

**EXHIBIT C**  
**FRANCHISE AGREEMENT**

**SUSHI GO! INTERNATIONAL INC.**

**FRANCHISE AGREEMENT**

\_\_\_\_\_  
**FRANCHISEE**

\_\_\_\_\_  
**DATE**

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**SUSHI GO! INTERNATIONAL INC.**

**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (the "Agreement") is made and entered into by and between Sushi Go! International Inc., a Nevada corporation, having its principal place of business at 2250 E. Tropicana Avenue, Suite 19-667, Las Vegas, Nevada 89119 ("Franchisor") and \_\_\_\_\_, a \_\_\_\_\_ corporation/limited liability company/partnership, having its principal place of business at \_\_\_\_\_ ("Franchisee") on the date this Agreement is executed by Franchisor below (the "Effective Date").

**WITNESSETH:**

**WHEREAS**, as the result of the expenditure of time, skill, effort and money, Franchisor has developed and owns a unique and distinctive system (hereinafter "System") relating to the establishment and operation of restaurants specializing in the sale of Japanese style foods, including soups, noodles, rice and various dim sum items, teas, other Japanese items and a limited menu of American food items, as well as desserts & alcoholic beverages, prepared in accordance with Franchisor's recipes and specifications;

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior design, décor, color scheme, and furnishings; proprietary products and ingredients; proprietary recipes and special menu items, uniform standards, specifications, and procedures for operations; quality and uniformity of products and services offered; procedures for inventory, management and financial control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time;

**WHEREAS**, Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems and indicia of origin, including, but not limited to, the mark "Hanakai" and such other trade names, service marks, and trademarks as are now designated (and may hereafter be designated by Franchisor in writing) for use in connection with the System (hereinafter referred to as "Marks"), which Marks are licensed to Franchisor under a perpetual license agreement;

**WHEREAS**, Franchisor continues to develop, use and control the use of such Marks in order to identify for the public, the source of services and products marketed thereunder and under the System, and to represent the System's high standards of quality, appearance and service;

**WHEREAS**, Franchisee understands and acknowledges the importance of Franchisor's high standards of quality, cleanliness, appearance and service and the necessity of operating the business franchised hereunder in conformity with Franchisor's standards and specifications; and

**WHEREAS**, Franchisee desires to use the System in connection with the operation of a Hanakai restaurant at the location specified in Attachment A hereto, as well as to receive the training and other assistance provided by Franchisor in connection therewith.

**NOW, THEREFORE**, the parties, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

**ARTICLE I**  
**GRANT**

A. In reliance on the representations and warranties of Franchisee and its Controlling Principals (as defined in Section XIX.R.) hereunder, Franchisor hereby grants to Franchisee, upon the terms and conditions in this Agreement, the right and license, and Franchisee hereby accepts the right and obligation, to operate a Hanakai restaurant under the Marks and the System in accordance with this Agreement (“Restaurant” or “Franchised Business”). Franchisee and the Controlling Principals have represented to Franchisor that they have entered this Agreement with the intention to comply fully with the obligations to construct a Restaurant hereunder and not for the purpose of reselling the rights to develop the Restaurant hereunder. Franchisee and the Controlling Principals understand and acknowledge that Franchisor has granted such rights in reliance on the business skill, financial capacity, personal character of, and expectations of performance hereunder by, Franchisee and the Controlling Principals and that this Agreement and the rights and obligations hereunder may not be transferred until after the Restaurant is open for business to the public and in accordance with Section II.F.

B. The specific street address of the Restaurant location accepted by Franchisor shall be set forth in Attachment A (“Location” or “Accepted Location”). Franchisee shall not relocate the Restaurant without the express prior written consent of Franchisor, which consent shall not be unreasonably withheld. This Agreement does not grant to Franchisee the right or license to operate the Restaurant or to offer or sell any products or services described under this Agreement at or from any other location.

C. If Franchisee is unable to continue the operation of the Restaurant at the Accepted Location because of the occurrence of a force majeure event (as described in Section XVII.A(3)(e)), then Franchisee may request approval of Franchisor to relocate the Restaurant to another location in the primary area of responsibility, as that term is defined below. Any other request to relocate the Restaurant shall also be subject to the same procedures. If Franchisor elects to grant Franchisee the right to relocate the Restaurant, then Franchisee shall comply with the site selection and construction procedures set forth in Section II.

D. Upon the execution of this Agreement, Franchisee will be assigned a primary area of responsibility (“Primary Area of Responsibility” or “PAR”) that will also be described in Attachment A. Except as provided in this Agreement, and subject to Franchisee’s and the Controlling Principals’ full compliance with this Agreement, any other agreement among Franchisee (defined as any entity that is controlled by, controlling or under common control with such other entity) and Franchisor, Franchisor shall not establish or authorize any other person or entity, other than Franchisee, to establish a Hanakai Sushi Bar & Grill Restaurant in the Primary Area of Responsibility during the term of this Agreement. Franchisee acknowledges and understands that the rights granted hereunder pertain only to the establishment of a Hanakai Restaurant. Franchisee acknowledges and agrees that Franchisor operates Restaurants under the Marks, and that Franchisor’s affiliates currently operate, or may in the future operate, restaurants under different marks and with operating systems that are the same or similar to the System, and that any such restaurants might compete with Franchisee’s restaurant. Franchisee further agrees and acknowledges that the license granted hereby is only for the operation of one (1) Hanakai Sushi Bar & Grill Restaurant. Accordingly, in the Primary Area of Responsibility Franchisor and any of its current or future affiliates may own, acquire, establish and/or operate, and license others to establish

and operate, businesses under other proprietary marks and/or other operating systems, regardless of whether such businesses are the same, similar, or different from the Restaurant, Franchisor and any of its current or future affiliates may also offer and sell (and may authorize others to offer and sell): (i) collateral products under the Marks, at or from any location, such as pre-packaged food and beverage products and Hanakai memorabilia; (ii) food and beverage services under the Marks at or through any Hanakai Restaurant or other permanent, temporary or seasonal food service facility providing in whole or in part the products and services offered by a Hanakai Restaurant in a Reserved Area only (as defined below); and (iii) any products or food and beverage services under any other names and marks. A Reserved Area is defined as only an airport, or travel plaza provided such airport or travel plaza has an agreement with Franchisor for the placement of a Hanakai Sushi Bar & Grill Restaurant in more than one of their facilities ("National Accounts").

## **ARTICLE II**

### **SITE SELECTION, PLANS AND CONSTRUCTION**

A. Franchisee assumes all cost, liability, expense and responsibility for locating, obtaining and developing a site for the Restaurant within the PAR and for constructing and equipping the Restaurant at such site. Franchisee shall not make any binding commitment to a prospective vendor or lessor of real estate with respect to a site for the Restaurant unless the site is accepted as set forth below. Franchisee acknowledges that the location, selection, procurement and development of a site for the Restaurant is Franchisee's responsibility; that in discharging such responsibility Franchisee may consult with real estate and other professionals of Franchisee's choosing; and that Franchisor's approval of a prospective site and the rendering of assistance in the selection of a site does not constitute a representation, promise, warranty or guarantee, express or implied, by Franchisor that the Restaurant operated at that site will be profitable or otherwise successful.

B. (1) Prior to acquiring by lease or purchase a site for the Restaurant, Franchisee shall locate a site for the Restaurant that satisfies the site selection guidelines provided to Franchisee by Franchisor pursuant to Section V.(1) and shall submit to Franchisor in the form specified by Franchisor a description of the site, including evidence satisfactory to Franchisor demonstrating that the site satisfies Franchisor's site selection guidelines, together with such other information and materials as Franchisor may reasonably require, including, but not limited to, a letter of intent or other evidence satisfactory to Franchisor which confirms Franchisee's favorable prospects for obtaining the site. Franchisor shall have fifteen (15) days after receipt of this information and materials to approve or disapprove, in its sole discretion, the proposed site as the location for the Restaurant. No site may be used for the location of the Restaurant unless it is first accepted in writing by Franchisor.

(2) If Franchisee elects to purchase the premises for the Restaurant, Franchisee shall submit a copy of the proposed contract of sale to Franchisor for its written approval prior to its execution and shall furnish to Franchisor a copy of the executed contract of sale within ten (10) days after execution. If Franchisee will occupy the premises of the Restaurant under a lease, Franchisee shall submit a copy of the lease to Franchisor for written approval prior to its execution and shall furnish to Franchisor a copy of the executed lease within ten (10) days after execution. No lease for the Restaurant premises shall be accepted by Franchisor unless a Collateral Assignment of Lease, prepared by Franchisor and executed by Franchisor, Franchisee and the lessor, in substantially the form attached as Attachment B, is attached to the lease and incorporated therein. Franchisor shall have ten (10) days after receipt of the lease or the proposed contract of sale to either approve or disapprove such documentation prior to its execution.

(3) After a location for the Restaurant is accepted by Franchisor and acquired by Franchisee pursuant to this Agreement the location shall be described in Attachment A.

C. Franchisee shall be responsible for obtaining all zoning classifications and clearances which may be required by state or local laws, ordinances or regulations or which may be necessary as a result of any restrictive covenants relating to the Restaurant premises. Prior to beginning the construction of the Restaurant, Franchisee shall (i) obtain all permits, licenses and certifications required for the lawful construction or remodeling and operation of the Restaurant, and (ii) certify in writing to Franchisor that the insurance coverage specified in Section XII is in full force and effect and that all required approvals, clearances, permits and certifications have been obtained. Upon request, Franchisee shall provide to Franchisor additional copies of Franchisee's insurance policies or certificates of insurance and copies of all such approvals, clearances, permits and certifications.

D. Franchisee must obtain any architectural, engineering and design services it deems necessary for the construction of the Restaurant at its own expense from an architectural design firm approved by Franchisor, which approval shall not be unreasonably withheld. Franchisee shall adapt the prototypical architectural and design plans and specifications for construction of the Restaurant provided to Franchisee by Franchisor in accordance with Section V.(3) as necessary for the construction of the Restaurant and shall submit such adapted plans to Franchisor for review. If Franchisor determines, in its reasonable discretion, that any such plans are not consistent with the best interests of the System, Franchisor may prohibit the implementation of such plans, and in this event will notify Franchisee of any objection(s) within ten (10) days of receiving such plans. If Franchisor fails to notify Franchisee of an objection to the plans within this time period, Franchisee may use such plans. If Franchisor objects to any such plans, it shall provide Franchisee with a reasonably detailed list of changes necessary to make the plans acceptable. Franchisor shall, upon a re-submission of the plans with such changes, notify Franchisee within ten (10) days of receiving the resubmitted plans whether the plans are acceptable. If Franchisor fails to notify Franchisee of any objection within such time period, Franchisee may use the resubmitted plans. Franchisee acknowledges that Franchisor's review of such plans relates only to compliance with the System and that acceptance by Franchisor of such plans does not constitute a representation, warranty, or guarantee, express or implied, by Franchisor that such plans are accurate or free of error concerning their design or structural application.

E. Franchisee shall commence and diligently pursue construction or remodeling (as applicable) of the Restaurant. Commencement of construction shall be defined as the time at which any site work is initiated by or on behalf of Franchisee at the location accepted for the Restaurant. Site work includes, without limitation, paving of parking areas, installing outdoor lighting and sidewalks, extending utilities, demising of interior walls and demolishing of any existing premises. During the time of construction or remodeling, Franchisee shall provide Franchisor with such periodic reports regarding the progress of the construction or remodeling as may be reasonably requested by Franchisor. In addition, Franchisor may make such on-site inspections as it may deem reasonably necessary to evaluate such progress. Franchisee shall notify Franchisor of the scheduled date for completion of construction or remodeling no later than thirty (30) days prior to such date. Within a reasonable time after the date of completion of construction or remodeling, Franchisor may, at its option, conduct an inspection of the completed Restaurant. Franchisee acknowledges and agrees that Franchisee will not open the Restaurant for business without the written authorization of Franchisor and that authorization to open shall be conditioned upon Franchisee's strict compliance with this Agreement.

F. Franchisee acknowledges that time is of the essence. Subject to Franchisee's compliance with the conditions stated below, Franchisee shall open the Restaurant and commence business within one hundred twenty (120) days after Franchisee has obtained possession of the Accepted Location,



unless Franchisee obtains an extension of such time period from Franchisor in writing. Subject to Franchisee's compliance with the conditions stated below, Franchisee shall open the Restaurant and commence business the later of one hundred twenty (120) days after the Franchisee has obtained possession of the Accepted Location or one hundred twenty (120) days after Franchisor has approved plans for the Restaurant. Notwithstanding the foregoing, Franchisee shall nevertheless be obligated to open the Restaurant within the time frame provided for in the Area Development Agreement, i.e., within one year of the effective date ("Opening Date") and which shall be set forth in Attachment A. Prior to opening, Franchisee shall complete all exterior and interior preparations for the Restaurant, including installation of equipment, fixtures, furnishings and signs, pursuant to the plans and specifications approved by Franchisor, and shall comply with all other pre-opening obligations of Franchisee, including, but not limited to, those obligations described in Sections VI.B. - G., to Franchisor's reasonable satisfaction. If Franchisee fails to comply with any of such obligations, except for a force majeure act as described in Section XVII.A (3) (e), Franchisor shall have the right to prohibit Franchisee from commencing business. Franchisee's failure to open the Restaurant and commence business in accordance with the foregoing shall be deemed a material event of default under this Agreement.

### **ARTICLE III** **TERM AND RENEWAL**

A. Unless sooner terminated as provided in Section XVII. hereof, the term of this Agreement shall continue from the date stated on the first page hereof until the earlier of (i) ten (10) years from Opening Date or (ii) the expiration or termination of Franchisee's right to possess the Restaurant premises.

B. Franchisee may, at its option, renew the rights under this Agreement for additional consecutive terms of five (5) years each (provided that such renewal term shall automatically terminate upon the expiration or termination of Franchisee's right to possess the Restaurant premises), subject to any or all of the following conditions which must, in Franchisor's discretion, be met prior to and at the time of renewal:

(1) Franchisee shall give Franchisor written notice of Franchisee's election to renew not less than seven (7) months nor more than twelve (12) months prior to the end of the initial term or first renewal term, as applicable;

(2) Franchisee shall repair or replace, at Franchisee's cost and expense, equipment (including electronic cash register or computer hardware or software systems inclusive of any software upgrades required of Franchisee), signs, interior and exterior decor items, fixtures, furnishings, catering or delivery vehicles, if applicable, supplies and other products and materials required for the operation of the Restaurant as Franchisor may reasonably require and shall obtain, at Franchisee's cost and expense, any new or additional equipment, fixtures, supplies and other products and materials which may be reasonably required by Franchisor for Franchisee to offer and sell new menu items from the Restaurant or to provide the Restaurant's services by alternative means such as through carry-out, catering or delivery arrangements and shall otherwise modernize the Restaurant premises, equipment (including electronic cash register or computer hardware or software systems), signs, interior and exterior décor items, fixtures, furnishings, catering or delivery vehicles, if applicable, supplies and other products and materials required for the operation of the Restaurant, as reasonably required by Franchisor to reflect the then-current standards and image of the System and as contained in the Manuals (as defined in Section V.(4)) or otherwise provided in writing by Franchisor;

(3) Franchisee shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee or any of its affiliates and Franchisor; and Franchisee shall have substantially and timely complied with all the terms and conditions of such agreements during the terms thereof;

(4) Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor under this Agreement and any other agreement between Franchisee or any of its affiliates and Franchisor and shall have timely met those obligations throughout the terms thereof;

(5) Franchisee shall present satisfactory evidence that Franchisee has the right to remain in possession of the Restaurant premises or obtain Franchisor's approval of a new site for the operation of the Restaurant for the duration of the renewal term of this Agreement;

(6) Franchisee and the Controlling Principals (as defined in Section XIX.T.) shall execute a general release of any and all claims against Franchisor, and the officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement or under federal, state or local laws, rules, regulations or orders; and

(7) Franchisee shall comply with Franchisor's then-current financial qualifications and training requirements.

#### **ARTICLE IV** **FEES**

A. Franchisee shall pay to Franchisor an initial franchise fee of Twenty-Five Thousand Dollars (\$25,000) which shall be paid upon the execution of this Agreement, unless this Agreement is executed pursuant to an Area Development Agreement, in which event, the balance of the initial fee shall be due and payable. The amount of the initial franchise fee when so paid shall be deemed fully earned and non-refundable, except as provided below, in consideration of the administrative and other expenses incurred by Franchisor in granting the franchise hereunder and for its lost or deferred opportunity to grant such franchise to any other party.

(1) In the event that Franchisee (i) is unable to obtain possession of an approved location for the Restaurant within six (6) months from the date of this Agreement, Franchisor shall have the right, but not the obligation, to terminate this Agreement and refund seventy-five percent (75%) of the initial franchise fee paid, without interest. Prior to Franchisor providing any refund, Franchisee must demonstrate to Franchisor's reasonable satisfaction that Franchisee has made a good faith effort to obtain possession of an approved location for the Restaurant.

B. (1) During the term of this Agreement, Franchisee shall pay to Franchisor, in partial consideration for the rights herein granted, a continuing weekly royalty fee of six percent (6%). Such royalty fee shall be due and payable each week ("Accounting Period") based on the Gross Sales for the preceding week (the first such Accounting Period beginning on the Opening Date and ending on the Sunday that corresponds to the end of the then-current Accounting Period as determined in accordance with Franchisor's Manuals) so that it is received by Franchisor by electronic fund transfer on or before the Wednesday following the end of each Accounting Period, provided that such day is a business day. A business day for the purpose of this Agreement means any day other than Saturday, Sunday or the following national holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas. If the date

on which such payments would otherwise be due is not a business day, then payment shall be due on the next business day.

(2) Each such royalty fee shall be preceded by a royalty report itemizing the Gross Sales for the preceding Accounting Period ("Royalty Report") and any other reports required hereunder. Notwithstanding the foregoing, Franchisee shall provide Franchisor with such Gross Sales information on the Monday of each week following the Accounting Period (or next business day if the Monday is not a business day) by modem or, if not reasonably available, by facsimile transmission or such other method of delivery as Franchisor may reasonably direct.

(3) By executing this Agreement, Franchisee agrees that Franchisor shall have the right to withdraw funds from Franchisee's designated bank account each Accounting Period by electronic funds transfer ("EFT") in the amount of the royalty fee described above. Provided such day is a business day (and if not a business day, on the next succeeding business day), such withdrawals shall be drawn on the Wednesday of each week for the amount of the royalty due with respect to Franchisee's Gross Sales for the preceding Accounting Period, as evidenced by the Royalty Report. If the Royalty Report has not been received within the time period required by this Agreement, then Franchisor may process an EFT for the royalty for the subject Accounting Period based on (a) information regarding Franchisee's Gross Sales for the preceding Accounting Period obtained by Franchisor in the manner contemplated by Section VII.E.(8) of this Agreement, or (b) the most recent Royalty Report provided to Franchisor by Franchisee; provided that if a Royalty Report for the subject Accounting Period is subsequently received and reflects (i) that the actual amount of the royalty due was more than the amount of the EFT by Franchisor, then Franchisor shall be entitled to withdraw additional funds through EFT from Franchisee's designated bank account for the difference; or (ii) that the actual amount of the royalty due was less than the amount of the EFT by Franchisor, then Franchisor shall return the excess amount to Franchisee within five (5) business days of notice by Franchisee or discovery by Franchisor if the excess is greater than One Hundred Fifty Dollars (\$150), if the excess withdrawn by Franchisor is One Hundred Fifty Dollars (\$150) or less, then Franchisor will credit the excess amount to the payment of Franchisee's future royalty obligations. Franchisee shall, upon execution of this Agreement or at any time thereafter at Franchisor's request, execute such documents or forms as Franchisor determines are necessary for Franchisor to process EFTS from Franchisee's designated bank account for the payments due hereunder. Should any EFT not be honored by Franchisee's bank for any reason, Franchisee agrees that it shall be responsible for that payment plus a service charge applied by Franchisor and the bank, if any. Franchisee further agrees that it shall at all times throughout the term of this Agreement maintain a minimum balance of Three Thousand Dollars (\$3,000.00) in the Franchisee's bank account against which such EFTS are to be drawn for the Restaurant operated under this Agreement. If royalty payments are not received when due, interest may be charged by Franchisor in accordance with Section IV.B.(4) below. Upon written notice to Franchisee, Franchisee may be required to pay such royalty fees directly to Franchisor in lieu of EFT, at Franchisor's sole discretion.

(4) Franchisee shall not be entitled to withhold payments due Franchisor under this Agreement on grounds of alleged non-performance by Franchisor hereunder. Any payment or report not actually received by Franchisor on or before such date shall be deemed overdue. Time is of the essence with respect to all payments to be made by Franchisee to Franchisor. All unpaid obligations under this Agreement shall bear interest from the date due until paid at the lesser of (i) eighteen percent (18%) per annum; or (ii) the maximum rate allowed by applicable law. Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall require the payment or permit the collection of interest in excess of the maximum rate allowed by applicable law. If any excess of interest is provided for herein, or shall be adjudicated to be so provided in this Agreement, the provisions of this paragraph shall govern and prevail, and neither Franchisee nor its Principals shall be obligated to pay the excess

amount of such interest. If for any reason interest in excess of the maximum rate allowed by applicable law shall be deemed charged, required or permitted, any such excess shall be applied as a payment and reduction of any other amounts which may be due and owing hereunder, and if no such amounts are due and owing hereunder then such excess shall be repaid to the party that paid such interest.

(5) If the payments or reports required by Section IV.B.(2) are not received by Franchisor as required by this Section, Franchisee shall pay to Franchisor, in addition to the overdue amount, a fee of Fifty Dollars (\$50) per day for each day that the royalty is unpaid or the report is not received. This fee is reasonably related to Franchisor's costs resulting from the delay in payment and/or receipt of any report, is not a penalty, and is in addition to any other remedy available to Franchisor under this Agreement for Franchisee's failure to pay royalties and/or submit reports in accordance with the terms of this Agreement. If for any reason the fee of Fifty Dollars (\$50) is deemed to be interest charged, required or permitted in excess of the maximum rate allowed by applicable law, any such excess shall be applied as a payment and reduction of any other amounts which may be due and owing hereunder, and if no such amounts are due and owing hereunder, then such excess shall be repaid to the party that paid such amount.

C. For the purposes of determining the royalties to be paid hereunder, "Gross Sales" shall mean the total selling price of all services and products and all income of every other kind and nature related to the Restaurant (including, without limitation, income related to catering and delivery activities, and any sales or orders of food products or food preparation services provided from or related to the Restaurant), whether for cash or credit and regardless of collection in the case of credit. In the event of a cash shortage, the amount of Gross Sales shall be determined based on the records of the electronic cash register system and any cash shortage shall not be considered in the determination. Gross Sales shall expressly exclude the following:

(1) Tips or gratuities charged to customers on behalf of employees of the Restaurant, receipts from the operation of any public telephone installed in the Restaurant, or products from vending machines located at the Restaurant, except for any amount representing Franchisee's share of such revenues;

(2) Sums representing sales taxes collected directly from customers, based upon present or future laws of federal, state or local governments, collected by Franchisee in the operation of the Restaurant, and any other tax, excise or duty which is levied or assessed against Franchisee by any federal, state, municipal or local authority, based on sales of specific merchandise sold at or from the Restaurant, provided that such taxes are actually transmitted to the appropriate taxing authority; and

(3) Proceeds from isolated sales of trade fixtures not constituting any part of Franchisee's products and services offered for resale at the Restaurant nor having any material effect upon the ongoing operation of the Restaurant required under this Agreement.

Franchisor may, from time to time, authorize certain other items to be excluded from Gross Sales. Any such permission may be revoked or withdrawn at any time in writing by Franchisor in its discretion. In addition to the foregoing, the following are included within the definition of Gross Sales:

i. The full value of meals furnished to Franchisee's employees as an incident to their employment except that the value of any discounts extended to such employees may be credited against Gross Sales during the Accounting Period in which the meals were furnished for the purpose of determining the amount of Gross Sales upon which the royalty fee is due; and

ii. All proceeds from the sale of coupons, gift certificates or vouchers; provided that at the time such coupons, gift certificates or vouchers are redeemed the retail price thereof may be credited against Gross Sales during the Accounting Period in which such coupon, gift certificate or voucher is redeemed for the purpose of determining the amount of Gross Sales upon which the royalty fee is due.

D. Franchisee shall pay such other fees or amounts described in this Agreement.

## **ARTICLE V**

### **FRANCHISOR'S OBLIGATIONS**

Franchisor agrees to provide the services described below with regard to the Restaurant:

(1) Franchisor's written site selection guidelines and such site selection assistance as Franchisor may deem advisable.

(2) Such on-site evaluation as Franchisor may deem necessary on its own initiative or in response to Franchisee's reasonable request for site evaluation; provided, however, that Franchisor shall not provide an on-site evaluation for any proposed site prior to the receipt of all required information and materials concerning such site prepared pursuant to Section II. Franchisor (or its designee) will provide at no additional charge to Franchisee one (1) on-site evaluation for the Restaurant; provided that if this Agreement does not relate to Franchisee's first Restaurant, Franchisor reserves the right to charge a reasonable fee for any such on-site evaluation as described in the following sentence. Thereafter, if additional on-site evaluations are deemed appropriate by Franchisor, or upon Franchisee's reasonable request, Franchisor reserves the right to charge a reasonable fee for performing each such evaluation and a fee representing the reasonable expenses incurred by Franchisor (or its designee) in connection with such on-site evaluation, including, without limitation, the cost of travel, lodging, meals and wages.

(3) On loan, one (1) set of prototypical architectural and design plans and specifications for a Hanakai Restaurant. Franchisee shall independently, and at Franchisee's expense, have such architectural and design plans and specifications adapted for construction of the Restaurant in accordance with Section II.

(4) On loan, one (1) set of the Training Video Series ("Videos"), if and when available, and one (1) set of Confidential Operations Manuals and such other manuals and written materials as Franchisor shall have developed for use in the franchised business (as the same may be revised by Franchisor from time to time, the "Manuals"), as more fully described in Section X.A. If the Restaurant is the initial Restaurant developed by Franchisee, Franchisor shall provide without additional cost two (2) sets of the Videos and one (1) copy and one (1) CD or electronic copy of the Confidential Operations Manuals for use in the Restaurant and at Franchisee's business office.

(5) Visits to the Restaurant and evaluations of the products sold and services rendered therein from time to time as reasonably determined by Franchisor, as more fully described in Section VII.E.6.

(6) Certain advertising and promotional materials and information developed by Franchisor from time to time for use by Franchisee in marketing and conducting local advertising for the Restaurant at a reasonable cost to Franchisee. Franchisor shall have the right to review and approve or disapprove all advertising and promotional materials that Franchisee proposes to use, pursuant to Section VIII.

(7) Advice and written materials concerning techniques of managing and operating the Restaurant from time to time developed by Franchisor, including new developments and improvements in Restaurant equipment, food products and the packaging and preparation thereof and menu items.

(8) From time to time and at Franchisor's reasonable discretion, at a reasonable cost, make available for resale to Franchisee's customers, certain merchandise identifying the System, such as pre-packaged food products and Hanakai memorabilia, in sufficient amounts to meet customer demand. Similarly, Franchisor may make available from time to time certain Restaurant equipment and décor items at a reasonable cost.

(9) A list of approved suppliers as described in Section VII.D. from time to time as Franchisor deems appropriate.

(10) An initial training program for Franchisee's Operating Principal, General Manager and other Restaurant personnel and other training programs in accordance with the provisions of Section VI.E.(1), (2) and (4).

(11) On-site pre-opening and post-opening assistance at the Restaurant in accordance with the provisions of Section VI.E.(3).

(12) Establishment and administration of a creative fund and/or advertising cooperatives and placement of a Yellow Pages trademark listing and other business listings at Franchisor's reasonable discretion in accordance with Section VIII.

## **ARTICLE VI**

### **FRANCHISEE'S AGREEMENTS, REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. Each of Franchisee and the Controlling Principals covenants and agrees that it shall make all commercially reasonable efforts to operate the Restaurant so as to achieve optimum sales.

B. If Franchisee is a corporation, limited liability company, or partnership, Franchisee and the Controlling Principals represent, warrant and covenant that:

(1) Franchisee is duly organized and validly existing under the state law of its formation;

(2) Franchisee is duly qualified and is authorized to do business in each jurisdiction in which its business activities or the nature of the properties owned by it require such qualification;

(3) Franchisee's corporate charter, operating agreement, or written partnership agreement shall at all times provide that the activities of Franchisee are confined exclusively to the operation of the Restaurant, unless otherwise consented to in writing by Franchisor;

(4) The execution of this Agreement and the consummation of the transactions contemplated hereby are within Franchisee's corporate power, if Franchisee is a corporation, or if Franchisee is a limited liability company, permitted under its operating agreement, or if Franchisee is a partnership, permitted under Franchisee's written partnership agreement and have been duly authorized by Franchisee;

(5) If Franchisee is a corporation, or a limited liability company, copies of Franchisee's articles of incorporation, bylaws, operating agreement, other governing documents, any amendments thereto, resolutions of the Board of Directors authorizing entry into and performance of this Agreement, and any certificates, buy-sell agreements or other documents restricting the sale or transfer of stock of the corporation, and any other documents as may be reasonably required by Franchisor shall be furnished to Franchisor prior to the execution of this Agreement; or, if Franchisee is a partnership, copies of Franchisee's written partnership agreement, other governing documents and any amendments thereto shall be furnished to Franchisor prior to the execution of this Agreement, including evidence of consent or approval of the entry into and performance of this Agreement by the requisite number or percentage of partners, if such approval or consent is required by Franchisee's written partnership agreement;

(6) If Franchisee is a corporation, partnership or other form of legal entity other than an individual, the ownership interests in Franchisee are accurately and completely described in Attachment C. Further, if Franchisee is a corporation, Franchisee shall maintain at all times a current list of all owners of record and all beneficial owners of any class of voting securities in Franchisee or, if Franchisee is a partnership or other form of legal entity, Franchisee shall maintain at all times a current list of all owners of an interest in the partnership or entity. Franchisee shall immediately provide a copy of the updated list of all owners to Franchisor upon the occurrence of any change of ownership and otherwise make its list of owners available to Franchisor upon request;

(7) If Franchisee is a corporation, Franchisee shall maintain stop-transfer instructions against the transfer on its records of any of its equity securities and each stock certificate representing stock of the corporation shall have conspicuously endorsed upon it a statement in a form satisfactory to Franchisor that it is held subject to all restrictions imposed upon assignments by this Agreement; provided, however, that the requirements of this Section shall not apply to the transfer of equity securities of a publicly held corporation (as defined in Section XIX.R). If Franchisee is a partnership, its written partnership agreement shall provide that ownership of an interest in the partnership is held subject to all restrictions imposed upon assignments by this Agreement;

(8) Franchisee must have provided Franchisor with the most recent financial statements of Franchisee. Such financial statements present fairly the financial position of Franchisee, at the dates indicated therein and with respect to Franchisee, the results of its operations and its cash flow for the years then ended. Franchisee agrees that it shall maintain at all times, during the term of this Agreement, sufficient working capital to fulfill its obligations under this Agreement. Each of the financial statements mentioned above shall be certified as true, complete and correct and shall have been prepared in conformity with generally accepted accounting principles applicable to the respective periods involved and, except as expressly described in the applicable notes, applied on a consistent basis. No material liabilities, adverse claims, commitments or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise, which are not reflected as liabilities on the financial statements of Franchisee.

(9) If, after the execution of this Agreement, any person ceases to qualify as one of Franchisee's Principals (defined in Section XIX.R.) or if any individual succeeds to or otherwise comes to occupy a position which would, upon designation by Franchisor, qualify him as one of Franchisee's Principals, Franchisee shall notify Franchisor within ten (10) days after any such change and, upon designation of such person by Franchisor as one of Franchisee's Principals or as a Controlling Principal, as the case may be, such person shall execute such documents and instruments (including, as applicable, this Agreement) as may be required by Franchisor to be executed by others in such positions;

(10) Franchisee's Principals (as defined in Section XIX.R) shall each execute and bind themselves to the confidentiality and non-competition covenants set forth in the Confidentiality Agreement and Ancillary Covenants Not to Compete which forms Attachment D to this Agreement (see Sections X.B(2) and X.C(4)). The Controlling Principals shall, jointly and severally, guarantee Franchisee's performance of all of Franchisee's obligations, covenants and agreements hereunder pursuant to the terms and conditions of the guaranty contained herein, and shall otherwise bind themselves to the terms of this Agreement as stated herein; and

(11) Franchisee and the Controlling Principals acknowledge and agree that the representations, warranties and covenants set forth above in Section VI.B.(1)-(10) are continuing obligations of Franchisee and the Controlling Principals, as applicable, and that any failure to comply with such representations, warranties and covenants shall constitute a material event of default under this Agreement. Franchisee and the Controlling Principals will cooperate with Franchisor in any efforts made by Franchisor to verify compliance with such representations, warranties and covenants.

C. Upon the execution of this Agreement, Franchisee shall designate and retain an individual to serve as the Operating Principal of the Restaurant (the "Operating Principal"). If Franchisee is an individual, Franchisee shall perform all obligations of the Operating Principal. The Operating Principal shall, during the entire period he serves as such, meet the following qualifications:

(1) The Operating Principal must, at its option, either serve as the General Manager (as defined in Section VI.D) or, subject to the approval of Franchisor, designate another individual to serve as the General Manager; which individual (the Operating Principal's designee) shall also perform the duties and obligations of Operating Principal described herein; provided that Operating Principal shall take all necessary action to ensure that such designee conducts and fulfills all of Operating Principal's obligations in accordance with the terms of this Agreement and Operating Principal shall remain fully responsible for such performance.

(2) The Operating Principal must maintain a direct or indirect ownership interest in Franchisee. Except as may otherwise be provided in this Agreement, the Operating Principal's interest in Franchisee shall be and shall remain free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, voting agreement, proxy, security interest or purchase right or options.

(3) Franchisee and the Operating Principal (or his designee, if applicable) shall devote substantial full time and best efforts to the supervision and conduct of the franchised business. Operating Principal shall execute this Agreement as one of the Controlling Principals, and shall be individually, jointly and severally bound by all obligations of Franchisee, the Operating Principal and the Controlling Principals hereunder.

(4) The Operating Principal (and any such designee) shall meet Franchisor's reasonable standards and criteria for such individual, as set forth in the Manuals as defined herein or otherwise in writing by Franchisor.

(5) If, during the term of this Agreement, the Operating Principal or any designee is not able to continue to serve in the capacity of Operating Principal or no longer qualifies to act as such in accordance with this Section, Franchisee shall promptly notify Franchisor and designate a replacement within sixty (60) days after the Operating Principal or such designee ceases to serve or be so qualified, such replacement being subject to the same qualifications and restrictions listed above. Franchisee shall provide for interim management of the activities contemplated under this Agreement until such replacement is so designated, such interim management to be conducted in accordance with this



Agreement. Any failure to comply with the requirements of this Section VI.C. shall be deemed a material event of default under this Agreement.

D. Franchisee shall designate and retain at all times a general manager ("General Manager") to direct the operation and management of the Restaurant. Franchisee shall designate its General Manager concurrently with the execution of this Agreement. The General Manager shall be responsible for the daily operation of the Restaurant. The General Manager may be one of the Controlling Principals. The General Manager shall, during the entire period he serves as General Manager, meet the following qualifications:

(1) The General Manager shall satisfy Franchisor's educational and business experience criteria as set forth in the Manuals as defined herein or otherwise in writing by Franchisor;

(2) The General Manager shall devote full time and best efforts to the supervision and management of the Restaurant;

(3) The General Manager shall be an individual acceptable to Franchisor; and

(4) The General Manager shall satisfy the training requirements set forth in Section VI.F. If, during the term of this Agreement, the General Manager is not able to continue to serve in such capacity or no longer qualifies to act as such in accordance with this Section, Franchisee shall promptly notify Franchisor and designate a replacement within sixty (60) days after the General Manager ceases to serve, such replacement being subject to the same qualifications listed above (including completing all training and obtaining all certifications required by Franchisor. Franchisee shall provide for interim management of the Restaurant until such replacement is so designated, such interim management to be conducted in accordance with the terms of this Agreement. Any failure to comply with the requirements of this Section VI.D. shall be deemed a material event of default under Section XVII.A.(3)(p) hereof.

E. Franchisee agrees that it is necessary to the continued operation of the System and the Restaurant that Franchisee's Operating Principal and General Manager receive such training as Franchisor may require, and accordingly agrees as follows:

(1) Not later than thirty (30) days prior to the date the Restaurant commences operations as a Hanakai Sushi Bar & Grill Restaurant, Franchisee's Operating Principal and General Manager shall attend and complete, to Franchisor's satisfaction, Franchisor's initial training program. Training of such persons shall be conducted by Franchisor or its designee at a Franchisor or designee-operated Restaurant or such other location designated by Franchisor. Franchisor shall provide instructors and training materials for the initial training of the Operating Principal and General Manager at no additional charge to Franchisee; provided that Franchisor shall have the right to charge a reasonable fee for such training of any additional managers or Restaurant personnel.

Franchisor shall determine, in its reasonable discretion, whether the Operating Principal and General Manager have satisfactorily completed initial training. If the initial training program is not satisfactorily completed by the Operating Principal or General Manager, or if Franchisor in its reasonable business judgment based upon the performance of the Operating Principal or General Manager, determines that the training program cannot be satisfactorily completed by any such person, Franchisee shall designate a replacement to satisfactorily complete such training. Any Operating Principal or General Manager subsequently designated by Franchisee shall also receive and complete such initial training. Franchisor reserves the right to charge a reasonable fee for any initial training provided by Franchisor to any initial General Manager or any other Restaurant personnel for any Restaurant

subsequently developed by Franchisee and otherwise for any initial training provided to a replacement or successor General Manager. Franchisee shall be responsible for any and all expenses incurred by Franchisee or Franchisee's Operating Principal, General Manager and other Restaurant personnel in connection with any initial training program, including, without limitation, costs of travel, lodging, meals and wages.

(2) Franchisee's Operating Principal, General Manager and such other Restaurant personnel as Franchisor shall designate shall attend such additional training programs and seminars as Franchisor may offer from time to time, if Franchisor requires such attendance. For all such programs and seminars, Franchisor will provide the instructors and training materials. However, Franchisor reserves the right to impose a reasonable fee for such additional training programs and seminars that are not mandatory. Franchisee shall be responsible for any and all expenses incurred by Franchisee or its Operating Principal, General Manager and other Restaurant personnel in connection with such additional training, including, without limitation, costs of travel, lodging, meals, and wages.

(3) In connection with the opening of the Restaurant, Franchisor shall provide Franchisee with opening assistance by a trained representative of Franchisor or its designee. The trainer will provide on-site pre-opening and opening training, supervision, and assistance to Franchisee for a period of two (2) weeks. With respect to the opening assistance described above and any such assistance provided to a replacement Restaurant established by Franchisee pursuant to Sections I.B and C hereof or any development agreement between Franchisor and Franchisee, Franchisee shall pay to Franchisor the per diem fee then being charged to franchisees generally for opening assistance, including payment of any expenses incurred by such trainer(s), such as costs of travel, lodging, meals and wages; provided, that if the Restaurant is the first Restaurant developed by Franchisee, Franchisee shall not be required to pay such per diem fee. The per diem fee shall be payable by Franchisee for any such assistance provided to a replacement Restaurant pursuant to Section I.B hereof.

(4) Upon the reasonable request of Franchisee or as Franchisor shall deem appropriate, Franchisor shall, during the term hereof, subject to the availability of personnel, provide Franchisee with additional trained representatives who shall provide on-site remedial training and assistance to Franchisee's Restaurant personnel. For additional training and assistance requested by Franchisee, Franchisee shall pay the per diem fee then being charged to franchisees under the System for the services of such trained representatives, plus their costs of travel, lodging, meals, and wages. The per diem fee will not be charged if such assistance is provided based on Franchisor's determination that such training and assistance is necessary; however, Franchisor reserves the right to charge for its reasonable expenses incurred in connection with such training and assistance.

F. Franchisee and the Controlling Principals understand that compliance by all franchisees and developers operating under the System with Franchisor's training, development and operational requirements is an essential and material element of the System and that Franchisor and franchisees and developers operating under the System consequently expend substantial time, effort and expense in training management personnel for the development and operation of their respective Restaurants. Accordingly, Franchisee and the Controlling Principals agree that if Franchisee or any Controlling Principal shall, during the term of this Agreement, designate as General Manager or employ in a managerial position any individual who is at the time or was within the preceding ninety (90) days employed in a managerial or supervisory position by Franchisor including, but not limited to, individuals employed to work in Restaurants operated by Franchisor or by any other franchisee or developer, then such former employer of such individual shall be entitled to be compensated for the reasonable costs and expenses, of whatever nature or kind, incurred by such employer in connection with the training of such employee. The parties hereto agree that such expenditures may be uncertain and difficult to ascertain

and therefore agree that the compensation specified herein reasonably represents such expenditures and is not a penalty. An amount equal to the compensation of such employee for the six (6) month period (or such shorter time, if applicable) immediately prior to the termination of his employment with such former employer shall be paid by Franchisee prior to such individual assuming the position of General Manager or other managerial position unless otherwise agreed with the former employer. In seeking any individual to serve as General Manager or in such other managerial position, Franchisee and the Controlling Principals shall not discriminate in any manner whatsoever to whom the provisions of this Section apply, on the basis of the compensation required to be paid hereunder, if Franchisee or any Controlling Principal designates or employs such individual. The parties hereto expressly acknowledge and agree that no current or former employee of Franchisor, Franchisee, or of any other entity operating under the System shall be a third party beneficiary of this Agreement or any provision hereof. Notwithstanding the above, solely for purposes of bringing an action to collect payments due under this Section, such former employer shall be a third party beneficiary of this Section VI.F. Franchisor hereby expressly disclaims any representations and warranties regarding the performance of any employee or former employee of Franchisor, or any franchisee or developer under the System who is designated as Franchisee's General Manager or employed by Franchisee or any of the Controlling Principals in any capacity, and Franchisor shall not be liable for any losses, of whatever nature or kind, incurred by Franchisee or any Controlling Principal in connection therewith. Franchisor hereby agrees to itself refrain from soliciting and employing Franchisee's employees in a manner comparable with the terms and conditions of this Section VI.F applicable to the limitations on Franchisee's recruitment of Franchisor's employees as provided for thereunder and to the extent that Franchisor breaches such covenant, Franchisor shall compensate Franchisee in the same manner set forth hereunder.

G. Franchisee shall comply with all requirements of federal, state and local laws, rules, regulations, and orders, including but not limited to obtaining the appropriate alcoholic beverage licenses required by Franchisee's local or state government.

H. Franchisee shall comply with all other requirements and perform such other obligations as provided hereunder.

## **ARTICLE VII**

### **FRANCHISE OPERATIONS**

A. Franchisee understands the importance of maintaining uniformity among all of the Restaurants and the importance of complying with all of Franchisor's standards and specifications relating to the operation of the Restaurant.

B. Franchisee shall maintain the Restaurant in a high degree of sanitation, repair and condition, and in connection therewith shall make such additions, alterations, repairs and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment (including, but not limited to, electronic cash register or computer hardware and software systems), and décor as Franchisor may reasonably direct in order to maintain system wide integrity and uniformity. Franchisee shall also obtain, at Franchisee's cost and expense, any new or additional equipment (including electronic cash register or computer hardware and software systems), fixtures, supplies and other products and materials which may be reasonably required by Franchisor for Franchisee to offer and sell new menu items from the Restaurant or to provide the Restaurant services by alternative means, such as through carry-out, catering or delivery arrangements. Except as may be expressly provided in the Manuals, no alterations or improvements or changes of any kind in design,

equipment, signs, interior or exterior decor items, fixtures or furnishings shall be made in or about the Restaurant or its premises without the prior written approval of Franchisor.

C. To assure the continued success of the Restaurant, Franchisee shall, upon the request of Franchisor, make other improvements to modernize the Restaurant premises, equipment (including electronic cash register or computer hardware and software systems), signs, interior and exterior décor items, fixtures, furnishings, supplies and other products and materials required for the operation of the Restaurant to Franchisor's then-current system wide standards and specifications. Notwithstanding the above, Franchisee agrees that it will make such capital improvements or modifications described in this Section VII.C. if so requested by Franchisor on or before the fifth (5<sup>th</sup>) anniversary of the Opening Date, or at such other time during the term of this Agreement that a majority of the Restaurants then operated by Franchisor has made or are utilizing best efforts to make such improvements or modifications.

D. Franchisee shall comply with all of Franchisor's standards and specifications relating to the purchase of all food and beverage items, ingredients, supplies, materials, fixtures, furnishings, equipment (including electronic cash register and computer hardware and software systems) and other products used or offered for sale at the Restaurant. Except as provided in Sections VII.F. and VII.G. with respect to certain materials bearing the Marks and proprietary products, and Section VII.K. with respect to vehicles used in the operation of the Restaurant, Franchisee shall obtain such items from suppliers (including manufacturers, distributors and other sources) who continue to demonstrate the ability to meet Franchisor's then-current standards and specifications for food and beverage items, ingredients, supplies, materials, fixtures, furnishings, equipment and other items used or offered for sale at Restaurants and who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably; and who have been approved in writing by Franchisor prior to any purchases by Franchisee from any such supplier; and who have not thereafter been disapproved by Franchisor. If Franchisee desires to purchase, lease or use any products or other items from an unapproved supplier, Franchisee shall submit to Franchisor a written request for such approval, or shall request the supplier itself to do so. Franchisee shall not purchase or lease from any supplier until and unless such supplier has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge, not to exceed the reasonable cost of the inspection and the actual cost of the test, shall be paid by Franchisee or the supplier. Franchisor reserves the right, at its option, to re-inspect from time to time the facilities and products of any such approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Franchisor's then-current criteria. Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier.

E. To ensure that the highest degree of quality and service is maintained, Franchisee shall operate the Restaurant in strict conformity with such methods, standards and specifications of Franchisor set forth in the Manuals and as may from time to time otherwise be prescribed in writing. In particular, Franchisee also agrees:

(1) To sell or offer for sale all menu items, products and services required by Franchisor and in the method, manner and style of distribution prescribed by Franchisor, including, but not limited to, eating-in, carry-out, catering or delivery services, only as expressly authorized by Franchisor in writing in the Manuals or otherwise. Franchisee agrees to comply with the terms of any such distribution program and in connection therewith to execute such documents or instruments that Franchisor may deem necessary to such program.

(2) To sell and offer for sale only the menu items, products and services that have been expressly approved for sale in writing by Franchisor; to refrain from deviating from Franchisor's standards and specifications without Franchisor's prior written consent; and to discontinue selling and offering for sale any menu items, products or services which Franchisor may, in its sole discretion, disapprove in writing at any time.

(3) To maintain in sufficient supply and to use and sell at all times only such food and beverage items, ingredients, products, materials, supplies and paper goods that conform to Franchisor's standards and specifications; to prepare all menu items in accordance with Franchisor's recipes and procedures for preparation contained in the Manuals or other written directives, including, but not limited to, the prescribed measurements of ingredients; and to refrain from deviating from Franchisor's standards and specifications by the use or offer of non-conforming items or differing amounts of any items, without Franchisor's prior written consent.

(4) To permit Franchisor or its agents, during normal business hours, to remove a reasonable number of samples of food or non-food items from Franchisee's inventory or from the Restaurant, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent laboratory to determine whether such samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Franchisee to bear the cost of such testing if the supplier of the item has not previously been approved by Franchisor or if the sample fails to conform with Franchisor's reasonable specifications.

(5) To purchase or lease and install, at Franchisee's expense, all fixtures, furnishings, equipment (including electronic cash register and computer hardware and software systems), décor items, signs, catering or delivery vehicles, and related items as Franchisor may reasonably direct from time to time in the Manuals or otherwise in writing; and to refrain from installing or permitting to be installed on or about the Restaurant premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, catering or delivery vehicles, décor items, signs, games, vending machines or other items not previously approved as meeting Franchisor's standards and specifications. If any of the property described above is leased by Franchisee from a third party, such lease shall be approved by Franchisor, in writing, prior to execution. Franchisor's approval shall be conditioned upon such lease containing a provision which permits any interest of Franchisee in the lease to be assigned to Franchisor upon the termination or expiration of this Agreement and which prohibits the lessor from imposing an assignment or related fee upon Franchisor in connection with such assignment.

(6) To grant Franchisor and its agents the right to enter upon the Restaurant premises and any catering or delivery motor vehicles, during normal business hours, for the purpose of conducting inspections; to cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, to take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Should Franchisee, for any reason, fail to correct such deficiencies within a reasonable time as determined by Franchisor, Franchisor shall have the right and authority (without, however, any obligation to do so) to correct such deficiencies and charge Franchisee a reasonable fee for Franchisor's expenses in so acting, payable by Franchisee immediately upon demand.

(7) To maintain a competent, conscientious, trained staff and to take such steps as are necessary to ensure that its employees preserve good customer relations and comply with such dress code as Franchisor may prescribe from time to time. Also to ensure that all staff and owners adhere to, observe, and follow our Core Values of Integrity, Excellence, Personal & Team Best, and Balance, its

definitions and culture in all of the Franchisee's dealings with staff, owners, customers, vendors, and the surrounding community.

(8) To install and maintain equipment and a telecommunications line in accordance with Franchisor's specifications to permit Franchisor to access and retrieve by telecommunication any information stored on electronic cash registers (or other computer hardware and software) Franchisee is required to utilize at the Restaurant premises as specified in the Manuals, thereby permitting Franchisor to inspect and monitor electronically information concerning Franchisee's Restaurant, Gross Sales and such other information as may be contained or stored in such equipment and software. Franchisee shall obtain and maintain Internet access or other means of electronic communication, as specified by Franchisor from time to time. It shall be a material default under this Agreement if Franchisee fails to maintain such equipment, lines and communication methods in operation and accessible to Franchisor at all times throughout the term of this Agreement. Franchisor shall have access as provided herein at such times and in such manner as Franchisor shall from time to time specify.

F. Franchisee acknowledges and agrees that Franchisor has and may continue to develop for use in the System certain products which are prepared from confidential proprietary recipes and which are trade secrets of Franchisor and other proprietary products bearing the Franchisor's Marks. Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that Franchisor closely control the production and distribution of such products. Accordingly, Franchisee agrees that if such products become a part of the System, Franchisee shall use only Franchisor's secret recipes and proprietary products and shall purchase solely from Franchisor or from a source designated by Franchisor all of Franchisee's requirements for such products. Franchisee further agrees to purchase from Franchisor for resale to Franchisee's customers certain merchandise identifying the System as Franchisor shall require, such as pre-packaged food products and Hanakai memorabilia and promotional products, in amounts sufficient to satisfy Franchisee's customer demand.

G. Franchisee shall require all advertising and promotional materials, signs, decorations, paper goods (including menus and all forms and stationery used in the franchised business), and other items which may be designated by Franchisor to bear the Marks in the form, color, location and manner prescribed by Franchisor.

H. Franchisee shall process and handle all consumer complaints connected with or relating to the Restaurant, and shall promptly notify Franchisor by telephone and in writing of all of the following complaints: (i) food related illnesses, (ii) safety or health violations, (iii) claims exceeding One Hundred Dollars (\$100.00), and (iv) any other material claims against or losses suffered by Franchisee. Franchisee shall maintain for Franchisor's inspection any inspection reports affecting the Restaurant or equipment located in the Restaurant during the term of this Agreement and for thirty (30) days after the expiration or earlier termination hereof.

I. Upon the execution of this Agreement or at anytime thereafter, Franchisee shall, at the option of Franchisor, execute such forms and documents as Franchisor deems necessary to appoint Franchisor its true and lawful attorney-in-fact with full power and authority for the sole purpose of assigning to Franchisor only upon the termination or expiration of this Agreement, as required under Section XVIII.O.: (i) all rights to the telephone numbers of the Restaurant and any related and other business listings; and (ii) Internet listings, domain names, Internet Accounts, advertising on the Internet or World Wide Web, websites, listings with search engines, e-mail addresses or any other similar listing or usages related to the Franchised Business. Franchisee agrees that it has no authority to and shall not

establish any website or listing on the Internet or World Wide Web without the express written consent of Franchisor, which consent may be denied without reason.

J. Upon execution of this Agreement or at any time thereafter, Franchisee shall, at the option of Franchisor, execute such forms and documents as Franchisor deems necessary to appoint Franchisor its true and lawful attorney-in-fact with full power and authority for the sole purpose of obtaining any and all returns and reports filed by Franchisee with any state or federal taxing authority, pertaining only to the Franchised Business.

K. Any vehicle used by Franchisee to deliver Restaurant products and services to customers shall meet Franchisor's standards with respect to appearance and ability to satisfy the requirements imposed on Franchisee hereunder. Franchisee shall place such signs and décor items on the vehicle as Franchisor requires and shall at all times keep such vehicle clean and in good working order. Franchisee shall not engage or utilize any individual in the operation of a motor vehicle in connection with providing services hereunder who is under the age of eighteen (18) years or who does not possess a valid driver's license under the laws of the state in which Franchisee provides such services. Franchisee shall require each such individual to comply with all laws, regulations and rules of the road and to use due care and caution in the operation and maintenance of motor vehicles. Except as noted above, Franchisor does not set forth any standards or exercise control over any motor vehicle utilized by Franchisee.

L. In the event Franchisee sells any food, beverage, products, premiums, novelty items, clothing, souvenirs or performs any services that Franchisor has not prescribed, approved or authorized, Franchisee shall, following notice from Franchisor: (i) cease and desist offering or providing the unauthorized or unapproved food, beverage, product, premium, novelty item, clothing, souvenir or from performing such services and (ii) pay to Franchisor, on demand, a prohibited product or service fine equal to Two Hundred Fifty Dollars (\$250) per day for each day such unauthorized or unapproved food, beverage, product, premium, novelty item, clothing, souvenir or service is offered or provided by Franchisee. The prohibited product or service fine shall be in addition to all other remedies available to Franchisor under this Agreement or at law.

### **ARTICLE VIII** **ADVERTISING AND RELATED FEES**

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

A. Franchisor may from time to time develop and create advertising and sales promotion programs designed to promote and enhance the collective success of all Restaurants operating under the System. Franchisee shall participate in all such advertising and sales promotion programs in accordance with the terms and conditions established by Franchisor for each program. In all aspects of these programs, including, without limitation, the type, quantity, timing, placement and choice of media, market areas and advertising agencies, the standards and specifications established by Franchisor shall be final and binding upon Franchisee.

B. In addition to the ongoing advertising contributions set forth herein and, subject to any allocation of Franchisee's expenditures for local advertising to the Cooperative as described in Section VIII.D. or Creative Fund as described in Section VIII.C., Franchisee shall spend, annually throughout the term of this Agreement, not less than two percent (2%) of the Gross Sales of the Restaurant on advertising for the Restaurant in its Area of Primary Responsibility ("Local Advertising"). Franchisee shall submit to Franchisor annually an advertising expenditure report accurately reflecting such

expenditures for the preceding period on or before the 1st day of February following the end of each calendar year, provided that such day is a business day. If that day is not a business day, then such report shall be due on the next business day. In addition to the restrictions set forth below, costs and expenditures incurred by Franchisee in connection with any of the following shall not be included in Franchisee's expenditures on Local Advertising for purposes of this Section, unless approved in advance by Franchisor in writing:

- (1) Incentive programs for employees or agents of Franchisee; including the cost of honoring any coupons distributed in connection with such programs;
- (2) Research expenditures;
- (3) Food costs incurred in any promotion;
- (4) Salaries and expenses of any employees of Franchisee, including salaries or expenses for attendance at advertising meetings or activities;
- (5) Charitable, political or other contributions or donations;
- (6) In-store materials consisting of fixtures or equipment; and
- (7) Seminar and educational costs and expenses of employees of Franchisee.

C. Franchisor reserves the right to establish and administer a creative fund for the purpose of advertising the System on a regional or national basis (the "Creative Fund"). Franchisee agrees to contribute one percent (1%) of the Gross Sales of the Restaurant for each week to the Creative Fund, such fee to be paid to Franchisor by EFT on or before the Wednesday following each Accounting Period, provided that such day is a business day. If that date is not a business day, then payment shall be due on the next business day. Franchisor may in its sole discretion require Franchisee to allocate to the Creative Fund, all or any portion of Franchisee's required contributions to a Cooperative as described in Section VIII.D. or expenditures for Local Advertising as described in Section VIII.B. Franchisor shall, however, have the right, upon thirty (30) days written notice to Franchisee, to increase the amount of the Creative Fund contribution to two percent (2%). In reviewing and modifying the advertising fee, Franchisor shall consider the level of advertising expenditures by Restaurants operated by Franchisor and by competitors of the System, media costs, available marketing resources, population changes, changes in market conditions, the degree of market penetration of the System, and such other factors as Franchisor deems relevant to the operation of the Creative Fund. Franchisee shall be provided with thirty (30) days' prior written notice of any such change in the advertising fee. Each such Creative Fund contribution shall be accompanied by an advertising report itemizing the Gross Sales for the preceding Accounting Period. Notwithstanding the foregoing, Franchisee shall provide Franchisor with such information on the Monday of each week following the Accounting Period (or next business day if the Monday is not a business day) by modem or, if not reasonably available, by facsimile transmission, or such other method specified by Franchisor.

Franchisee agrees that the Creative Fund shall be maintained and administered by Franchisor or its designee as follows:

- (1) Franchisor shall have sole discretion to approve or disapprove the creative concepts, materials and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the Creative Fund is intended to maximize general public



recognition and acceptance of the Marks and enhance the collective success of all Restaurants operating under the System. Franchisor shall, with respect to Restaurants operated by Franchisor, contribute to the Creative Fund generally on the same basis as Franchisee. In administering the Creative Fund, Franchisor and its designees undertake no obligation to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.

(2) Franchisee agrees that the Creative Fund may be used to satisfy any and all costs of maintaining, administering, and preparing advertising (including, without limitation, the cost of preparing and conducting television, radio, magazine and newspaper advertising campaigns; internet marketing direct mail and outdoor billboard advertising; internet marketing; public relations activities; employing advertising agencies to assist therein; and costs of Franchisor's personnel and other departmental costs for advertising that is internally administered or prepared by Franchisor). All sums paid by Franchisee to the Creative Fund shall be maintained in a separate account by Franchisor and may be used to defray any of Franchisor's general operating expenses, if any, as Franchisor may incur in activities reasonably related to the administration of the Creative Fund and advertising programs for franchisees and the System. The Creative Fund and its earnings shall not otherwise inure to the benefit of Franchisor. The Creative Fund is operated solely as a conduit for collecting and expending the advertising fees as outlined above.

(3) A statement of the operations of the Creative Fund shall be prepared annually by Franchisor and shall be made available to Franchisee upon request.

(4) Although the Creative Fund is intended to be of perpetual duration, Franchisor may terminate the Creative Fund. The Creative Fund shall not be terminated, however, until all monies in the Creative Fund have been expended for development and creativity purposes or returned to contributing franchised businesses or those operated by Franchisor, without interest, on the basis of their respective contributions.

D. Franchisee agrees that Franchisor shall have the right, in its reasonable discretion, to designate any geographic area, which shall be defined as the area within the same local advertising media market where the Restaurant is located, in which two (2) or more Restaurants are located as a region for purposes of establishing an advertising cooperative ("Cooperative"). The members of the Cooperative for any area shall, at a minimum, consist of all Restaurants. Each Cooperative shall be organized and governed in a form and manner, and shall commence operation on a date, determined in advance by Franchisor in its sole discretion. Each Cooperative shall be organized for the exclusive purposes of administering advertising programs and developing, subject to Franchisor's approval pursuant to Section VIII.H., promotional materials for use by the members in Local Advertising. If at the time of the execution of this Agreement a Cooperative has been established for a geographic area that encompasses the Restaurant, or if any such Cooperative is established during the term of this Agreement, Franchisee shall execute such documents as are required by Franchisor immediately upon the request of Franchisor and shall become a member of the Cooperative pursuant to the terms of those documents. Franchisee shall participate in the Cooperative as follows:

(1) Subject to any allocation of Franchisee's contribution to a Cooperative to the Creative Fund as described in Section VIII.C., Franchisee shall contribute to the Cooperative such amounts required by the documents governing the Cooperative; provided, however, Franchisee will not be required to contribute more than one percent (1%) of Franchisee's Gross Sales during each Accounting Period to the Cooperative unless, subject to Franchisor's approval, the members of the Cooperative agree to the payment of a larger fee. Notwithstanding the above, the payment of any such

Cooperative fee shall be applied toward satisfaction of the Franchisee's Local Advertising requirement set forth in Section VIII.B.;

(2) Franchisee shall submit to the Cooperative and to Franchisor such statements and reports as may be required by Franchisor or by the Cooperative. All contributions to the Cooperative shall be maintained and administered in accordance with the documents governing the Cooperative. The Cooperative shall be operated solely as a conduit for the collection and expenditure of the Cooperative fees for the purposes outlined above; and

(3) No advertising or promotional plans or materials may be used by the Cooperative or furnished to its members without the prior approval of Franchisor. All such plans and materials shall be submitted to Franchisor in accordance with the procedure set forth in Section VIII.H.

E. Regardless of whether Franchisor establishes a Creative Fund under Section VIII.C. applicable to the Restaurant, or a Cooperative is established under Section VIII.D. applicable to the Restaurant, the total required advertising contributions or payments by Franchisee under this Section VIII (i) to such a Creative Fund, (ii) to such a Cooperative, and (iii) for Local Advertising, shall never exceed four percent (4%) of Franchisee's Gross Sales.

F. Franchisee shall also pay its pro rata share of the cost of a Yellow Pages trademark or other business listings to be placed by Franchisor on behalf of all Hanakai Restaurants in the Restaurant's local market area. If Franchisee operates the only Restaurant under the System in the local market area, Franchisee shall be responsible for full payment of any Yellow Pages trademark advertising or other business listing, unless Franchisor determines, in its sole discretion, that placement of a Yellow Pages trademark listing or other business listings for such local market area is not economically justified. Any amount paid by Franchisee for such Yellow Pages trademark or other business listings may be applied by Franchisee toward satisfaction of its Local Advertising requirement.

G. All advertising and promotion by Franchisee in any medium shall be conducted in a professional manner and shall conform to the standards and requirements of Franchisor as set forth in the Manuals or otherwise. Franchisee shall obtain Franchisor's approval of all advertising and promotional plans and materials prior to use if such plans and materials have not been prepared by Franchisor or previously approved by Franchisor during the twelve (12) months prior to their proposed use. Franchisee shall submit such unapproved plans and materials to Franchisor, and Franchisor shall approve or disapprove such plans and materials within fifteen (15) business days of Franchisor's receipt thereof. Franchisee shall not use such unapproved plans or materials until they have been approved by Franchisor, and shall promptly discontinue use of any advertising or promotional plans or materials, whether or not previously approved, upon notice from Franchisor. Franchisee shall not advertise or use the Franchisor's Marks in any fashion on the Internet, World Wide Web or via other means of advertising through telecommunication without the express written consent of Franchisor.

H. With respect to the offer and sale of all menu and beverage items, Franchisor may from time to time offer guidance with respect to the selling price for such goods, products and services. Except with respect to maximum prices set forth below, Franchisee is in no way bound to adhere to any such recommended or suggested price. Franchisee shall have the right to sell its products and provide services at any price that Franchisee may determine, except that Franchisor reserves the right to establish maximum prices for any given product or service nationwide or within an advertising market (as determined by Franchisor). Franchisee shall not exceed any maximum price established by Franchisor, but at all times remains free to charge any price below the maximum established by Franchisor. Franchisee shall execute any instruments or other writings required by Franchisor to facilitate the

provision of such products and services. If Franchisee elects to sell any or all its products or merchandise at any price recommended by Franchisor, Franchisee acknowledges that Franchisor has made no guarantee or warranty that offering such products or merchandise at the recommended price will enhance Franchisee's sales or profits.

I. In addition to the ongoing advertising contributions set forth herein, Franchisee shall be required to spend Seven Thousand Five Hundred Dollars (\$7,500) on a grand opening advertising campaign to advertise the opening of the Restaurant. The grand opening advertising campaign shall be conducted in the sixty (60) day period comprising the thirty (30) days prior to and thirty (30) days following the Restaurant's opening. All advertisements proposed to be used in the grand opening advertising campaign are subject to Franchisor's review and approval in the manner set forth in this Section VIII.

J. In the event that any volume discounts, rebates, allowances, or other similar discounts are received by the Franchisor from any manufacturer or other supplier designated by the Franchisor on account of purchases made by the Franchisor for its account or for the account of the Franchisee, or by the Franchisee directly for his/her own account, the Franchisor shall have the option of remitting same to the Fund or retain the full amount of the said volume discounts, rebates, allowances, or other similar discounts.

#### **ARTICLE IX** **MARKS**

A. Franchisor grants Franchisee the right to use the Marks during the term of this Agreement in accordance with the System and related standards and specifications.

B. Franchisee expressly understands and acknowledges that:

(1) As between Franchisor and Franchisee, Franchisor is the licensee of the owner of all right, title and interest in and to the Marks and the goodwill associated with and symbolized by them.

(2) Neither Franchisee nor any Controlling Principal shall take any action that would prejudice or interfere with the validity of Franchisor's rights with respect to the Marks. Nothing in this Agreement shall give the Franchisee any right, title, or interest in or to any of the Marks or any service marks, trademarks, trade names, trade dress, logos, copyrights or proprietary materials, except the right to use the Marks and the System in accordance with the terms and conditions of this Agreement for the operation of the Restaurant and only at or from its accepted location or in approved advertising related to the Restaurant.

Franchisee understands and agrees that the limited license to use the Marks granted hereby applies only to such Marks as are designated by Franchisor, and which are not subsequently designated by Franchisor as being withdrawn from use, together with those which may hereafter be designated by Franchisor in writing. Franchisee expressly understands and agrees that it is bound not to represent in any manner that it has acquired any ownership or equitable rights in any of the Marks by virtue of the limited license granted hereunder, or by virtue of Franchisee's use of any of the Marks.

(3) Franchisee understands and agrees that any and all goodwill arising from Franchisee's use of the Marks and the System shall inure solely and exclusively to Franchisor's benefit,

and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the Marks.

(4) Franchisee shall not contest the validity of or Franchisor's interest in the Marks or assist others to contest the validity of or Franchisor's interest in the Marks.

(5) Franchisee acknowledges that any unauthorized use of the Marks shall constitute an infringement of Franchisor's rights in the Marks and a material event of default hereunder. Franchisee agrees that it shall provide Franchisor with all assignments, affidavits, documents, information and assistance Franchisor reasonably requests to fully vest in Franchisor all such rights, title and interest in and to the Marks, including all such items as are reasonably requested by Franchisor to register, maintain and enforce such rights in the Marks.

(6) If it becomes advisable at any time, in the discretion of Franchisor, to modify or discontinue use of any Mark and/or to adopt or use one or more additional or substitute proprietary marks, then Franchisee shall be obligated to comply with any such instruction by Franchisor. Franchisor shall have no obligation in such event to reimburse Franchisee for its documented expenses of compliance. Franchisee waives any other claim arising from or relating to any Mark change, modification or substitution. Franchisor will not be liable to Franchisee for any expenses, losses or damages sustained by Franchisee as a result of any Mark addition, modification, substitution or discontinuation. Franchisee covenants not to commence or join in any litigation or other proceeding against Franchisor for any of these expenses, losses or damages.

C. With respect to Franchisee's franchised use of the Marks pursuant to this Agreement, Franchisee further agrees that:

(1) Unless otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Restaurant only under the name "Hanakai" without prefix or suffix. Franchisee shall not use the Marks as part of its corporate or other legal name, and shall obtain the Franchisor's approval of such corporate or other legal name prior to filing it with the applicable state authority.

(2) During the term of this Agreement and any renewal hereof, Franchisee shall identify itself as the owner of the Restaurant in conjunction with any use of the Marks, including, but not limited to, uses on invoices, order forms, receipts and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Restaurant or any catering or delivery vehicle as Franchisor may designate in writing.

(3) Franchisee shall not use the Marks to incur any obligation or indebtedness on behalf of Franchisor;

(4) Franchisee shall comply with Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name registrations, and shall execute any documents deemed necessary by Franchisor or its counsel to obtain protection of the Marks or to maintain their continued validity and enforceability.

D. Franchisee shall notify Franchisor immediately by telephone and thereafter in writing of any apparent infringement of or challenge to Franchisee's use of any Mark, of any claim by any person of any rights in any Mark, and Franchisee and the Controlling Principals shall not communicate with any person other than Franchisor, its counsel and Franchisee's counsel in connection with any such infringement, challenge or claim. Franchisor shall have complete discretion to take such action as it

deems appropriate in connection with the foregoing, and the right to control exclusively, any settlement, litigation or Patent and Trademark Office or other proceeding arising out of any such alleged infringement, challenge or claim or otherwise relating to any Mark. Franchisee agrees to execute any and all instruments and documents, render such assistance, and do such acts or things as may, in the opinion of Franchisor, reasonably be necessary or advisable to protect and maintain the interests of Franchisor in any litigation or other proceeding or to otherwise protect and maintain the interests of Franchisor or any other interested party in the Marks. Franchisor will indemnify Franchisee and hold it harmless from and against any and all claims, liabilities, costs, damages and reasonable expenses for which Franchisee is held liable in any proceeding arising out of Franchisee's use of any of the Marks (including settlement amounts), provided that the conduct of Franchisee and the Controlling Principals with respect to such proceeding and use of the Marks is in full compliance with the terms of this Agreement.

E. The right and license of the Marks granted hereunder to Franchisee is non-exclusive and Franchisor thus has and retains the following rights, among others, subject only to the limitations of Section I.:

(1) To grant other licenses for use of the Marks, in addition to those licenses already granted to existing franchisees;

(2) To develop and establish other systems using the Marks or other names or marks and to grant licenses thereto without providing any rights to Franchisee; and

(3) To engage, directly or indirectly, through its employees, representatives, licensees, assigns, agents and others, at wholesale, retail or otherwise, in (a) the production, distribution, license and sale of products and services, and (b) the use in connection with such production, distribution and sale, of the Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs and other identifying characteristics as may be developed or used from time to time by Franchisor.

## **ARTICLE X**

### **CONFIDENTIALITY AND NON-COMPETITION COVENANTS**

A. (1) To protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Marks, Franchisee shall conduct its business in accordance with the Manuals, other written directives which Franchisor may issue to Franchisee from time to time whether or not such directives are included in the Manuals, and any other manuals and materials created or approved for use in the operation of the franchised business.

(2) Franchisee and the Controlling Principals shall at all times treat the Manuals, any written directives of Franchisor, the Videos, and any other manuals and materials, and the information contained therein as confidential and shall maintain such information as trade secret and confidential in accordance with this Section X. Franchisee and the Controlling Principals shall divulge and make such materials available only to such of Franchisee's employees as must have access to it in order to operate the Restaurant. Franchisee and the Controlling Principals shall not at any time copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or otherwise make the same available to any person other than those authorized above.

(3) The Manuals, written directives, Videos, other manuals and materials and any other confidential communications provided or approved by Franchisor shall at all times remain the sole

property of Franchisor, shall at all times be kept in a secure place on the Restaurant premises, and shall be returned to Franchisor immediately upon request or upon termination or expiration of this Agreement.

(4) The Manuals, any written directives, and any other manuals and materials issued by Franchisor and any modifications to such materials shall supplement and be deemed part of this Agreement.

(5) Franchisor may from time to time revise the contents of the Manuals and the contents of any Videos and other manuals and materials created or approved for use in the operation of the Franchised Business. Franchisee shall remove and return to Franchisor all pages of the Manual that have been replaced or updated by Franchisor. Franchisee shall return to Franchisor all Videos that are replaced with updated copies. Franchisee expressly agrees to comply with each new or changed standard.

(6) Franchisee shall at all times ensure that the Manuals are kept current and up to date. In the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's corporate office shall control.

(7) Franchisor will charge a replacement fee of Five Hundred Dollars (\$500) for any replacement Manual or Video requested by Franchisee.

B. (1) Neither Franchisee nor any Controlling Principal shall, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person, persons, partnership, association or corporation and, following the expiration or termination of this Agreement, they shall not use for their own benefit any confidential information, knowledge or know-how concerning the methods of operation of the Franchised Business which may be communicated to them or of which they may be apprised in connection with the operation of the Restaurant under the terms of this Agreement. Franchisee and the Controlling Principals shall divulge such confidential information only to such of Franchisee's employees as must have access to it in order to operate the Restaurant. Any and all information, knowledge, know-how, techniques and any materials used in or related to the System which Franchisor provides to Franchisee in connection with this Agreement shall be deemed confidential for purposes of this Agreement. Neither Franchisee nor the Controlling Principals shall at any time, without Franchisor's prior written consent, copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenant in this Section shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be perpetually binding upon Franchisee and each of the Controlling Principals.

(2) Franchisee shall require and obtain the execution of covenants similar to those set forth in Section X.B.(1) from its General Manager and all other personnel of Franchisee who have received or will have access to confidential information. Such covenants shall be substantially in the form set forth in Attachment D. All of Franchisee's Principals not required to sign this Agreement as a Controlling Principal also must execute such covenants.

(3) If Franchisee or the Controlling Principals develop any new concept, process product, recipe, or improvement in the operation or promotion of the Restaurant, Franchisee is required to promptly notify Franchisor and provide Franchisor with all necessary related information, without compensation. Franchisee and the Controlling Principals acknowledge that any such concept, process product, recipe, or improvement will become the property of Franchisor, and Franchisor may use or disclose such information to other franchisees or developers as it determines to be appropriate.

C. (1) Franchisee and the Controlling Principals specifically acknowledge that, pursuant to this Agreement, Franchisee and the Controlling Principals will receive valuable training, trade secrets and confidential information, including, without limitation, information regarding the operational, sales, promotional and marketing methods and techniques of Franchisor and the System which are beyond the present skills and experience of Franchisee and the Controlling Principals and Franchisee's managers and employees. Franchisee and the Controlling Principals acknowledge that such specialized training, trade secrets and confidential information provide a competitive advantage and will be valuable to them in the development and operation of the Restaurant, and that gaining access to such specialized training, trade secrets and confidential information is, therefore, a primary reason why they are entering into this Agreement. In consideration for such specialized training, trade secrets, confidential information and rights, Franchisee and the Controlling Principals covenant that with respect to Franchisee, during the term of this Agreement (or with respect to each of the Controlling Principals, during the term of this Agreement for so long as such individual or entity satisfies the definition of "Controlling Principals" as described in Section XIX.R. of this Agreement), except as otherwise approved in writing by Franchisor, neither Franchisee nor any of the Controlling Principals shall, either directly or indirectly, for themselves or through, on behalf of or in conjunction with any person(s), partnership or corporation:

(a) 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 the System.

(b) Own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to, any business located within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which Franchisor has used, sought registration of or registered the same or similar Marks or operates or licenses others to operate a business under the same or similar Marks, which business is of a character and concept similar to the Restaurant, including a restaurant which offers and sells Japanese cuisine.

(2) With respect to Franchisee, and for a continuous uninterrupted period commencing upon the expiration, termination of, or transfer of all of Franchisee's interest in, this Agreement (or, with respect to each of the Controlling Principals, commencing upon the earlier of: (i) the expiration, termination of, or transfer of all of Franchisee's interest in, this Agreement or (ii) the time such individual or entity ceases to satisfy the definition of "Controlling Principals" as described in Section XIX.R. of this Agreement) and continuing for two (2) years thereafter, except as otherwise approved in writing by Franchisor, neither Franchisee, nor any of the Controlling Principals shall, directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, persons, partnership, or corporation:

(a) Divert, or attempt to divert, any business or customer of the franchised business hereunder 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 the System.

(b) Employ, or seek to employ, any person who is at that time or was within the preceding ninety (90) days employed by Franchisor, or by any other franchisee or developer of Franchisor, or otherwise directly or indirectly induce such person to leave that person's employment,

except as may be permitted under any existing development agreement or franchise agreement between Franchisor and Franchisee.

(c) Own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to any business that is of a character and concept similar to the Restaurant, including a restaurant which offers and sells Japanese cuisine, which business is, or is intended to be, located within the PAR or within a twenty-five (25) mile radius of the location of any Sushi Go! Restaurant or food service facility in existence or under construction at any given time during such period.

(3) The parties acknowledge and agree that each of the covenants contained herein are reasonable limitations as to time, geographical area, and scope of activity to be restrained and do not impose a greater restraint than is necessary to protect the goodwill or other business interests of Franchisor. The parties agree that each of the covenants herein shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee and the Controlling Principals expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section.

(a) Franchisee and the Controlling Principals understand and acknowledge that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Section X.C. in this Agreement, or any portion thereof, without their consent, effective immediately upon notice to Franchisee; and Franchisee and the Controlling Principals agree that they shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section XIX.B. hereof.

(b) Franchisee and the Controlling Principals expressly agree that the existence of any claims they 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.

(c) Section X.C.(1)(b) and (2)(c) shall not apply to ownership of less than a five percent (5%) beneficial interest in the outstanding equity securities of any publicly held corporation.

(4) Franchisee shall require and obtain execution of covenants similar to those set forth in this Section X.C. (including covenants applicable upon the termination of a person's employment with Franchisee) from its General Manager and all other personnel of Franchisee who have received or will have access to training from Franchisor. Such covenants shall be substantially in the form set forth in Attachment D. All of Franchisee's Principals not required to sign this Agreement as a Controlling Principal also must execute such covenants. Notwithstanding the foregoing, Franchisor reserves the right, in its sole discretion, to decrease the period of time or geographic scope of the non-competition covenant set forth in Attachment D or eliminate such non-competition covenant altogether for any party that is required to execute such agreement under this Section X.C(4).

D. Franchisee and the Controlling Principals acknowledge that any failure to comply with the requirements of this Section shall constitute a material event of default under Section XVII hereof. Franchisee and the Controlling Principals acknowledge that a violation of the terms of this Section would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and



Franchisee and the Controlling Principals accordingly consent to the issuance of an injunction prohibiting any conduct by Franchisee or the Controlling Principals in violation of the terms of this Section. Franchisee and the Controlling Principals agree to pay all court costs and reasonable attorneys' fees incurred by Franchisor in connection with the enforcement of this Section, including payment of all costs and expenses for obtaining specific performance of, or an injunction against violation of, the requirements of such Section.

## **ARTICLE XI** **BOOKS AND RECORDS**

A. Franchisee shall maintain during the term of this Agreement, and shall preserve for at least five (5) years from the dates of their preparation, full, complete and accurate books, records and accounts, including, but not limited to, sales slips, coupons, purchase orders, payroll records, check stubs, bank statements, sales tax records and returns, cash receipts and disbursements, journals and ledgers, records of EFT transactions, and backup or archived records of information maintained on any computer system in accordance with generally accepted accounting principles and in the form and manner prescribed by Franchisor from time to time in the Manual or otherwise in writing.

B. In addition to the remittance reports required by Sections IV. and VIII. hereof, Franchisee shall comply with the following reporting obligations:

(1) Franchisee shall, at Franchisee's expense, submit to Franchisor, in the form prescribed by Franchisor, profit and loss statement for each of the thirteen (13) four (4) week accounting periods designated by Franchisor (the "Statement Period") (which may be unaudited) for Franchisee within fifteen (15) days after the end of each Statement Period during the term hereof. Each such statement shall be signed by Franchisee's treasurer or chief financial officer or comparable officer attesting that it is true, complete and correct;

(2) Franchisee shall, at its expense, provide to Franchisor a complete annual financial statement (which may be unaudited) for Franchisee prepared by an independent certified public accountant satisfactory to Franchisor, within ninety (90) days after the end of each fiscal year of Franchisee during the term hereof, showing the results of operations of Franchisee during such fiscal year; Franchisor reserves the right to require the financial statements described above to be audited by an independent Certified Public Accountant satisfactory to Franchisor at Franchisee's cost and expense if an inspection discloses an understatement of two percent (2%) or more in any report, pursuant to Section XI.C.; and

(3) Franchisee shall also submit to Franchisor, for review or auditing, such other forms, reports, records, information and data as Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, upon request and as specified from time to time in writing.

C. Franchisor or its designees shall have the right, during normal business hours, to review, audit, examine and copy any or all of the books and records of Franchisee as Franchisor may require at the Restaurant. Franchisee shall make such books and records available to Franchisor or its designees immediately upon request. If any required royalty payments to Franchisor are delinquent, or if an inspection should reveal that such payments have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount overdue or understated upon demand with interest determined in accordance with the provisions of Section IV.B.(4). If an inspection discloses an understatement in any report of two percent (2%) or more, Franchisee shall, in addition, reimburse

Franchisor for all costs and expenses connected with the inspection (including, without limitation, reasonable accounting and attorneys' fees). These remedies shall be in addition to any other remedies Franchisor may have at law or in equity.

D. Franchisee understands and agrees that the receipt or acceptance by Franchisor of any of the statements furnished or royalties paid to Franchisor (or the cashing of any royalty checks or processing of any electronic fund transfers) shall not preclude Franchisor from questioning the correctness thereof at any time and, in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified by the Franchisee and the appropriate payment shall be made by the Franchisee.

E. Franchisee hereby authorizes (and agrees to execute any other documents deemed necessary to effect such authorization) all banks, financial institutions, businesses, suppliers, manufacturers, contractors, vendors and other persons or entities with which Franchisee does business to disclose to Franchisor any requested financial information in their possession relating to Franchisee or the Restaurant. Franchisee authorizes Franchisor to disclose data from Franchisee's reports, if Franchisor determines, in its sole discretion, that such disclosure is necessary or advisable, which disclosure may include disclosure to prospective or existing franchisees or other third parties.

F. Notwithstanding any forms and documents which may have been executed by Franchisee under Section VII.J., Franchisee hereby appoints Franchisor its true and lawful attorney-in-fact with full power and authority, for the sole purpose of obtaining any and all returns and reports filed by Franchisee with any state and/or federal taxing authority pertaining to the Franchised Business. This power of attorney shall survive the expiration or termination of this Agreement.

## **ARTICLE XII** **INSURANCE**

A. (1) Franchisee shall procure, upon execution of this Agreement, and shall maintain in full force and effect at all times during the term of this Agreement at Franchisee's expense, an insurance policy or policies protecting Franchisee and Franchisor, successors and assigns, and the officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of the Franchisor against any demand or claim with respect to personal injury, death or property damage, or any loss, liability or expense whatsoever arising or occurring upon or in connection with the Restaurant.

(2) Such policy or policies shall be written by a responsible carrier or carriers reasonably acceptable to Franchisor and shall include, at a minimum (except as additional coverages and higher policy limits may reasonably be specified by Franchisor from time to time), in accordance with standards and specifications set forth in writing, the following:

(a) Comprehensive General Liability Insurance, including broad form contractual liability, broad form property damage, personal injury, advertising injury, dram shop liability, completed operations, products liability and fire damage coverage, in the amount of Two Million Dollars (\$2,000,000) combined single limit.

(b) "All Risks" coverage for the full cost of replacement of the Restaurant premises and all other property in which Franchisor may have an interest with no coinsurance clause for the premises.

(c) Crime insurance for employee dishonesty in the amount of Ten Thousand Dollars (\$10,000) combined single limit.

(d) Automobile liability coverage, including coverage of owned, non-owned and hired vehicles, with coverage in amounts not less than Two Million Dollars (\$2,000,000) combined single limit.

(e) Worker's compensation insurance in amounts provided by applicable law or, if permissible under applicable law, a legally appropriate alternative providing substantially similar compensation for injured workers satisfactory to Franchisor, provided that Franchisee (i) maintains an excess indemnity or "umbrella" policy covering employer's liability and/or a medical/disability policy covering medical expenses for on-the-job accidents, which policy or policies shall contain such coverage amounts as Franchisee and Franchisor shall mutually agree upon and (ii) conducts and maintains a risk management and safety program for its employees as the Franchisee and Franchisor shall mutually agree is appropriate. Such policies shall also include a waiver of subrogation in favor of Franchisor its officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees.

(f) Such other insurance as may be required by the state or locality in which the Restaurant is located and operated.

(g) Franchisee may, with the prior written consent of Franchisor, elect to have reasonable deductibles in connection with the coverage required under Sections XII.A(2)(a)-(g) hereof. Such policies shall also include a waiver of subrogation in favor of Franchisor, and the respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them.

(3) In connection with any construction, renovation, refurbishment or remodeling of the Restaurant, Franchisee shall maintain Builder's Risks/installation insurance in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to Franchisor.

(4) Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section XV. of this Agreement.

(5) All general liability and property damage policies shall contain a provision that Franchisor its officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees, although named as insureds, shall nevertheless be entitled to recover under such policies on any loss occasioned to Franchisor or its servants, agents or employees by reason of the negligence of Franchisee or its servants, agents or employees.

(6) Upon execution of this Agreement, and thereafter in accordance with Section IV hereof and thirty (30) days prior to the expiration of any such policy, Franchisee shall deliver to Franchisor Certificates of Insurance evidencing the existence and continuation of proper coverage with limits not less than those required hereunder. In addition, if requested by Franchisor, Franchisee shall deliver to Franchisor a copy of the insurance policy or policies required hereunder. All insurance policies required hereunder, with the exception of workers' compensation, shall name Franchisor, and the officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, as additional insureds, and shall expressly provide that any interest of same