individuals designated by Franchisee to assume primary responsibility for the operation of the Program are required to attend and complete the TSS Express Program training program offered by Franchisor. Franchisee acknowledges and agrees that one of the significant components of the TSS Express Program is the web-based sale by Franchisor of photographs generated by franchisees participating in the TSS Express Program. In consideration for Franchisee providing its digital photographs to Franchisor for uploading to Franchisee's website to facilitate the ordering of Products, which orders will be fulfilled by Franchisor, Franchisor agrees to remit to Franchisee on a quarterly basis a portion of the revenue Franchisor receives from such orders, all in accordance with Section 7.10 above. Franchisee must bear all expenses associated with the equipment, computer and systems for the TSS Express Program including, without limitation, print charges payable to Franchisor for each photograph taken. Franchisee must purchase technical support for the TSS Express Program, which will be provided by Franchisor, its designee or through an on-line support system. Technical support will also provide Franchisee with a toll-free telephone hotline 24 hours per day, 7 days a week. The hotline is intended to provide Franchisee with a mechanism for reporting problems and receiving assistance. In consideration for these support services, Franchisee agrees to pay an annual technical support fee to Franchisor. The annual technical support fee, which will be specified in the Manual, is subject to change upon 60 days' prior written notice to Franchisee. The technical support provided includes updates and upgrades and error corrections to the proprietary computer software provided with the Express Photography System which is a significant component of the TSS Express Program. Franchisee acknowledges and agrees that in offering the TSS Express Program, it will be restricted in the types of services and products it is permitted to offer. The Products shall be offered in accordance with the written standards and specifications of Franchisor, many of which will be contained in the Manual, technical bulletins or other written directives specific to the TSS Express Program and all of which may be changed or supplemented by Franchisor, effective upon written notice to the Franchisee. If offered by Franchisee, Franchisee agrees to use its reasonable best efforts to advertise and promote continually the TSS Express Program and Franchisee's ability to provide event, portrait and school photography and on-site processing of photographs. Franchisee shall only use designated marketing materials as provided to Franchisee by Franchisor and will not produce any of its own marketing materials unless given written approval to do so by Franchisor with respect to the marketing of the TSS Express Program. At no time will Franchisee display or use in any manner any of the Marks which have been designated for use in selling TSS Express Program Products in the offer or sale of any other products or services, without the written permission of Franchisor. Franchisee shall implement and maintain any promotional campaign for the sale of TSS Express Program Products in a manner as set forth in the Manual or otherwise by written directive from Franchisor and specific to the TSS Express Program.

8.6 Minimum Productivity. If Franchisee selected a Plan 1, 2 or 3 franchise, Franchisee agrees that it will (i) submit to Franchisor (or its designee) digital files or images associated with the TSS Express Program, if offered, for processing into Products, (ii) submit to Franchisor (or its designee) digital files and/or images, (iii) incur print fees for the TSS Express Program, if offered, or (iv) purchase marketing materials or ancillary items associated with the Franchised Business, in amounts sufficient to generate a minimum of \$1,000 in fees for Franchisor (or its designee) for each month during the term of this Agreement, and at least \$10,000 of such fees in each consecutive six month period, commencing as of the Effective Date; provided, however, that during the first six months after the Effective Date, such minimum productivity levels shall be \$500 for each month and \$5,000 for the six month period. If Franchisee selected a Plan 4 franchise, Franchisee agrees that it will (i) submit to Franchisor (or its designee) digital files or images associated with the TSS Express Program, if offered, for processing into

Products, (ii) submit to Franchisor (or its designee) digital files and/or images, (iii) incur print fees for the TSS Express Program, if offered, Program or (iv) purchase marketing materials or ancillary items associated with the Franchised Business in amounts sufficient to generate a minimum of \$500 in developing and printing fees for Franchisor (or its designee) for each month during the Term, and at least \$6,000 of such fees in each consecutive six month period, commencing as of the Effective Date; provided, however, that during the first six months after the Effective Date, such minimum productivity levels shall be \$375 for each month and \$3,750 for the six month period. Notwithstanding the foregoing, if Franchisee owns multiple franchises, one of which is a Plan 1 franchise, Franchisee agrees that it will undertake the obligations set forth in (i) - (iv) above, in amounts sufficient to generate a minimum of \$1,500 in fees for Franchisor (or its designee) for each month during the term of this Agreement, and at least \$5,000 for the six month period commencing upon the purchase of such multiple franchises and at least \$15,000 of such fees in each consecutive six month period thereafter. Beginning on the second anniversary of the Effective Date and continuing on each anniversary thereafter during the term of this Agreement, Franchisor shall have the right to increase the minimum productivity levels for the succeeding twelve month period by a percentage commensurate with the percentage increase in the population of the Territory since the commencement of the preceding twelve month period. For purposes of calculating the percentage increase in such population, Franchisor shall utilize information available from the United States Department of Commerce - Bureau of the Census. Franchisor's determination of the percentage increase, if any, shall be final and not subject to challenge by Franchisee. If Franchisor elects to exercise its right to increase the minimum productivity levels as provided above, Franchisor shall notify Franchisee in writing within 45 days of the end of the preceding twelve month period of the new minimum productivity levels for the succeeding twelve month period. Upon the renewal of this Agreement, if any, Franchisor may establish new minimum productivity levels based upon such factors as population growth in the Territory since the Effective Date, Franchisor's minimum fees for new franchises, changes in Franchisor's Methods, and such other factors as Franchisor shall in good faith determine to be appropriate. Should Franchisee fail to attain its minimum productivity level as specified above, Franchisee shall have the opportunity to reduce the shortfall through the purchase of certain items and materials related to the Franchised Business such as trophies, plaques, event photography prints, and supplies from Franchisor. The application of these purchases to reduce the shortfall and the rules associated therewith shall be established by Franchisor at its sole discretion and communicated to Franchisee.

8.7 Compliance with Laws. Franchisee shall comply with all Laws applicable to the conduct of the Franchised Business and shall obtain and thereafter maintain in good standing any and all licenses, permits and consents necessary for Franchisee to conduct the Franchised Business. Franchisor shall, where required by applicable law, file for and maintain a "Certificate of Fictitious Name" under the name The Sports Section in the city, county and/or state where the Franchised Business is located. Evidence of such filing shall be furnished to Franchisor on its request.

8.8 Compliance with Franchise Manual and Training Requirements. Franchisee shall fully comply with, adhere to and abide by each and every rule, procedure, standard, specification and requirement contained in Franchisor's Manual, which shall include Franchisor's sales guide and presentation book, as amended, modified or supplemented from time to time and such other manuals and other written rules, procedures, standards, specifications and requirements as Franchisor may promulgate or issue from time to time as so amended, modified or supplemented. Franchisee expressly acknowledges that Franchisor may amend, modify or supplement the Manual for the purpose of maintaining, improving, modifying, supplementing or enforcing Franchisor's Methods, so long as such amendments, modifications or supplements will, in the good faith opinion of Franchisor, inure to the collective benefit of Franchisor and Franchisor's existing and future franchisees or shall otherwise improve Franchisor's Methods. Franchisee agrees to keep Franchisee's copy of the Manual up-to-date including downloading changes made and posted on Franchisor's website. Franchisee acknowledges that the Manual is and shall

remain the sole and exclusive property of Franchisor and upon expiration or termination of this Agreement, Franchisee shall immediately return the Manual to Franchisor. Nothing contained in this provision shall be interpreted or construed to make Franchisee an employee of Franchisor. Franchisee shall complete the training programs described in Sections 7.6, 7.7 and 7.8 above, as well as other training programs offered by Franchisor which are declared by the Franchisor to be mandatory for the operation of the Franchised Business. For example, Franchisee hereby acknowledges and agrees that within six months of the Effective Date, Franchisee and its representatives shall successfully complete Franchisor's TSS University program (which program is offered at or near Franchisor's principal place of business on a regular basis).

8.9 Advertising. All advertising by Franchisee using any of the Marks, in whole or in part, must be approved in advance by Franchisor. The foregoing is intended to ensure the necessary quality, uniformity and continuity of advertising and promotional activity for all Sports Section franchises. Franchisor may, from time to time, conduct advertising programs and marketing campaigns in the Territory which are intended to assist Franchisee in selling Products and increasing awareness of the Franchisee's Franchised Business, the system of Sports Section franchisees and the Sports Section brand. Franchisor makes no representations, warranties or guarantees that such programs and campaigns will be successful or will have a positive economic impact on Franchisee's Franchised Business.

8.10 (a) Limitation on Competition. In consideration of the valuable training that Franchisee will receive from Franchisor, the disclosure to Franchisee of the Proprietary Information (as defined in Section 8.15) and Franchisee's use of Franchisor's Methods and the Marks, and in recognition of Franchisor's need to protect the integrity of its franchise system, its Methods and Proprietary Information, Franchisee agrees that it will not, directly or indirectly through employees or agents, for financial gain during the term of this Agreement anywhere and for a period of one year after the termination or expiration of this Agreement for any reason, within the Territory, except as a Sports Section franchisee licensed by Franchisor (i) photograph individuals or groups participating in youth sports and special events or (ii) market for sale or sell still videographic or digital images, targeted for, aimed at or designed for individuals or groups participating in youth sports or special events. Furthermore, Franchisee acknowledges and agrees that Franchisee shall be considered in default under this Agreement, and this Agreement will be subject to termination, in the event that a person in the immediate family (including spouse, domestic partner, parent or child) of Franchisee (or if Franchisee is other than an individual, each Owner that is subject to these covenants) engages in the activities in (i) and (ii) of this Section 8.10(a) that would violate this Section 8.10(a) if such person was subject to the covenants of this Section 8.10(a).

(b) Covenant Not to Solicit Customers. In further consideration of the valuable training that Franchisee will receive from Franchisor, the disclosure to Franchisee of the Proprietary Information and Franchisee's use of Franchisor's Methods and Marks, and in recognition of Franchisor's need to protect the integrity of its franchise system, its Methods and Proprietary Information, Franchisee agrees that, for a period of two years following the termination or expiration of this Agreement for any reason, it will not, on its own behalf, or on behalf of any person, firm, partnership, association, corporation or business organization, entity or enterprise, solicit for financial gain any customer or league or group, or any representative of any customer or league or group, for, with or through whom Franchisee did business or solicited business as a franchisee of Franchisor during the two years immediately preceding the termination or expiration of this Agreement, with a view to marketing for sale, selling or providing or promoting any of the type of products or services provided by Franchisee during the two year period immediately preceding the termination or expiration of the Franchise Agreement.

(c) Covenant Not to Solicit Employees. In further consideration of the valuable training that Franchisee will receive from Franchisor, the disclosure to Franchisee of the Proprietary

Information and Franchisee's use of Franchisor's Methods or Marks, and in recognition of Franchisor's need to protect the integrity of its franchise system, its Methods and Proprietary Information, Franchisee agrees that, for a period of two years following the termination or expiration of this Agreement for any reason, it will not, on its own behalf, or on behalf of any person, firm, partnership, association, corporation or business organization, entity or enterprise, solicit or in any manner encourage employees of Franchisor to leave the employ of the Franchisor. The foregoing prohibition applies only to employees with whom Franchisee had contact in connection with this Agreement during the period of two years immediately preceding the termination or expiration of this Agreement.

(d) It is the intention of the parties that Franchisee maximize the business of the Franchised Business for the mutual benefit of Franchisor and Franchisee, and any action of Franchisee which diverts business to another entity or diminishes the ongoing business activities of the Franchised Business is a material breach of this Agreement. Franchisee shall not, during the term of this Agreement, either directly or indirectly, for itself, or through or on behalf of, or in conjunction with, any person, persons, partnership or corporation (1) divert or attempt to divert any business or customer of the Franchised Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and Franchisor's Methods, or (2) solicit any franchisee of Franchisor to leave the Sports Section franchise system.

(e) In recognition of Franchisee's exposure to the Franchisor's Methods, Franchisee agrees to execute the Telephone Listing Agreement attached hereto as Schedule F contemporaneously with the execution of this Agreement.

Franchisee acknowledges that the periods of restriction and the geographical areas of restriction imposed by the provisions of this Section 8.10 are fair and reasonable and are required for the protection of Franchisor's legitimate interest including other franchisees of Franchisor and the integrity of Franchisor's Methods and its franchise system. Franchisor acknowledges that these restrictions will not prevent Franchisee from earning a livelihood in the event of termination or expiration of this Agreement. Franchisee agrees that any violation by Franchisee of the covenants contained in this Section 8.10 are likely to cause irreparable injury and damage to Franchisor which may not be adequately compensated by money damages and that such violations may be restrained by process issued out of a court of competent jurisdiction, in addition to any other remedies of Franchisor provided herein or by law. Franchisee agrees that the provisions of this Section 8.10 are and have been a primary inducement to Franchisor to enter into this Agreement, and that in the event of breach, or a threatened or attempted breach of this provision, Franchisor shall be entitled, in addition to any other remedies which it may have hereunder or at law or in equity, to a preliminary and/or permanent injunction and to a decree of specific performance of the terms of this Section 8.10 without the necessity of showing actual or a threatened damage. Notwithstanding any provision of this Agreement contrary to the terms and conditions of this Section 8.10 including, without limitation, Section 12.14 of this Agreement, any dispute between Franchisor and Franchisee arising out of or pertaining to the covenants and agreements set forth in this Section 8.10, regardless of the forum in which such dispute is litigated, arbitrated or otherwise addressed for the purpose of resolving such dispute, shall be governed by and construed and enforced in accordance with the laws of the state in which the Franchisee's Territory is located, which laws shall prevail in the event of any conflict of law. In the event of a violation of any of the restrictions set forth in this Section 8.10, Franchisor shall be entitled to terminate this Agreement and to require an accounting by Franchisee of all earnings, profits and other benefits arising from such violation. The rights and remedies of Franchisor under this Section 8.10 shall be cumulative and in addition to any other rights or remedies to which Franchisor may be entitled at law or in equity. Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the

enforcement by Franchisor of the covenants in this Section 8.10; provided, however, any claims Franchisee may have against Franchisor may be brought in a separate proceeding.

8.11 Standards of Performance. Franchisee understands and agrees that it must offer and sell all Products, services and participate in all programs which are part of the Franchisor's Methods, and all other products, services and programs which Franchisor may incorporate into the Franchisor's Methods in the future. Franchisee is expressly prohibited from offering or selling any product or service which is not part of the Franchisor's Methods. Franchisee shall, in conducting the Franchised Business, observe high ethical standards of operation reasonably calculated to maintain the uniformity of image, public goodwill and reputation attached to the business of Franchisor and Marks, and shall not engage in any activity which may harm the reputation of Franchisor or any other franchisee of Franchisor. Franchisee shall in no event promote, market or sell under the Marks any goods or services other than Products approved by Franchisor. Franchisee shall deal fairly and honestly with all customers and render prompt, courteous and willing service.

8.12 Maintenance of Staff. Franchisee shall maintain a staff of employees, independent contractors and/or service representatives as may be necessary for Franchisee to operate the Franchised Business. Franchisee shall carefully supervise the hiring, employment and termination of all such personnel, and shall only hire as employees and service representatives such persons as Franchisee believes are honest and dependable and will reflect favorably on Franchisee and Franchisor and all of Franchisor's other franchisees.

8.13 Best Efforts/Guaranty. Franchisee shall, and shall cause all Owners, executive employees and managers, to devote Franchisee's and such Owners', executive employees' and managers' best efforts toward the conduct of the Franchised Business. Additionally, if Franchisee is a corporation, limited partnership or limited liability company, Franchisee agrees that in order to induce the Franchisor to enter into this Agreement, the Franchisee will cause each Owner, executive employee and manager to execute and deliver to Franchisor prior to the Effective Date of this Agreement, the Guaranty, in substantially the form in Schedule E, evidencing that all Owners, executive employees and managers guarantee the prompt payment and performance of each undertaking, agreement and covenant of Franchisee under this Agreement.

8.14 Use of Marks.

(a) Franchisee acknowledges that Franchisor is the owner of the Marks. Franchisee acknowledges that its right to use the Franchisor's Marks is obtained solely from the terms of this Agreement and is limited to the operation of the Franchised Business pursuant to this Agreement, the Manual and other such standards, specifications and procedures prescribed by Franchisor during the term of this Agreement. Nothing in this Agreement will give Franchisee any right, title or interest in or to any of the Marks except the license, during the term of this Agreement, to display and use the Marks according to the limitations set forth in this Agreement and in other written directives issued by Franchisor.

(b) Franchisee shall strictly comply with the standards, specifications, requirements and instructions of Franchisor regarding the use of Marks including the form and manner of use. Franchisee may not use the Marks in connection with the sale of any unauthorized product, service or program, or in any other manner not explicitly authorized in writing by Franchisor. Franchisor shall not use the Marks in any fashion which would incur any obligation or indebtedness on behalf of Franchisor. Franchisee agrees that the goodwill associated with Marks is and will remain the exclusive property of Franchisor and that Franchisee will derive no benefit from such goodwill, except that received from the operation or possible sale of the Franchised Business during the term of this Agreement. Any increase in the goodwill

associated with Marks during the term hereof will inure to Franchisor's benefit. All rights to use the Marks shall automatically revert to Franchisor without cost and without the execution or delivery of any documents upon the expiration or termination of this Agreement.

(c) Franchisee shall not use all or any portion of the Marks as part of Franchisee's names, and, without the prior written consent of Franchisor, as part of Franchisee's trade name. Franchisee shall not use any of the Marks or any commercial symbol similar to any of the Mark in connection with the performance or sale of any unauthorized services or products, or in any other manner not expressly authorized in writing by Franchisor.

(d) During the term hereof and continuing after the expiration or termination of this Agreement, Franchisee shall not, and shall not permit any Owner or any employee, directly or indirectly, to contest, challenge or assist in contesting Franchisor's ownership, title, right or interest in the Marks, trade secrets, methods, procedures and advertising techniques which are part of Franchisor's franchise system, or contest Franchisor's sole right to register, use or license others to use the Marks, trade secrets, methods, procedures, advertising techniques, and any other mark or name which incorporates "The Sports Section" or any similar phrase. Franchisee agrees not to apply for or obtain any trademark or service mark registration of any of the Marks or confusingly similar marks in its own name.

(e) Franchisee shall immediately notify Franchisor in writing of any unauthorized use of the Marks or trade name or other Proprietary Information known to Franchisee, and Franchisee shall permit Franchisor, if it so chooses, to participate in any litigation involving Franchisee and the Marks. Franchisee acknowledges that Franchisor shall have the sole right to control exclusively any litigation or other proceeding arising out of any infringement, challenge or claim relating to any of the Marks. To the extent necessary, Franchisee agrees to sign any documents, give any assistance and do any acts that Franchisor's attorneys say are necessary or advisable in order to protect and maintain Franchisor's interest in any litigation or proceeding relating to the Marks or otherwise to protect and maintain Franchisor's interest in the Marks. To the extent such assistance causes Franchisee to incur out-of-pocket expenses, Franchisor shall reimburse Franchisee promptly for any such reasonable out-of-pocket expenses. Nothing herein shall require Franchisor to take any action against any third party on account of an alleged infringement.

(f) Franchisee agrees that if Franchisor in its sole discretion deems it advisable at any time for Franchisee to modify or discontinue the use of any of the Marks or use one or more additional or substitute trademarks, trade names or service marks, Franchisee will promptly do so at its sole expense without making any claims against Franchisor or any affiliated person or entity.

8.15 Proprietary Information. Franchisee acknowledges that during the term of this Agreement, Franchisor may disclose in confidence to Franchisee, either orally or in writing, certain trade secrets, know-how and other confidential information relating to Franchisor's Methods and the Franchised Business (collectively referred to as "Proprietary Information"). Franchisee acknowledges that the Proprietary Information is not generally known in the trade and is beyond the present skills and experience of Franchisee and that for Franchisee to develop such information on its own would be expensive, time-consuming and difficult. Furthermore, Franchisee acknowledges that the Proprietary Information provides a competitive advantage for those operating under the Franchisor's Methods and will be valuable to Franchisee in connection with the operation of the Franchised Business and that gaining access to such Proprietary Information is a prime reason why Franchisee is entering into this Agreement. Accordingly, Franchisee specifically understands and affirms that the following have been deemed to constitute Proprietary Information (without limitation): All Products, all services and procedures relating to the Products, all systems of operations, services, programs, products, standards, techniques, specifications, and criteria which now comprise or in the future may comprise a part of

Franchisor's Methods or its system of franchises; the Manual including supplements and/or amendments to the Manual; methods of advertising and promotion; records relating to the Franchised Business; mailing lists; customer and prospective customer lists; any and all databases associated with the Franchised Business; business forms; Product order forms; and all other components, specifications, standards, requirements and procedures imposed by Franchisor. Franchisee hereby agrees that it shall not during the Initial Term of this Agreement (or any Renewal Term thereof) use any Proprietary Information for the benefit of any other person, partnership, association, corporation or entity or use the Proprietary Information, or any portion thereof, in any business other than the Franchised Business. Franchisee shall not at any time during or after the term of this Agreement disclose, divulge, publish, copy, reproduce or disseminate any Proprietary Information to any person, partnership, association, corporation or entity except that Franchisee may disclose Proprietary Information to Franchisee's officers, employees and service representatives, but only to the extent necessary for them to perform their respective functions in connection with the Franchised Business and only after they have agreed in writing to comply with this Section 8.15 and executed and delivered agreements in the form of the Non-Solicitation and Non-Disclosure Agreement attached to Schedule C. Upon request from Franchisor, Franchisee shall submit to Franchisor copies of all such executed Non-Solicitation and Non-Disclosure Agreements. The obligations and restrictions set forth in this Section 8.15 shall remain in full force and effect during the Initial Term and any Renewal Term hereof and for a period of five years following the termination or expiration hereof; provided, however, that as to any item of Proprietary Information that constitutes a trade secret under applicable law, the obligation of confidentiality and non-disclosure will continue for so long as allowed under applicable law. Notwithstanding the foregoing, the restrictions on the disclosure and use of Proprietary Information will not apply to the following: (i) information which is generally known to the trade or the public at the time of disclosure, (ii) information which becomes known to the trade or the public subsequent to the time of disclosure, provided that such general knowledge is not the result of Franchisee's breach of this Agreement, and (iii) information which the Franchisee can demonstrate was known to the Franchisee at the time of disclosure.

#### 8.16 Prohibition on Assignment.

(a) Franchisee acknowledges and agrees that Franchisor is only willing to enter into this Agreement with Franchisee based on the skills, aptitude, attitude, qualifications, covenants and representations of Franchisee (and its Owners, if any). Accordingly and except as provided to the contrary in Section 8.16(b) below, without the prior written consent of Franchisor (which consent will not be unreasonably withheld), Franchisee shall not assign, transfer, convey or otherwise dispose of Franchisee's rights, benefits, duties, obligations or responsibilities under this Agreement; nor shall any Owner assign, transfer, convey or otherwise dispose of such Owner's interest in Franchisee. As used in this Agreement, the term "transfer" shall include the voluntary, involuntary, direct or indirect assignment, sale, gift or other disposition of any interest in this Agreement, the ownership of Franchisee or the Franchised Business. For example, the transfer of ownership of capital stock or a partnership interest as well as the merger or issuance of additional securities or interest representing an ownership interest in the Franchisee shall be considered an event constituting a transfer. Any transfer without such approval will constitute a breach of this Agreement and be void and of no effect. Notwithstanding the above, if Franchisee is an individual, Franchisee may at any time transfer and assign its rights, benefits, duties, obligations and responsibilities under this Agreement to any corporation at least 51% of the capital stock of which is owned or controlled by Franchisee.

(b) On the death, disability or permanent incapacity of Franchisee or any Owner, the heirs, legal representatives, executors or administrators (as the case may be) of such affected person shall be entitled to: (i) if the affected person was the Franchisee, assign the Franchisee's interest in this Agreement to any person meeting Franchisor's then-current standards for new franchisees, and who is capable of conducting the Franchised Business in a manner satisfactory to Franchisor and provided the requirements



of this Section 8.16 are met, or (ii) if the affected person was an Owner, assign such Owner's interest in Franchisee to any heirs or legatees of the affected person, or to any other person approved by Franchisor (which approval shall not be unreasonably withheld).

(c) Franchisee acknowledges and agrees that the restrictions on transfer contained in this Agreement are reasonable and are necessary to protect the Franchised Business, the Marks, the Franchisor's franchise system as well as Franchisor's excellent reputation and image that are essential for the protection of Franchisor and the other franchisees of Franchisor. In connection with any attempted assignment of this Agreement by Franchisee or of any Owner's interest in any Franchisee, the following preconditions must be met:

(i) such assignee has agreed in writing to be bound by the obligations of the assignor under this Agreement;

(ii) all known or liquidated debts of Franchisee to Franchisor and to any affiliate of Franchisor are paid;

(iii) no Event of Default or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists under this Agreement;

(iv) in the case of an assignment by Franchisee, the assignee meets Franchisor's then-current requirements for new franchisees, including, but not limited to, good reputation and character, business acumen, management skills, creditworthiness, financial strength and other business considerations;

(v) in the case of an assignment by an Owner, after such assignment, at least one of the Owners is actively engaged in the management of Franchisee and the Franchised Business or any other person approved in advance in writing shall meet the qualifications that Franchisor generally requires of owners of interest in, or managers of, franchisees in order to assure that Franchisee shall be capable of performing hereunder;

(vi) Franchisee has paid to Franchisor its then-current fee for approving assignments, which fee shall be in an amount sufficient to reimburse or pay Franchisor for the costs and expenses (including reasonable attorneys' fees) incurred in connection with the approval of such assignment. Franchisor's current transfer fee is set forth on Schedule A, but may be increased at any time upon 90 days prior written notice to Franchisee;

(vii) If the transferee is an individual or entity who was listed in Franchisor's database of prospective franchisees prior to Franchisee's initial contact with such transferee, Franchisee shall be required to pay Franchisor a commission in connection with Franchisee's transfer of the Franchised Business to transferee. The commission shall be equal to the then-current commission as set forth on Franchisor's form of Resale Agreement and shall be paid no later than 10 days after the closing of the transfer.

(viii) Franchisee or the Owner, as the case may be, if requested by Franchisor, executes a general release under seal, in a form satisfactory to Franchisor's counsel, of any and all claims against Franchisor, its subsidiaries, affiliates, successors and assigns and their respective officers, directors, shareholders, partners, agents, representatives, employees and attorneys, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement and all applicable Laws;

(ix) the transferee must execute and deliver to Franchisor a franchise agreement in the form that the Franchisor is then using in the grant of franchises, which may contain terms different than the terms of this Agreement, except that it will not materially alter the economic conditions of the operation of a franchise;

(x) the Franchisee and the transferee must arrange the delivery by Franchisee and receipt by transferee of any photographic materials, sales materials, samples, training and support documents, and photographic equipment in connection with the transfer of the franchise;

(xi) the transferee must agree to complete the Franchisor's training program to Franchisor's satisfaction. Franchisor agrees that the cost of transferee training is included in the Transfer Fee set forth on Schedule A to this Agreement unless otherwise agreed to by Franchisor, Franchisee, and transferee;

(xii) Franchisor receives a fully executed copy of all transfer documents to enable the Franchisor to determine that the price and terms of payment are not so burdensome as to be likely affect adversely the transferee's operation of the Franchised Business; and

(xiii) the Franchisee or Owner must execute a non-competition covenant, for the benefit of the Franchisor and the transferee, agreeing for a period of one year from the day of the transfer, not to hold any direct or indirect interest, in any capacity, in a competitive business located or operating within twenty-five miles of the Territory.

(d) In no event may any Franchisee or any Owner mortgage, hypothecate, pledge or encumber all or any of Franchisee's or such Owner's rights, benefits, duties, responsibilities or obligations under this Agreement or its ownership or interest in any ownership in Franchisee. Each certificate or other document evidencing any ownership in any entity having a proprietary interest in Franchisee's rights granted herein shall bear substantially the following legend: **THE OWNERSHIP EVIDENCED BY THIS DOCUMENT, INCLUDING WITHOUT LIMITATION THE ASSIGNMENT, TRANSFER, CONVEYANCE, OTHER DISPOSITION OR ENCUMBRANCE THEREOF, IS SUBJECT TO THE PROVISIONS OF A CERTAIN FRANCHISE AGREEMENT BY AND BETWEEN \_\_\_\_\_ AND THE SPORTS SECTION, INC.**

(e) Without conditioning or impairing Franchisor's right to prohibit assignments of Franchisee's rights as described above, in the event Franchisee desires to transfer all or any part of an interest in the Franchised Business, or to issue, transfer or subdivide any beneficial interest in a corporate or partnership Franchisee, Franchisee shall first offer to Franchisor a first option to acquire such business or interest therein. Franchisee shall give Franchisor 30 days prior written notice of its proposal and intention to effectuate a transfer, stating the nature of the interest to be so transferred, the name and address of the person to whom such interest is to be transferred and a complete description of all terms and conditions of the proposed transfer. Franchisor shall have 30 days from receipt of such notice in which to exercise, in its sole discretion, its first option to acquire the interest to be so transferred upon the same price and financial terms described in said notice, exercise thereof to be effected by Franchisor depositing in the United States mail written notice to Franchisee of its intention to purchase. Franchisor shall have the absolute right to transfer the aforesaid first option to purchase.

(f) Franchisee acknowledges and agrees that notwithstanding any assignment (and/or any termination of Franchisee's rights and/or Franchisor's obligations in connection therewith or otherwise), Franchisee will remain liable to Franchisor for all payment and other obligations under this Agreement. Additionally, the Franchisee is obligated to assist the transferee as it transitions to operating the Franchised Business.

(g) Franchisee acknowledges and agrees that Franchisor shall have the right to assign or otherwise transfer, and to pledge, hypothecate or encumber this Agreement or all or any of its rights or interests herein and Franchisor will thereupon be released from any obligations to Franchisee arising under or related in any way to this Agreement, the Franchisee's operation of the Franchise or otherwise. Among other things, Franchisor may sell its assets, the Marks and/or the franchise system, may engage in any private or public offering of securities, may merge, acquire or be acquired by other corporations in any business transaction, may undertake any refinancing, recapitalization or other economic or financial restructuring and, in connection with the foregoing or such related events, the Franchisee's consent shall not be required. Franchisee specifically waives any and all claims, demands or damages arising from or relating to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing.

(h) All funds are initially payable directly to Franchisor upon receipt of the signed transfer agreements. Franchisor will disburse payment to the assignor once the assignee stipulates all sales obligations have been met and Franchisor concurs.

8.17 Indemnification. Franchisee acknowledges and agrees that the Franchisor does not assume any liability and will not be deemed liable for any agreements, representations or warranties Franchisee may make that are not expressly authorized under this Agreement nor will Franchisor be obligated for any damages to any person or property or for any fines or penalties arising out of the operation of the Franchised Business operated by the Franchisee, whether or not caused by Franchisee's negligence or willful action or failure to act. Franchisor will have no liability for any sales, use, excise, income or other taxes levied against Franchisee or its assets. Franchisee shall defend at its own cost and indemnify and hold harmless to the fullest extent permitted by law, Franchisor, its corporate parent, the corporate subsidiaries, affiliates, successors, assigns and designees of either entity, and the respective officers, shareholders, directors, employees, agents and representatives of each (collectively, "Indemnitees") from all losses and expenses incurred in connection with any action, suit, proceeding, claim, demand, investigation, or formal or informal inquiry or settlement thereof which arises out of or is based upon Franchisee's (i) operation of the Franchised Business, (ii) use of the Marks and Franchisor's Methods in any manner not in accordance with this Agreement, (iii) breach of this Agreement or alleged violation of breach of any warranty, representation, agreement or obligation in this Agreement, (iv) acts, errors or omissions or those of its agents, employees, contractors, affiliates or representatives, and (v) alleged violation or breach of any contract Law. For purposes of this Section 8.17, the term "losses and expenses" shall be deemed to include all losses, compensatory, exemplary or punitive damages, fines, charges, expenses, cause, attorneys' fees, experts' fees, court costs and such other amounts incurred in connection with the matters described. Franchisee agrees the Indemnitees shall have the right to defend any such claim against them. Under no circumstances shall Indemnitees be required or obligated to seek recovery from third parties or otherwise mitigate their losses in order to maintain an indemnification claim against Franchisee. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

8.18 Records and Right to Audit. Franchisee shall maintain at its own expense bookkeeping, accounting and business records concerning all aspects of the Franchised Business including job orders, digital file development, Products sold, sales information, information concerning the processing and development of all digital files, revenue results, digital file usage and storage, and other such business information. Such records shall be kept in an orderly manner in accordance with any instructions or directives set forth in the Manual and shall be maintained for a minimum of three years. Franchisor shall have the right at any time during business hours, and with reasonable notice to Franchisee, to inspect and audit, or cause to be inspected or audited, such business records of the Franchised Business. Such

inspection and audit shall done in a manner so as not to disrupt the business activities of the Franchisee and the Franchisee agrees to cooperate fully with the Franchisor or its designee to conduct any such inspection or audit. If the inspection or audit reveals an Event of Default, for which Franchisor exercises its rights under Section 9 herein, Franchisee shall reimburse Franchisor for the reasonable costs of such inspection or audit. The foregoing remedy shall be in addition to all other remedies available to the Franchisor hereunder or under applicable law.

8.19 Insurance. Franchisee agrees to maintain, at Franchisee's expense, insurance during the term of this Agreement as follows: (i) Franchisee shall maintain commercial general liability insurance coverage for the operation of the Franchised Business, including but not limited, coverage against all types of public liability including premises liability, against claims for personal injury, bodily injury, death of property damage suffered by others, with a minimum coverage of \$1,000,000 per accident or occurrence affecting one or more persons or property damage and \$1,000,000 aggregate, (ii) workers' compensation, unemployment compensation, disability insurance, social security and other mandatory insurance coverages shall be maintained in such amounts that as may now or later be required by applicable law; and (iii) Franchisee shall maintain motor vehicle liability insurance for any claims arising out of the Franchised Business, or occurring as a result of maintenance or operation by the Franchisee, its employees or persons doing business for the Franchisee of any automobiles, trucks or other vehicles with the minimum coverage of \$500,000 for each accident or occurrence affecting one or more persons or property damage. All insurance policies shall be issued by an insurance carrier rated "A" or better by Alfred M. Best and Company, Inc. All policies described above shall insure Franchisee and name Franchisor as an additional insured and shall stipulate that Franchisor shall receive at least 30 days prior written notice of cancellation or modification. The obligation to obtain and maintain insurance policies as set forth herein shall in no way relieve the Franchisee of liability under the indemnity provision set forth in Section 8.17. To the extent Franchisee for any reason shall fail to procure and maintain such insurance coverage, Franchisor shall have the right and authority (without having any obligation to do so) immediately to procure such insurance coverage and to charge the same to Franchisee who shall immediately reimburse Franchisor for such charges on demand.

8.20 Taxes. Franchisee shall pay when due all taxes, assessments and governmental charges on or against Franchisee or Franchisee's real or personal properties, income and revenues; provided, however, that no such tax, assessment or governmental charge need be paid so long as the validity, applicability or amount thereof is being contested in good faith by appropriate proceedings.

8.21 Websites. Franchisee acknowledges and understands that it has no right or license to create a website for the Franchised Business and no right to use the Marks in association with a website except the website created by Franchisor pursuant to Section 7.11.

8.22 Electronic Mail Address. Franchisee acknowledges and agrees that it will utilize the electronic mail address that Franchisor will create and provide for Franchisee for the operation of its Franchised Business. Franchisee further acknowledges and agrees that such electronic mail address will be the main address Franchisor utilizes for electronic mail correspondence with Franchisee, and that Franchisor reserves the right to unlimited monitoring of such electronic mail address and communication and information distributed and disclosed among users of such electronic mail address.

8.23 Advertising Standards. Franchisee shall conform all advertising for the Franchised Business to the standards, specifications and requirements specified in by Franchisor in its Manual or by written directive. Franchisee shall only use such advertising and promotional materials and programs which have been furnished or suggested by Franchisor or have been approved in writing in advance by Franchisor. Franchisee shall ensure that all advertising which utilizes any of the Marks shall be conducted in a dignified manner. Franchisor agrees to review such advertising and promotional materials

in a reasonable time, provided, however, should it fail to respond within ten business days following its receipt of Franchisee's proposed advertising and promotional materials, such advertising and promotional materials will be deemed approved by Franchisor.

## 9. TERMINATION

9.1 Events of Default. On the occurrence of any of the following events ("Events of Default"), an Event of Default shall exist hereunder:

(a) Franchisee shall fail to pay on a timely basis any amounts due Franchisor or its affiliate or designee hereunder or under any other agreement between Franchisor and Franchisee, including, without limitation, all charges for goods which may be sold from Franchisor to Franchisee, or Franchisee shall fail to pay on a timely basis any sums due its vendors and such failure to pay may adversely impact Franchisor's franchise system or other franchisees of Franchisor;

(b) Franchisee shall fail to meet the minimum productivity level established in Section 8.6 hereof;

(c) Franchisee abandons the Franchised Business by failing to operate the business for thirty (30) consecutive days, or any shorter period after which it is reasonable under the facts and circumstances for Franchisor to conclude that Franchisee does not intend to continue to operate the Franchised Business, unless such failure to operate is due to fire, flood or any other similar act of God beyond Franchisee's control (in which event, Franchisee shall be excused from operating the Franchised Business so long as Franchisee shall diligently take such steps as are necessary to re-open the Franchised Business as soon as practicable);

(d) Franchisee shall engage in the substitution or misleading sale of merchandise under any of Franchisor's Marks or any other abuse of such Marks or otherwise materially impairs the goodwill associated with the Marks or Franchisor's right therein, or if Franchisee uses in connection with the Franchised Business any names, marks, systems, insignia or symbols not authorized by Franchisor;

(e) Franchisee shall make any assignment or transfer of Franchisee's rights under this Agreement without compliance with the terms of Section 8.16 hereof;

(f) Franchisee shall make, or has made or submitted to Franchisor one or more materially false or fraudulent reports or statements;

(g) Franchisee shall make, suffer or permit disclosure, duplication or other use of any portion of the Manual or any other Proprietary Information not otherwise permitted under this Agreement;

(h) Franchisee or any of its officers, partners, directors, or managers shall be convicted in a court of competent jurisdiction of an indictable offense or felony directly related to the business conducted pursuant to this Agreement or any offense involving fraud or moral turpitude or shall engage in any criminal, dishonest or unethical conduct that may adversely affect the reputation of the Franchised Business, any franchise of Franchisor or the goodwill associated with the Marks;

(i) If Franchisee, or any person controlling, controlled by, or under common control with Franchisee, or any general partner of Franchisee, shall become insolvent by reason of inability to pay debts as they mature; or is adjudicated a bankrupt, files or has filed against a petition in bankruptcy, reorganization or similar proceeding under federal bankruptcy laws; or if a receiver, permanent or temporary, of the business, assets, or property of Franchisee or any such person or any part thereof, is

appointed by a court of competent authority, or if Franchisee or any such person requests the appointment of a receiver or makes a general assignment for the benefit of creditors; or if a final judgment against Franchisee or any such person in the amount of \$5,000 or more remains unsatisfied of record for 30 days or longer; or if the bank accounts, property or receivables of Franchisee or any such person or attached and such attachment proceedings are not dismissed within a 30 day period; or if execution is levied against the business or property of Franchisee or any such person;

(j) Franchisee shall fail to perform or breach any other term, covenant or agreement contained herein or in any other Franchise Agreement or any other agreement between Franchisor and Franchisee and/or its affiliated and/or controlled corporations, partnerships, persons or other business entities, or shall fail to abide by any other reasonable standard or procedure issued by Franchisor from time to time concerning operation of the Franchised Business, and shall fail to cure such breach or failure within 20 days after written notice thereof;

(k) Franchisee operates the Franchised Business in a manner reflecting gross mismanagement;

(l) Franchisee fails to obtain Franchisor's written approval or consent prior to taking any action which such consent or approval is expressly required by this Agreement;

(m) Franchisee permits a material violation of any law, ordinance, rule or regulation of a governmental agency in connection with the operation of the Franchised Business, and permits the same to go uncorrected after notification, unless there is a bona fide dispute as to the violation or legality of such law, ordinance, rule or regulation, and Franchisee promptly resorts to courts or forms of appropriate jurisdiction to test such violation or illegality; or

(n) Franchisee, or any entity controlled by, controlling or under common control with Franchisee, is in default under any other Franchise Agreement with Franchisor.

9.2 Franchisor's Remedies. On the occurrence of any Event of Default, Franchisor may, at its election and without notice or demand of any kind, declare this Agreement, and any and all rights granted hereunder, to be immediately terminated and of no further force or effect whatsoever, except as otherwise expressly provided herein. No such termination shall relieve Franchisee of any of its obligations, debts or liabilities hereunder, including without limitation any debts, obligations or liabilities which shall have accrued prior to such termination. The right of termination herein granted shall be in addition to, and not in lieu of, any and all other rights and remedies available to Franchisor at law, in equity or otherwise including, without limitation, specific performance and damages (including, without limitation, direct, indirect, special, incidental or consequential damages), all of which shall be cumulative. Franchisor shall have no obligation at any time to perform or to comply with any of its obligations to Franchisee, whether pursuant to this Agreement or otherwise, unless (i) Franchisee shall have fully complied with and performed all of its obligations under this Agreement and (ii) no Event of Default, or event in which with the giving of notice or passage of time or both will constitute an Event of Default, exists hereunder. Notwithstanding the foregoing, if Franchisee is in default of this Agreement pursuant to Section 9.1(b) or Section 9.3 (solely due to defaults under Section 8.6), Franchisor shall have the right, in its sole discretion, to offer Franchisee an option to avoid termination by reducing the size of the Territory (the "New Territory") and restating the minimum productivity levels for the New Territory such that the population in the New Territory will be commensurate with the level of productivity Franchisee achieved during the most recent twelve month period of this Agreement. Franchisee shall have the option of accepting the New Territory and corresponding new productivity levels within ten days of its receipt of Franchisor's offer and, if Franchisee accepts such offer, Franchisee must execute an amendment hereto which will specify the New Territory and new minimum productivity levels. The portion of the Territory

which is not within the New Territory shall be available for sale by Franchisor to a new or existing Sports Section franchisee. Franchisee acknowledges and agrees that (x) it shall have no right to receive any compensation for the reduction in the size of its Territory, the consideration being Franchisor's waiver of its right to terminate the Franchise Agreement pursuant to this Section 9.2, (y) the aforementioned option, if offered, is offered voluntarily by Franchisor and (z) if Franchisor exercises this option, Franchisee will assign to any new franchisee of the portion of the Territory which is not in the New Territory, all contracts or business and prepaid fees that Franchisee received from customers located therein. Nothing shall preclude Franchisor, for any reason, from exercising its right to terminate the Franchise Agreement without offering such option.

9.3 Third Default. Notwithstanding the above, Franchisor may automatically terminate this Agreement without allowing any period for cure by Franchisee (subject to any minimum time period for notice required by applicable law) at such time as Franchisor gives written notice of the third violation or default of Franchisee under this Agreement within any 12 month period, regardless of whether Franchisee may have subsequently cured any previous violations or defaults.

9.4 Statutory Restrictions. Notwithstanding anything to the contrary in this Section 9, in the event any law or regulation of a governmental authority having jurisdiction over this Agreement shall limit Franchisor's rights of termination hereunder or shall require longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the requirements of such laws and regulations, however, in such event this Agreement shall be deemed amended only to the extent necessary to conform to the requirements of such law or regulation.

## **10. COVENANTS ON EXPIRATION OR TERMINATION OF FRANCHISE.**

Franchisee covenants and agrees that upon the expiration or termination of this Agreement or the franchise herein granted for any reason:

10.1 Payment of Amounts Owed to Franchisor. Franchisee agrees to pay to Franchisor within ten days after the effective date of termination or expiration of this Agreement or any later date that the amounts due to Franchisor or its affiliates are determined, any amounts due and owing hereunder including, without limitation, fees associated with processing and developing of Products as well as amounts owed for Franchisee's purchases of Products, equipment or other items from Franchisor or its affiliates.

10.2 Confidential Information. Franchisee shall immediately cease using any Proprietary Information of Franchisor in any business or for any other purpose and Franchisee shall, within ten days of such expiration or termination, return to Franchisor all copies of the Manual received by Franchisee, together with all other materials containing trade secrets, know-how or other Proprietary Information.

10.3 Cease Identification with Franchisor. Franchisee shall, within ten days of such expiration or termination, discontinue Franchisee's use of the Marks and the use of any signs or other materials bearing any of the Marks; shall delete from Franchisee's trade name, if any, any words indicating any affiliation with Franchisor; and shall cease use of Franchisor's Methods in the further conduct of its business, to the extent Franchisor's Methods are unique or distinctive or are based on Proprietary Information. In connection therewith, Franchisee shall cease immediately to hold itself out in any way as a franchisee of Franchisor and to not directly or indirectly at time thereafter identify itself or any business with which Franchisee is associated as a current or former franchisee of Franchisor. In connection with the discontinuation of its use of the Marks, Franchisee shall not use any colorable imitation of any Mark or any indicia of a Sports Section franchise, in any manner or for any purpose. Franchisee agrees to strictly abide by all post-termination/post-expiration covenants set forth in this Agreement.

10.4 Promote Separate Identity. Franchisee shall not operate Franchisee's business in any manner that would give the public the impression that Franchisee is or was formerly in any respect licensed by or affiliated with Franchisor. Accordingly, Franchisee shall erase or obliterate from letterheads, stationery, printed material, advertising or other forms used by Franchisee, the Marks and other words or symbols indicating such an affiliation with Franchisor. Furthermore, Franchisee shall permanently discontinue all of its advertising to the effect that Franchisee is licensed by or affiliated with Franchisor. Finally, Franchisee shall notify the telephone company and all telephone directory publishers of the termination or expiration of Franchisee's right to use any telephone number and any regular, classified or other telephone directory listings associated with any Mark and to authorize transfer thereof to Franchisor or its designee. Franchisee acknowledges that, Franchisor has the sole rights to and interest in all telephone, teletype or facsimile machine numbers and directory listings associated with any Mark. Franchisee authorizes Franchisor, and hereby appoints Franchisor and any of its officers, as Franchisee's attorney-in-fact, to direct the telephone company and all telephone directory publishers to transfer any telephone, teletype or facsimile machine numbers and directory listings relating to the Franchised Business to Franchisor or its designee. The telephone company and all directory publishers may accept such direction or this Agreement as conclusive of Franchisor's exclusive rights in such telephone numbers and directory listings and Franchisor's authority to direct their transfer. To further facilitate the transfer of the telephone numbers and directory listings, Franchisee shall, immediately upon termination or expiration of this Agreement, take such action as is required pursuant to that certain Telephone Listing Agreement executed by the parties contemporaneously with the execution of this Agreement. In connection with the foregoing, Franchisor has the right to notify InterNIC and all other search engines of the termination or expiration of Franchisee's right to use all domain names, websites and other search engines for the Franchised Business and to authorize InterNIC or its successors and all other search engines to transfer to Franchisor or its assignee all domain names, web sites and search engines of the Franchised Business. Franchisee acknowledges that Franchisor has the absolute right and interest in and to all domain names, websites and search engines associated with the Marks and Franchisee authorizes Franchisor to direct InterNIC or its successors and all search engines to transfer Franchisee's domain names, websites and search engines to Franchisor or its assignee if this Agreement expires or is terminated.

10.5 Customer List. Franchisee shall promptly deliver to Franchisor all copies of Franchisee's customer lists, customer files, databases, records, mailing lists and prospective customer lists or customer information accumulated by Franchisee.

10.6 Injunctive Relief. Franchisee acknowledges that Franchisee's failure to abide by the provisions of this Section 10 will result in irreparable harm to Franchisor, and that Franchisor's remedy at law for damages will be inadequate. Accordingly, Franchisee agrees that upon any breach by Franchisee of the provisions of this Section 10, Franchisor shall be entitled to injunctive relief or specific performance in addition to any other remedies available at law or in equity.

10.7 Rights of Franchisor. The expiration or termination of this Agreement shall be without prejudice to any of the rights of Franchisor against Franchisee and such termination or expiration shall not relieve Franchisee of its obligations to Franchisor existing at the time of such expiration or termination or terminate those obligations which by their nature survive the expiration or termination of this Agreement.

10.8 Continuing Obligations. All obligations of this Agreement which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect after and notwithstanding its expiration or termination until they are satisfied in full or by their nature expire.

## 11. ENFORCEMENT.



11.1 Irreparable Harm. Franchisee acknowledges and agrees that irreparable harm could be caused to Franchisor by Franchisee's violation of any of the terms or conditions of this Agreement and, as such, in addition to any other relief available at law or equity, Franchisor shall be entitled to obtain in a court of competent jurisdiction, without bond, restraining orders or temporary or permanent injunctions in order to enforce, among other items, the provisions of this Agreement relating to the Marks, Franchisee's obligations on termination or expiration of this Agreement, disputes and controversies based on or arising under the Lanham Act, as now or hereafter amended, disputes and controversies involving enforcement of the Franchisor's rights under Sections 7 and 9 of this Agreement and to prohibit any act or omission by Franchisee or its employees that constitutes a violation of applicable law, threatens Franchisor's franchise system or threatens other franchisees of Franchisor. Franchisee's only remedy if such an injunction is entered will be the dissolution of the injunction, if appropriate, and Franchisee waives all damage claims if the injunction is wrongfully issued.

11.2 Arbitration. **Except insofar as Franchisor elects to enforce this Agreement in state or federal court to collect monies owed pursuant to Section 10.1 or to obtain relief pursuant to Section 11.1, or unless otherwise prohibited by applicable state law, all disputes, controversies, claims, suits, actions, proceedings or otherwise between or involving Franchisee and Franchisor and their respective shareholders, owners, corporate affiliates, officers, directors, employees, agents, or guarantors, whether arising out of or relating in any way to this Agreement or any other document ancillary to this Agreement, the franchise relationship created hereunder, any alleged breach of any duty or otherwise (including, without limitation, the underlying legality of the offer and/or sale of the Franchised Business, any action for rescission and any claim of fraud) and on whatever theory and/or facts based, will be submitted to and settled by arbitration in accordance with the Federal Arbitration Act under the Commercial Arbitration Rules of the American Arbitration Association including, without limitation, the Optional Rules for Emergency Measures of Protection, or any successor association. All matters within the scope of the Federal Arbitration Act shall be governed by it and not any state arbitration law. In connection with such arbitration, the parties will execute an appropriate confidentiality agreement. An arbitration proceeding may be commenced by written notice to either party to the other requesting arbitration. Unless otherwise prohibited by applicable state law, the forum for any arbitration required hereunder shall be in the City of Atlanta, Georgia. One arbitrator shall be selected for disputes with a petitioner's claim of less than \$100,000; three arbitrators shall be selected for disputes with greater amounts claimed. The arbitrator(s) shall be selected by the American Arbitration Association, provided, however, that if said Association does not provide a selection procedure, then Franchisee and Franchisor shall each select one arbitrator and the two arbitrators selected shall select a third, and in the event of death, disability or resignation of an arbitrator, his/her successor shall be chosen in the same manner as the arbitrator so succeeded. The arbitrator(s) shall have the power to order discovery on the basis of what is likely to produce material and relevant information in the proceeding, and to assess cost and expenses of the arbitration according to the relative merits of the parties' position in the case. The arbitrator(s) may issue temporary restraining orders, preliminary injunctions, injunctions and other equitable or interim relief to the extent reasonably necessary pending resolution of the arbitration. Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding and final. Franchisor and Franchisee hereby waive to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to recovery of any actual damages sustained by it. The provisions of this paragraph are intended to benefit and bind certain third party non-signatories and this arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of this Agreement. In event that either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding**

**that failure to appear. Arbitration pursuant to this paragraph shall be conducted on an individual, not a class-wide basis. An arbitration proceeding between the parties shall not be consolidated with any other arbitration proceeding involving the Franchisor and any other person.**

11.3 Limitation of Claims. Any and all claims arising out of or relating to this Agreement or the relationship among the parties hereto shall be barred unless an action or legal or arbitration proceeding in accordance with the terms of this Agreement is commenced within one year from the date Franchisee or Franchisor knew or should have known of the facts giving rise to such claim(s). The foregoing limitation shall not apply to money debts owed by Franchisee to Franchisor.

11.4 Costs and Attorneys' Fees. If Franchisor is required to enforce this Agreement in a judicial or arbitration proceeding, and it prevails in such proceeding (as determined by a court of competent jurisdiction or an arbitrator, if necessary), Franchisor will be awarded the costs and expenses which it incurs, including, but not limited to, reasonable attorneys' fees, litigation expenses, and court or arbitration costs, whether incurred prior to or in preparation of such proceeding. If the Franchisor incurs out-of-pocket expenses in connection with Franchisee's failure to pay when due amounts owing to Franchisor, to submit when due any reports or otherwise to comply with this Agreement, Franchisee agrees to reimburse Franchisor for any such expenses, including, without limitation, reasonable attorneys' fees and related costs and expenses.

## **12. MISCELLANEOUS.**

12.1 Survival of Representations. All statements contained herein or in any certificate, agreement, instrument or other document delivered by or on behalf of any of the parties pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations, warranties, stipulations, covenants and agreements made by such party and shall survive the execution of this Agreement and the consummation of the transactions contemplated herein.

12.2 Entire Agreement. This Agreement including Schedules, Addenda and any other documents expressly referred to herein or otherwise attached hereto, sets forth the sole and entire agreement between the parties and supersedes all prior discussions, understanding and agreements between the parties with respect to the matters contained herein. The parties expressly confirm that there are no other oral or written agreements, "side-deals", arrangements or understandings between them except as set forth herein.

12.3 Notices. All notices, requests, demands, tenders and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given when received in person or by conformed telecopy three business days after deposit in the United States mail, for certified or registered delivery, return receipt requested, postage prepaid or one business day after delivery to such reliable overnight commercial courier service for next business day delivery or on the date of delivery if accomplished by hand delivery or courier. Notices to Franchisor and Franchisee shall be sent to their respective addresses as set forth on Schedule A or, with respect to Franchisee, at such other address from which Franchisee is conducting the Franchised Business. Any party may change the mailing address to which notices, requests, demands, tenders and other communications to such party shall be delivered or mailed by giving notice thereof to the other party hereto in the manner herein provided.

12.4 Waiver. Any term or condition of this Agreement may be waived at any time by the party hereto which is entitled to the benefit thereof, but such waiver shall only be effective if evidenced by a writing signed by such party. A waiver on one occasion shall not be deemed to be a waiver of the same or of any other breach of a future occasion. No course of dealing by any party, and no failure, omission, delay or forbearance by such party, in whole or in part, in exercising such party's rights,

powers, benefits or remedies, shall be deemed a waiver of any such rights, powers, benefits or remedies. Should Franchisor agree to accept any payments due it hereunder that have not been timely made, in whole or in part, such acceptance shall not be deemed to be a waiver of any prior or future default or breach by Franchisee of this Agreement.

12.5 Amendments and Modifications. This Agreement may be amended or modified only by a writing signed by both parties hereto. This limitation or modification is not subject to oral rescission, modification or waiver.

12.6 Cumulative Remedies. None of the remedies conferred upon Franchisor is intended to be exclusive of any other remedy, and each and every such remedy shall be in addition to, and not in limitation of or substitution for, every other remedy available at law or in equity or by statute or otherwise.

12.7 Independent Contractor Relationship. Nothing contained herein or in any instrument, agreement or other document delivered pursuant hereto or in connection herewith shall make either of the parties hereto the partner, joint venturer, subsidiary, agent, servant or employee of the other. It is the intent of the parties that Franchisee is and shall continue to be an independent contractor responsible for all of Franchisee's obligations and liabilities with respect to the establishment and operation of the business conducted pursuant to the License herein granted. Franchisee shall have no authority, express, implied or apparent, to act on behalf of or to bind Franchisor, and Franchisee shall take no action to create any such authority or the appearance of an employer-employee relationship between the parties. In indicating its affiliation with Franchisor, Franchisee shall at all times clearly represent that Franchisor is independently owned and operated, consistent with applicable law. Franchisor does not, unless otherwise expressly done in writing, assume liability for, or be deemed liable hereunder as the result of any action of Franchisee or by reason of any act or omission of the Franchisee in the conduct of the Franchised Business or otherwise, or any claim or judgment arising therefrom. There does not exist any fiduciary or similar relationship between Franchisor and Franchisee, the relationship being a normal commercial relationship between independent business persons intended for their separate economic benefit.

12.8 Singulars and Plurals; Pronouns. Where the context shall so require, the use of the singular form herein shall include the plural, and the use of the plural form the singular, and the use of any gender shall include any and all genders. All references to Franchisee in this Agreement shall be deemed to include, personally and individually, all officers, directors, and shareholders if the Franchisee is a corporation, all members if the Franchisee is a limited liability company, or all general partners, if Franchisee is a partnership. All acknowledgments, promises, covenants, obligations and agreements herein made or undertaken by the Franchisee shall be deemed jointly and severally undertaken by them and by all of the signatories hereto on behalf of the Franchisee.

12.9 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

12.10 Interpretation. The headings set out in this Agreement are for convenience of reference and shall not be deemed as part of this Agreement and shall not affect the meaning or construction of any of the provisions hereof. The language of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either party. Each term and provision of this Agreement to be performed by Franchisee shall be construed to be both a covenant and a condition.