

Next Day Access

FRANCHISE AGREEMENT

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Next Day Access FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is made and entered into this 22nd day of May, 20 13, by and between Next Day Access, LLC, a limited liability company formed under Tennessee law, with its principal business address at 8500 Wolf Lake Drive, Suite 114, Bartlett, TN 38133 (referred to in this Agreement as "we", "us" or "our"), and Castle Rock Access, LLC, a Wisconsin limited liability company with its principal place of business at 800 Carmichael Rd. #136, Hudson, WI 54016 (referred to in this Agreement as "you", "your" or "owner").

RECITALS:

WHEREAS, we have expended and continue to expend considerable time and effort in the development of a distinctive format and system (the "System") for businesses that engage in the sale and rental of ramps ("Ramps"), and additional, related products and accessories as described in our Operating Manual from time to time, which currently include inclined and vertical lift systems, pool lift systems, patient lifts to move clients from the bed, floor safety materials, automatic door openers, wireless alert devices, and home modifications/devices such as grab bars and poles, and such other related goods and services that enhance the quality of life of physically disabled or challenged persons as we may specify from time to time (collectively, "Additional Approved Products");

WHEREAS, the distinguishing characteristics of the System include, without limitation: distinctive business formats, methods, procedures, designs, layouts, standards and specifications, all of which may be changed, improved and further developed by us from time to time;

WHEREAS, the System is identified by means of certain trade names, service marks, trademarks, logos, and indicia of origin, including, but not limited to, "Next Day Access™," as are now designated and may hereafter be designated by us in writing for use in connection with the System (collectively, the "Proprietary Marks");

WHEREAS, we continue to develop, use, and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed under those Marks and under the System, and to represent the System's high standards of quality, appearance, and service;

WHEREAS, you desire to enter into the business of operating a Next Day Access Business under our System and Proprietary Marks, and wish to enter into an agreement with us for that purpose, and to receive the training and other assistance we provide in connection therewith; and

WHEREAS, you understand and acknowledge the importance of our high standards of quality and service and the necessity of operating the business franchised hereunder in conformity with our standards and specifications.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party set forth herein, agree as follows:

1. GRANT

1.1 Grant of Franchise. We grant to you the right, and you undertake the obligation, upon the express terms and conditions set forth in this Agreement, to establish and operate a Next Day Access Business under the Proprietary Marks and the System (the "Next Day Access Business" or the "Franchised Business"), and to use the Proprietary Marks and the System, as they may be changed and improved from time to time at our sole discretion, solely in connection with that business and only at the location set forth in Section 1.2 of this Agreement.

1.2 Approved Location. You shall operate the Franchised Business only at a location approved by us (the "Approved Location"). You may operate the Next Day Access Business from your personal residence; however, if in our sole opinion the space available there is not sufficient to effectively operate the Franchised Business, you must lease storage space, at your sole cost, sufficient to store all products purchased by you pursuant to this Agreement. The exact street address of the Approved Location is listed on Exhibit A, entitled Territory Agreement, to this Agreement. You shall not relocate the Franchised Business without our prior written approval which we can refuse to grant for any reason or no reason at all.

1.3 Your Territory. You shall operate the Next Day Access™ Business only within the territory described in Exhibit A ("Approved Location", "Territory", and "Area of Primary Responsibility"). Except as otherwise provided in this Agreement, during the term of this Agreement, we retain the right but have no obligation to establish or operate and to license any other person the right to establish or operate a Next Day Access Business within the Territory. We retain the rights, among others, on any terms and conditions we deem advisable, and without granting you any rights therein:

1.3.1 To establish and operate, and license others to establish and operate, a Next Day Access Business under the System and the Proprietary Marks at any location outside your Area of Primary Responsibility (see Franchise Agreement Section 1.4), notwithstanding the proximity to your Territory or the Approved Location and

1.3.2 To sell or distribute, or license others to sell or distribute, directly or indirectly, any products and services other than products and services sold through the Next Day Access System, through any distribution channels (including, without limitation, the Internet), at any location whether within or outside your APR under any proprietary marks (including the Proprietary Marks);

1.3.3 To terminate the territorial protection described in Section 1 hereof if you fail to attain or exceed twenty thousand dollars (\$20,000) in monthly Gross Revenue at least once during each twelve (12) calendar months of this Agreement. The foregoing remedy shall be in addition to any other remedies we may have under this Agreement.

1.4 Your "Area of Primary Responsibility" ("APR"). You have the exclusive right to operate the Franchised Business within the ZIP Code listed on Exhibit A. This ZIP Code is your Area of Primary Responsibility. You have additional rights in your Area of Primary Responsibility. These rights include the following: a) the right of first refusal to all business from that ZIP Code that is referred by us to our Franchisees. You must accept the referral within 48 hours of receiving notice or we have the right to either refer it to any other Franchisee who has the non-exclusive right to operate in the Territory or to any dealer who sells and installs our or any of our affiliates' products or we may take it ourselves. b) You will also have the right to purchase any part of the order coming from our affiliate at a discount. The discount will vary with the materials and/or goods available for sale in filling the order. c) You also have the right to purchase additional Zip Codes at the time you close on the purchase of the APR. If you do so the additional Zip Codes will become a part of your Area of Primary Responsibility, effective with the closing of the purchase. The cost of these additional ZIP Codes is \$00.03 per person in each of the ZIP Codes being purchased. If there are other Franchisees in the Territory, then the desired ZIP Codes may not be available. If they are available but have been requested by a new franchisee as a part of their original Area of Primary Responsibility, then you have a right of first offer, not a right of first refusal, which must be exercised within 48 hours after receipt of notice to exercise the right to offer. The right to purchase additional ZIP Codes at a discount relates to Zip Codes purchased as part of the original purchase, only.

1.5 Alternate Channels of Distribution. You shall offer and sell products only from the Next Day Access Business and only in accordance with the requirements of this Agreement and the procedures set forth in the Operating Manual, as defined in Section 3.5 below. You shall only offer or sell products to retail customers for their use and consumption and not for resale.

1.6 Supplementing the System. You acknowledge that we may, in our sole discretion, (a) supplement, improve, change, and otherwise modify the System from time to time, and (b) supplement, improve, change, remove and otherwise modify the Ramps and Additional Approved Products from time to time. You agree to comply with all

of our requirements in that regard, including, without limitation, offering and selling new or different products, services, or merchandise as specified by us.

2. TERM AND RENEWAL

2.1 **Term.** This Agreement shall be in effect upon our acceptance and execution and, except as otherwise provided herein, the term of this Agreement shall be ten (10) years from the date first above written, unless this Agreement is sooner terminated pursuant to its terms.

2.2 **Renewal.** Upon the expiration of the term of this Agreement, you may, subject to the following conditions, renew this Agreement for one (1) additional consecutive term of ten (10) years. We may require, in our sole discretion, that any or all of the following conditions be met prior to such renewal:

2.2.1 You shall give us written notice of your election to renew no fewer than eight (8) months nor more than twelve (12) months prior to the end of the then-current term;

2.2.2 You shall make or provide for, in a manner satisfactory to us, such renovation and modernization of the premises of the Next Day Access Business as we may reasonably require, including, without limitation, purchase of additional or replacement equipment and renovation of signs to reflect the then-current standards and image of the System;

2.2.3 You shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between you or any of your affiliates and us or our subsidiaries or affiliates; and, in our reasonable judgment, you shall have substantially complied with all the terms and conditions of such agreements during the terms thereof;

2.2.4 You shall have satisfied all monetary obligations due and owed by you to us and our subsidiaries and affiliates, and to the Next Day Access Brand Fund (defined in Section 12 below), and shall have timely met those obligations throughout the term of this Agreement;

2.2.5 If you operate your Next Day Access Business in any location other than your personal residence, you shall present evidence satisfactory to us that you have the right to remain in possession of the Premises for the duration of the renewal term or shall obtain our approval, which may be withheld in our sole discretion, of a new location for the Next Day Access Business for the duration of the renewal term;

2.2.6 You shall, at our option, execute our then-current form of franchise agreement (but only for such renewal terms as are provided by this Agreement) and other ancillary agreements, which shall supersede this Agreement in all respects, and the terms of which may differ materially from the terms of this Agreement, including, without limitation, increasing your required royalty fees, advertising contributions, and other fees, as determined by us, except that you shall not be required to pay an initial franchise fee and your Territory shall remain the same and all other terms and conditions of the new Agreement are the same or more favorable than the then current form of franchise agreement in use by us;

2.2.7 You shall execute a General Release, in a form prescribed by us, of any and all claims, known or unknown, that you might have against us or our subsidiaries or affiliates, or their respective officers, directors, agents, or employees (see Exhibit ? to this Agreement);

2.2.8 You shall comply with our then current qualification and training requirements;

2.2.9 You shall pay us a renewal fee in the amount equal to Fourteen Thousand Dollars US (\$14,000.00 US); and

2.2.10 You shall be current with respect to your obligations to lessor, suppliers, and any others with whom you do business.

3. OUR DUTIES

3.1 Specifications. We may furnish you, at no charge to you, specifications for a Next Day Access Business, including requirements for image, equipment, signs and other procedures. You acknowledge that such specifications shall not contain the requirements of any federal, state or local law, code or regulation (including without limitation those concerning the Americans with Disabilities Act or similar rules governing public accommodations or commercial facilities for persons with disabilities).

3.2 Training. We shall provide the training as set forth in Section 6 hereof.

3.3 On-Site Assistance. During the initial twelve (12) months of the term of this Agreement, our representative shall, at times we determine in our discretion, visit with you one (1) time in your Territory or at a location agreeable to both parties to provide you with guidance in developing and operating the Next Day Access Business. Thereafter such visits may occur up to one (1) time per year as we determine in our sole discretion. The first such visit shall last a minimum of four (4) hours, and all visits thereafter shall last a minimum of two (2) hours each.

3.4 Advertising and Promotional Materials. We may make available to you advertising and promotional materials at your expense as provided in Section 12 hereof.

3.5 Manuals. We will either provide you, on loan, one copy of our confidential operations manuals (the "Operating Manual"), or provide you with electronic access to the Operating Manual, as more fully described in Section 9 hereof.

3.6 Inspections. We will conduct, as we deem advisable in our sole discretion, inspections of the Premises and your operation of the Next Day Access Business at any time during your regular business hours and with or without notice to you.

3.7 Equipment. We will provide to you a list of initial equipment and related products and accessories for the Next Day Access Business for purchase from our affiliate or a supplier we designate.

3.8 Ongoing Advice. During the term of this Agreement, we will advise you from time to time regarding operating issues concerning the Next Day Access Business disclosed by reports you submit to us or on-site inspections we make. Such guidance will, in our sole discretion, be furnished in our Operating Manual (described in Section 9), in bulletins or other written materials, during telephone consultations and/or consultations at our offices, or through the Internet. In addition, we will furnish guidance to you from time to time, as we deem appropriate in our sole discretion, on the following matters concerning the System: standards, specifications and operating procedures and methods to be utilized; purchasing required and recommended goods, equipment, materials, supplies and services; advertising and marketing programs; employee training; and administrative bookkeeping and accounting procedures. At your request, we will furnish additional guidance and assistance relating to the operation of the business and, in such a case, we may, in our discretion, charge the per diem fees and charges we establish from time to time in the Operating Manual or otherwise in writing.

3.9 Next Day Access Brand Fund. We shall have the right, without the obligation, to establish and administer a brand promotion fund in the manner set forth in Section 12 hereof.

3.10 Performance by Designee. You acknowledge and agree that any duty or obligation imposed on us by this Agreement may be performed by any designee, employee, or agent of us, as we may direct.

3.11 Fulfilling Our Obligations. In fulfilling our obligations pursuant to this Agreement, and in conducting any activities or exercising any rights pursuant to this Agreement, we (and our subsidiaries and affiliates) shall have the right: (a) to take into account, as we see fit, the effect on, and the interests of, other Franchised Businesses and Systems in which we have an interest and on our own activities and the activities of our subsidiaries and affiliates; (b) to share market and product research, and other proprietary and non-proprietary business information, with other franchised businesses and systems in which we have an interest or our subsidiaries or affiliates have an interest, or with our subsidiaries or affiliates; (c) to introduce proprietary and non-proprietary items or operational equipment

used by the System into other franchised systems in which we have an interest; and/or (d) to allocate resources and new developments between and among systems, and/or our subsidiaries or affiliates, as we see fit.

4. FEES

4.1 **Initial Franchise Fee.** You shall pay to us, on execution of this Agreement, a nonrefundable initial franchise fee of Twenty Eight Thousand Dollars (US \$28,000) (the "Initial Franchise Fee"). The entire Initial Franchise Fee is fully earned and non-refundable in consideration of administrative and other expenses incurred by us in granting this franchise and for our lost or deferred opportunity to enter into this Agreement with others; provided, however, that, if you (or your managing shareholder, partner or member) fail to complete the Initial Training Program, described in Section 6.1 below, to our satisfaction, we will refund the Initial Franchise Fee to you, less our reasonable administrative, supervisory, accounting, training and legal costs.

4.2 **Royalty Fee.** You shall pay to us a continuing royalty fee in the amount of Eight Percent (8%) of Gross Revenue. The term "Gross Revenue" means all revenues generated from the sale or lease of Product and any other revenue you derive from operating your Next Day Access Business conducted upon, from or with respect to the Next Day Access Business, whether such sales are evidenced by cash, check, credit, charge, account, barter or exchange. Gross Revenue shall include, without limitation, monies or credit received from the sale of products, from tangible property of every kind and nature, promotional or otherwise. Gross Revenue shall not include good faith refunds, adjustments, credits and allowances actually made by your Next Day Access Business in compliance with the Operating Manual (described in Section 9). Gross Revenue shall also exclude any sales taxes or other taxes collected from customers by you and paid directly to the appropriate taxing authority.

4.3 **Brand Promotion Expenditures and Contributions.** You shall make monthly expenditures and contributions for advertising and brand promotion as specified in Section 12 hereof.

4.4 **Payments.** All payments to us required by Sections 4.2 and 12 hereof shall be paid on or before the 5th day of the calendar month based on the Gross Revenue from the preceding month. We reserve the right to require that all such payments be made by electronic fund transfer or direct deposit. Any payment or electronic payment not actually received by us on or before the 5th calendar day of the month shall be deemed overdue. If any payment is overdue by thirty (30) days or more, you shall pay us immediately upon demand, in addition to the overdue amount, interest on such amount from the date it was due until received by us, at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by applicable law, whichever is less. In addition, if any monthly report required by Section 11 below is not received when due, all payments owed by you for such month shall be deemed overdue until such reports are received by us, regardless of whether payment was actually made, and you shall be responsible for applicable interest as described in this Paragraph 4.4. Entitlement to such interest shall be in addition to any other remedies we may have. You shall not be entitled to set off any payments required to be made under this Section 4 against any monetary claim you may have against us. However, you acknowledge and agree that we have the right to set off any amounts that we may be required to pay to you under this Franchise Agreement against amounts that you or your owners owe to us.

4.5 **Bank Account.** You shall deposit all revenues from operation of the Franchised Business into one bank account within two (2) days of receipt, including cash, checks, credit card receipts or the value of other forms of payment. We have the right to require, in the Operating Manual or otherwise in writing, that you make Royalty payments and other payments required under this Agreement directly to a bank or such other financial institution account specified by us, at the times and with the frequency designated by us, by electronic funds transfer, direct deposit, or such other means as we may specify from time to time, notwithstanding any other provisions of this Agreement, and you agree to comply with such requirement. To facilitate this method of payment, you shall furnish us, our bank, or other financial institution, and any other recipient of payment, with such information and authorizations as may be necessary to permit such payment in such manner. You shall bear all expenses, if any, associated with such authorizations and payments. You agree to execute any and all documents as may be necessary to effectuate and maintain the electronic funds transfer, as we require. In the event you change banks or accounts for the bank account required by this Section 4.5, you shall, prior to such change, provide such information and

documentation as required in this Section 4.5. Your failure to provide such information concerning the bank account required by this Section 4.5 or any new account or your withdrawal of authorization as required hereunder for whatever reason shall be a breach of this Agreement.

5. OPENING OF FRANCHISED BUSINESS

5.1 **Business Development.** You shall develop, maintain, renovate or construct, and equip, the Next Day Access Business at your own expense. You shall comply with any and all specifications that we provide for a Next Day Access Business, including requirements for image, equipment, signs and other procedures.

5.2 **Licensing.** You shall be responsible, at your own expense, for obtaining all zoning classifications, permits, certifications, and clearances required for the lawful construction and operation of the Next Day Access Business, including, but not limited to, certificates of occupancy and business licenses, which may be required by federal, state or local laws, ordinances, or regulations, or which may be necessary or advisable owing to any restrictive covenants relating to the Premises or required by the lessor.

5.3 **Commencement Criteria.** You agree not to commence operation of the Next Day Access Business until:

5.3.1 You have completed the Initial Training Program (see Section 6.1) to our satisfaction;

5.3.2 All amounts then due to us or our affiliates have been paid;

5.3.3 We have been furnished with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as we request; and

5.3.4 We have been furnished with such evidence as we reasonably request that you possess such necessary equipment as we require for you to operate the Next Day Access Business pursuant to our Operating Manual.

5.4 **Opening Deadline.** You shall commence operation of the Next Day Access Business not later than sixty (60) days after the date of execution of this Agreement and within ten (10) days after you have completed Initial Training Program to our satisfaction. The parties agree that time is of the essence in the opening of the Next Day Access Business and that your failure to open the Next Day Access Business within the time periods described in this Section 5.4 shall be considered a material breach and default under this Agreement and will entitle us to terminate this Agreement pursuant to Section 15 hereof.

5.5 **ADA Certification.** If the Next Day Access Business is not located at your personal residence, prior to opening the Next Day Access Business, you shall execute and deliver to us an ADA Certification in the form attached to this Agreement as Exhibit B, to certify to us that the Next Day Access Business and any proposed renovations comply with the ADA.

6. TRAINING

6.1 **Initial Training Program.** Before the Next Day Access Business commences operations, the following individuals shall attend and complete to our satisfaction the initial training program ("Initial Training Program"): (a) you (or, if you are a corporation, partnership or limited liability company, your managing shareholder, partner or member); and (b) one additional employee you elect to enroll in the Initial Training Program. We shall have the right to approve those persons who attend the Initial Training Program and to require fewer or additional persons to attend the Initial Training Program as we determine in our sole discretion. In the event you (or your managing shareholder, partner or member) or your employee fail, in our sole discretion, to successfully complete the Initial Training Program, to our satisfaction, we have the right to terminate this Agreement pursuant to Section 15 hereof.

6.1.1 The Initial Training Program consists of five (5) working days of training for you (or your managing shareholder, partner or member) and your employees to be furnished at our training facility or at an operating Next Day Access Business that we designate.

7.2.6 To refrain from selling or advertising any equipment, other products, merchandise, or services hereunder on the Internet without our prior, written approval;

7.2.7 To use, in the operation of the Franchised Business, such standards, specifications, and procedures as prescribed by us, which may relate to any one or more of the following with respect to the Next Day Access Business:

7.2.7.1 Replacement of obsolete or worn out equipment;

7.2.7.2 Terms and conditions of the sale and delivery of, and terms and methods of payment for goods, services, including direct labor, materials and supplies that you obtain from us, our affiliates or others;

7.2.7.3 Sales, marketing, advertising and promotional programs and materials and media used in such programs;

7.2.7.4 Staffing levels for the Next Day Access Business; matters relating to managing the Next Day Access Business; communication to us of the identities of the Next Day Access Business' personnel; and qualifications, training, dress and appearance of employees;

7.2.7.5 Days and hours of operation of the Next Day Access Business;

7.2.7.6 Participation in market research and testing of goods and services;

7.2.7.7 Acceptance of credit cards, other payment systems and check verification services;

7.2.7.8 Participation in any intranet or extranet computer network we establish and maintain for Next Day Access franchisees (and to execute such agreement(s) and pay such fees as we reasonably require in connection therewith); bookkeeping, accounting, data processing and record keeping systems and forms; methods, formats, content and frequency of reports to us of sales, revenue, financial performance and condition; and furnishing tax returns and other operating and financial information to us;

7.2.7.9 Sell or rent any products hereunder outside of your Territory only with our prior written consent and not sell or rent any products hereunder in the territory of another Next Day Access franchisee. You must coordinate with us for referring sales or customers located outside the Territory to us or other Next Day Access franchisees;

7.2.7.10 Types, amounts, terms and conditions of insurance coverage required to be carried for the Next Day Access Business and standards for underwriters of policies providing required insurance coverage; our protection and rights under such policies as an additional named insured; required or impermissible insurance contract provisions; assignment of policy rights to us; periodic verification of insurance coverage that must be furnished to us; our right to obtain insurance coverage for the Next Day Access Business at your expense if you fail to obtain required coverage; our right to defend claims; and similar matters relating to insured and uninsured claims;

7.2.7.11 Adhering to good business practices and observing high standards of honesty, integrity, fair dealing and ethical business conduct in all dealings with customers, suppliers and us; and

7.2.7.12 Regulation of such other aspects of the operation and maintenance of the Next Day Access Business that we determine from time to time to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and Next Day Access Businesses.

7.3 **Minimum Revenue.** You shall attain or exceed Twenty Thousand Dollars (\$20,000) in monthly Gross Revenue at least once during every twelve (12) calendar months of this Agreement.

7.4 **Fixtures, Furnishings, and Office Equipment.** You shall purchase and install, at your expense, all fixtures, furnishings, office equipment (including, without limitation, a facsimile machine, telephone(s), computer, printer, and cash register or point-of-sale recording system), décor, and signs as we may reasonably direct from time to time. If you operate your business from any location other than your personal residence, you shall refrain from installing or

permitting to be installed on or about the Premises, without our prior written consent, any fixtures, furnishings, equipment, décor, signs or other items not previously approved as meeting our standards and specifications.

7.5 Sources of Products. You must purchase or lease all equipment that we approve and require for the Franchised Business, including, but not limited to, the computer hardware and software, tools, and the Next Day Access Vehicle (meeting the specification we require including bearing the signage we provide), all as described in the Operating Manual.

7.5.1 You must purchase all Next Day Access products from our affiliate (at then current prices and subject to the then current terms and conditions) or from other designated supplier(s) we specify.

7.5.2 All equipment and products sold or offered for sale at the Next Day Access Business shall meet our then-current standards and specifications, as established in the Operating Manual or otherwise in writing. Except as otherwise provided in Section 7.5.1, you shall purchase all equipment and products used or offered for sale at the Next Day Access Business for which we have established standards or specifications solely from approved suppliers (including distributors and other sources) which demonstrate, to our continuing reasonable satisfaction, the ability to meet our standards and specifications, and who have been approved by us in the Operating Manual or otherwise in writing. If you desire to purchase products from a party other than an approved supplier, you shall submit to us a written request to approve the proposed supplier, together with such evidence of conformity with our specifications as we may reasonably require. We shall have the right to require that our representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered for evaluation and testing either to us or to an independent testing facility that we designate. You shall pay a charge not to exceed the reasonable cost of the evaluation and testing. We shall use our best efforts, within ninety (90) days after our receipt of such completed request and completion of such evaluation and testing (if required by us), to notify you in writing of our approval or disapproval of the proposed supplier. You shall not sell or offer for sale any products of the proposed supplier until you receive our written approval of the proposed supplier. We may from time to time revoke our approval of particular products or suppliers when we determine, in our sole discretion, that such products or suppliers no longer meet our standards. Upon receipt of written notice of such revocation, you shall cease to sell any disapproved products and cease to purchase from any disapproved supplier. You agree that you shall use products purchased from approved suppliers solely for the purpose of operating the Next Day Access Business and not for any other purpose, including, without limitation, resale. Nothing in the foregoing shall be construed to require us to make available to prospective suppliers standards and specifications that we, in our sole discretion, deem confidential.

7.6 Financing. You agree, at your own expense, to secure all financing required to develop and operate the Next Day Access Business.

7.7 Licensing and Permits. You agree, at your own expense, to research the requirements for and obtain all permits and licenses required to operate the Next Day Access Business.

7.8 Inventory. At the time the Next Day Access Business opens, you shall stock the initial inventory of equipment, materials, products, ramps, ramp accessories, and supplies as prescribed by us in the Operating Manual or otherwise in writing. Thereafter, you shall stock and maintain all types of equipment and approved products in quantities sufficient to meet reasonably anticipated customer demand. You agree to immediately notify us if an approved supplier substitutes an unapproved product in place of an approved product. We are not liable to you for any loss or damage, or deemed to be in breach of this Agreement, if we cannot deliver, or cause to be delivered, or if our affiliates or designated sources or approved suppliers cannot deliver, all of your orders for goods, merchandise, equipment, supplies, etc. where such things are out-of-stock or discontinued.

7.9 Inspections. You shall permit us and our agents to enter upon the Premises at any time during regular business hours, with or without notice, for the purpose of conducting inspections. In connection with such inspections, we shall have the right to speak with you, any of your employees or customers; take audio or video recordings and photographs; remove samples of any goods, materials or supplies for testing and analysis; and conduct such other activities as we deem appropriate in our sole discretion. You shall cooperate with our representatives in such inspections by rendering such assistance as they may reasonably request, including presenting customers with such

6.1.2 No other additional or refresher courses are required for you to commence operation of the Next Day Access Business.

6.2 **Subsequent Employees.** At our option, any persons subsequently employed by you shall, prior to the assumption of duties, also attend and complete to our satisfaction the Initial Training Program and pay the then-current training fee designated in the Operating Manual or otherwise in writing from time to time by us. We may require you to pay us fees for training your new employees hired after your Next Day Access Business commences operations.

6.3 **Additional Programs.** You (or your managing shareholder, partner or member) and your employees who attend the Initial Training Program or who are designated from time to time shall attend such additional courses, seminars and other training programs as we may reasonably require from time to time. We reserve the right to require you (or your managing shareholder, partner or member) and your employees to attend an annual national or regional meeting, seminar or convention for Next Day Access franchisees for training or business purposes.

6.4 **Training Fee and Expenses.** All training programs required by this Agreement shall be at such times and places as may be designated by us. We shall furnish the Initial Training Program to you (or your managing shareholder, partner or member) and one (1) additional employee at no additional fee or other charge. You shall be responsible for any and all expenses incurred by you or your employees in connection with attending the Initial Training Program and all other such programs, including, without limitation, the costs of transportation, lodging, meals, and wages.

7. YOUR DUTIES

7.1 **Operating Standards.** You understand and acknowledge that every detail of the System and the Franchised Business is important to you, us, and other Next Day Access businesses in order to develop and maintain high operating standards, to increase the demand for the products sold by all franchised businesses operating under the System, to protect and enhance our reputation and goodwill, to promote and protect the value of the Proprietary Marks, and other reasons.

7.2 **Adherence to Standards and Specifications.** To insure that the highest degree of quality and service is maintained, you shall operate the Next Day Access Business in strict conformity with such methods, standards, and specifications as we may from time to time prescribe in the Operating Manual or otherwise in writing. You agree:

7.2.1 To maintain in sufficient supply, as we may prescribe in the Operating Manual or otherwise in writing, and to use at all times, only such types, models and brands of products, equipment (including, but not limited to, a vehicle for use in the Franchised Business (see Section 7.5, the "Next Day Access Vehicle" or the "Vehicle"), in the model and bearing the signage we require, the tools, and the computer hardware and software), materials and supplies from a supplier or suppliers designated or approved by us that conform to our written standards and specifications, and to refrain from deviating from it by the use of nonconforming items, without our prior written consent;

7.2.2 To sell or offer for sale only the Ramps, Additional Approved Products, and such other products, equipment and services as have been expressly approved for sale in writing by us; to refrain from any deviation from our standards and specifications without our prior written consent; and to discontinue selling and offering for sale any Ramps, Additional Approved Products, and other products, merchandise, equipment, and services which we may, in our discretion, disapprove in writing at any time;

7.2.3 To refrain from marketing, offering, or selling Ramps or Additional Approved Products independently of the other products sold or leased by the Next Day Access Business;

7.2.4 To purchase all equipment, materials, products, supplies and services from suppliers as we approve and designate in the Operating Manual or otherwise in writing from time to time;

7.2.5 To refrain from selling or renting any equipment or products at any type of location prohibited by Next Day Access in the Operating Manuals or otherwise in writing from time to time;

evaluation forms as we may periodically prescribe, and, upon notice from us or our agents, and without limiting our other rights under this Agreement, shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. If deficiencies are detected during any inspection, and we subsequently conduct a re-inspection in our sole discretion, you shall be responsible for our costs and expenses of such re-inspection. Should you, for any reason, fail to correct any deficiencies within a reasonable time as determined by us, we shall have the right, but not the obligation, to correct any deficiencies which may be susceptible to correction by us and to charge you a reasonable fee for our expenses in so acting, payable to us upon demand. The foregoing shall be in addition to such other remedies we may have.

7.10 Advertising and Promotional Materials. You shall ensure that all graphics, signs, advertising and promotional materials, decorations and other items specified by us bear the Proprietary Marks in the form, color, location, and manner prescribed by us.

7.11 Maintenance of Premises and Vehicle. You shall maintain the Premises (including any adjacent public areas and storage facility) and Vehicle in a clean, orderly condition and in excellent repair; and, in connection therewith, you shall, at your own expense, make such additions, alterations, repairs and replacements thereto (but not others without our prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment and décor as we may reasonably direct.

7.12 Refurbishment. We reserve the right to require you to refurbish, once every five (5) years, the Premises and/or Vehicle and other equipment, at your expense, to conform to the building design, trade dress, color schemes and presentation of the Proprietary Marks in a manner consistent with the then-current image for new Next Day Access Businesses. Such refurbishment may include, without limitation, installation of new equipment, remodeling, redecoration and modifications to existing improvements.

7.13 On-Premises Supervision. During operating hours, the Next Day Access Business shall be under the direct, on-premises supervision of one of your principals, or another individual who has satisfactorily completed the Initial Training Program, which we reserve the right to approve in our sole discretion. At least one (1) individual who has completed our Initial Training Program shall be on the Premises operating the Next Day Access Business during all hours of operation specified by us in writing in the Operating Manual or otherwise in writing from time to time. You shall take such steps as are necessary to ensure that your employees preserve good customer relations; render competent, prompt, courteous and knowledgeable service; and meet such minimum standards, including, without limitation, such attire as we may reasonably require, as we may establish from time to time in the Operating Manual. You and your employees shall handle all customer complaints, refunds, returns and other adjustments in a manner that will not detract from our name and goodwill. You shall be solely responsible for all employment decisions and functions of the Next Day Access Business, including, without limitation, those related to hiring, firing, training, wage and hour requirements, record-keeping, supervision, and discipline of employees.

7.14 Changes to the System. You shall not implement any change, amendment or improvement to the System without our express prior written consent. You shall notify us in writing of any change, amendment or improvement in the System which you propose to make, and shall provide to us such information as we request regarding the proposed change, amendment or improvement. You acknowledge and agree that we shall have the right to incorporate the proposed change, amendment or improvement into the System and shall thereupon obtain all right, title and interest therein without compensation to you.

7.15 Compliance With Lease. You shall comply with all the terms of your lease or sublease, if any exists, and all other agreements affecting the operation of the Next Day Access Business; promptly furnish us a copy of your lease, upon request; shall undertake best efforts to maintain a good and positive working relationship with your landlord and/or lessor; and refrain from any activity which may jeopardize your right to remain in possession of, or to renew the lease or sublease for, the Premises.

7.16 Health and Safety Standards. You shall meet and maintain the highest health and safety standards and ratings applicable to the operation of the Next Day Access Business.

You shall furnish to us immediately upon the receipt thereof, a copy of all health inspection reports and any violation or citation which indicates your failure to maintain federal, state, or local health or safety standards in the operation of the Next Day Access Business. Your failure to cure such violations within twenty-four (24) hours shall constitute grounds for immediate termination pursuant to Section 15.3.5 herein. We shall also have the right, but not the obligation, to enter the Premises, without notice, at any time during regular business hours to cure any health or safety violation at the Next Day Access Business and require you to reimburse us for all out-of-pocket costs and expenses incurred by us to affect such cure.

7.17 Restrictions on Prices. We reserve the right to require you to comply with reasonable restrictions on rental or sale prices for specific products, merchandise, or services offered and sold by you as required in the Operating Manual or through the Next Day Access Business Brand Fund, or as otherwise reasonably directed by us in writing from time to time.

7.18 Computer System and Required Software.

7.18.1 We shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware be used by you, including without limitation: (a) back office and point of sale systems, data, audio, and video, systems for use at the Next Day Access Business; (b) printers and other peripheral hardware or devices; (c) archival back-up systems; (d) Internet access mode and speed; and (e) physical, electronic, and other security systems (collectively, the "Computer System").

7.18.2 We shall have the right, but not the obligation, to develop or have developed for us, or to designate: (a) computer software programs that you must use in connection with the Computer System (the "Required Software"), which you shall install at your expense; (b) updates, supplements, modifications, or enhancements to the Required Software, which you shall install at your expense; (c) the tangible media upon which you record data; and (d) the database file structure of the Computer System.

7.18.3 At our request, you shall purchase or lease, and thereafter maintain, the Computer System and, if applicable, the Required Software. We shall have the right at any time to remotely retrieve and use such data and information from your Computer System or Required Software that we deem necessary or desirable. You expressly agree to strictly comply with our standards and specifications for all items associated with your Computer System and any Required Software in accordance with our standards and specifications. You agree, at your own expense, to keep your Computer System in good maintenance and repair and install such additions, changes, modifications, substitutions, and/or replacements to your Computer System or Required Software as we direct from time to time in writing. You agree that your compliance with this Section 7.18 shall be at your sole cost and expense.

7.19 Storage Space. You shall lease sufficient storage space to store your purchased products during the term of this Agreement.

8. PROPRIETARY MARKS

8.1 Our Representations. We represent with respect to the Proprietary Marks:

8.1.1 We are the owner of all right, title, and interest in and to the Proprietary Marks.

8.1.2 We have the right to use, and to license others to use, the Proprietary Marks.

8.1.3 We have taken and will take all steps reasonably necessary to preserve and protect the ownership and validity of the Proprietary Marks.

8.2 Your Use of the Marks. With respect to your use of the Proprietary Marks, you agree that:

8.2.1 You shall use only the Proprietary Marks designated by us, and shall use them only in the manner that we authorize and permit;

8.2.2 You shall use the Proprietary Marks only for the operation of the Next Day Access Business and only at the Approved Location and on the Vehicle, or in advertising or promotional materials for the Next Day Access Business used at or conducted from the Approved Location;

8.2.3 Unless otherwise authorized or required by us, you shall operate and advertise the Next Day Access Business only under the name "Next Day Access" and shall use all Proprietary Marks without prefix or suffix. You shall not use the Proprietary Marks as part of your corporate or other legal name or as part of an Internet domain name or Internet e-mail address;

8.2.4 During the term of this Agreement, and any renewal or extension hereof, you shall identify yourself as the owner of the Next Day Access Business (in the manner required by us) in conjunction with any use of the Proprietary Marks, including, but not limited to, on invoices, order forms, receipts, business stationery, and contracts with all third parties or entities, as well as the display of such notices in such content and form and at such conspicuous locations as we may designate in writing;

8.2.5 Your right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of our rights and will entitle us to exercise all of our rights under this Agreement in addition to all rights available at law or in equity;

8.2.6 You shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of us;

8.2.7 You shall execute any documents deemed necessary by us to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability;

8.2.8 You shall promptly notify us of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, our right to use and to license others to use, or your right to use, the Proprietary Marks. You acknowledge that we have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. We have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. We shall defend you against any third party claim, suit, or demand arising out of your use of the Proprietary Marks. If we, in our sole discretion, determine that you have used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by us. If we, in our sole discretion, determine that you have not used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by you. In the event of any litigation relating to your use of the Proprietary Marks, you shall execute any and all documents and do such acts as may, in our opinion, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, we agree to reimburse you for your out-of-pocket costs in doing such acts; and

8.2.9 You shall not attempt to register or otherwise obtain any interest in any Internet domain name or URL containing any of the Proprietary Marks, or any portion thereof, or any other word, name, symbol or device which is likely to cause confusion with any of the Proprietary Marks.

8.3 Acknowledgments. You expressly understand and acknowledge that:

8.3.1 We are the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them, and we have the right to use, and license others to use, the Proprietary Marks;

8.3.2 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System;

8.3.3 During the term of this Agreement and after its expiration or termination, you shall not directly or indirectly contest the validity of our ownership of, or our right to use and to license others to use, the Proprietary Marks;

8.3.4 Your use of the Proprietary Marks does not give you any ownership interest or other interest in or to the Proprietary Marks;

8.3.5 Any and all goodwill arising from your use of the Proprietary Marks shall inure solely and exclusively to our benefit, and upon expiration or termination of this Agreement and the license granted herein, no monetary amount shall be assigned to you or any of your principals, affiliates, subsidiaries, successors, licensees or assigns as attributable to any goodwill associated with your use of the System or the Proprietary Marks;

8.3.6 Except as specified in Section 1.3 hereof, the license of the Proprietary Marks granted hereunder to you is nonexclusive, and we have and retain the rights, among others: (a) to use the Proprietary Marks ourselves in connection with selling products, merchandise, and services; (b) to grant other licenses for the Proprietary Marks; (c) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks; and (d) to grant licenses thereto without providing any rights therein to you.

8.3.7 We reserve the right, in our sole discretion, to modify, add to, or discontinue use of the Proprietary Marks, or to substitute different proprietary marks, for use in identifying the System and the Next Day Access Businesses operating there under. You agree promptly to comply with such changes, revisions and/or substitutions, and to bear all the costs of modifying your signs, advertising materials, interior graphics and any other items which bear the Proprietary Marks to conform therewith. Your use of any such modified or substituted proprietary marks shall be governed by the terms of this Agreement to the same extent as the Proprietary Marks.

9. CONFIDENTIAL OPERATIONS MANUAL

9.1 **Standards of Operation.** In order to protect our reputation and goodwill and to maintain high standards of operation under the System, you shall operate the Next Day Access Business in accordance with the standards, methods, policies, and procedures specified in the Operating Manual. Upon your completion of the Initial Training Program to our satisfaction, we will either lend you one (1) paper copy of our operations manual ("Operating Manual") or provide you with electronic access to the Operating Manual (via Internet, extranet, or other electronic means) for your use during the term of this Agreement only. The Operating Manual may consist of multiple volumes of printed text, computer disks, other electronically stored data, DVDs, and videotapes.

9.2 **Confidentiality.** You shall treat the Operating Manual, any other manuals created for or approved for use in the operation of the Next Day Access Business, and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential pursuant to Section 10 below. You shall not copy, duplicate, record or otherwise reproduce the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person.

9.3 **Exclusive Property.** The Operating Manual shall remain the sole property of us and shall be kept in a secure place on the Premises. If any paper copy of the Operating Manual provided by us is lost, destroyed or significantly damaged, you agree to obtain a replacement copy at our then-applicable charge.

9.4 **Revisions to Manuals.** We may from time to time revise the contents of the Operating Manual, and you expressly agree to comply with each new or changed standard. You shall ensure that the Operating Manual is kept current at all times. We have the right to maintain all or any portions of the Operating Manual in written or electronic form, including, without limitation, on one or more Website. If we maintain the Operating Manual in electronic form or on one or more Website, you agree (a) to install, maintain, and upgrade continually throughout the term of this Agreement and as required by us in the Operating Manual and in writing from time to time, at your sole expense, the highest-speed Internet connection available to provide access to such portions of the Operating Manual; (b) to make one copy of such portion of the Operating Manual and to maintain such copies and their contents as secret and confidential; and (c) neither you nor any of your principals or employees shall make any electronic copy of any portion of the Operating Manual. In the event of any dispute as to the contents of the Operating Manual, the terms of the master electronic copy (or, if unavailable, the paper copy) maintained by us at our home office shall be controlling.

10. CONFIDENTIAL INFORMATION

10.1 **Confidential Information**. You shall not, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person, partnership, association, limited liability company or corporation any confidential information, knowledge or know-how concerning the methods of operation of the business franchised hereunder, including, without limitation, the Operating Manual, knowledge of specifications for and suppliers of certain goods, services, equipment, materials and supplies, product costs, accounting methods, including both paper and electronic spreadsheets, knowledge of the operating results and financial performance of other Next Day Access Businesses, your customer lists, customer accounts, and customer information, whether developed by us, you independently, or with our assistance, management tools, or advertising which may be communicated to you or of which you may be apprised by virtue of your operation under the terms of this Agreement ("Confidential Information"). You shall divulge such Confidential Information only to such of your employees as must have access to it in order to operate the Franchised Business. Any and all information, knowledge, know-how, techniques and other data which we designate as confidential shall be deemed confidential for purposes of this Agreement.

10.2 **Confidentiality Agreements**. You shall require your manager, assistant manager, other such personnel having access to any of our Confidential Information, and any sales representative or installer acting as an independent contractor to execute non-competition covenants and covenants that they will maintain the confidentiality of information they receive in connection with their employment by, affiliation or independent contractor relationship with you at the Next Day Access Business. Such covenants shall be in the form attached hereto as Exhibit C.

10.3 **Irreparable Injury**. You acknowledge that any failure to comply with the requirements of this Section 10 will cause us irreparable injury, and you agree to pay all court costs and reasonable attorneys' fees incurred by us in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 10, or such other relief sought by us.

11. ACCOUNTING AND RECORDS

11.1 **Weekly Gross Sales**. You shall record all sales on a point-of-sale recordkeeping and control system designated by us, or on any other equipment specified by us in the Operating Manual or otherwise in writing. You shall maintain a monthly record of all Gross Sales on a spreadsheet provided by us, or by such other means designated by us at our sole discretion. You shall provide us with such monthly record no later than the fifth day of each calendar month in the form we prescribe, via telefax or electronically. We shall have the right to access any business information or data collected and generated on your point-of-sale system and we may require you to use an accountant approved by us in advance.

11.2 **Other Reports**. You shall, at your expense, submit to us in the form we prescribe, the following reports, financial statements, and other data:

11.2.1 Within five (5) days after their filing, copies of all signed sales tax returns and signed withholding tax returns for the Next Day Access Business and, as soon as you have received them, copies of the canceled checks for the required sales taxes and withholding taxes;

11.2.2 Within fifteen (15) days after the end of each fiscal quarter, an unaudited profit and loss statement for the Next Day Access Business for the immediately preceding fiscal quarter and a year-to-date balance sheet as of the end of such fiscal quarter;

11.2.3 Within sixty (60) days after the end of the Next Day Access Business' fiscal year, reviewed annual profit and loss and source and use of funds statements and a reviewed balance sheet for the Next Day Access Business as of the end of such fiscal year signed by you or your principal operating officer or operating partner;

11.2.4 Within ten (10) days after our request, exact, signed original copies of federal and state income tax returns of the Next Day Access Business and other tax returns, including personal tax returns, and such other forms, records, books and other information that we may periodically require;

11.2.5 Within thirty (30) days after the end of each calendar month, a copy of the Next Day Access Business' monthly operating account bank statement; and

11.2.6 Such other forms, reports, records, information, and data as we may reasonably designate from time to time or as may be described in the Operating Manual.

11.2.6 In those states requiring electronic filing and payment of sales tax, you are required to furnish us with an electronic copy of all such filings and payment history.

11.3 Recordkeeping. You shall prepare, and shall preserve for at least three (3) years from the dates of their preparation complete and accurate books, records and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by us in the Operating Manual or otherwise from time to time in writing, including but not limited to: (a) cash receipts journals; (b) cash disbursements and weekly payroll journals and schedules; (c) general ledgers; (d) monthly bank statements, daily deposit slips, and cancelled checks; (e) all personal and Business tax returns; (f) suppliers' invoices (paid and unpaid); (g) monthly fiscal period balance sheets and fiscal period profit and loss statements; and (h) such other records as we may from time to time require.

11.4 Inspection and Audit. We, along with our designated agents, shall have the right at any time during regular business hours to examine, copy, and/or personally review at our expense, your books, records, accounts, and tax returns. We shall have the right at all reasonable times to remove such books, records, accounts and tax returns for copying. We shall also have the right, at any time, to have an independent audit made of your books and records. If an inspection or audit should reveal that any income or sales have not been reported or have been understated by two percent (2%) or more in any report to us, then you shall immediately pay to us the amount underpaid upon demand, in addition to interest from the date such amount was due until paid, at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by law, whichever is less, plus all of our costs and expenses in connection with the inspection or audit, including, without limitation, travel costs, lodging and wage expenses, and reasonable accounting and legal fees and costs. The foregoing remedies shall be in addition to any other remedies we may have under this Agreement or otherwise at law or in equity.

12. ADVERTISING AND PROMOTION

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

12.1 Opening Advertising and Promotion. You shall conduct initial local marketing for the Next Day Access Business within your first ninety (90) days of operation of the Next Day Access Business. You shall expend a minimum of Three Thousand Dollars (\$3,000) for such purpose. Such initial local marketing will utilize the marketing and public relations programs and media and advertising materials we have furnished to you or approved. We may, in our sole discretion, specify the form, manner, and timing of such advertising and promotion. The initial local marketing expenditures are in addition to the expenditures required by Sections 12.2 and 12.3.

12.2 Local Marketing, Advertising, and Promotion. Except as otherwise provided herein, for each month that your Next Day Access Business is open for business, you must spend on a minimum amount of money on local marketing, advertising, and promotion in such manner as we may, in our sole discretion, direct in the Operating Manual or otherwise in writing from time to time. The minimum amount of money that you must spend each month under this Section 12.2 is calculated as follows: (a) during your first year of operation or if your annual Gross Revenue for the prior fiscal year was less than \$300,000, you must spend each month a minimum of \$1,200 or 6% of the Gross Revenue for the preceding month, whichever is greater; (b) if your annual Gross Revenue for the prior fiscal year was greater than or equal to \$300,000 and less than \$500,000, you must spend each month a minimum of 4% of the Gross Revenue for the preceding month; and (c) if your annual Gross Revenue for the prior fiscal year was equal to or greater than \$500,000, you must spend each month a minimum of 3% of the Gross Revenue for the preceding month. Upon our request, you shall provide satisfactory evidence of all local advertising and promotion expenditures in such manner as we shall direct in the Operating Manual or otherwise in writing from time to time. If we determine

that you have not spent the requisite amounts, we may require you to pay such unexpended amounts into the Brand Fund.

12.3 Next Day Access Brand Fund. During the term of this Agreement, you shall also contribute to a Brand Fund ("Brand Fund") for advertising, marketing and public relations programs and materials as we deem necessary and appropriate in our sole discretion. Amounts due under this Section 12.3 shall be payable in the same manner as the Royalty fee described in Section 4.4. You shall contribute to the Brand Fund as follows: (a) during your first year of operation or if your annual Gross Revenues for the prior fiscal year was less than \$300,000, you must contribute monthly 1% of Gross Revenues for the preceding month to the Brand Fund; (b) if your annual Gross Revenues for the prior fiscal year was equal to or greater than \$300,000 you must contribute monthly 2% of Gross Revenues for the preceding month to the Brand Fund. Such contributions to the Brand Fund shall be in addition to the expenditures required by Sections 12.1 and 12.2 hereof. The Brand Fund shall be maintained and administered by us as follows:

12.3.1 We shall direct all advertising, marketing, and promotional programs, and have sole discretion over all aspects of such programs, including but not limited to concepts, materials, and media used in such programs, and the placement and allocation thereof. You agree and acknowledge that the Brand Fund is intended to maximize general public recognition, acceptance, and use of the System; and that we are not obligated, in administering the Brand Fund, to make expenditures for you which are equivalent or proportionate to your contribution, to make expenditures in your geographical area, or to ensure that you benefit directly or on a pro rata basis from expenditures or activities of the Brand Fund;

12.3.2 The Brand Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting and preparing advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which we believe will enhance the image of the System, including, but not limited to, the costs of preparing and conducting radio, television, print, and Internet-based advertising campaigns; developing, maintaining, and updating a World Wide Web site for the Next Day Access brand and System on the Internet; direct mail advertising; marketing surveys; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; purchasing point-of-purchase materials; and providing promotional and other marketing materials and services to the businesses operating under the System. The Brand Fund may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, approved by us in advance, which products, services, or improvements we shall have the right to determine will promote general public awareness of and favorable support for the System. The Brand Fund may furnish you with samples of advertising, marketing formats, promotional formats and other materials at no additional cost to you when we, in our sole discretion, deem appropriate. Multiple copies of such materials will be furnished to you at our direct cost of producing them plus any related shipping handling and storage charges;

12.3.3 You shall contribute to the Brand Fund, in accordance with this Section 12.3. The Brand Fund will not be used to defray any of our general operating expenses, except we retain the right to obtain reimbursement from the Brand Fund for our out-of-pocket costs and expenses incurred in administering the Brand Fund, for up to ten percent (10%) of the monies contributed to the Brand Fund to reimburse us for administrative costs and overhead incurred by us in any activities related to the administration of the Brand Fund and its programs, and a pro rata portion of the salaries of personnel who spend time on Brand Fund-related matters. The Brand Fund and any earnings thereon shall not otherwise inure to our benefit. We may spend, on behalf of the Brand Fund, in any fiscal year, an amount that is greater or less than the aggregate contribution of all Next Day Access Businesses to the Brand Fund in that year and the Brand Fund may borrow from us or others to cover deficits or invest any surplus for future use. All interest earned on monies contributed to the Brand Fund will be used to pay advertising costs before other assets of the Brand Fund are expended. We will prepare an annual statement of monies collected and costs incurred by the Brand Fund and furnish the statement to you upon written request. We have the right to cause the Brand Fund to be incorporated or operated through a separate entity at such time as we deem appropriate and such successor entity will have all of the rights and duties specified herein. We shall maintain separate bookkeeping accounts for the Brand Fund.

12.3.4 You acknowledge that the Brand Fund is not a trust or one of our assets and that we are not a fiduciary to you with respect to or a trustee of the Brand Fund or the monies therein; and

12.3.5 The Brand Fund is intended to be of perpetual duration. However, we maintain the right to terminate the Brand Fund. The Brand Fund may not be terminated, however, until all monies in the Brand Fund have been expended for advertising and/or promotional purposes or returned to its contributors on the basis of their respective contributions during the preceding three (3) month period.

12.4 Advertising Cooperative. We reserve the right, in our discretion, to designate any geographical area for purposes of establishing a regional advertising and promotional cooperative (“Cooperative”), and to determine whether a Cooperative is applicable to the Next Day Access Businesses. If a Cooperative has been established in your area prior to opening the Next Day Access Business, you shall become a member of the Cooperative no later than thirty (30) days after opening the Next Day Access Business. If a Cooperative is established subsequent to your opening of the Next Day Access Business, you shall become a member of the Cooperative no later than thirty (30) days after the date on which the Cooperative commences operation. If your Next Day Access Business is within the territory of more than one Cooperative, you shall not be required to be a member of more than one Cooperative within that territory.

12.4.1 Each Cooperative shall be organized and governed in a form and manner, shall commence operation on a date, and shall operate pursuant to written governing documents, all of which must be approved in advance by us in writing;

12.4.2 Each Cooperative shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to our approval, standardized advertising materials for use by the members in local advertising;

12.4.3 No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without our prior approval. All such plans and materials shall be submitted to us in accordance with the procedures set forth in Section 12.9 hereof;

12.4.4 Each Cooperative shall have the right to require its members to make contributions to the Cooperative in such amounts as determined by the Cooperative; provided, however, that you shall not be required to contribute to any Cooperative in excess of one percent (1%) of Gross Revenue during any calendar year, unless two-thirds of the members of the Cooperative vote in favor of a greater contribution. Your payments made under this Section 12.4.4 shall be credited towards the monthly expenditure required to be made under Section 12.2 hereof and shall be in addition to the requirements of Section 12.1 and 12.3 hereof;

12.4.5 Each member franchisee shall submit to the Cooperative, no later than the first Friday of each month, for the preceding fiscal month, its contribution as provided in Section 12.4.4 hereof, together with such other statements or reports as may be required by us or by the Cooperative with our prior approval. All contributions to the Cooperative shall be forwarded by the Cooperative to us, and we shall expend such moneys as directed by the duly elected representative of the Cooperative;

12.4.6 We, in our sole discretion, may grant to any franchisee an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating the reasons supporting such exemption. Our decision concerning such request for exemption shall be final; and

12.4.7 We shall have the power to require the Cooperative to be formed, changed, dissolved, or merged.

12.5 Website. As used in this Agreement, the term “Website” means an interactive electronic document, series of symbols, or otherwise, that is contained in a network of computers and/or other devices linked by communications software. The term Website includes, but is not limited to, the Internet and World Wide Web. We reserve the right to require you to establish and maintain a Website, at your expense, in connection with the Next Day Access Business. You shall comply with the following requirements, and all other applicable requirements set forth in the Operating Manual or otherwise in writing from time to time:

12.5.1 Except as approved in advance in writing by us, you shall not establish or maintain a separate Website, or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the Franchised Business. If such approval is granted by us, you shall establish and operate such World Wide Web or Internet site in accordance with our standards and policies provided to you in the Operating Manual or otherwise in writing from time to time;

12.5.2 You specifically acknowledge and agree that any Website will be deemed "advertising" under this Agreement, and will be subject to (among other things) our approval under this Section 12;

12.5.3 You may only use Web materials, Web pages, and Web site content which we have approved in advance in writing. You shall promptly incorporate on, and remove from, your Web site any information we require in the manner specified in the Operating Manual or otherwise in writing;

12.5.4 You shall provide on your Website all hyperlinks or other links that we may require. You shall not use any of the Marks on your Website, except as expressly permitted by us in writing. You may not post or include any Confidential Information or any other copyrighted material or information on your Web site without our prior written approval. If you wish to modify your approved Web site, all proposed modifications must receive our prior written approval;

12.5.5 We may furnish you with materials for your Website, which you shall adapt and utilize, but we shall be and at all times remain the sole owner of the copyrights for all material which appears on your Web site;

12.5.6 You shall obtain our prior written approval for each Internet domain name and/or home page address you use in connection with your Website. We shall be, and at all times remain, the sole owner of the domain name and/or home page address for the Web site you maintain in connection with the Next Day Access Business, you shall execute all documents required by us in connection therewith, and you hereby appoint us as your attorney-in-fact to execute such documents on your behalf if you fail to do so; and

12.5.7 We shall have the right to modify the provisions of this Section 12.5 relating to Websites as we shall solely determine is necessary or appropriate for the best interests of the System.

12.6 Advertising Materials. All advertising and promotion by you shall be in such media and of such type and format as we may approve, shall be conducted in a dignified manner and shall conform to such standards and requirements as we may specify. You shall not use any advertising or promotional plans or materials unless and until you have received written approval from us as described in Section 12.8. You acknowledge and agree that all advertising that you use must designate only our toll free telephone number for contacting you.

12.7 Telephone Directories. If you elect to list and advertise the Next Day Access Business in the principal regular (white pages) and classified (yellow pages) telephone directories covering the area in which the Next Day Access Business is located, the costs of your telephone directory advertising will not be credited toward the advertising and promotion obligation described in Sections 12.1, 12.2 and 12.3, unless such ad is a pre-approved display or column ad.

12.8 Approval of Advertising Materials. You shall submit to us samples of all advertising and promotional plans and materials for any print, broadcast, cable, electronic, computer or other media (including, without limitation, the Internet) that you desire to use and that have not been prepared or previously approved by us within the preceding three (3) months (as provided in Section 21 hereof), for our prior approval. You shall not use such plans or materials until they have been approved in writing by us. If written notice of disapproval is not received by you from us within thirty (30) days of the date of receipt by us of such samples or materials, we shall be deemed to have approved them.

12.9 Advisory Council. We reserve the right, in our sole discretion, to require you to become a member of and participate actively in the Advisory Council ("Advisory Council") in your area. You shall participate actively in the Advisory Council as we designate and participate in all Advisory Council meetings approved by us. We reserve the right to amend the governing documents for the Council from time to time, in our sole discretion, at any time. We, in our sole discretion, will determine the topic areas to be considered by the Advisory Council. The purposes of the

Advisory Council shall include, but are not limited to, exchanging ideas and problem-solving methods, advising us on expenditures for system-wide advertising, and coordinating franchisee efforts. Amounts and expenditures may vary from time to time due to variations in Advisory Council participation and costs, as determined by the Advisory Council, and as approved by us. We shall have the right to change, or dissolve the Advisory Council at any time in our sole discretion.

12.10 National Accounts

12.10.1 Right to Create. Next Day Access may, but is not obligated to, negotiate and enter into national account arrangements with certain customers (“National Accounts”) for the benefit of the Next Day Access brand. We have sole discretion as to whether to designate a particular customer as a National Account, as well as the terms and conditions of the National Account agreement. We may designate any of your current or prospective customers as National Accounts without paying you any compensation except for compensation paid to franchisees generally for participating in that customer’s National Account program. If we establish a National Accounts program, you will have a first option to service National Account customers in your APR on behalf of the System, in accordance with the pricing and other terms that we have negotiated and any rules that we have prescribed as we may in our sole discretion determine to change them from time to time. You may not enter into conflicting arrangements with National Accounts.

12.10.2 Election to Participate. You may elect not to participate in any National Account Program, or to terminate your participation in the National Account program at any time by giving us at least 30 days’ prior written notice. If you elect not to participate in a National Account Program or terminate your participation in the National Account program or if you fail to satisfy the conditions and obligations of any National Account, we have the right to service and/or authorize others to service National Account customers within your APR without any compensation to you as a result of such servicing by us or designation of another to provide such services. If you are subsequently willing and able to provide service within your APR, we will have no obligation to readmit you to the program or to transfer any National Account customer to you.

12.10.3 Private Label Programs. Arrangements with National and Regional retail chains for the marketing and sale of products manufactured and / or sold by us or by our affiliate under other brands are excluded from the definition of a National Account. You have no rights in and to such “Private Label Programs” regardless of where and how they may be marketed and / or sold unless specifically granted by us at the time any Private Label Program is established in writing. The products covered by the Private Label Program may be designated as an Approved Product which you have the right to sell and install as a part of your Franchised Business.

12.10.4 Our Right to Establish and Operate the Business For a National Account. Unless provided for differently in this Agreement, we reserve to ourselves the unconditional right to establish or not establish, to operate and to terminate operations, to acquire and to sell on any terms that we designate and at any price we see fit, any and all National Accounts in any and all APR(s) that we designate on any terms and conditions we see fit.

12.10.4 Our Right to Sell a National Account We Establish and Operate. We reserve to ourselves the unconditional right to sell on any terms and conditions that we see fit the business of a National Account in any APR in which we operate the business of that National Account as a result of our establishing that business or acquiring that business from a You or any other of our franchisees or other legal entity.

13. INSURANCE

13.1 Minimum Insurance Requirements. You shall procure, prior to the commencement of any activities or operations under this Agreement, and shall maintain in full force and effect at all times during the term of this Agreement (and for such period thereafter as is necessary to provide the coverage required hereunder for events having occurred during the term of this Agreement), at your expense, an insurance policy or policies protecting you, us, and the parties’ respective officers, directors, partners, agents and employees against any demand or claim with respect to personal injury, death or property damage, business interruption, or any loss, liability or expense whatsoever arising or occurring upon or in connection with the Next Day Access Business, including, but not limited

to, commercial general liability insurance (including products/completed operations), property insurance (including, but not limited to, fire, vandalism, and malicious mischief insurance for the replacement value of the Next Day Access Business and its contents), casualty insurance, business interruption insurance, statutory workers' compensation and employer's liability insurance, and automobile insurance coverage for all vehicles used in connection with the operation of the Next Day Access Business. Such policy or policies shall be written by a responsible carrier or carriers acceptable to us. The commercial general liability policy shall name us and our subsidiaries and affiliates as additional insured, specifically including additional insured rights within the completed operations coverage grant. All other policies shall provide us with thirty (30) days notice of cancellation. All policies shall provide at least the types and minimum amounts of coverage specified in the Operating Manual. We shall have the right, from time to time, to make such changes in minimum policy limits and endorsements in the Operating Manual or otherwise in writing as it may determine in its reasonable discretion.

13.2 Non-waiver. Your obligation to obtain and maintain the policy or policies in the amounts specified in the Operating Manual shall not be limited in any way by reason of any insurance that may be maintained by us, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Section 20.3 of this Agreement.

13.3 Franchisor Entitled to Recover. All public liability and property damage policies shall contain a provision that we, although named as an insured, shall nevertheless be entitled to recover under such policies on any loss occasioned to us or our servants, agents or employees by reason of the negligence of you or your servants, agents or employees.

13.4 Certificates of Insurance. Prior to the commencement of any operations under this Agreement, and thereafter at least thirty (30) days prior to the expiration of any policy, you shall deliver to us Certificates of Insurance evidencing the proper types and minimum amounts of coverage. All Certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given to us in the event of material alteration to or cancellation of the coverage evidenced by such Certificates.

13.5 Our Right to Procure Insurance. Should you, for any reason, fail to procure or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by us in the Operating Manual or otherwise in writing, we shall have the right and authority (but not the obligation) to procure and maintain such insurance in your name and to charge the same to you, which charges, together with our reasonable expenses in so acting, shall be payable by you immediately upon notice. The foregoing remedies shall be in addition to any other remedies we may have under this Agreement or at law or in equity.

14. TRANSFER OF INTEREST

14.1 Our Right to Transfer. We shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations herein to any person or legal entity, and any of our designated assignee(s) shall become solely responsible for all of our obligations under this Agreement from the date of assignment. You shall execute such documents of attornment or other documents as we may request.

14.2 Your Conditional Right to Transfer. You understand and acknowledge that the rights and duties set forth in this Agreement are personal to you, and that we have granted this franchise in reliance on your (or, if you are a corporation, partnership, or limited liability company, your principals') business skill, financial capacity and personal character. Accordingly, neither you nor any immediate or remote successor to any part of your interest in this Agreement, nor any individual, partnership, limited liability company, corporation or other legal entity which directly or indirectly owns any interest in you or in the Franchised Business shall sell, assign, transfer, convey, pledge, encumber, merge or give away (collectively, "transfer") this Agreement, any direct or indirect interest in you, or in all or substantially all of the assets of the Franchised Business without our prior written consent. Any purported assignment or transfer not having our written consent required by this Section 14.2 shall be null and void and shall constitute a material breach of this Agreement, for which we may immediately terminate without opportunity to cure pursuant to Section 15.2.6 of this Agreement. The foregoing remedies shall be in addition to any other remedies we may have under this Agreement or at law or in equity.

14.3 Conditions of Transfer. You shall notify us in writing of any proposed transfer of this Agreement, any direct or indirect interest in purchasing your Franchised Business, or in all or substantially all of the assets of the Franchised Business, at least forty-five (45) days before such transfer is proposed to take place. We shall not unreasonably withhold our consent to any transfer. We may, in our sole discretion, require any or all of the following as conditions of its approval:

14.3.1 That all of your accrued monetary obligations and all other outstanding obligations to us and our affiliates have been satisfied;

14.3.2 That you are not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between you and us or our affiliates;

14.3.3 That the consideration or payment of terms offered by a proposed Transferee are not excessive or unreasonable, based on the Gross Revenue or the gross revenue of other Next Day Access Businesses, in our reasonable business judgment;

14.3.4 That the transferor shall have executed a general release, in a form prescribed by us, of any and all claims against us and our affiliates, and their respective officers, directors, agents, shareholders, and employees;

14.3.5 That the transferor and transferee have executed a mutual general release, relieving all claims against each other, excluding only such claims relating to any provision or covenant of this Agreement which imposes obligations beyond the expiration of this Agreement;

14.3.6 That the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as we may request) enter into a written assignment, in a form satisfactory to us, assuming and agreeing to discharge all of your obligations under this Agreement; and that the transferee guarantee the performance of all such obligations in writing in a form satisfactory to us;

14.3.7 That the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as we may request) demonstrate to our satisfaction that it meets our educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to operate the Franchised Business; has adequate financial resources and capital to operate the Franchised Business; and has not operated a business in competition with us;

14.3.8 That the transferee execute, for a term ending on the expiration date of this Agreement and with such renewal term(s) as may be provided by this Agreement, our then-current form of franchise agreement and other ancillary agreements as we may require for the Franchised Business, which agreements shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty fee, brand fund contribution and other fees, as determined by us, except that the transferee shall not be required to pay any initial franchise fee and your Territory shall remain the same;

14.3.9 That you remain liable for all of the obligations to us in connection with the Franchised Business which arose prior to the effective date of the transfer and execute any and all instruments reasonably requested by us to evidence such liability;

14.3.10 That the transferee (or, if the transferee is a corporation, partnership or limited liability company, a principal of the transferee acceptable to us), at the transferee's expense, have successfully completed any training programs then in effect upon such terms and conditions as we may reasonably require and pay us the then-current training fee;

14.3.11 That we approve the terms and conditions of the transfer agreement between you and transferee;

14.3.12 That transferee does not finance more than seventy-five percent (75%) of the total purchase price, and that transferee expressly, in writing, subordinates all third-party interests in the Franchised Business to the interests of us; and

14.3.13 That you pay to us a transfer fee of Ten Thousand Dollars (\$10,000); however, in the case of a transfer to a corporation or limited liability company formed by you for the convenience of ownership (as determined by us in our sole discretion), no such transfer fee shall be required.

14.4 No Security Interest. You shall not grant a security interest in the Next Day Access Business or in any of the assets of the Next Day Access Business without our express written consent. If we consent to such security interest, such consent shall be conditioned on, among other things, the secured party's agreement that in the event of any default by you under any documents related to the security interest, we shall have the right and option (but not the obligation) to be substituted as obligor to the secured party and to cure any of default by you, and, in the event we exercise such option, any acceleration of indebtedness due to your default shall be void. In the event we cure any such default by you, you shall reimburse us all amounts paid by us to cure the default, plus all costs and expenses incurred by us to cure such default, and you shall be deemed in default of this Agreement.

14.5 Our Right of First Refusal. If any party holding any direct or indirect 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 shall notify us as provided in Section 14.3 hereof, and shall provide such information and documentation relating to the offer as we may require. We shall have the right and option, exercisable within thirty (30) days after receipt of such written notification, to send written notice to the seller that we intend to purchase the seller's interest on the same terms and conditions offered by the third party. If we elect to purchase the seller's interest, closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of our election to purchase. If we elect not to purchase the seller's interest, any material change thereafter in the terms of the offer from a third party shall constitute a new offer subject to the same rights of first refusal by us as in the case of the third party's initial offer. Our failure to exercise the option afforded by this Section 14.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 14, with respect to a proposed transfer. In the event the consideration, terms and/or conditions offered by a third party are such that we may not reasonably be required to furnish the same consideration, terms and/or conditions, then we may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on the reasonable equivalent in cash of the consideration, terms and/or conditions offered by the third party, an independent appraiser shall be designated by us at our expense, and the appraiser's determination shall be binding.

14.6 Death or Mental Incapacity. Upon the death, physical or mental incapacity of any person with an interest in this Agreement, in you, or in all or substantially all of the assets of the Franchised Business, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by us within six (6) months after such death or mental incapacity. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivo transfer. In the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section 14, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by us within a reasonable time, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within a reasonable time, we may terminate this Agreement, pursuant to Section 15.2.7 hereof.

14.7 Non-waiver. Our consent to a transfer of any interest in this Agreement, in you, or in all or substantially all of the assets of the Franchised Business shall not constitute a waiver of any claims we may have against the transferring party, nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

15. DEFAULT AND TERMINATION

15.1 Automatic Termination. You shall be deemed to be in default under this Agreement, and all rights granted to you herein shall automatically terminate without notice to you or opportunity to cure, if: You become insolvent or make a general assignment for the benefit of creditors; a petition in bankruptcy is filed by you or such a petition is filed against and not opposed by you; you are adjudicated bankrupt or insolvent; a bill in equity or other proceeding for the appointment of a receiver of you or other custodian for your business or assets is filed and consented to by

you; a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; proceedings for a composition with creditors under any state or federal law should be instituted by or against you; a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); you are dissolved; execution is levied against your business or property; suit to foreclose any lien or mortgage against the Premises or equipment is instituted against you and not dismissed within thirty (30) days; or the real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.

15.2 Notice Without Opportunity to Cure. In addition to the foregoing, upon the occurrence of any of the following events of default, we may, at our option, terminate this Agreement and all rights granted hereunder, without affording you any opportunity to cure the default, effective immediately upon the provision of notice to you (in the manner provided under Section 23 hereof):

15.2.1 If you fail to open and operate the Next Day Access Business within the time limits provided in Section 5.4 hereof;

15.2.2 If you or the other individuals identified in Section 6.1 fail to complete the Initial Training Program to our satisfaction, or fail to attend additional training as described in Section 6.6 hereof;

15.2.3 If you at any time cease to operate or otherwise abandon the Franchised Business for five (5) or more consecutive business days, or lose the right to possession of the Premises, or otherwise forfeit the right to do or transact business in the jurisdiction where the Franchised Business is located; however, if, through no fault of your own, the Premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within sixty (60) days thereafter, then you shall have thirty (30) days after such event in which to apply for our approval to relocate and/or reconstruct the Premises, which approval shall not be unreasonably withheld;

15.2.4 If you fail to attain or exceed Twenty Thousand Dollars (\$20,000) in monthly Gross Revenue at least once during every twelve (12) calendar months of this Agreement;

15.2.5 If you, or any of your principals, officers, or directors, are convicted of a felony, a crime involving moral turpitude, or any other crime or offense that we believe is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith or our interest therein; or if you or any of your principals, officers, or directors, commit any acts or engage in any behavior that we believe is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or our interest therein, including but not limited to conduct that is fraudulent, unfair, unethical, or deceptive;

15.2.6 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Franchised Business;

15.2.7 If any purported assignment or transfer of any direct or indirect interest in this Agreement, in you, or in all or substantially all of the assets of the Franchised Business is made to any third party without our prior written consent, or otherwise contrary to the terms of Section 14 hereof;

15.2.8 If an approved transfer is not effected within the time provided following death or mental incapacity, as required by Section 14.6 hereof;

15.2.9 If you fail to comply with the covenants in Section 17.2 hereof or fail to obtain execution of the covenants required under Section 10.2 hereof;

15.2.10 If, contrary to the terms of Sections 9 or 10 hereof, you disclose or divulge the contents of the Operating Manual or other confidential information provided to you by us;

15.2.11 If you intentionally under-report Gross Revenue;

15.2.12 If you knowingly maintain false books or records or submit any false reports or other documentation (including your application for this franchise) to us;

15.2.13 If you misuse or make any unauthorized or improper use of the Proprietary Marks or any other identifying characteristics of the System, or otherwise materially impair the goodwill associated therewith or our rights therein; or if you fail to utilize the Proprietary Marks solely in the manner and for the purposes directed by us;

15.2.14 If you refuse to permit us to inspect the Premises, or the books, records or accounts of you upon demand as provided for herein;

15.2.15 If you, after curing any default pursuant to Section 15.3 hereof, commit the same default again, whether or not cured after notice;

15.2.16 If you sell products not previously approved by us, or purchase any product from a supplier not previously approved by us;

15.2.17 If you (or any of your owners) have made any material misrepresentation to us or any other party or omission in connection with your purchase of the Franchised Business; or

15.2.18 If we cure any default by you pursuant to Section 14.4 hereof.

15.3 Notice With Opportunity to Cure. Except as otherwise provided in Sections 15.1 and 15.2 of this Agreement, upon any other default by you, we shall give you written notice of such default (in the manner set forth under Section 23 hereof) and an opportunity to cure such default within thirty (30) days (or such shorter period specified below) of your receipt of such notice. We shall have the right to terminate this Agreement immediately upon notice to you if you fail to cure any default to our satisfaction, and provide proof thereof, within the thirty (30) day period (or such shorter period specified below). If applicable law requires a longer cure period, such period shall apply to our notice. Defaults which are susceptible of cure hereunder include the following illustrative events:

15.3.1 If you fail to substantially comply with any of the requirements imposed by this Agreement, as it may from time to time reasonably be supplemented by the Operating Manual, or fail to carry out the terms of this Agreement in good faith;

15.3.2 If you fail, refuse or neglect promptly to pay any monies owing to us or our affiliates when due, or to submit the financial or other information required by us under this Agreement (You shall have seven (7) days from your receipt of written notice to cure such default);

15.3.3 If you fail to maintain or observe any of the standards or procedures prescribed by us in this Agreement, the Operating Manual, or otherwise in writing;

15.3.4 Except as provided in Section 15.2.6 hereof, if you fail, refuse or neglect to obtain our prior written approval or consent as required by this Agreement;

15.3.5 If, upon inspection by us or a government health inspector, your Next Day Access Business is in violation of the health, safety, or sanitation standards prescribed by us in this Agreement, the Operating Manual, or otherwise in writing, or is in violation of any health or safety law, codes, or regulation (You shall have twenty-four (24) hours from your receipt of written notice to cure such default);

15.3.6 If you act, or fail to act, in any manner which is inconsistent with or contrary to your lease or sublease for the Premises, or in any way jeopardize your right to renewal of such lease or sublease (You shall have seven (7) days from your receipt of written notice to cure such default);

15.3.7 If you engage in any business or market any service or product under a name or mark which, in our opinion, is confusingly similar to the Proprietary Marks (You shall have seven (7) days from your receipt of written notice to cure such default); or

15.3.8 If you fail to comply with all applicable laws, rules and regulations related to the operation of the Next Day Access Business (including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Next Day Access Business).

15.4 Limitation of Services or Benefits. If you receive a notice of default issued pursuant to either Section 15.2 or Section 15.3 and fail to cure such default within the time period permitted in such notice, we shall have the right, in our sole discretion, to temporarily or permanently limit, curtail, or remove certain services or benefits provided or required to be provided to you hereunder in lieu of exercising our right to terminate this Agreement pursuant to its terms, including, without limitation:

15.4.1 To restrict you or any of your staff attendance at any initial training, continuing training, meetings, workshops, or conventions;

15.4.2 To refuse or permit our affiliate to sell or furnish to you any supplies, products, or advertising and promotional materials, including, but not limited to, withholding shipment of additional ramps or other products used in the Franchised Business;

15.4.3 To refuse to provide you ongoing advice about then operation of the Next Day Access Business

15.4.4 To refuse any request by you to approve a new supplier; and

15.4.5 To refuse any request by you to approve the use of any advertising or promotional materials.

You agree to hold us harmless with respect to any action taken by us pursuant to this Section 15.4; and you further agree that we shall not be liable for any loss, expense, or damage incurred by you or the Next Day Access Business because of any action we take pursuant to this Section 15.4. Nothing in this Section 15.4 constitutes a waiver of any of our rights or remedies under this Agreement or any other agreement between the parties; including, without limitation, the right to terminate this Agreement under Sections 15.1, 15.2, and 15.3 hereof. You acknowledge and agree that our exercise of our rights pursuant to this Section 15.4 shall not be deemed a constructive termination of this Agreement or of any other agreement between the parties, and shall not be deemed a breach of any provision of this Agreement by us. Any services or benefits removed, curtailed, or limited pursuant to this Section 15.4 may be reinstated at any time by us in our sole discretion and you hereby agree to accept immediately any such reinstatement of services or benefits so removed, curtailed, or limited. You acknowledge and agree that, if we limit any services or benefits under this Section 15.4, you shall continue to pay timely all fees and payments required under this Agreement and any other agreement between you and us, including, without limitation, any fees associated with services or benefits limited by us. You shall have no right to a refund of any fees paid in advance for such services or benefits.

16. OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement for any reason, all rights granted hereunder to you shall forthwith terminate, and:

16.1 Cease Operations. You shall immediately cease to operate the Franchised Business, and shall not thereafter, directly or indirectly, represent to the public or hold yourself out as a present or former Next Day Access franchisee. Immediately upon the expiration or termination hereof, you shall dispose of, and not sell, any Next Day Access products, equipment or other items sold hereunder.

16.2 Cease Use of Confidential Information and Proprietary Marks. You shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, and all Proprietary Marks and distinctive forms, slogans, signs, symbols, colors, and devices associated with the System. In particular, you shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, products and any other articles that display the Proprietary Marks. You shall de-identify the premises of the Franchised Business and the Vehicle so that there is no use or display of the Proprietary Marks after the effective date of termination or expiration.

16.3 Cancellation of Registrations. You shall take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by you which contains the mark "Next Day Access", or any other Proprietary Marks, and you shall furnish us with evidence satisfactory to us of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

16.4 Assignment of Lease. You shall, at our option, assign to us any interest which you have in any lease or sublease for the Premises. In the event we do not elect to exercise our option to acquire the lease or sublease for the Premises or if the Franchised Business is operated by you with our prior written consent and approval in your residence, you shall make such modifications or alterations to the Premises (including, without limitation, the changing of, and the assigning to us of, the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of the Premises from that of the Next Day Access Business under the System, and shall make such specific additional changes thereto as we may reasonably request for that purpose. In the event you fail or refuse to comply with the requirements of this Section 16.4, we shall have the right to enter upon the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of you, which expense you agree to pay upon demand.

16.5 Subsequent Use of Proprietary Marks Prohibited. You agree, in the event you continue to operate or subsequently begin to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in our sole discretion, is likely to cause confusion, mistake or deception, or which, in our sole discretion, is likely to dilute our rights in and to the Proprietary Marks. You further agree not to utilize any designation of origin, description or representation (including but not limited to reference to Next Day Access, the System or the Proprietary Marks) which, in our sole discretion, suggests or represents a present or former association or connection with us, the System or the Proprietary Marks.

16.6 Payment. You shall promptly pay all sums owing to us and our affiliates. In the event of termination due to your default, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by us as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in our favor against any and all of the personal property, furnishings, equipment, signs, fixtures, and inventory owned by you and on the Premises operated hereunder at the time of default.

16.7 Liquidated Damages Upon Termination Due to Your Default. In the event this Agreement is terminated prior to the end of its term due to your default hereunder, in addition to the amounts set forth in Section 16.6 above, you shall promptly pay to us a lump sum payment (as damages and not as a penalty) for breaching this Agreement in an amount equal to: (a) the average monthly royalty fee and Brand Fund fee payable by you under Sections 4.2 and 12.3 above over the twelve (12) month period immediately preceding the date of termination (or such shorter time period if the Next Day Access Business has been open less than twelve (12) months); (b) multiplied by the lesser of (i) thirty-six (36) months or (ii) the number of months then remaining in the then-current term of this Agreement. You acknowledge that a precise calculation of the full extent of the damages we will incur in the event of termination of this Agreement as a result of your default is difficult to determine and that this lump sum payment is reasonable in light of the damages we will incur for your material default causing the premature termination of this Agreement. This lump sum payment shall be in lieu of any damages we may incur as a result of your default, but it shall be in addition to all amounts provided above in Section 16.6 and any attorneys' and accountants' fees and other costs and expenses to which we are entitled under the terms of this Agreement, including but not limited to, Section 26.8 below. Your payment of this lump sum shall not affect our right to obtain appropriate injunctive relief and remedies to enforce this Section 16 and the covenants set forth in Sections 10 and 17.

16.8 Return Manuals and Confidential Information. You shall immediately deliver to us the Operating Manual, paper and electronic spreadsheets and checklists and all other records, correspondence and instructions containing confidential information relating to the operation of the Next Day Access Business, including, but not limited to, computer software, customer lists, and customer information, all of which are acknowledged to be our property, and shall retain no copy or record of any of the foregoing, with the exception of your copy of this Agreement, any correspondence between the parties and any other documents which you reasonably need for compliance with any provision of law.

16.9 Websites. You shall cease use of any Franchised Business domain name, URL, or home page address, and shall not establish any Website using any similar or confusing domain name, URL, and/or home page address.

16.10 Our Option to Purchase Equipment. We shall have the option, to be exercised within thirty (30) days after termination, to purchase from you any or all of the equipment, signs, inventory, materials, supplies and fixtures related to the operation of the Next Day Access Business that were purchased or leased specifically for use in the Franchised Business at the lesser of the fair market value or at sixty percent (60%) of your original investment in those items. If we cannot agree within such time on the price of any such items, an independent appraisal shall be conducted at our expense by an appraiser we select, and the appraiser's determination shall be binding. If we elect to exercise this option to purchase we shall have the right to set off all amounts due from you and the cost of the appraisal, if any, against any payment.

16.11 Compliance With Covenants. You shall comply with the covenants contained in Sections 10.1 and 17.3 of this Agreement.

16.12 Assignment of Customer Contracts. You agree to assign all of your customer accounts and contracts to us or to our designee within fifteen (15) days after the effective date of termination or expiration of this Agreement. The assignment shall permit us to collect and retain customer payments past due, in addition to customer payments owed after the date of assignment.

17. COVENANTS

17.1 Best Efforts. You covenant that, during the term of this Agreement, except as otherwise approved in writing by us, you (or, if you are a corporation, partnership or limited liability company, one of your principals, general partners or members) shall devote full time, energy, and best efforts to the management and operation of the Next Day Access Business.

17.2 In-Term Covenants. You specifically acknowledge that, pursuant to this Agreement, you will receive valuable, specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques used by us and the System. You covenant that during the term of this Agreement, except as otherwise approved in writing by us, you shall not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person or legal entity:

17.2.1 Divert or attempt to divert any present or prospective business or customer of any Next Day Access Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System;

17.2.2 Employ or seek to employ any person who is at that time employed by us, our affiliates, or by any of our other franchisees, or otherwise directly or indirectly induce such person to leave his or her employment; or

17.2.3 Own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in any retail business which: (a) is the same as, or substantially similar to, an Next Day Access Business; or (b) offers to sell or sells Ramps, Additional Approved Products, or other services, equipment, products or items which are the same as, or substantially similar to, any of the services, equipment, product or other items offered by an Next Day Access Business. The prohibitions in this Section 17.2 shall not apply to interests in or activities performed in connection with the Next Day Access Business.

17.3 Post-Term Covenants. You covenant that, except as otherwise approved in writing by us, you shall not, for a continuous, uninterrupted period of two (2) years commencing upon the date of (a) a transfer permitted under Section 14 of this Agreement, (b) expiration of this Agreement, (c) termination of this Agreement (regardless of the cause for termination), or (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Section 17.3, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity, own, maintain, operate, engage in, be employed by, provide assistance to, or have any interest in (as owner or otherwise) any retail business that: (a)(i) is the same as, or substantially similar to, an Next Day Access Business; or (ii) offers to sell or sells Ramps, Additional Approved Products, or any other equipment, products or items which are the same as, or substantially similar to, any of the equipment, products or other items offered by an Next Day Access Business; and (b) is, or is intended to be, located at or within:

17.3.1 Your Territory;

17.3.2 One hundred (100) miles of the Approved Location; or

17.3.3 Fifty (50) miles of any business operating under the System and the Proprietary Marks.

The prohibitions of Sections 17.2.3 and 17.3 shall not apply to your interests in or operation of a Next Day Access Business under a written Franchise Agreement.

17.4 No Application to Equity Securities. Sections 17.2.3 and 17.3 shall not apply to ownership by you of a less than five percent (5%) beneficial interest in the outstanding equity securities of any corporation which has securities registered under the Securities Exchange Act of 1934.

17.5 Reduction of Scope of Covenants. You understand and acknowledge that we shall have the right, in our sole discretion, to reduce the scope of any covenant set forth in Sections 17.2 and 17.3, or any portion thereof, without your consent, effective immediately upon receipt by you of written notice thereof; and you agree that you shall comply forthwith with any covenant as so modified, which shall be fully enforceable.

17.6 Compliance With Anti-Terrorism Laws. You acknowledge that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 (the "Executive Order"), we are prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in, acts of terrorism, as defined in the Executive Order. Accordingly, you represent and warrant to us that as of the date of this Agreement, neither you nor any person holding any ownership interest in you, controlled by you, or under common control with you, are designated under the Executive Order as a person with whom business may not be transacted by us, and that you (a) do not, and hereafter shall not, engage in any terrorist activity; (b) are not affiliated with and does not support any individual or entity engaged in, contemplating, or supporting terrorist activity; and (c) are not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

17.7 No Defense. You expressly agree that the existence of any claims you may have against us, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by us of the covenants in this Section 17. You agree to pay all costs and expenses (including reasonable attorneys' fees) incurred by us in connection with the enforcement of this Section 17.

17.8 Independent Covenants. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 17 is held unreasonable or unenforceable by a court, arbitrator, or agency having valid jurisdiction in a decision from which there is no further recourse to which we are a party, you expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty on you permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 17.8.

17.9 Irreparable Injury. You acknowledge that your violation of any of the terms of this Section 17 would result in irreparable injury to us for which no adequate remedy at law may be available, and you accordingly consent to the issuance of an injunction prohibiting any conduct by you in violation of the terms of this Section 17.

17.10 Our Costs and Expenses. You shall pay us all damages, costs, and expenses, including reasonable attorneys' fees, incurred by us in obtaining injunctive or other relief for the enforcement of any provision of this Section 17.

18. CORPORATE, PARTNERSHIP OR LIMITED LIABILITY COMPANY FRANCHISEE

18.1 Franchisee Corporation. If you are a corporation, you shall comply with the following requirements:

18.1.1 You shall be newly organized and your charter shall at all times provide that its activities are confined exclusively to operating the Franchised Business;

18.1.2 Copies of your Articles of Incorporation, Bylaws and other governing documents, and any amendments thereto, including the resolution of the Board of Directors authorizing entry into this Agreement, shall be promptly furnished to us;

18.1.3 You shall maintain stop-transfer instructions against the transfer on your records of any equity securities; and shall issue no certificates for voting securities upon the face of which the following printed legend does not legibly and conspicuously appear:

The transfer of this stock is subject to the terms and conditions of a Franchise Agreement with Next Day Access, LLC dated May 22nd, 2013. Reference is made to the provisions of the said Franchise Agreement and to the Articles and Bylaws of this Corporation.

Notwithstanding the above, the requirements of this Section 18.1.3 shall not apply to a “publicly held corporation.” A “publicly-held corporation” for purposes of this Agreement shall mean a corporation registered pursuant to the Securities and Exchange Act of 1934; and

18.1.4 You shall maintain a current list of all owners of record and all beneficial owners of any class of voting securities or securities convertible into voting securities of you and shall furnish the list to us upon request.

18.2 Franchisee Partnership. If you or any of your successors or assignees are a partnership, you shall comply with the following requirements:

18.2.1 You shall be newly organized and shall furnish us with a copy of your partnership agreement as well as such other documents as we may reasonably request, and any amendments thereto;

18.2.2 The partnership agreement shall at all times note conspicuously that partnership rights are held subject to, and that further assignment or transfer thereof are subject to, all restrictions imposed upon assignments by the Franchise Agreement; and

18.2.3 You shall prepare and furnish to us, upon request, a list of all your general and limited partners and their percentage of ownership.

18.3 Franchisee Limited Liability Company. If you or any of your successors or assignees are a limited liability company, you shall comply with the following requirements:

18.3.1 You must be newly organized and the articles of incorporation must at all times provide that your activities are confined exclusively to operating the Franchised Business;

18.3.2 You shall furnish us with a copy of the articles of organization and operating agreement as well as such other governing documents as we may reasonably request, and any amendments thereto;

18.3.3 The articles of organization or operating agreement shall at all times note conspicuously that membership rights are held subject to, and that further assignment or transfer thereof are subject to, all restrictions imposed upon assignments by the Franchise Agreement; and

18.3.4 You shall prepare and furnish to us, upon request, a list of your members or parties that hold any ownership interest in you.

18.4 Guaranty and Indemnification. If you are a corporation, partnership or limited liability corporation, or if any of your successors or assignees are a partnership or limited liability corporation, then all of the principals thereto shall execute a Guarantee, Indemnification, and Acknowledgment in the form attached hereto as Exhibit D.

18.5 Disclosure. If you are a corporation, partnership or limited liability corporation, you must complete the Disclosure of Franchisee Owners attached to this Franchise Agreement as Exhibit E. You shall notify us of any changes to any of your shareholders, partners or members ("Franchisee Owners"). You acknowledge that a change in the identity or ownership percentage of any Franchisee Owner shall constitute a Transfer and is governed by Paragraph 14 of this Agreement.

19. TAXES, PERMITS, AND INDEBTEDNESS

19.1 Payment of Taxes. You shall promptly pay when due all taxes levied or assessed, including, without limitation, employer's portion of employment-related taxes (FICA, Medicare and unemployment taxes) and sales taxes, and all accounts and other indebtedness of every kind incurred by you in the operation of the Franchised Business. You shall pay to us an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on us with respect to any payments to us required under this Agreement.

19.2 Contesting Taxes. In the event of any bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event shall you permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises, or any improvements thereon.

19.3 Permits and Licenses. You shall comply with all federal, state, and local laws, rules, and regulations, including without limitation, the applicable provisions of the ADA regarding the construction, design, and operation of the Franchised Business and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Franchised Business, including, without limitation, licenses to do business, fictitious name registrations, occupancy licenses, sales tax permits, construction permits, health permits, building permits, handicap permits and fire clearances.

19.4 Notification of Adverse Action. You shall immediately notify us in writing of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of the Franchised Business.

20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

20.1 Independent Contractor. The parties agree that this Agreement does not create a fiduciary relationship between them for any purpose, and acknowledge that you shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. During the term of this Agreement, you shall hold yourself out to the public as an independent contractor operating the Franchised Business pursuant to a franchise agreement with us. You agree to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Premises, the content of which we reserve the right to specify or approve.

20.2 No Authority to Contract. Nothing in this Agreement authorizes you to make any contract, agreement, warranty or representation on our behalf, or to incur any debt or other obligation in our name; and we shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall we be liable by reason of any act or omission by you in your operation of the franchised business hereunder or for any claim or judgment arising there from against you or us.

20.3 Indemnification. You shall indemnify and hold us and our affiliates, and their respective officers, directors and employees harmless against any and all claims, losses, costs, expenses, liabilities and damages arising directly or indirectly from, as a result of, or in connection with your operation of the Franchised Business, the

business conducted under this Agreement, or your breach of this Agreement, including, but not limited to, those alleged to be caused by our negligence, unless (and then only to the extent that) the claims, obligations, and damages are determined to be caused solely by our gross negligence or willful misconduct according to a final ruling that cannot be appealed issued by a court or arbitrator with competent jurisdiction, as well as the costs, including reasonable attorneys' fees, of defending against them. In the event we incur any costs or expenses, including, without limitation, legal fees, travel expenses, and other charges, in connection with any proceeding involving you in which we are not a party, you shall reimburse us for all such costs and expenses promptly upon presentation of invoices. You acknowledge and agree that your indemnification and hold harmless obligations under this Section shall survive the termination or expiration of this Agreement. Nothing herein shall preclude us from choosing our own legal counsel to represent us in any lawsuit, arbitration, or other dispute resolution.

21. APPROVALS AND WAIVERS

21.1 **Approval and Consent.** Whenever this Agreement requires our prior approval or consent, you shall make a timely written request to us the response to which must be in writing.

21.2 **No Warranties or Guarantees.** We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you, by providing any waiver, approval, consent, or suggestion to you in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefore.

21.3 **No Waiver.** No failure by us to exercise any power reserved to us by this Agreement, or to insist upon strict compliance by you with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of our right to demand exact compliance with any of the terms hereof. Our waiver of any particular default by you shall not affect or impair our rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, force, or omission by us to exercise any power or right arising out of any breach of default by you of any of the terms, provisions, or covenants hereof, affect or impair our right to exercise the same, nor shall such constitute a waiver by us of any right hereunder, or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Our subsequent acceptance of any payments due to us hereunder shall not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants, or conditions of this Agreement.

22. GRANT OF SECURITY INTEREST

As security for the payment of all amounts from time to time owing by you to us under this Agreement and all other agreements between the parties, and performance of all obligations to be performed by you, you hereby grant to us a security interest in all of your assets used in the Franchised Business, including, without limitation, all equipment, furniture, fixtures, inventory, and building and road signs, as well as all proceeds of the foregoing (the "Collateral"). You warrant and represent that the security interest granted hereby is prior to all other security interests held by financial institutions, if any. You agree not to remove the Collateral, or any portion thereof, from the Premises without our prior written consent. Upon the occurrence of any event entitling us to terminate this Agreement or any other agreement between the parties, we shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the Franchised Business is located, including, without limitation, the right to take possession of the Collateral. You agree to execute and deliver to us financing statements or such other documents as we reasonably deem necessary to perfect our interest in the Collateral within ten (10) days of receipt by you of such documents from us. Any notices delivered or mailed in accordance with Section 23 hereof at least fifteen (15) days prior to disposition of the Collateral, or any portion thereof, and, in reference to a private sale, need state only that you intend to negotiate such a sale.

23. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or sent by other means which affords the sender evidence of delivery or rejected delivery (including, without limitation, private delivery or courier service), which shall not include electronic

communication, such as e-mail, to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Us:

Next Day Access, LLC
8500 Wolf Lake Drive,
Suite 114,
Bartlett, TN 38133

Attn: Brian Clark, President

Notices to You:

Castle Rock Access, LLC
800 Carmichael Road, #136
Hudson, WI 54016

Attn: Carl Loge

Any notice by a means which affords the sender evidence of delivery or rejected delivery shall be deemed to have been given and received at the date and time of receipt or rejected delivery.

24. ENTIRE AGREEMENT

This Agreement, the attachments hereto, and the documents referred to herein constitute the entire Agreement between the parties concerning the subject matter hereof, and supersede any prior agreements, no other representations having induced you to execute this Agreement. Except for those permitted to be made unilaterally by us hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing. Nothing in this Agreement or in any related agreement between you and us is intended to disclaim the representations in our Franchise Disclosure Document or any exhibits or attachments thereto.

25. SEVERABILITY AND CONSTRUCTION

25.1 Severability. If, for any reason, any section, part, term, provision, and/or covenant herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, provisions, and/or covenants of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement.

25.2 Survival. Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination or assignment of this Agreement (regardless of cause for termination), shall survive such expiration, termination or assignment, including but not limited to Sections 10, 17, and 26.

25.3 No Rights or Remedies Conferred. Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, us, our officers, directors, shareholders, agents, and employees, and such of our successors and assigns as may be contemplated by Section 25 hereof, any rights or remedies under or by reason of this Agreement.

25.4 Promises and Covenants. You expressly agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court, arbitrator, or agency having valid jurisdiction may hold to be unreasonable and unenforceable in a decision to which there is no further recourse to which we are a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court, arbitrator, or agency order.

25.5 Captions and Headings. All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

26. APPLICABLE LAW AND DISPUTE RESOLUTION

26.1 Applicable Law. This Agreement shall be interpreted and construed exclusively under the laws of the State of Tennessee. In the event of any conflict of law, the laws of Tennessee shall prevail, without regard to the application of Tennessee conflict-of-law rules. If, however, any provision of this Agreement would not be enforceable under the laws of Tennessee and if you are located outside of Tennessee and such provision would be enforceable under the laws of the state in which you are located, then such provision shall be interpreted and construed under the laws of that state.

26.2 Mediation. Except as otherwise provided herein, if a dispute arises out of or relates to this Agreement, the breach hereof, the rights and obligations of the parties hereto, or the making, interpretation, or performance of either party under this Agreement, the parties agree first to try in good faith to settle the dispute by mediation administered by ADRI before resorting to arbitration, litigation, or some other dispute resolution procedure. Such mediation shall take place before a sole mediator at a location nearest to our principal business address or at such other location as determined by us in our sole discretion. The parties shall each bear all of their own costs of mediation; provided, however, the fees of the mediator shall be divided equally between the parties. The parties hereto agree that mediation shall not be required with respect to: (a) any claim or dispute involving any payment obligation of you that is more than forty five (45) days past due; (b) any claim or dispute involving actual or threatened disclosure or misuse of our confidential information; (c) any claim or dispute involving the ownership, validity, or use of the Proprietary Marks; (d) any claim or dispute involving the insurance or indemnification provisions of this Agreement; or (e) any action by us to enforce the covenants set forth in Section 17 of this Agreement.

26.3 Arbitration. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto, or the entry, making, interpretation, or performance of either party under this Agreement, which cannot be resolved by mediation under Section 26.2 or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the Arbitration Dispute Resolution Institute ("ADRI") in accordance with its Comprehensive Arbitration Rules and Procedures. Such arbitration shall take place before a sole arbitrator at the ADRI office located at 262 German Oak Drive, Memphis, TN 38018, or at such other location we determine in our sole discretion, and you agree not to file an objection to such locale. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any arbitration hereunder, except to the extent such issue may have been determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement. No arbitration, action, or proceeding under this Agreement shall add as a party, by consolidation, joinder, or in any other manner, any person or party other than you and us and any person in privity with, or claiming through, in the right of, or on behalf of, you or us, unless both parties consent in writing. We have the absolute right to refuse such consent.

26.4 Jurisdiction and Venue. Any action that is not otherwise subject to arbitration under Section 26.3 (including any challenge of an arbitral award granted hereunder), whether or not arising out of, or relating to, this Agreement, brought by you (or any principal thereof) against us shall be brought in Shelby County, Tennessee. We shall have the right to commence an action against you in any court of competent jurisdiction in. You hereby waive all objections to personal jurisdiction or venue for purposes of this Section 26.4 and agree that nothing in this Section 26.4 shall be deemed to prevent us from removing an action from state court to federal court.

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

26.6 Injunctive Relief. Nothing herein contained (including, without limitation, Sections 26.2, 26.3, and 26.4 above) shall bar our right to obtain injunctive relief from any court of competent jurisdiction against threatened conduct that will cause us loss or damage, under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions.

26.7 Limitation of Claims. You agree that any and all claims by you against us arising out of, or relating to, this Agreement may not be commenced by you unless brought before the earlier of (a) the expiration of one (1) year after the act, transaction, or occurrence upon which such claim is based. You agree that any claim or action not brought within the period required under this Section 26.7 shall forever be barred as a claim, counterclaim, defense, or set off.

26.8 Our Costs and Expenses. Except as expressly provided by Sections 26.2 and 26.3 hereof, you shall pay all expenses, including attorneys' fees and costs, incurred by us, our affiliates, and our successors and assigns (a) to remedy any of your defaults of, or enforce any of our rights under, this Agreement; (b) to effect termination of this Agreement; and (c) to collect any amounts due under this Agreement.

26.9 WAIVER OF RIGHT TO A JURY AND PUNITIVE DAMAGES. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY AGREE AS FOLLOWS:

26.9.1 THE PARTIES BOTH EXPRESSLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY OR AGAINST EITHER PARTY; AND

26.9.2 THE PARTIES BOTH EXPRESSLY WAIVE ANY CLAIM FOR PUNITIVE, MULTIPLE, AND/OR EXEMPLARY DAMAGES, EXCEPT THAT WE SHALL BE FREE AT ANY TIME HEREUNDER TO BRING AN ACTION FOR WILLFUL TRADEMARK INFRINGEMENT AND, IF SUCCESSFUL, TO RECEIVE AN AWARD OF MULTIPLE DAMAGES AS PROVIDED BY LAW.

27. FORCE MAJEURE

27.1 Non-Performance or Delay. Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of God; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties; and/or (d) our inability and/or the inability of our affiliates or suppliers to manufacture, purchase, and/or cause delivery of any products used in the operation of the Next Day Access Business.

27.2 Delay in Making Payments. The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of this Section. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that you shall remain obligated to promptly pay all fees due and owing to us hereunder, without any such delay or extension.

28. ACKNOWLEDGMENTS

28.1 Independent Investigation. You acknowledge that you have conducted an independent investigation of the business franchised hereunder, and recognize that the business venture contemplated by this Agreement is speculative and involves business risks, and that its success depends to a material extent upon your ability (or, if you are a corporation, partnership or limited liability company, the ability of your principals) as an independent businessperson, as well as other factors. We expressly disclaim the making of, and you acknowledge that you have not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement, and you represent and warrant that you have not entered into this Agreement in reliance upon any representation, oral or written, by us as to potential or expected sales or profits.

28.2 Site Approval. You hereby acknowledge and agree that our approval of the site for the Next Day Access Business does not constitute an assurance, representation or warranty of any kind, express or implied, as to the suitability of the Next Day Access Business' site, the Next Day Access Business' profitability or success, or for any other purpose, or of its compliance with any applicable zoning or land-use regulations or ordinances and any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the Americans with Disabilities Act (the "ADA") regarding the construction, design and operation of the Next Day Access Business. You acknowledge and agree that you, and not us, have the duty and obligation to locate and, if necessary, lease a site for the Next Day Access Business, that we make no representation, warranty, or guarantee that a suitable and acceptable site will be located, and that our approval of a site is not a guarantee or warranty that an acceptable lease can be negotiated or executed.

28.3 Acknowledgment of Receipt. You represent and agree that you received our Franchise Disclosure Document (with all its exhibits and this Agreement with all its exhibits) at least fourteen (14) calendar days before your signing of this Agreement or the payment of any monies to us under this Agreement or earlier upon your reasonable request. You represent and agree that you received a completed copy of this Agreement and all related agreements attached to the Franchise Disclosure Document with any changes to such agreements unilaterally and materially made by us at least seven (7) calendar days before executing this Agreement.

28.4 Acknowledgment of Understanding; Opportunity to Consult. You acknowledge that you have read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that we have accorded you ample time and opportunity to consult with an attorney or other advisor of your own choosing about the potential benefits and risks of entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

Next Day Access, LLC

WITNESS/ATTEST

By: 

By: 

Print Name: Brian Clark

Title: President

FRANCHISEE:

Castle Rock Access, LLC

By: 

Print Name: Chris Bakalars

Title: Member

WITNESS/ATTEST


By: 

EXHIBIT A
Next Day Access
FRANCHISE AGREEMENT

TERRITORY AGREEMENT

1. **APPROVED LOCATION.** You, as Franchisee, shall establish and operate your Next Day Access Business at the location set forth at the following location:

800 Carmichael Road, #136, Hudson, WI 54016

2. **TERRITORY.** Your Territory is the area described below and you shall operate the Next Day Access Business only within the area set forth below, as described in this Agreement: the geographical area known as and being

the counties of St. Croix and Pierce, Wisconsin

3. **AREA OF PRIMARY RESPONSIBILITY.** The Zip Code that constitutes your Area of Primary Responsibility is described below:

54016

We have not made, and do not make any representation or forecast about your Approved Location or Territory or Area of Primary Responsibility or the success or profitability of your Next Day Access Business.

IN WITNESS WHEREOF we have caused our signatures to be attested to the date first written above.

FRANCHISOR:

Next Day Access, LLC

By: 

Print Name: Brian Clark

Title: President

WITNESS/ATTEST

By: 

FRANCHISEE:

Castle Rock Access, LLC

By: 

Print Name: Chris Bakalars

Title: Member

WITNESS/ATTEST


By: 

EXHIBIT B
Next Day Access
FRANCHISE AGREEMENT

ADA CERTIFICATION

Next Day Access LLC (hereinafter referred to as "we", "us" or "our") and Castle Rock Access, LLC (hereinafter referred to as "you" or "your") are parties to a franchise agreement dated May 22nd, 2013 (the "Franchise Agreement") for the operation of an Next Day Access Business at 800 Carmichael Rd., #136, Hudson, WI 54016. In accordance with Section 5.4 of the Franchise Agreement, you certify to us that, to the best of your knowledge and to the extent required by law, the Next Day Access Business and its adjacent areas comply with all applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and standards, including but not limited to the Americans with Disabilities Act. You acknowledge that we have relied on the information contained in this certification. Furthermore, you agree to indemnify us and our officers, directors, and employees in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with your compliance with the Americans with Disabilities Act, as well as the costs, including attorneys' fees, related to the same.

IN WITNESS WHEREOF, the undersigned has duly executed this ADA Certification on the date first above written.

FRANCHISOR:

Next Day Access, LLC

By: 

Print Name: Brian Clark

Title: President

WITNESS/ATTEST

By: 

FRANCHISEE:

Castle Rock Access, LLC

By: 

Print Name: Chris Bakalars

Title: Member

WITNESS/ATTEST

By: 