

**ZEROREZ FRANCHISING SYSTEMS, INC.**

**FRANCHISE AGREEMENT**

NAME OF FRANCHISEE: \_\_\_\_\_

FRANCHISE NUMBER: \_\_\_\_\_

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SCHEDULES

SCHEDULE A  
SCHEDULE B

**ZEROREZ FRANCHISING SYSTEMS, INC.**

**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT between ZEROREZ Franchising Systems, Inc. (hereinafter referred to interchangeably as "Franchisor", "the Company", "ZEROREZ", "us" or "we"), a Nevada corporation, with its principal place of business located at 1464 West 40 South, Suite 100, Lindon, Utah 84042, and \_\_\_\_\_ ("Franchisee" or "you"), a(n) \_\_\_\_\_ Corporation, whose principal address is \_\_\_\_\_, made and entered into effective the \_\_\_ day of \_\_\_\_\_, of the year \_\_\_\_\_.

**RECITALS**

- A. The Company has expended considerable time, effort and money in developing a distinctive business format and methodology for the operation of a floor and fabric care business that utilizes the Marks (as defined below) and the Company's methods of operation and management, standards, specifications, confidential information, procedures, record keeping techniques, materials and Confidential Operations Manual (hereinafter referred to as the "System"); all of which is subject to change, improvement, and further development from time to time.
- B. The Company owns the entire right, title and interest, together with all the goodwill connected therewith, in various trademarks and service marks, including the name and symbol ZEROREZ, which are used by us in identifying, promoting, advertising, and marketing various floor and fabric care services (hereinafter referred to as the "Marks").
- C. You have read this Agreement and the Company's "Offering Circular for Prospective Franchisees" and understand the importance that these terms and conditions have in maintaining the System's high standards of quality and service protecting the Company's rights in the Marks and the goodwill associated with the Marks. You acknowledge that you have independently investigated the risks of operating a business based upon the System, including current and potential market conditions, competitive factors and risks, and have made an independent evaluation of all material facts surrounding the operation of a floor and fabric care business utilizing the System and Marks. You acknowledge that you have been granted a license to operate a Franchised Business (as defined below) and to use the System because of your commitment to abide by the procedures, policies, rules and regulations associated with a ZEROREZ franchise and to conform your Franchised Business to the System.
- D. You understand that the fundamental feature of a franchise system is a consistent method of operation at all franchises within the franchise system. You understand that as a franchisor, the Company has the right to evaluate the ZEROREZ concept and to adapt it to changing business conditions, industry changes, and changes necessary to meet the demands of customers. The Company intends to develop and test new services for sale, marketing programs and operating procedures to enhance the consistency of operation and customer service at the ZEROREZ franchise you operate. During the term of this Agreement, the Company expects changes to occur in the System. As a franchisee, you are bound to operate your franchise in accordance with the System as it changes from time to time.
- E. The parties intend for this Agreement to be implemented in a fair and reasonable manner and that all of its provisions be interpreted accordingly and consistently applied in a commercially reasonable manner designed to increase the quality and profitability of the products and services offered.

## 1. GRANT AND TERM

### 1.1 Grant of License

- (a) Subject to all the terms and conditions of this Agreement, the Company hereby grants to you an exclusive right to conduct and operate a ZEROREZ business utilizing the System, Marks, and the Company's distinctive methods of operation (the "Franchised Business") within, and only within, the area (the "Operating Territory") described in Schedule A attached hereto. The Operating Territory is defined to be a geographic area consisting of one or more contiguous or nearly contiguous zip codes containing a population base of up to approximately 300,000 people. Depending on population densities and other factors, there may be more than one Operating Territory within any particular market, geographic region or location, each of which may be owned by a different ZEROREZ franchisee. You have the exclusive rights to conduct the Franchised Business within the Operating Territory. You also have a non-exclusive right to offer ZEROREZ products and services outside your Operating Territory in any location that is within the same market area as your Operating Territory but that is not within the exclusive Operating Territory of any other present or future franchisee. You acknowledge that the Company may, in the future, after first offering the existing franchisee the opportunity to acquire, grant to another franchisee an exclusive license to territory that is outside your exclusive Operating Territory but that is within the market area in which your exclusive Operating Territory is located, and that in such event you will be required to cease doing business in that newly created exclusive Operating Territory belonging to another franchisee. You acknowledge that the cleaning fluid technology that is part of the System belongs to Electric Aquagenics Unlimited, Inc. ("EAU"), a Delaware corporation that is affiliated with the Company, and that your rights to use the fluid technology are derived from EAU pursuant to an exclusive license agreement between EAU and the Company. Pursuant to the license agreement between EAU and the Company, certain proprietary technology relating to the cleaning fluid will be held in escrow so that it will be available to you and other franchisees in the event EAU becomes insolvent, bankrupt or ceases doing business.
- (b) Provided that you have met your business development quotas as set forth in Schedule A hereto, and provided that you have not defaulted in any of the terms of this Agreement and that you are current on all payments and other obligations to ZEROREZ, you may purchase additional territory contiguous to your exclusive Operating Territory, or within the same unified market as your exclusive Operating Territory. Such newly purchased territory will be identified by zip codes. Any such additional territory you purchase will be added to your exclusive Operating Territory. You may exercise your right to purchase such additional territory by notifying the Company in writing of your intention to purchase such territory within thirty (30) days after the date that the Company notifies you of its intent to offer or sell any such new territory to a new franchisee; provided that such purchase must be completed within thirty (30) days after the date you provide such written notice to the Company. The purchase price to existing franchisees for new territory will be equal to the then current initial franchise fee charged to new franchises multiplied by a fraction, the numerator of which is the population of the new territory according to the latest available census numbers and the denominator of which is 300,000. By way of example, if a franchisee exercises its right to purchase new territory with a population of 100,000, and if the Company's initial franchise fee is then \$25,000, the purchase price, or franchise fee, for such new territory will be \$8,333.33 ( $\$25,000 \times (100,000/300,000)$ ). Partial zip codes will not be sold. In the event two or more franchisees desire to purchase the same additional territory within a unified market, the priority of the competing rights will be determined by the dates on which each franchisee commenced business operations within the unified market, with the first franchisee in a given unified market receiving the first right to purchase the territory, the second franchisee in the unified market receiving the second right to purchase the territory, and so forth. You will not be allowed to purchase additional territory that is not contiguous to your exclusive operating territory or within the same unified market as your exclusive operating territory without our prior approval.

## **1.2 Term**

The term of this Agreement will be ten (10) years from the date the Company accepts this Agreement and will expire on the date set forth in Schedule A attached hereto ("the Term"). You may, at your option and without payment of a fee, renew this Agreement for additional terms of 10 years each subject to meeting all of the following conditions prior to such renewal:

You must give us written notice of your intent to renew not less than 6 months or more than 12 months prior to the expiration of the then current term, provided, however, that the Company will not terminate this Agreement at the end of the then current term until it has given you written notice of its intention to terminate this Agreement at least fifteen (15) days prior to the end of the then current term;

- (a) You must not be in material violation of any provision of this Agreement or any amendment or any other agreement between you and the Company or its affiliates; and you shall have substantially complied with the terms and conditions of such agreements during the then current term;
- (b) You will have satisfied all monetary obligations owed by you to the Company and its affiliates;
- (c) You will execute our then current franchise agreement, provided that such current agreement does not impose materially greater obligations upon you than this Agreement, in which case this Agreement shall remain in effect during the extended term;
- (d) You will comply with the Company's then current qualifications and training requirements; provided such qualifications and training requirements are reasonably required to operate the franchised business and are consistently applied to all franchisees.

## **1.3 Commitment to Develop Operating Territory**

By granting you exclusive rights to the System and the Marks for the Operating Territory, you agree as follows:

- (a) to use commercially reasonable efforts to develop demand for the services offered at your franchised business and to service your customers, all in accordance with the standards and policies established by the Company;
- (b) the Operating Territory is reasonable and sufficient in size and scope to support the Franchised Business;
- (c) you have no rights to the System or Marks outside the Operating Territory without the Company's express written consent, not to be unreasonably withheld.

## **1.4 Reserved Rights**

Notwithstanding the rights granted to you under this Agreement, the license granted under this Agreement is non-exclusive, and the Company and any affiliate retain for themselves the right in their sole reasonable discretion:

- (a) to establish, and grant other franchisees or licensees the right to establish, Franchised Businesses anywhere outside the Operating Territory, subject to your rights to purchase additional territory as outlined in paragraph 1.1 above;
- (b) to market and sell products bearing the Marks which are similar to those offered through the Franchised Business through any and all potential distribution channels including, without limitation, distributors, dealers, retail outlets, and via e-commerce via the Internet or other electronic media, provided that the Company does so in a manner that is intended to benefit the

Company's franchisees;

- (c) to sell products bearing the Marks in retail stores such as supermarkets, floor covering stores, hardware stores or home centers, or other channels of distribution without regard to your exclusive operating territory, provided that we do so in a manner that is intended to benefit our franchisees.
- (d) to promote and/or sell products and services via e-commerce if we determine that such sales will benefit the ZEROREZ System and/or marks.
- (e) to establish or acquire other franchise systems for similar or different products and services using different trademarks or service marks in your exclusive operating territory, or the exclusive operating territory belonging to any other ZEROREZ franchisee.
- (f) to develop, and to market and sell to commercial end users a portable carpet or fabric cleaning system, provided that the Company will pay to you at least ten percent (10%) of the gross sales price received by the Company with respect to the sales of such systems to commercial end users located within your exclusive Operating Territory.

## 2. FEES

### 2.1. Initial Franchise Fee

Upon the completion of your initial training and the opening of your franchised business you will pay to the Company the initial franchise fee specified in Schedule A attached hereto. Except as described in Item 13.3, the initial franchise fee is non-recurring and non-refundable. Subject to our prior written approval, up to one-half of the initial franchise fee may be paid pursuant to the terms of a Promissory Note in the form attached as Exhibit F to the ZEROREZ Uniform Franchise Offering Circular.

### 2.2. Royalty

Beginning on the date (the "Royalty Commencement Date") that is sixty (60) days after the date on which the Primacide cleaning solution generator is installed at your business, you agree to pay the Company a monthly royalty fee equal to the greater of four percent (4%) (the "Percentage") of the Franchised Business's Gross Sales (as defined below) or the minimum monthly royalty fee listed below:

<u>Portion of Term</u>	<u>Minimum Royalty Fee</u>
First ten (10) Months after Royalty Commencement Date	\$400 per Month
Next twelve (12) Months after Royalty Commencement Date	\$670 per Month
Next twenty four (24) Months after Royalty Commencement Date	\$890 per Month
Next twelve (12) Months after Royalty Commencement Date	\$1,330 per Month
Thereafter	\$2,000 per Month

The minimum royalty set forth above is based on franchisee development objectives that have been formulated by the Company. These franchisee development objectives make certain assumptions regarding the rate at which a franchisee is expected to develop its franchised business within its exclusive operating territory. The assumptions used by the Company in formulating the franchise development objectives include the assumption that each truck will generate gross revenue of \$200,000 per year (increasing consistent with increases in the Consumer Price Index), and that a franchisee with a single exclusive operating territory with a population base of up to 300,000 will have one truck in operation during years one and two, an average of 1-1/3 truck in operation during years three and four, two trucks in operation during years five and six, and three trucks in operation beginning in year seven. By signing this Agreement, you specifically acknowledge that the franchisee development objectives are reasonable, and you specifically consent to the minimum royalty amounts

set forth above.

Royalty fees are due and payable to the Company on or before the 15<sup>th</sup> day of each calendar month based upon the Gross Sales during the preceding calendar month. Royalty fees shall begin to accrue on the Royalty Commencement Date. The Company will not increase your royalty fee percentage during any renewal term of this Agreement.

### **2.3. Gross Sales**

"Gross Sales" shall mean the aggregate gross amount of all revenues from whatever source derived (whether in the form of cash, credit, check, agreements to pay, or other consideration including the actual value of any goods or services traded, bartered, or otherwise received by you in exchange for any form of non-monetary consideration, and whether or not payment is received at the time of service) that arise from or are derived by you or by any other person from business conducted or which originated in, on, from, or through the Franchised Business, including any and all activities undertaken by you or any agent, employee, or representative dealing with the business of floor and fabric care, excluding nominal value services offered in trade or bartered, whether such business is conducted in compliance with or in violation of the terms of the Agreement. "Gross Sales" do not include:

- (a) sales tax or other tax receipts, the collection of which is required by law;
- (b) refunds, allowances, adjustments or credits actually made by the Franchised Business; and
- (c) sales or disposal of used equipment under terms of Item 5.3 of this Agreement.

### **2.4 Monthly Statements**

No later than the 15<sup>th</sup> day of each month after commencing operation of the Franchised Business you agree to deliver to the Company a monthly statement itemizing the Gross Sales, number of jobs completed and number of re-cleans during such month, and such other sales information as the Company may reasonably require and in a manner as may be specified from time to time by the Company, signed by you as certification of the accuracy of the information set forth therein. The Company has the right to require such statements to be submitted electronically via manual or automatic submittal from the operations software. In the case of electronic submission of statements, a printed statement is not required with the timely payment of royalties due and payable. Unless the Company requires you to pay royalties by electronic funds transfer, royalties due and payable to the Company shall accompany each monthly statement.

### **2.5 Interest on Overdue Accounts**

You agree to pay interest on any monies due from you to the Company under this Agreement that remain unpaid 30 days after becoming due at the rate of 2% per month, or the maximum allowed by law, whichever is less.

### **2.6 Automatic Transfer**

The Company has the right to require you to pay any and all royalties due under this Agreement by electronic funds transfer, in which case you agree to perform such acts, and sign and deliver such documents as are necessary to implement such a payment program and to make the required funds available for withdrawal on or before the designated payment dates.

### **2.7 Sales Quota**

To ensure that you utilize your commercially reasonable efforts to promote the Franchised Business and grow the demand within the Operating Territory for the services and products you offer, the

Company has the right to set a reasonable sales quota for the Operating Territory. The sales quota, to which the Company and you have mutually agreed if any, is specified in Schedule A. Notwithstanding whether a specific sales quota has been established, you are obligated hereunder, and thus will be in material breach hereof if you fail to achieve Gross Sales equal to that amount of Gross Sales necessary to achieve the minimum monthly royalty payment for any period of six (6) consecutive months or if you fail to achieve the Gross Sales listed as Sales Quotas in Schedule A for two consecutive years.

### **3. COMMENCEMENT OF BUSINESS**

You will not commence business, and you will not be considered to be in full compliance with the terms and conditions of this Agreement, until you and your agents, as designated in the reasonable discretion of the Company (hereinafter referred to as "Designated Franchisee Trainees"), successfully complete the Company's initial training program, as described in Section 4. As time is of the essence, you agree to use your commercially reasonable efforts to cause the Designated Franchisee Trainees to complete the training in a timely manner.

You will establish business premises within the Operating Territory for the Franchised Business, which may be in a residence so long as allowed by local zoning regulations. You agree to commence offering services and products for sale to the public within the Operating Territory as soon as possible after the date of this Agreement, but in any event not later than four (4) months after the completion of the Company's initial training program, unless otherwise agreed in writing by the Company. This Agreement may be terminated for your failure to commence your Franchised Business as required herein. You agree that time is of the essence in the opening of the Franchised Business.

### **4. TRAINING AND OPERATING ASSISTANCE**

#### **4.1 Training**

Prior to the start of your Franchised Business, we will furnish initial training on the operation of a ZEROEZ franchise to one or more Designated Franchisee Trainees. Initial training for up to two Designated Franchisee Trainees will be paid by the Company. The Company reserves the right to charge a fee for the training of additional individuals. The training program shall be comprised of both an in field training and classroom sessions which take place at our headquarters or at a location designated by us. Each Designated Franchisee Trainee is required to complete the entire training program to our satisfaction. If we determine that a Designated Franchisee Trainee is unable to satisfactorily complete the initial training program, you will be allowed to designate an alternate trainee to successfully complete the initial training program. After completing such training, then your Designated Franchisee Trainees will be responsible for training all non-managerial employees you hire to work in your Franchise Business. Such training may be provided by us, at your expense. All new or successor general managers must also complete our initial training program. You will be responsible for the expenses your Designated Franchisee Trainees incur while attending any initial training program including transportation, lodging, meals, and compensation, if any. During the term of this Agreement, we may require the Designated Franchisee Trainees and previously trained Designated Franchisee Trainees to attend additional training courses at your expense either via the Internet or at such locations and times as we may designate. We reserve the right to charge reasonable fees for these new or refresher courses.

#### **4.2 Employees**

You will hire all employees or independent contractors in connection with your Franchised Business, including but not limited to management, clerical, sales, and service personnel, and be exclusively responsible for the terms of their employment and compensation. You will not employ anyone who refuses or fails to satisfactorily complete the training program conducted by you or us. You will not employ or continue to employ anyone who refuses to grant permission for or fails to meet our

standards after a criminal background check conducted by a source or vendor approved by us. All of your employees charged with day-to-day operational management responsibility for the Franchised Business (including, but not limited to, your general managers) must be trained by us pursuant to Item 4.1 hereof. All of your employees must execute a confidentiality agreement substantially in the form attached as Exhibit G to the Uniform Franchise Offering Circular, which requires them to maintain the confidential nature of our trade secrets, confidential and proprietary information, System, and Confidential Operations Manual during the term of their employment and thereafter. You must inform us in writing promptly upon the termination of employment of any management personnel.

#### **4.3 Confidential Operations Manual**

At an appropriate point in the training program, we will loan to you one copy of our Confidential Operations Manual. Any portion of the Confidential Operations Manual containing information necessary for you to complete portions of training prior to your arrival at our headquarters will be provided as needed. For purposes of this Agreement, the "Confidential Operations Manual", which may be one or more separate manuals, also includes alternative or supplemental means of communicating such information by other media, including bulletins, e-mails, videotapes, audio tapes, compact discs, computer diskettes and CD's. You understand that we may, from time to time, change, delete, and/or add to the contents of the Confidential Operations Manual for the purpose of maintaining, improving, modifying, supplementing or enforcing the System. We are required to communicate such changes in electronic format only, with written versions published exclusively at our option. You agree to keep your copy of the Operations Manual current. If there is a dispute relating to the contents of the Operations Manual, the then current version posted on our private Intranet site will be controlling. You will take the necessary steps to ensure the security of the Confidential Operations Manual and keep it free from theft, unauthorized copying, fire or other acts which would jeopardize damage to or disclosure of its contents.

You understand that it is necessary for you to comply strictly with the Confidential Operations Manual since it will regulate one or more of the following areas pertaining to your Franchised Business:

- (a) required or authorized products and services;
- (b) advertising, marketing, sales and promotional programs, and materials and media used in such programs;
- (c) specifications and standards for cleaning supplies, equipment, machinery, chemicals and office supplies, including the specifications for location and plumbing connections required for the installation of the cleaning solution generator;
- (d) terms and conditions of the sale and delivery of services;
- (e) service vehicle specifications;
- (f) staffing requirements;
- (g) hours of operation;
- (h) employee training requirements;
- (i) insurance coverage requirements;
- (j) accounting system requirements, including the format, content and frequency of financial and performance reports to us;
- (k) computer software requirements and specifications;
- (l) designated or approved suppliers; and

- (m) inspections to be performed by us.

The Confidential Operations Manual is the exclusive property of the Company and it is not to be copied by you or your employees or agents, except for forms and similar items included for the express purpose of copying. The Confidential Operations Manual shall not have the effect of changing any provisions of this Agreement or any renewal Agreement and shall not directly or indirectly require you to pay any greater fees to us greater than are required to be paid under this Agreement, nor shall it reduce or impair any of your essential rights hereunder. In the event of any conflict between the Confidential Operations Manual and this Agreement, this Agreement shall control.

#### **4.4 General Guidance**

At no additional cost to you, we will, at our option furnish you with advice and assistance in connection with the operation of your Franchise Business. The areas in which we may provide guidance to you include:

- (a) employee training;
- (b) the operation of vehicles and equipment;
- (c) cleaning methods and procedures;
- (d) advertising and promotional programs;
- (e) conduct an annual convention for all franchisees, for which there will be no charge for up to two individuals from your Franchised Business. You will be responsible for all of your expenses while attending the annual convention..
- (f) purchasing additional vehicles, equipment, supplies and/or materials.

This discretionary assistance may be furnished through a number of sources including the Confidential Operations Manual, electronic communications including e-mail and postings to our private Intranet site, written directives and bulletins, telephone support, and personal consultations at our headquarters or your business premises. You acknowledge and agree that various means of communication (e.g., electronic communication) may require you to incur expenses for communication technology, including hardware, software and access fees. At our discretion we may have one of our field representatives visit your location within three months of when you begin operation of your ZEROREZ business. Should you specifically request that we provide consultation to you at your business premises in addition to the initial visit, we reserve the right to charge per diem fees and charges and require you to reimburse us for the travel and living expenses of our personnel.

#### **4.5 Telephone Listings**

You agree to pay all telephone company charges for such telephone numbers and to reimburse us if for any reason we have to pay any such charges. You agree not to place any restrictive codes on your advertised telephone numbers for your Business or to use any other telephone numbers in your advertising without our prior consent. You agree not to terminate any such telephone numbers during the term of this Agreement or do anything else that may directly or indirectly impede the transfer of those numbers upon any termination or expiration (without renewal) of this Agreement.

Upon termination or expiration (without renewal) of this Agreement, you agree to transfer to the Company the telephone number(s) you are using in your marketing and advertising, and directory listings for your business within three (3) days after a written request by us that you do so. If you fail to do so, we will be entitled to the exclusive rights with respect to the telephone numbers and directory listings for your business. The telephone company and all listing agencies may accept this

Agreement as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and as conclusive evidence of our authority to direct their transfer, without any liability to you.

In addition, you agree to sign, contemporaneously with the execution of this Agreement, such release and transfer documents as we may require to authorize us to obtain the telephone numbers of your Business upon any termination or expiration (without renewal) of this Agreement. If, during the term of this Agreement, the telephone numbers for your Business should be transferred to someone other than us, you will cooperate with us to ensure they are returned and amended, terminated or transferred as we direct you.

#### **4.6 Sale and Approval of Items**

The Company or its affiliates agree, directly or indirectly, by virtue of our own distribution or arrangements with third party suppliers, to sell to you approved floor and fabric care equipment, supplies, uniforms, decals, chemicals, materials, forms, promotional and advertising materials. You understand that it is the policy of the Company and/or its affiliates to mark up the price for these items, or to receive a rebate from items purchased from third party suppliers, so that the Company and its affiliates can return a reasonable profit. Notwithstanding the foregoing, the Company agrees that at any time that your average monthly gross sales for the prior six (6) months is greater than \$50,000 per month, then the Company will limit the amount it charges you for such items to cost plus shipping and handling. The Company agrees to charge (or ensure that its affiliates charge) all ZEROZ franchisees the same price for these items, except in the case where quantity discounts are available for volume purchases in which case the discounts will be available to all franchisees on the same basis.

### **5. OPERATING STANDARDS AND SERVICES**

#### **5.1 Services**

You will provide to the public complete floor and fabric care services, including carpet cleaning, upholstery cleaning, hard surface cleaning, duct cleaning, and leather cleaning, and all such services, and only those services, as authorized by the Company from time to time. These cleaning services will be performed in accordance with the procedures, policies and guidelines specified by the Company from time to time.

#### **5.2 Supplies and Materials**

You will use only equipment, machinery, cleaning supplies, cleaning solutions, materials, containers, uniforms, forms, and products approved by the Company as meeting our standards and specifications. If you propose to use any item not previously approved by us, you shall submit or have the proposed vendor submit to the Company upon our request, sufficient specifications, samples, photographs and/or other information we request to provide for sufficient examination and testing for us to determine whether the item and its proposed supplier meet the Company's specifications, qualifications, and standards. We reserve the right to require the proposed vendor to reimburse the Company for the reasonable costs of investigating the proposed item and vendor. Our determination as to whether the item vendor meets our specifications, qualifications and standards is final. We reserve the right to limit the number of vendors for in order to achieve volume pricing for the benefit of the ZEROZ System.

#### **5.3 Equipment Systems**

Before you open your Franchised Business, you will be required to obtain from the Company one complete ZEROZ equipment package. The ZEROZ equipment package consists of those items specified in Item 7 of the Uniform Franchise Offering Circular, which Item 7 is hereby incorporated herein and made a part of this Agreement. Your Primacide cleaning solution generator will service no more than five (5) trucks in normal operation. You will be required to obtain an

additional Primacide cleaning solution generator for each five trucks (or portion of five trucks) you have in operation.

#### **5.4 Standards of Service**

You and your employees will give prompt, courteous, and efficient service to your customers. In all your dealings with customers, suppliers and the public, you and your employees will adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct. All advertising and promotion of the Franchised Business, including the products and services offered, will be in strict compliance with the standards established by the Company, shall be completely factual, and shall conform to the highest standards of ethical advertising. You agree to refrain from any business or advertising practice that may be injurious to the Company, the goodwill associated with other ZEROREZ franchisees, the System, or the Marks. You agree not to deviate from the standards set by the Company for the operation of the Franchised Business. You shall guarantee your services and respond promptly to all inquiries and complaints in order to achieve customer satisfaction. If in our opinion it becomes necessary or appropriate for us to enter a customer's premises to inspect or correct your work, you shall reimburse us for the costs associated with such inspections or corrections within 30 days of the issuance of our invoice for such costs. You acknowledge and agree that you are prohibited from subcontracting your responsibilities hereunder or the services you provide in connection with your ZEROREZ franchise without our written consent.

#### **5.5 System Standards**

You understand that your operation of the Franchised Business in accordance with the System is essential to preserve the unique qualities and aspects of the ZEROREZ franchise and the Marks and services to benefit all ZEROREZ franchisees, including you. Therefore, during the term of this Agreement, you agree to operate the Franchise Business in accordance with the System and to comply with all of the Company's specifications, standards, and operating procedures relating to the operation of the Franchised Business including, without limitation:

- (a) methods and procedures for providing cleaning services;
- (b) the safety, maintenance, cleanliness, sanitation, function and appearance of your vehicles, equipment, accessories and signs;
- (c) requirements for the uniforms worn by, and the general appearance of, you and your employees;
- (d) the use of the Marks;
- (e) sales, marketing, advertising and promotional programs;
- (f) materials such as signs, posters, displays, brochures, flyers, forms, stationery, and other similar items;
- (g) the identification of your business as a franchisee of the Company and a licensed user of the Marks;
- (h) designated or approved suppliers, which may include the Company and/or its affiliates;
- (i) terms and conditions of the sale and delivery of products and services that you obtain from the Company, its affiliates, and/or unaffiliated suppliers;
- (j) bookkeeping, data processing, accounting, and record keeping systems, reports and forms, including the format, content and frequency of reports to us;
- (k) complying with applicable laws including, without limitation, obtaining required licenses and

permits;

- (l) complying, without limitation, with all applicable environmental laws and regulations relating to the securing, possession, filing with one or more government agency, proper display, and employee notification regarding Material Safety Data Sheets, as well as the proper disposal of solutions and waste water related to the operation of the Franchised Business; and
- (m) offering all products and services that we designate as a part of a ZEROREZ franchise.

## **5.6 Additional Responsibilities**

You specifically covenant and agree:

- (a) to operate your Franchised Business using only the trade name approved by the Company, and to display prominently such name on all forms, stationery, and related materials used with the Franchised Business, and to obtain and maintain a "Certificate of Fictitious Name" for such trade name as and if required by local law in the city, county, or state where your Franchised Business is located;
- (b) to permit us and our agents, at all reasonable times, to inspect your operations as provided in Item 10.2 hereof. You shall cooperate with our representatives and render assistance to the Company as may be reasonably requested;
- (c) that from time to time the Company may change or modify the System and you agree to adopt, use, and display for the purposes of this Agreement such changes as are commercially reasonable as if they were part of the System as of the date of this Agreement;
- (d) to post in a conspicuous place at your business premises a notice with the following words: "This ZEROREZ franchise is independently owned and operated under license from ZEROREZ Franchising Systems, Inc." You agree that your invoices, purchase orders, marketing materials, and brochures will contain a similar statement notifying the reader that your Franchised Business is independently owned and operated under a license from the Company;
- (e) to establish and maintain at your own expense a bookkeeping, accounting, record keeping, and records retention system covering the Franchised Business, separate and distinct from any other business or personal records you may maintain;
- (f) to provide the Company with quarterly and annual financial statements relating to the Franchised Business prepared in accordance with generally accepted accounting principles consistently applied and certified by you to be complete and accurate, including balance sheets, income statements, and changes in cash position,
- (g) to ensure that your principal owner and your general manager or base managers complete the initial training in the operation of the Franchised Business to the Company's satisfaction. Additionally, you agree to ensure that those individuals who are trained in accordance with this Item 5.6(g) will be responsible for training your other employees. If the Company offers periodic refresher training courses, you agree to have your employees, as designated by the Company, attend at your expense, such additional training. You acknowledge that you shall be responsible for the travel, living expenses and per diem charges for your personnel who attend any training provided by the Company.
- (h) To be solely responsible for the hiring, firing and promotion of your employees, the payment of all payroll taxes, compliance with all statutes, regulations, and ordinances relating to the employment of employees. The Company shall have no control over the terms and conditions of employment of your employees;

- (i) To fulfill your requirement to fully develop the potential of the Franchised Business in the Operating Territory, you will have available sufficient trucks and equipment to service promptly and adequately all customers within your Operating Territory;
- (j) you agree to sign, contemporaneously with the execution of this Agreement or at such subsequent time as requested by us, such release and transfer documents as we may require to authorize us to transfer the telephone numbers of your Business upon any termination or expiration (without renewal) of this Agreement. If, during the Term, the telephone numbers for your Business should be transferred to someone other than us, you will cooperate with us to ensure they are returned to us.
- (k) At a minimum, to answer your telephones between 8:00 am and 6:00 p.m. Monday through Friday, and between 8:00 am and 4:00 p.m. on Saturdays, except during holidays and periods when it is impossible, impracticable or commercially unreasonable to do so.

### **5.7 Prices Determined by You**

The Company may from time to time advise or offer guidance to you concerning suggested prices for you to charge. You are not obligated to accept any such advice or guidance, and you have the right to determine the prices you charge without interference from us, except with respect to National Accounts as provided in Section 5.12.

### **5.8 Management, Conflicting and Competing Interests**

The Franchised Business must be under the direct supervision of one or more managers fully trained by the Company. You agree that you will faithfully and diligently perform your obligations hereunder, that a fully trained management employee will continuously exert his or her full time attention, energy, and commercially reasonable efforts to promote and enhance the Franchised Business, and that you will not engage in any business or other activity that will conflict with your obligations under this Agreement. You acknowledge that the operation of a ZEROZ franchise is a full time occupation. Therefore, you agree that neither you nor any Principal Owner will have any interest as an owner (except as publicly traded securities), lender, director, officer, employee, consultant, representative, agent, or any other such capacity in any other business that competes with the Franchised Business (except another ZEROZ franchise) during the term of this Agreement without the express written consent of the Company, not to unreasonably be withheld.

### **5.9 Vehicles**

All vehicles used with the Franchised Business must meet the Company's specifications including, without limitation, make, model, size, color, decals and appearance.

### **5.10 Computer Systems**

We may require you to purchase, lease or upgrade, at your expense, such computer hardware and software, required dedicated telephone and power lines, Internet Service Provider, modems, printers, and other computer-related accessories or peripheral equipment as we may specify from time to time in the Confidential Operations Manual for various required or recommended functions, such as including recording and reporting Gross Sales, intranet communications system, online and in-business training, product and supply orders via the Internet from us, any of our affiliates or vendors, consumer scheduling of inspections or service appointments via the Internet, or online or telephone line connections to equipment/machinery.

### **5.11 Software**

You will obtain from Vanguard Computer Systems, Inc., 1012 Stearman Drive, Whitehouse, Tennessee 37188, a license to use the latest available version of Camelot Operations Software ("Software"). We agree not to unreasonably withhold approval of a request to use alternative

software, provided the software meets all of our requirements and specifications, which we will make available on reasonable request.

### **5.12 National Accounts**

We may, at our option, enter into agreements to provide or accept services for third party companies on a national or regional basis ("National Accounts"). National Accounts may be floor covering manufacturers, retailers, insurance companies or other businesses which offer a market for our services. You should be aware that National Accounts may lead to high volume and, in some situations, discounted pricing. In order to fully develop the ZERO REZ brand on a national basis, you will be required to service National Accounts at the pricing established by ZERO REZ, provided that such pricing is approved by a franchisee board consisting of representatives of franchisees who are in good standing from all geographic regions in which the Company has franchisees. In negotiating pricing schedules on National Accounts, ZERO REZ will negotiate in good faith on behalf of all of the franchisees. When a National Account or the customer of a National Account outlet requests ZERO REZ services in your exclusive operating territory or within ten (10) miles of your exclusive operating territory, whether through us or from you directly, you must provide the services requested for the applicable price, provided that such services must be commercially reasonable. Failure to service National Accounts when requested to do so will be considered to be a breach of this Agreement. You must offer expanded service hours, including 24-hour on-call capability, if required to service the national account on a commercially reasonable basis. If a special price is not in effect for a specific National Account, you may charge your standard rates for service to such National Account.

## **6. MARKS**

### **6.1. Ownership**

The Company has filed trademark applications with the United States Patent and Trademark Office for the name "ZERO REZ" and for our logo (the "Marks"). You acknowledge that the Company is the owner of the Marks and all associated goodwill. You agree not to contest the validity of the Marks during or after the term of this Agreement or any renewal. Other than your right to use the Marks pursuant to this Agreement, you acquire no right, title, or interest of any kind or nature in or to the Marks or the associated goodwill. Unless otherwise permitted in writing by the Company, you shall use the Marks only in connection with the System, and you agree that your use of the Marks under this Agreement inures to the benefit of the Company. You are required to use the Marks pursuant to and in compliance with this Agreement, the System, and other standards we prescribe. You agree to execute any documents deemed necessary by the Company or its counsel to obtain protection for the Marks or to maintain their continued validity and enforceability. Your unauthorized use of the Marks will constitute a breach of this Agreement and an infringement of the Company's rights in and to the Marks. All provisions of this Agreement applicable to the Marks apply to any additional trademark, service mark, or commercial symbol we authorize or require you to use.

### **6.2 Approval**

You will display the Marks only in the form and manner specifically approved by us and, upon request by the Company, will affix any legends, markings, and notices of trademark registration or any other notice of the Company's ownership. The Company shall have the right to approve all material prepared by you, included but not limited to stationery, promotional items, displays, and other printed materials, upon which any of the Marks appear.

### **6.3 Protection and Defense**

The Company agrees to protect and defend the Marks. You agree to cooperate fully with the Company in the defense and protection of the Marks and shall immediately advise the Company in writing of any potentially infringing uses by others and any suits brought or claims made against you involving the Marks. So long as you have provided the notice required herein, the Company agrees to

defend you against third party claims or demands resulting from your use of the Marks unless the Company determines that you did not use the Marks in accordance with this Agreement. The Company will reimburse you for all out of pocket expenses you incur if your use of the Marks conforms with this Agreement. Decisions regarding the protection and defense of the Marks, and the settlement of any litigation involving the Marks, shall be solely in the discretion of the Company and you shall take no action related thereto without the express written consent of the Company. Further, without the Company's consent, you shall not initiate any suit or proceeding against alleged imitators or infringers or any other suit or proceeding to enforce or protect the System.

#### **6.4 Further Restrictions on the Marks**

- (a) You understand that the license to the Marks is non-exclusive and the Company retains the right to grant licenses for the Marks to other companies or individuals;
- (b) Except with the express written consent of the Company, you shall not use any trademarks, service marks or other identifying characteristics in connection with the Franchised Business other than the Marks;
- (c) You shall not manufacture, market, or sell products nor perform services under the Marks unless specifically approved by the Company;
- (d) Except for the fictitious name registration referred to in Item 5.6 (a), you shall not use or register, in whole or in part, the Marks or the Company's name, or anything similar, as part of your corporate name or as the name of any entity directly or indirectly associated with your activities; and
- (e) You shall not use any Mark with any prefix, suffix, or other modifying words, designs or symbols unless the Company approves in writing.

#### **6.5 Goodwill**

You acknowledge the substantial goodwill value of the Marks and your significant responsibilities to the System. You shall not use the Marks in any manner to injure to disparage the Company or its reputation nor take any action which would harm or jeopardize the Marks, or the Company's ownership thereof, in any way.

#### **6.6 Changes to Marks**

The Company has the right at any time, upon notice to you, to make additions to, deletions from, and changes in the Marks, and you will adopt and use any and all such additions, deletions, and changes pursuant to the Company's instructions. The Company will not reimburse you for any expenses you incur in complying with these instructions including any loss of revenue attributable to any modified or discontinued Mark.

#### **6.7 Inspection**

To ensure that you are properly employing the Marks in connection with the operation of the Franchised Business, you agree that the Company or its agents shall have the right to inspect your operations and business premises. To the extent that the Company takes advantage of its rights under this Item 6.7, you shall fully cooperate with the Company and render such assistance as may reasonably be required.

### **7. MARKETING AND ADVERTISING**

#### **7.1 Value**

You recognize the value of advertising and the importance of the standardization of advertising and

marketing programs to the furtherance of the goodwill and public image of the System and all ZEROEZ franchisees.

## **7.2 Approval of Advertising**

In order to ensure the necessary quality, uniformity, and continuity of advertising and promotional activity for all ZEROEZ franchisees operating under the System, you agree not to carry out any advertising or promotional activities, or to publish or distribute any advertising and promotional materials, until you have sent a copy of such proposed advertising or promotional material to the Company and have obtained written approval by the Company to use such material. You agree that all advertising and promotional activities that you undertake will be completely factual and will comply with the Company's advertising guidelines. You will be solely responsible for compliance with all laws applicable to advertising in your jurisdiction.

## **7.3 National or Regional Advertising Fund**

At such time as the Company shall reasonably determine that a national or regional advertising program would contribute to an increase in the goodwill associated with the System and Marks, the Company will give you no less than 90 days notice that such a program will be undertaken. As of the date prescribed by the Company for the inception of the national or regional advertising program, you agree to contribute to the national or regional advertising fund an amount to be set by the Company, provided that you will not be required to contribute more than two percent (2%) of your monthly Gross Sales up to \$300,000 and 1% of your monthly Gross Sales in excess of \$300,000. The fees payable to the Fund shall be paid on or before the 15<sup>th</sup> day of the month immediately following the month to which such fees relate. You further agree that:

- (a) The Fund will be maintained and administered by the Company or its designee and the Company will oversee all advertising and promotional programs, marketing, and public relations with the sole discretion to approve or disapprove the concepts, materials, and media used in such programs and the placement and allocation of these programs. You acknowledge and agree that the Fund may be used, in the Company's reasonable discretion, to pay costs of producing, preparing, distributing, and using marketing, advertising, and other materials and programs; administering national, regional, and other marketing programs; purchasing media; employing advertising, public relations, and other agencies and firms; and supporting market research. In connection therewith, the Fund shall have the right to hire consultants, some of whom may be affiliated with the Company, such as an in-house advertising agency, in order to assist with production, marketing programs, media buys or materials for the System. The Fund will be used to cover the costs of advertising and promotional activities including, without limitation, direct mail campaigns advertising via radio, television, magazines, billboards and newspapers, marketing surveys and research, public relations, employing advertising and/or media buying agencies, production of advertising material, media planning and placement, marketing and administrative personnel, and any other costs associated with the development, evaluation, testing, distribution or placement of advertising time, space, or materials in national, regional, or other advertising media;
- (b) In administering the Fund and determining how and where the monies in the Fund will be spent, the Company will take into account the relative contributions of each of the participating franchisees; however, there can be no assurances that expenditures will be made to your direct benefit or within the Operating Territory that are equivalent or proportional to your contribution to the Fund.
- (c) The money contributed to the Fund will be maintained in a separate account from the Company's other monies and shall not be used to cover any of the Company's expenses, except for reasonable administrative costs and overhead associated with managing and administering the Fund. The Fund will, at no time, be an asset of the Company.
- (d) The Company, in its sole discretion, may spend in any fiscal year an amount greater or less

than any aggregate contribution to the Fund in that year and the Fund may borrow from the Company or its affiliates or other lenders to cover deficits in the Fund or cause the Fund to invest any surplus for future use by the Fund. The balance of the Fund, including contributions to and earnings of the Fund in a given year, can be carried forward and used for Fund activities the following year;

- (e) The Company will not have any direct or indirect liability or obligation to you, the Fund, or otherwise with respect to how it is maintained or managed or its direction or administration;
- (f) You acknowledge and agree that your and the Company's rights and obligations with respect to the Fund and all related matters are governed solely by this Agreement and that this Agreement and the Fund are not in the nature of a "trust," "fiduciary relationship," or similar special arrangement, and is only an ordinary commercial relationship between independent businesses for their independent economic benefit;

Although the Fund is intended to be of perpetual duration, the Company retains the right to terminate the Fund. The fund will not be terminated, however, until all monies in the Fund have been expended for advertising or promotional purposes or returned to contributors on the basis of their respective contributions.

#### **7.4 Required Local Advertising Expenditures**

While this Agreement is in effect, you agree to make monthly expenditures for local advertising and promotional activities of the Franchised Business of not less than ten percent (10%) of your Gross Sales (up to \$100,000 in monthly Gross Sales) for the preceding month, unless otherwise provided on Schedule A. In no event shall you be required to spend more than \$10,000 per month in local advertising and promotional activities of the Franchised Business. At such time as the Company establishes a national or regional advertising program to which you will be required to contribute 2% of your Gross Sales as provided for in Section 7.3, the amount you will be required to spend on local advertising will be reduced from ten percent (10%) to eight percent (8%) of your Gross Sales (up to \$100,000 per month). Upon request, you will deliver to the Company a report providing proof that you have fulfilled your local advertising requirement. Samples of all advertising, promotional and marketing materials that the Company has not prepared or previously approved must be submitted to the Company for its approval at least 30 days prior to the closing date for the submittal of materials as set by any media company for timely publication, in which case the material shall be deemed to have been approved unless the Company notifies you in writing to the contrary within 14 business days following its receipt of the material. Advertising and promotion by you in any medium shall be conducted in a dignified manner shall conform to the standards and requirements of the Company.

#### **7.5 Local Advertising Cooperatives**

In certain cases, your Operating Territory may be located in an advertising market area where other franchisees of the Company or Company-owned operations will also be located. In these cases, the Company may determine with the approval of franchisees controlling the majority of the population in the advertising market that all ZEROEZ franchises sharing the same local advertising market area should participate in market-wide cooperative advertising programs. If the Company makes such a determination with respect to your market area, your participation will be mandatory. The Company shall have the authority to set the terms of any such cooperative advertising programs, and to make changes to those programs from time to time as the Company deems appropriate, and you agree to participate in any such cooperative advertising programs as directed by the Company, although the Company agrees to permit the activities of the cooperative to be controlled locally in accordance with guidelines set forth in the Confidential Operations Manual. We have the right to require you or any local advertising cooperative to employ the services of an advertising agency or media buying company that we designate or approve for the administration of local advertising expenditures. Any ZEROEZ Businesses owned by us or any of our affiliates located in your local advertising market area(s) will participate in the cooperative(s) with the same rights as other members and will contribute to the cooperative(s) on the same basis as you are required to contribute. Amounts you pay to the

local cooperative program shall be credited toward the local advertising expenditures required under Item 7.4 herein.

#### **7.6 Franchisee's Name and Photograph**

You hereby grant to the Company the right, without compensation, to use your name, address, photographs of your principal owners, and information concerning you or your Franchised Business in any publication, circular, or advertisement related to ZERO REZ franchises or the sale of ZERO REZ franchises.

#### **7.7 Telephone Directories**

If you choose to advertise in the Yellow Pages or other telephone directory, such advertisements must be approved by us in advance.

#### **7.8 Internet Advertising**

The Company may, in its sole discretion, maintain a website and may list information about you and your Franchised Business within any portion of such a website, including a page devoted to your Franchised Business based upon a template developed by the Company, if applicable. The Company's website will not contain any financial data applicable to your Franchised Business without your prior written consent. The Company shall have the sole discretion to determine the content and format of its web site. You may not develop an independent web site related to your Franchised Business unless the Company fails to set up and maintain a website, and you may not use any of the Marks in any domain name or web site without the prior written consent of the Company.

#### **7.9 Advertising Agency**

In order to maintain consistency and quality, and in order to keep franchisees focused on revenue generation, you agree that you will use such company or companies as may be designated by us from time to time, for your franchised business's local and/or national or regional advertising, provided that such company or companies are, in your reasonable discretion, adding commercial value. Upon termination or expiration of this Agreement, all rights to local or regional radio or television advertising shall become the property of the Company, and you will remain responsible for payment of all fees for such advertising through the date of termination or expiration of this Agreement.

#### **7.10 Toll Free Telephone Number**

You are required to advertise the central 1-866-ZERO REZ telephone number in all of your advertising. It is anticipated that calls to the central telephone number originating within your exclusive operating territory will be routed to you or to a call center serving your area. Calls for jobs within your market area but that are outside your exclusive operating territory will be assigned to you and any other franchisee(s) or Company owned outlet operating within that market area, on a pro-rata basis. You agree to pay your share of the cost of calls to the national toll free number and the reasonable cost of any call center serving your area.

### **8. CONFIDENTIAL INFORMATION; COVENANTS**

#### **8.1 Confidential Information**

You will receive confidential and proprietary information which the Company has developed over time and at great expense. Any information disclosed by the Company to you that is designated as confidential, or which by its nature might reasonably be expected, if disclosed, to provide the Company's competitors with a competitive advantage or injure the Company's business, shall be considered "Confidential Information" hereunder. Without limiting the foregoing, the following shall be

presumed to be Confidential Information: all of the contents of the Confidential Operations Manual and updates, cleaning products and/or formulas, lists of suppliers, lists of franchisees, lists of franchisee prospects, lists of customers, price lists and advertising strategies.

You acknowledge that the Confidential Information is not generally known in the trade and is beyond your present skills and experience, and that for you to develop such information on your own would be expensive, time consuming and difficult. You further acknowledge that the Confidential Information provides a competitive advantage and will be valuable to you in the development of your Franchised Business, and that gaining access to this information is a primary reason why you entering into the Agreement. Accordingly, in consideration of the Company's disclosure of the Confidential Information, you agree as follows:

- (a) Neither you or your officers, directors, shareholders, or any person or entity controlling, controlled by, or under common control with you, will at any time appropriate or use the Confidential Information, or any portion thereof, in any business other than the Franchised Business; disclose or reveal any portion of the Confidential Information to any person, other than to your employees who have signed the non-disclosure agreement described in Item 8.1(b) herein; or communicate, divulge, or use any Confidential Information for the benefit of any other person or entity except as authorized by the Company in connection with the franchise granted hereunder.
- (b) You will take all appropriate precautions to prevent unauthorized copying or disclosure of any Confidential Information by your employees and agents, which precautions shall include restricting access to Confidential Information to a "need to know" basis. You will require each employee or agent with access to Confidential Information to execute a non-compete and non-disclosure agreement, in a form acceptable to and approved by the Company.

## **8.2 Covenants**

In consideration of the valuable training that you will receive from the Company, the disclosure to you of the Company's trade secrets and Confidential Information, and the use and license of the System, you agree that neither you nor any of your owners will individually or jointly with others, either directly or indirectly, for itself, himself, or herself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or other entity will:

During the term of this Agreement:

- (a) divert or attempt to divert any present or prospective business or customer of any Franchised Business to any competitor;
- (b) own, maintain, operate, advise, consult with, engage in, or have any interest in any business engaged, wholly or partly, in the sale of products and services associated with floor and fabric care, or which offers products or services competitive with those offered under the System, to any customer;
- (c) own, maintain, operate, advise, consult with, engage in, or have any interest in any business engaged, wholly or partly, in the wholesale sale of products and services associated with floor and fabric care, or which offers products or services at wholesale otherwise competitive to those offered under the System, to any customer or potential customer regardless of location.

Subsequent to the expiration or termination of this Agreement, a transfer permitted hereunder, or a final decision of an arbitrator or a court of competent jurisdiction, and continuing for eighteen months thereafter:

- (a) own, maintain, operate, advise, consult with, engage in, or have any interest in any business engaged, wholly or partly, in the sale of products and services associated with floor and fabric care, or which offers products or services otherwise similar to those offered under the System,

to any customer within the same state as, or a state that borders, the state in which your exclusive Operating Territory is located;

- (b) provide products or services which are the same as or similar to the products and services offered under the System to any customer to whom you provided such products or services at any time during the one year period prior to the termination, expiration, or permitted transfer of this Agreement.

These restrictions will not apply to your ownership of less than a five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation, and you agree that the Company shall have the right to reduce the scope of any covenant contained in this Item 8.2, simply by providing written notice to you. Upon your receipt of such written notice, you agree to comply with such modified covenants. The existence of any claims you may have against the Company, whether arising under this Agreement or otherwise, will not constitute a defense to enforcement by the Company of the covenants contained in this Item 8.2.

In the event that any provision of this Covenant not to Compete shall be held invalid or unenforceable by a court of competent jurisdiction by reason of the duration or scope thereof; such invalidity or unenforceability shall attach only to the specific provision determined to be unenforceable and the covenant shall remain in full force and effect for the greatest time period and for the broadest scope permitted by applicable law. Franchisee and the Company intend that this Covenant not to Compete shall be deemed to be a series of separate covenants, one for each and every county of each and every state of the United States of America and one for each and every political subdivision of each and every other country where the Covenant not to Compete is effective.

### **8.3 Customer Lists**

All customers within your exclusive Operating Territory, and all lists of such customers, shall be your property; provided that in the event this Agreement expires or is terminated by the Company, ownership of the customers within your exclusive and all customer lists containing information regarding such customers shall automatically become the sole property of the Company. You covenant not to use the customer lists for any purpose other than in connection with the Franchised Business. You will, on demand, promptly deliver to the Company a complete list of your customers including all information concerning such customers as requested by the Company. You will not, for a period of at least eighteen (18) months from the termination or expiration of this Agreement, contact any customer for whom you have provided services as a franchisee of the Company for the purpose of offering such customer services that are similar to or competitive with the services you provided as a franchisor of the Company.

## **9. TAXES AND INDEBTEDNESS**

### **9.1. Payment**

You will promptly pay when due any and all federal, state, and local taxes including, without limitation, employment and sales taxes, levied or assessed with respect to any services or products furnished, used, or licensed pursuant to the Agreement, and all accounts or other indebtedness of every kind incurred by you in the operation of the Franchised Business. This does not preclude you from undertaking bona fide disputes regarding your liability for taxes assessed or other indebtedness, provided you contest the liabilities through the proper procedures of the taxing authority or applicable law.

### **9.2. Responsibility for Debts**

You expressly covenant and agree to accept full and sole responsibility for all debts and obligations incurred in the operation of the Franchised Business.

### **9.3. Notification of Suits**

You agree to notify us immediately in writing of any suit, proceeding, or action and of the issuance of any writ, award, decree, injunction, or order of any court, agency, or other government instrumentality, that may adversely affect the operation of the Franchised Business.

### **9.4. Reimbursement of Taxes and Costs**

Should any "franchise" or other tax based upon the gross sales, gross revenues, business activities, or operation of the Franchised Business that should properly be imposed upon, or paid by, the Franchised Business, be imposed on the Company by any taxing authority, you will reimburse the Company in an amount equal to the amount of such taxes and related costs and expenses imposed upon or paid by the Company. You will make such reimbursement within ten (10) days after receipt of written notice from the Company that the Company is entitled to reimbursement for payment of such taxes and other amounts as set forth herein.

## **10. RIGHT TO ACCESS, INSPECTION AND AUDIT**

### **10.1. Access**

The Company and its authorized representatives shall have the right at any time during normal business hours, with reasonable notice, to enter your business premises or the premises where you or your employees are providing customer services in order to inspect records, monitor procedures, and evaluate performance to determine if you and your employees are in compliance with this Agreement. This review may include, in the sole discretion of the Company, an annual business review of your entire Franchised Business in order to ensure continued compliance with this Agreement. You agree to cooperate fully with the Company in any review under this Section.

### **10.2. Inspection and Audit**

You will retain at your business premises, for a period of at least 3 years, all of the records pertaining to the Franchised Business and your Gross Sales. All such records shall be available for inspection and copying at all reasonable times by the Company. The Company's right to inspect, audit, and copy your records shall survive for a period of 3 years following any expiration or termination of this Agreement.

### **10.3. Deficiencies**

In the event any inspection or audit discloses a deficiency in the payment of any royalty, or any other amount required to be paid under this Agreement, you shall immediately pay the deficiency to the Company. In addition, if the deficiency is equal to or exceeds 2% of the correct amount required to be paid under this Agreement during any 12 month period, you will immediately pay the Company the entire cost of such inspection and audit, including but not limited to, travel, lodging, meals, salaries, and other expenses of the inspecting or auditing personnel.

## **11. INDEMNIFICATION; INSURANCE**

### **11.1 Indemnity**

The Company shall not be liable (vicariously or otherwise) for any of your actions, nor shall the Company be liable (vicariously or otherwise) by reason of any act or omission on your part in the operation of the Franchised Business or for any claim or judgment against you. You agree to indemnify and hold the Company and its officers, directors, and employees harmless from and against any expense, liability, or damage (including attorney's fees) the Company or such individuals may incur as a result of claims, demands, costs or judgments, of any kind or nature, by anyone, arising out of, or otherwise connected with, the ownership, maintenance or operation of the Franchised Business by you. The Company shall have the right, within reason, to approve the

counsel used in defending any action subject to indemnification hereunder. The Franchisee shall not be liable (vicariously or otherwise) for any of Company's actions, nor shall the Franchisee be liable (vicariously or otherwise) by reason of any act or omission on the Company's part in the operation of the franchise system or for any claim or judgment against the Company. Company agrees to indemnify and hold the Franchisees and their respective officers, directors, and employees harmless from and against any expense, liability, or damage (including attorney's fees) the Franchisees or such individuals may incur as a result of claims, demands, costs or judgments, of any kind or nature, by anyone, arising out of, or otherwise connected with, the ownership, maintenance or operation of the Company.

## **11.2 Insurance**

During the term of this Agreement, you agree to maintain, at your expense, insurance as follows:

- (a) insurance on the generally accepted "all risk" form on all personal property and assets of every description and kind used in the Franchised Business in an amount of the full insurable value thereof;
- (b) commercial general liability insurance coverage for the operation of the Franchised Business, including but not limited to, coverage against all types of public liability, including products liability, premises liability, completed operations liability, against claims for personal injury, bodily injury, death, or property damage suffered by others including the Company, its agents, or its employees, or as a result of the use of products sold by, or services rendered by, you, with a minimum coverage of \$1,000,000 per accident or occurrence affecting one or more persons or property damage and \$1,000,000 aggregate, or as it may reasonably be adjusted from time to time;
- (c) motor vehicle liability insurance for any claims arising out of the Franchised Business, or occurring as a result of the maintenance or operation by you, your employees, or persons doing business on your behalf, of any automobiles, trucks, or other vehicles or other facilities with a minimum coverage of \$1,000,000 for each accident or occurrence affecting one or more persons, or property, or as it may reasonably be adjusted from time to time;
- (d) workers' compensation, unemployment compensation, social security, and other mandatory insurance coverage shall be maintained in such amounts as may now or later be required by any applicable law.

All insurance policies shall be issued by an insurance carrier rated "A" or better by Alfred M. Best and Company, Inc. All policies described in Items 11.2(a)-(d) above shall insure you and name the Company as an additional insured, and shall stipulate that the Company shall receive at least 30 days' written notice of cancellations or modification. Your obligation to obtain and maintain the insurance policies described herein shall not be limited in any way by reason of any insurance that may be obtained by the Company, nor shall your performance of this obligation relieve you of liability under the indemnity provision set forth in Item 11.1. You shall deliver to the Company certificates of insurance or copies of insurance policies evidencing compliance with the requirements of this Item 11.2, together with proof of payment for such policies, prior to commencing operation of the Franchised Business, and thereafter prior to the expiration date of any such insurance coverage.

The Company may, from time to time upon at least 60 days prior written notice to you, increase or modify mandatory insurance coverage for the Franchised Business as the Company may deem necessary for the protection of the Company, the System, and you. You agree to comply with such increased or modified coverage requirements at your sole cost and expense, provided that such increased or modified coverage is reasonable;

You acknowledge and agree that should you fail to procure and maintain the insurance required by this Item 11, the Company has the right, but not the obligation, to procure the insurance and to require you to reimburse us for the cost of such insurance and for any expenses incurred in procuring the

insurance.

### **11.3 Third Parties**

You are responsible for all losses or damages and contractual liabilities to third persons arising out of or in connection with the possession, ownership, or operation of the Franchised Business, and for all claims or demands for damages to property or injury, illness, or death of persons directly or indirectly resulting therefrom.

### **11.4 Employee Bond**

You shall obtain and maintain in effect a blanket fidelity bond in the amount of twenty five thousand dollars (\$25,000) to cover your employees and shall send the Company a copy of such bond. This bond must provide that the Company shall be given 30 days' prior written notice of termination, cancellation, or expiration.

## **12. TRANSFER OF FRANCHISE**

### **12.1 Transfer of Franchise**

This Agreement is personal to you and you will neither sell, assign, transfer, nor encumber your rights under this Agreement without the prior written consent of the Company, not to unreasonably be withheld. If you are a corporation, limited liability company, or similar entity, the terms of this Item 12.1 shall be deemed violated upon any sale, resale, pledge, assignment, transfer, or encumbrance of a controlling interest in the entity. If you are a partnership, then the terms of this Item 12.1 shall be deemed violated upon any removal or addition of any general partner. You shall disclose to the Company on Schedule B of this Agreement the names of all your partners, owners, and shareholders, and shall give the Company prompt notice of any changes or additions to the same. In the event of any change or transfer in your ownership interest during the term of this Agreement, the person or entity acquiring such ownership interest shall be required as a condition of obtaining such ownership interest to execute the personal covenants listed below the signature block. Any assignment or transfer in violation of this Item 12 shall be null and void and shall constitute a material breach of this Agreement which will provide the Company with the right to terminate this Agreement in accordance with Item 13.

### **12.2 Right of First Refusal**

If any person holding a direct interest in this Agreement, in you, or in all or substantially all of the assets of the Franchised Business, desires to accept any bona fide offer from a third party to purchase such interest, you will notify the Company at least 30 days before the transfer is proposed to take place and provide any information or documentation relating to the offer that the Company requires. The Company will have the right and option, exercisable within 30 days after receipt of such written notification, to send written notice to the seller that the Company intends to purchase the seller's interest on the same terms and conditions offered by the third party. If the Company elects not to purchase the seller's interest, such third party will have 90 days from the earlier date of receipt of a notice from the Company declining to exercise its right of first refusal; or 30 days after the Company's receipt of the transferor's written notification of the proposed transfer, to close on the transfer of the interest. Failure to effect a transfer with the third party within the 90 day period, or any material change of the terms of the offer prior to closing, will constitute a new offer subject to the same rights of first refusal by the Company as in the case of the third party's initial offer. The Company's failure to exercise the option provided by this Item 12.2 does not constitute a waiver of any other provision of this Agreement. If the consideration, terms, or conditions offered by a third party are such that the Company cannot furnish the same consideration, terms, or conditions, then the Company may purchase the interest proposed for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash, an independent appraiser will be designated by the Company, at the Company's expense, and the appraiser's determination will be final and binding.

### **12.3 Conditions for Transfer**

You acknowledge and agree that the restrictions on transfer contained in this Agreement are reasonable and are necessary to protect the Franchised Business, the System, and the Marks, as well as the Company's reputation and image, and are essential for the protection of the Company and other ZEROREZ franchisees. The Company agrees not to unreasonably withhold its consent to a sale, assignment, or transfer of the Franchised Business by you, provided however, that consent to such transfer otherwise permitted or permissible may be refused in any case unless:

- (a) all of your obligations under this Agreement and any other agreement affecting the Franchised Business are assumed by the transferee. You will remain liable for all obligations to us in connection with the Franchised Business which arose prior to the effective date of the transfer;
- (b) all your known or liquidated debts to the Company or any affiliates of the Company are paid;
- (c) you are not in default in any material respect under this Agreement or any other agreement with the Company or any affiliates of the Company;
- (d) the transferee and its partners, officers, and shareholders, if applicable, satisfactorily complete prior to the date of transfer the training required of new franchisees on the Company's then current terms;
- (e) you, if requested by the Company, satisfy the Company that the transferee, and its partners, officers, and shareholders if applicable, meet all of the requirements of the Company for new franchisees, including but not limited to, good reputation and character, business acumen, operational ability, management skills, credit rating, financial strength, and other business considerations;
- (f) you, all of your individual owners, and those of the transferee, if required by the Company, execute a general release under seal of any and all claims against the Company, in which event the Company will execute a similar release in your favor;
- (g) you or your transferee pays to the Company a transfer fee for effecting the transfer and in providing training and other initial assistance to the transferee, which fee shall be \$2,500; and
- (h) the Company receives a fully executed copy of all transfer documents.

### **12.4 Transfer to a Corporation**

Notwithstanding Sections 12.1-12.3 above, on 30 days' prior notice to us, you (if you are an individual or partnership) may transfer this Agreement, in conjunction with a transfer of all of the assets of your Business, by an agreement in form and substance satisfactory to us, to a corporation, trust, or limited liability company or other estate planning vehicle, of which you own and control all of the equity and voting power of all issued and outstanding capital stock. No such assignment will relieve you or your Owners of your obligations hereunder, and you and your Owners will remain jointly and severally liable for all obligations hereunder.

### **12.5 Special Transfers**

Item 12.1-12.3 shall not apply to any transfer of the Franchise among any of your then current Owners disclosed in Schedule B of this Agreement. Section 12.3(g) shall not apply to a transfer of the Franchised Business to a spouse or adult child of the franchisee (if an individual) or to a spouse or adult child of a then current owner listed in Schedule B (if a corporation, Limited Liability Company or partnership).

## **12.6 Death or Disability of Franchisee**

Upon your death or permanent disability, or the death or permanent disability of your principal owner, the executor, administrator or other personal representative of such person must transfer his interest in this Agreement or his interest in the Franchised Business to a third party approved by us in accordance with all of the applicable provisions of Item 12 herein within a reasonable period of time, not to exceed one (1) year from the date of death or permanent disability, unless agreed to in writing by Company.

## **12.7 Assignment by the Company**

All of the Company's rights and obligations under this Agreement are freely assignable by the Company with or without your consent.

## **12.8 Non-waiver**

The consent by the Company to a transfer covered by this Item shall not constitute a waiver of any claims the Company may have against the transferring party, nor will it be deemed a waiver of the Company's right to demand exact compliance with any of the terms of this Agreement by transferor and transferee.

# **13. TERMINATION OF AGREEMENT**

## **13.1 Expiration of Term**

Unless renewed as provided in Item 2 herein, this Agreement shall expire without notice effective on the date specified in Schedule A which is 10 years from the date set forth above, subject to earlier termination as described in this Item 13.

## **13.2 By You**

If you are in substantial compliance with the Agreement and the Company materially fails to comply with this Agreement and does not correct such failure within 30 days after written notice is received by the Company or, if such failure cannot be cured within the 30 day period, or the Company does not undertake diligently to attempt to cure the failure within the cure period and continue to do so thereafter until the failure is cured, then you may terminate this Agreement effective 10 days after delivery to the Company of a written notice of termination.

## **13.3 By the Company**

In the event that you fail to commence the operation of the Franchised Business as required herein or the Company reasonably determines that you are unable to complete satisfactorily the initial training program as required in Item 4 above, then the Company shall have the right to terminate this Agreement, effective immediately upon delivery to you of written notice of termination.

## **13.4 By the Company; No Refund of Initial Franchise Fee; Automatic Termination**

If any of the following events occur, you will be deemed in default under this Agreement, and the rights granted to you hereunder will automatically terminate without notice:

- (a) if you file a petition in bankruptcy, or if a petition is filed against you and not contested by you within three (3) days, or if you are a corporation, partnership, or limited liability company, you are dissolved;
- (b) if you make a general assignment for the benefit of creditors or become insolvent;

- (c) if you fail to contest, satisfy, lift, or vacate within 10 days any execution, seizure, foreclosure, levy, or distress against the assets of the Franchised Business;
- (d) if you fail to contest or have removed, within 10 days, the appointment of a receiver or other custodian (either temporary or permanent) of the Franchised Business or any part of its assets;
- (e) if a final judgment in excess of \$25,000 remains unsatisfied or of record for 30 days or longer;
- (f) if you take the benefit of any act or proceeding for winding up your affairs or compromising your debts;
- (g) if you make a transfer (as defined in Item 12) of the Franchised Business or of the rights granted under this Agreement without first complying with the relevant provisions of this Agreement;
- (h) if you misuse or make an unauthorized use of the System or Marks or any other name, mark, system, insignia, symbol, or right provided by the Company to you, after being notified in writing by the Company to cease and desist from such unauthorized use, or if you make an unauthorized copy of disclosure of the Confidential Information or make an unauthorized copy of or otherwise make any unauthorized disclosure of the Confidential Operations Manual, after being notified in writing by the Company to cease and desist from such unauthorized copy or disclosure; or
- (i) if you repeatedly, and after written notice to cease, perform services hereunder in the operating territory of another ZEROREZ franchisee.

**13.5 By the Company; No Refund of Initial Franchise Fee;**

If any of the following events occur, the Company may, at its option, terminate this Agreement effective immediately upon your receipt of a written notice of termination at the end of any cure period:

- (a) if you abandon or surrender or transfer control of the operation of the Franchised Business or fail to conduct actively the Franchised Business as required herein and such condition continues for three (3) days after notice of such default is given (with the exception of fire, flood, other Acts of God, or other extraordinary circumstances which prevent you from actively conducting the Franchised Business);
- (b) if you operate the Franchised Business in a manner that presents a health or safety hazard to your clients, customers, employees, or the public and such manner of operation continues uncorrected for two (2) days or longer if it cannot be cured in 2 days and cure is commenced and diligently pursued to completion after notice to correct same;
- (c) if you sell or offer for sale any unauthorized product or service for more than three (3) days after notice to cease; or longer if it cannot be cured in 3 days and cure is commenced and diligently pursued to completion;
- (d) if you any Principal Owner or executive officer is convicted of a felony, a crime involving fraud or moral turpitude, or any other crime or offense that the Company believes is reasonably likely to have an adverse effect on the System, the Marks, or the Company's interests;
- (e) if you refuse to submit any report, financial statement, schedule, or other information or supporting records required herein more than fifteen (15) days after the Company makes written demand for such report, financial statement, schedule, or other information or supporting records;
- (f) if you fail to achieve the sales quota set forth in Item 2.7, and/or in Schedule A , or fail to comply with the covenants set forth in Item 8.2, if such failure continues more than sixty (60)

days after written notice to cure from the Company;

- (g) if you knowingly submit on two (2) or more occasions at any time during the term of this Agreement a report, financial statement, tax return, schedule, or other information or supporting record that understates your Gross Sales for any period by more than two percent (2%), unless you demonstrate that such understatement resulted from an inadvertent error;
- (h) if you fail or refuse to pay any amount owed to the Company or any affiliate for any royalty or other financial obligation (including the portion of the initial franchise fee you financed), or if you fail or refuse to pay any amount due to any lender or any payment owed under any agreement executed in connection with your purchase of a ZERO REZ franchise (including, but not limited to, any truck and equipment lease, or Primacide generator), within 10 days after a demand for payment, or fail to honor on two (2) or more occasions in any 12 month period throughout the term of this Agreement, checks presented to the Company or any affiliated entity for payment, or repeatedly and consistently pay any amount due hereunder after its due date;
- (i) if you violate any law, ordinance, rule or regulation of any governmental agency in connection with the operation of the Franchised Business and do not correct such violation promptly after notification thereof, unless there is a bona fide dispute as to the violation or status of such law, rule or regulation, and you promptly resort to a court of competent jurisdiction or other appropriate forum to contest such violation or status;
- (j) if you intentionally use equipment or supplies that are not in compliance with the Company's standards and specifications after being notified by the Company not to use such equipment or supplies;
- (k) if you unreasonably refuse to permit the Company to inspect the Franchised Business, its premises, or your books and records upon demand;
- (l) if you made any material misrepresentations to the Company upon which the Company relied in evaluating your application for a ZERO REZ franchise;
- (m) if you have failed to cure, as allowed under this Agreement, two (2) or more notices of default under this Agreement during any 12 consecutive month period,; or
- (n) if you fail to promptly respond to, and reasonably satisfy, the complaints of seven (7) or more of your clients or customers received within any 12 consecutive month period.

### **13.6 By the Company; No Refund of Initial Franchise Fee; Cure Opportunities**

If you fail to comply with any other provision of this Agreement or any other specification, standard, or operating procedure prescribed by the Company, the Company has the right to terminate this Agreement by providing you written notice of the default; provided, however, you may avoid termination by immediately initiating a remedy to cure and curing the default to the Company's satisfaction within 30 days' after receiving such written notice of default, or longer if required and diligently pursued, and by promptly providing proof of such remedy to the Company. If any such default is not cured within the specified 30 day cure period, or any longer period as applicable law may require, this Agreement will terminate with reasonable notice to you of not less than 30 days. The Company agrees that any written notice of default shall describe the default with specificity.

## **14. YOUR RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION**

### **14.1 General Obligations**

Upon termination or expiration of this Agreement, all rights granted to you under this Agreement will terminate and you will undertake the following:

- (a) to pay immediately any monies owed to the Company and its affiliates. All periodic payments shall be deemed to accrue daily and shall be adjusted accordingly;
- (b) to immediately cease to operate the Franchised Business and to immediately cease to represent to the public or hold yourself out as a present or former franchisee of the Company;
- (c) to immediately cease using the Marks and any confusingly similar names, marks, systems, and insignia, and cancel all assumed name or equivalent registrations relating to your use of any of the Marks. You will notify any telephone company and all listing agencies of the termination or expiration of your right to use any telephone number or directory listing associated with the Marks, and you hereby acknowledge that these items (and trunk lines and any other services provided by telephone companies and used by you in the Franchised Business) revert automatically to the Company for its (or its new franchisee's) use within the Operating Territory;
- (d) to immediately cease to use the System or any of its methods, procedures, or techniques;
- (e) to immediately make changes in signs, decals, and colors as the Company shall reasonably request so as to distinguish your vehicles from those of any other ZEROEZ franchisee;
- (f) within five (5) days of the effective date of termination or expiration, to return to the Company all copies of all material previously received from the Company including, without limitation, the Company's Confidential Information, the Confidential Operations Manual, and a complete list of your present customers and clients, including their addresses and telephone numbers. You will keep all Franchised Business records for at least three (3) years after the effective date of termination or expiration and keep the Company advised of the location of such records;
- (g) comply with the restrictive covenant obligations set forth in Item 8.2; and
- (h) unless otherwise restricted by the Company, within five (5) days of the effective date of termination or expiration, return to the Company any data generated by using the Software.

#### **14.2 Right to Purchase**

In the event that this Agreement is terminated for any reason or is not renewed, the Company shall have the right, but not the obligation, exercisable within 30 days of the effective date of the termination or expiration of this Agreement, to repurchase at the then fair market value the truck and equipment, including accessories, and the Primacide generator. The Company shall also have the right, but not the obligation, exercisable by written notice delivered to you at any time after delivery of a notice of default hereunder or within 30 days after the effective date of termination or expiration, to purchase for fair market value all or part of the other physical assets used in the Franchised Business, except for your personal assets. There shall be no compensation for goodwill, and the purchase price shall be equal to the fair market value. If we cannot agree with you upon a fair market value within a reasonable time, each party shall designate an appraiser and both appraisers will agree on and designate a third independent appraiser to make the determination of fair market value, whose determination shall be binding. The cost of the appraisal shall be shared equally by the parties. The closing of the purchase shall take place at a location, and on a date, chosen by the Company, acting reasonably, and shall be completed in accordance with all applicable bulk sales legislation. At closing, you shall deliver to the Company a bill of sale for the assets, in a form acceptable to the Company. The Company shall be entitled to set off against the purchase price any amounts then owed by you, and to pay out of the purchase price any of your unpaid creditors.

#### **14.3 Continuing Obligations**

All obligations of the parties hereto which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect notwithstanding such expiration or termination. In particular, but without limiting the generality of the foregoing, the provisions in Items 6, 8, 10, 11, 14, and 16 hereof shall survive termination or expiration of this Agreement.

#### **14.4 Transfer or Termination of Domain Names and Web Sites**

In the event that you violated Item 7.8 hereof during the term of this Agreement, you agree that upon the termination or expiration of this Agreement, the Company will have the absolute right to notify InterNIC, any and all other registration agencies or companies, and all search engines of the termination or expiration of this Agreement and to authorize such agencies to transfer to the Company or its designee all domain names, web sites, and or other Internet related presence arranged or contracted by you and associated with the Franchised Business. You acknowledge and agree that the Company has the absolute right to, and interest in, all domain names, web sites, and any other Internet related presence associated with the franchise granted hereunder and the Company has the full right and authority to direct InterNIC and any other registration agency or company to transfer domain names, web sites or any other online presence arranged or contracted by you to the Company or its designee. You further acknowledge that this Agreement will constitute a release by you of InterNIC and all other registration agencies or companies and all other search engines from any and all claims, liabilities, actions and damages that you may, at any time, have the right to allege against them in connection with this Item 14.4.

### **15. FRANCHISEES' RIGHT OF FIRST REFUSAL TO PURCHASE THE COMPANY**

#### **15.1 Right of First Refusal**

If the Company or its shareholders desire to accept any bona fide offer from a third party to purchase all or substantially all of the Assets of the Company or a controlling interest in the outstanding capital stock of the Company, the Company will notify each of the Company's franchisees at least sixty (60) days before the transfer is proposed to take place and provide any information or documentation relating to the offer that the franchisees may reasonably require. At least a majority of the franchisees, or franchisees representing at least thirty percent (30%) of the total population in all operating territories then owned and operating acting together as a group, will have the right and option, exercisable within forty five (45) days after the Company sends such written notification to the franchisees, to notify the Company that the franchisees intend to purchase the Company's assets or controlling interest in the stock on the same terms and conditions offered by the third party. If the franchisees elect not to purchase the seller's interest, such third party will have 120 days from the receipt of a notice from the franchisees declining to exercise their right of first refusal to close on the transfer of the assets or controlling interest. Failure to effect a transfer with the third party within the 120 day period, or any material change of the terms of the offer prior to closing, will constitute a new offer subject to the same rights of first refusal by the franchisees as in the case of the third party's initial offer. The franchisees' failure to exercise the option provided hereunder does not constitute a waiver of any other provision of this Agreement. If the consideration, terms, or conditions offered by a third party are such that the franchisees cannot furnish the same consideration, terms, or conditions, then the franchisees may purchase the interest proposed for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash, an independent appraiser will be mutually designated by the Company and the purchasing group of franchisees, at the Company's and the purchasing franchises expense, and the appraiser's determination will be final and binding.

### **16. MISCELLANEOUS**

#### **16.1 Relationship of Parties**

You are an independent contractor. Neither party is the legal representative or agent of, or has the power to obligate, or to direct or supervise the daily affairs of, the other for any purpose whatsoever, and no partnership, joint venture, agency, or fiduciary or employment relationship is intended or created by reason of this Agreement. You shall take all reasonable steps necessary to clearly identify to the public that the Company is not the owner or operator of the Franchised Business and is not

responsible for the acts or omissions of you and your employees, representatives, and agents. If requested by the Company, all of your invoices, work orders, contracts, etc. will identify your business as "an independently owned and operated franchise of Zerorez Franchising Systems, Inc."

### 16.2 Notices

All communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by any means which shall provide evidence of the date received, to the respective parties at the following addresses or at such different addresses as may be designated at any time by written notice to the other party:

Company: ZEROREZ Franchising Systems, Inc.  
1464 West 40 South, Suite 100  
Lindon, Utah 84042  
Attention: President  
Fax: (801) 932-7989

Franchisee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_

### 16.3 Withholding of Payments

You agree that you will not unreasonably withhold payment of any amounts owed to the Company or any affiliate. Should you have any claims against the Company for alleged non-performance by the Company of any of its obligations hereunder, those claims shall be submitted to arbitration as provided in Item 16.10.

### 16.4 Entire Agreement

This Agreement, including schedules, attachments, addenda, and any other documents expressly referred to herein, sets forth the entire agreement between the parties, fully superseding any and all prior negotiations, agreements, representations, or understandings between them, whether oral or written, pertaining to the subject matter hereof. The parties hereby expressly confirm that there are no oral or written agreements, arrangements, or understandings between them except as expressly reflected herein. Except as otherwise expressly provided herein, this Agreement may be amended only by a written document signed by both parties hereto.

### 16.5 Waiver and Delay

Any party who becomes aware of any claim or demand against the other shall have one year from the date such party became aware of, or with reasonable diligence should have become aware of, the facts giving rise to such claim in which to settle such claim or demand or to file a lawsuit with respect to it, or the claim or demand shall be deemed to have been waived and abandoned by such party. No waiver or delay by either party in requiring strict compliance with respect to any obligation of this Agreement or any agreement with other franchisees of the Company (or in the exercise of any right or remedy provided herein) and no custom or practice at variance with the requirements hereof shall constitute a waiver or modification of any such obligation, requirement, right or remedy, or preclude the exercise of any such right or remedy or the right to require strict compliance with any obligation set forth herein, or shall preclude, affect, or impair enforcement of any right or remedy provided herein

with respect to any subsequent default. All remedies, either under this Agreement, at law, in equity, or otherwise afforded to either party hereunder, shall be cumulative and not alternative and may be exercised simultaneously or sequentially in any order.

#### **16.6 Partial Invalidity**

In the event any term or provision of this Agreement is declared to be invalid or unenforceable for any reason, the provision shall be modified to the extent necessary to make it enforceable, or if it cannot be so modified, then severed, and the remaining terms of this Agreement shall remain in full force and effect, and it is hereby declared the intention of the parties that they would have executed the Agreement as so modified.

#### **16.7 Interpretation**

The table of contents and captions used in this Agreement are inserted for convenience only and shall not affect the meaning or construction of this Agreement. The language of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either party.

#### **16.8 Successors**

Subject to the restrictions on transfer in Item 13, this Agreement shall be binding upon and inure to the benefit of the permitted successors, assigns, heirs, and personal representatives of the parties.

#### **16.9 Applicable Law**

All matters relating to arbitration shall be governed by the Federal Arbitration Act. Except to the extent governed by the Federal Arbitration Act as required herein, the United States Trademark Act of 1946 or other federal law, this Agreement and the relationship between the parties hereto shall be governed by and interpreted in accordance with the laws of the State of Utah, which shall prevail in the event of any conflict of laws. This Agreement shall become valid when executed and accepted by the Company at Lindon, Utah. It shall be deemed made and entered into in the State of Utah. In entering into this Agreement, you acknowledge that you have sought, voluntarily accepted, and become associated with the Company, which is headquartered in Lindon, Utah, and that this Agreement contemplates and shall result in business relationships with the Company's headquarters personnel. The choice of law designation permits, but does not require, that all suits concerning this Agreement be filed in the State of Utah.

#### **16.10 Arbitration of Certain Disputes**

- (a) Except as provided in Item 16.10(b) below, any and all disputes or controversies between or among the parties hereto, and their respective shareholders, owners, corporate affiliates, officers, directors, employees, agents, or guarantors, including without limitation, any disputes or controversies based upon, arising out of, or in any way connected to this Agreement, any agreements ancillary to this Agreement, the relationship created hereunder, the offer or sale thereof, or operation, or management of any franchise or Franchised Business, shall be resolved in accordance with the Federal Arbitration Act through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, as modified or supplemented as herein provided. An arbitration proceeding may be commenced by written notice from either party to the other requesting arbitration.**
- (b) The following types of disputes and controversies shall not be resolved through arbitration as provided in Item 16.10(a) above: disputes and controversies based upon or arising out of the Lanham Act, as now or hereafter amended, or otherwise relating to the ownership or validity of any of the Marks; disputes and controversies involving**

enforcement of the Company's rights under Items 6, 8, and 13 of this Agreement; and disputes and controversies related to or based upon your failure to pay royalties or advertising fund contributions when due.

- (c) Three arbitrators who shall be selected by the AAA office in which the arbitration petition has been filed shall conduct any arbitration under Item 16.10(a) above. The parties desire that at least one arbitrator be an attorney familiar with franchising matters. The arbitrators shall have the power to order discovery on the basis of what is likely to produce material and relevant information in the proceeding, and to assess costs and expenses of the arbitration according to the relative merits of the parties' positions in the case. The arbitrators shall enter judgement by default in the event either party shall fail or refuse to appear or participate in any properly noticed arbitration proceeding. Damages recoverable in any action shall be limited to actual damages proved and neither party shall be entitled to recover special, consequential, punitive, or multiplied damages. The parties agree to be bound by the provisions of any limitation on the period of time within which claims may be brought under applicable law or this Agreement, whichever expires earlier. In connection with any arbitration proceeding, each party must submit or file any claim that would constitute a compulsory counterclaim (under the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim that is not submitted or filed will be forever barred.
- (d) The forum for any arbitration required hereunder shall be in the county in which the Company's principal headquarters are located.
- (e) In the event a dispute or claim arises hereunder involving both matters subject to arbitration under this Item 16.10 as well as matters not subject to arbitration under Item 16.10(b), all portions of such claim which are subject to arbitration shall be severed from the claims not subject to arbitration and shall be subject to arbitration hereunder, unless both parties agree to consolidation in a single action.
- (f) The provisions of this Item 16.10 are intended to benefit and bind certain third-party non-signatories and will continue in full force and effect subsequent to termination or expiration of this Agreement.

#### **16.11 Attorneys' Fees**

Should either party be required to enforce its rights hereunder, the prevailing party shall be entitled to recover its reasonable costs and expenses, including without limitation, attorneys' fees, costs, and such expenses on appeal, to be determined by the court or arbitrator, as the case may be and not a jury.

#### **16.12 Personal Guarantees**

If you are a corporation, limited partnership, or limited liability company, you agree that in order to induce the Company to enter into this Agreement, you will cause one or more of your principals acceptable to the Company to guaranty to the Company the full payment and performance of all your obligations under this Agreement. The form of such guaranty shall be as attached hereto as Exhibit 3.

#### **16.13 Operation of the Franchised Business**

You acknowledge and agree that you shall be responsible for operating the Franchised Business and that you shall not enter into any management agreement or other similar arrangement for the operation of the Franchised Business with any independent entity without the prior consent of the

Company.

**17. ACKNOWLEDGEMENTS**

**17.1 Risks**

You acknowledge that you have conducted an independent investigation of the business contemplated by this Agreement, you recognize that it involves business risk, and that making a success of the venture is largely dependent upon your own business abilities. The Company expressly disclaims the making of, and you acknowledge that you have not received or relied on, any representation, warranty, or guaranty, expressed or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement, except as expressly set forth in this Agreement and the Offering Circular provided to you.

*Franchisee's Initials* \_\_\_\_\_ *Date* \_\_\_\_\_

**17.2 No Other Representations**

You expressly warrant that you have no knowledge of, and you have not relied upon, any representation or statement about the Franchised Business made by the Company or its officers, directors, shareholders, employees, agents, franchise sales representatives, or servants, whether written or oral, that is contrary to the terms of this Agreement or the Offering Circular provided to you. You represent and warrant to the Company, as material inducement to its entry into this Agreement, that you have made no misrepresentations to the Company in connection with this Agreement.

*Franchisee's Initials* \_\_\_\_\_ *Date* \_\_\_\_\_

**17.3 Advisors**

You acknowledge that you have received, read, and understand this Agreement and the Offering Circular delivered in connection with the Franchised Business; that you have had ample time and opportunity to review such documents with your own legal counsel and other advisors of your own choosing, if any, and to consult with them about the potential benefits and risks of entering into this Agreement; and that the Company has fully and adequately explained the provisions of such documents to your satisfaction.

*Franchisee's Initials* \_\_\_\_\_ *Date* \_\_\_\_\_

**17.4 Variances**

You acknowledge that the Company may from time to time approve exceptions or changes from the uniform standards of the System which the Company, in its sole absolute discretion, believes necessary or desirable under particular circumstances. You understand that you have no right to object to or automatically obtain such variances, and that any exception or change must be approved in advance by the Company in writing. You also understand that other existing or future franchisees may operate under different forms of agreements, and consequently the rights and obligations of such franchisees may differ materially from yours.

*Franchisee's Initials* \_\_\_\_\_ *Date* \_\_\_\_\_

**17.5 Acknowledgements on Behalf of Shareholders, Partners and Co-Owners**

You acknowledge and represent that each of your partners, shareholders, or members:

- (a) has received a copy of the Company's Offering Circular at least 10 business days (14 in Illinois) prior to the first personal meeting with any representative of the Company, your execution of

this Agreement, or payment of any consideration. You have read and understand the Company's Offering Circular;

- (b) has received a final copy of this Agreement at least 5 business days prior to your execution of this Agreement;
- (c) has read and understand same, including without limitation the acknowledgements of this Item 17.

Franchisee's Initials \_\_\_\_\_ Date \_\_\_\_\_

The parties have executed this Agreement effective as of the date of the Company's acceptance as indicated below.

**FRANCHISEE:**

\_\_\_\_\_  
**Print Name of Franchisee**

**By:** \_\_\_\_\_

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

**By:** \_\_\_\_\_

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

**By:** \_\_\_\_\_

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

**COMPANY:**

**ZEROREZ Franchising Systems, Inc.**

**By:** \_\_\_\_\_

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

**Date of the Company's Acceptance:**

\_\_\_\_\_

**SCHEDULE A**

**OPERATING TERRITORY/ INITIAL FRANCHISE FEE/SALES QUOTAS**

The Operating Territory shall be:

Political and geographic boundaries described above or delineated on the attached map shall be considered fixed as of the date of the Franchise Agreement and shall not change for the purpose hereof notwithstanding a political reorganization or change to such boundaries or regions. All street boundaries shall be deemed to end at the street centerline unless otherwise so delineated or specified above.

Initial Franchise Fee: \_\_\_\_\_  
Payment Method: \_\_\_\_\_ Lump Sum  
\_\_\_\_\_ Installments  
Monthly Payments Commence: \_\_\_\_\_  
Down Payment: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Interest Rate: \_\_\_\_\_% per annum

This Agreement Expires on: \_\_\_\_\_

Sales Quota/Minimum Advertising Expense (if applicable):

	<u>Sales Quota (\$)</u>	<u>Min. Advertising Expense (%)</u>
Year 1	_____	_____
Year 2	_____	_____
Year 3	_____	_____
Year 4	_____	_____
Years 5-10	_____	_____

Franchisee's Initials \_\_\_\_\_ Date \_\_\_\_\_

Company's Initials \_\_\_\_\_ Date \_\_\_\_\_

**SCHEDULE B**

**LIST OF PARTNERS, OWNERS AND SHAREHOLDERS OF FRANCHISEE OWNING MORE THAN  
20% OF FRANCHISEE**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Ownership Percentage

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Ownership Percentage

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Ownership Percentage

\_\_\_\_\_  
Name

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Title

\_\_\_\_\_  
Ownership Percentage

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Name

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Title

\_\_\_\_\_  
Ownership Percentage

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Ownership Percentage