

## FRANCHISE DISCLOSURE DOCUMENT



Water Babies US Franchise LLC  
a Delaware limited liability company  
115 E Pennsylvania Ave, Suite 16  
Southern Pines, NC 28387  
833-268-5650  
waterbabiesusa.com

Water Babies US Franchise LLC (“**Water Babies**”) is offering franchises for the use of the design mark WATER BABIES® and related trademarks and service marks for the operation of a business offering swimming and water survival instruction services to babies, toddlers, and children and the sale of underwater photographic services and retail product sales from one or more rented pools (“**Water Babies Business**”).

The total investment necessary to begin operation of a Water Babies franchised business is \$107,710 to \$153,242, including \$83,985 that must be paid to the franchisor.

The total investment necessary to enter into a Multi-Unit Development Agreement for the right to develop three (3) Water Babies franchised businesses and to begin operations as a Multi-Unit Developer is \$186,710 to \$232,242. This includes \$162,985 that must be paid to the franchisor.

The disclosure document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read this disclosure document and all agreements carefully. You must receive this disclosure document at least 14 days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Carl Higgins at 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387 at [carl.higgins@waterbabies.co.uk](mailto:carl.higgins@waterbabies.co.uk), 833-268-5650.

The terms of your contract will govern your franchise relationship. Don’t rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. Information comparing franchisors is available. Call your state agency or your public library for sources of information. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” is available from the FTC. You can contact the FTC at 1-877-FTCHELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may be laws on franchising in your state. Ask your state agencies about them.

**The issuance date: May 28, 2025**

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit D.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit A includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Water Babies business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be Water Babies franchisee?</b>	Item 20 or Exhibit D lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit E.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement and multi-unit development agreement requires you to resolve disputes with the franchisor by arbitration or litigation only in North Carolina. Out-of-state mediation, arbitration or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to arbitrate or litigate with the franchisor in North Carolina than in your own state.

Certain states may require other risks to be highlighted. Check the “State Specific Addenda” (if any) to see whether your state requires other risks to be highlighted.

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**EXHIBITS:**

- Exhibit A: Financial Statements
- Exhibit B: Franchise Agreement
- Exhibit C: Multi-Unit Development Agreement
- Exhibit D: List of Current Franchisees and Former Franchisees
- Exhibit E: List of State Agencies and Agents for Service of Process
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- Exhibit I: Statement of Franchisee
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**ITEM 1**  
**THE FRANCHISOR, AND ANY PARENT, PREDECESSORS, AND AFFILIATES**

To simplify the language in this Franchise Disclosure Document “**Water Babies**” or “**we**” means Water Babies US Franchise LLC, the “**Franchisor**”. “**You**” means the person, corporation, partnership or other business entity that buys the franchise, the “**Franchisee**”. “**You**” also means your owners if you are a business entity.

**The Franchisor**

Water Babies US Franchise LLC is a Delaware limited liability company formed on January 13, 2025. We do not do business under any other name. Our principal business address is 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387. We have been offering franchises for Water Babies Businesses in the United States since May 2025, but have never operated a Water Babies Business. We have not previously offered franchises in any line of business, nor do we engage in any other business.

Our agent for service of process in Delaware is VCORP AGENT SERVICES, INC. located at 108 W. 13th Street, Suite 100, Wilmington, DE 19801. Our other agents for service of process are disclosed on **Exhibit E**.

**Our Parent, Predecessor and Affiliates**

Our parent company is Water Babies US TopCo LLC (“**TopCo**”). TopCo is a Delaware limited liability company formed on January 13, 2025. TopCo’s address is 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387. TopCo provides management services and training services to us and our Affiliates. Water Babies US Franchise LLC will provide the training services, including, but not limited to, Point of Sale operations, and facilities management.

Our predecessor is Water Babies Group Limited (“**Water Babies UK**”). Water Babies UK is a limited liability company located at Winslade House, Winslade Park, Clyst St Mary, Exeter EX5 1FY, United Kingdom. Water Babies UK has offered Water Babies franchises in the United Kingdom since 2004 and has franchisees in the United Kingdom, Republic of Ireland, Holland and Canada. Water Babies UK has also offered franchises in a system called “**Water Bumps**” providing pre and postnatal exercise in water from 2014 to 2018.

We have one affiliate company (“**Affiliate**”) Water Babies Holdings Inc. (“**WB Holdings**”). WB Holdings is a Delaware corporation formed on October 28, 2024. WB Holdings’ address is 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387.

Our parent company and Affiliates do not franchise in this or any other line of business.

**The Business**

We offer franchises for the use of our WATER BABIES and SWIMVINCIBLE trademarks, trade names, service marks and logos (“**Marks**”) for the operation of Water Babies Businesses. The franchise is operated under a business format per a unique system, including our valuable know-how, information, trade secrets, training methods, Operations Manual, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, marketing programs, and research and development connected with the operation and promotion of Water Babies Businesses (“**System**”). We reserve the right to change or otherwise modify the System at any time. Each Water Babies Business offers swimming and water survival instruction services to babies, toddlers, and children and the sale of underwater photographic services and retail product sales from one or more rented pools in the territory.

You must operate your Water Babies Business per our standard business operating practices and sign our standard franchise agreement (“**Franchise Agreement**”). Your Water Babies Business must offer authorized services and products, specifically including swimming and water survival instruction services and the sale of underwater photographic services. We reserve the right to add, modify, or delete any services or products that you must offer or sell at your Water Babies Business at any time. You must also obtain all necessary permits, licenses and approvals to operate your Water Babies Business.

We offer one type of Franchise, which is available to those persons who we deem qualified to operate a Water Babies Business. You may operate one Water Babies Business for each Franchise Agreement you sign with us. We also offer to select qualified persons the opportunity to acquire the right to develop Water Babies Businesses in multiple Territories. We retain the right to choose to award or not to award a Water Babies Franchise to any prospective franchisee, and to cease discussions regarding the awarding of a Franchise at any time, regardless of the stage of the Franchise award process or the time and money spent by you or any other prospective franchisee.

We will use commercially reasonable efforts to grant no more than one license to a franchisee for every 50,000 people aged 9 and under (as determined by the most recent U.S. Census Bureau report) in a designated geographical area (“**Population Limit**”). We will use the most recent population information available in the U.S. Census Data, or other population statistical sources of our choosing, to determine populations. The designated geographical area will generally be delineated using zip codes but we reserve the right to utilize streets, city or county boundaries, or other geographic markers to establish the boundaries of your Territory. We reserve the right to change, modify, or delete the Population Limits.

If you are granted the right to enter into a Multi-Unit Development Agreement to open and operate more than one Water Babies Business, you must sign a separate Franchise Agreement for each Water Babies Business that you operate. Under the terms of our Multi-Unit Development Agreement, you agree to open one or more Water Babies Businesses, each with its own Territory, each year, making up a greater development territory, (“**Development Territory**”) according to a development schedule (“**Development Schedule**”). You must sign a Franchise Agreement in the form attached to this Franchise Disclosure Document for your first Water Babies Business when you sign the Multi-Unit Development Agreement. We will require you to sign our then-current form of Franchise Agreement, which may be materially different from the form of agreement in this Franchise Disclosure Document, after that for each Water Babies Business that you develop under the Multi-Unit Development Agreement. Unless otherwise stated, any reference in this Franchise Disclosure Document to “**you**” or “**Franchisee**” includes you both as a Multi-Unit Developer under a Multi-Unit Development Agreement and as Franchisee under a Franchise Agreement. The terms of future franchise arrangements may materially vary from the franchise offered under this Franchise Disclosure Document.

## **Regulations**

Certain states and local jurisdictions may have enacted laws, rules, regulations, and ordinances that apply to the care and supervision of children and may require, in certain instances, that you obtain a day care or similar license. These regulations may establish certain standards, specifications, and requirements that must be followed by you. You should investigate whether there are any regulations and requirements that may apply in the geographic area in which you are interested in locating your Water Babies Business, and you should consider both their effect and the cost of compliance.

You must obtain all required licenses and permits and ensure that your employees and others providing Water Babies Products and Services to customers on behalf of your Water Babies Business have all required licenses and permits. The failure to maintain the proper licensing is a material breach of the Franchise Agreement. You must also perform criminal background checks on all of your employees. We also require your compliance with all provisions of the USA Patriot Act and Executive Order 13224.

## Market Competition

The Water Babies System presently focuses on providing swim instruction to children in urban and suburban areas. You will have to compete with other businesses including franchised operations, national chains, public pools and private pools offering swim instruction to children. The market for providing swim instruction to children is developed and competitive.

## ITEM 2 BUSINESS EXPERIENCE

**CEO – Howard Harrison:** Howard Harrison has served as CEO of Water Babies US Franchise LLC since its inception in January 2025. Howard Harrison has served as the CEO and board member of Water Babies Group Limited in Devon, England since May 2021.

**CFO – Pete Grimes:** Pete Grimes has served as CFO of Water Babies US Franchise LLC since its inception in January 2025. Pete Grimes has served as the CFO of Water Babies Group Limited in Devon, England since September 2012.

**Vice President of North America – Carl Higgins:** Carl Higgins has served as the VP of North America for Water Babies US Franchise LLC since its inception. Carl Higgins previously served as the Associate Director of International of Water Babies Group Limited in Devon, England from February 2024 to December 2024. Carl Higgins previously served as the International Business Manager of Water Babies Group Limited in Devon, England from June 2023 to February of 2024. Prior to June 2023, Carl Higgins served as the Franchise Business Manager of Water Babies Group Limited in Devon, England from October 2020 to June 2023.

**COO – Mike Lonergan:** Mike Lonergan has served as the Chief Operating Officer of Water Babies US Franchise LLC since April 2025. Mike Lonergan has previously served as a Consultant for Mike Aquatic LLC in Chicago IL, from February 2023 to April 2025. Mike Lonergan has previously served as VP of Sales of Kiefer Aquatics in Chicago IL, from December 2021 to February of 2023. Mike Lonergan has previously served as Chief Swim Officer of Big Blue Swim School LLC in Chicago, IL from January 2019 to April 2021.

**Vice President of Brand Marketing – Natasha Khojasteh:** Natasha Khojasteh has served as the VP of Brand and Marketing of Water Babies US Franchise LLC since its inception. Natasha Khojasteh has served as the Director of Brand and Marketing of Water Babies Group Limited in Devon, England since April 2018.

**Director International Marketing - Katie Herridge:** Katie Herridge has served as the Director of International Marketing of Water Babies US Franchise LLC since its inception. Katie Herridge has served as the Head of International Marketing of Water Babies Group Limited in Devon, England since September 2024. Katie Herridge previously served as Senior Brand Manager of Water Babies Group Limited in Devon, England from June 2021 to September 2024, and Brand Manager of Water Babies Group Limited in Devon, England from January 2019 to June 2021.

**Vice President of Aquatics - Aine Halton-Hanley:** Aine Halton-Hanley has served as VP of Aquatics of Water Babies US Franchise LLC since its inception. Aine Halton-Hanley has served as Director of Aquatics of Water Babies Group Limited in Devon, England since January 2024. Aine Halton-Hanley previously served as an instructor, franchisee, and Director of Water Babies Wiltshire, Bath and Bristol Ltd, in Wiltshire, England from May 2014 to January 2023.

**Managing Director of Technology - Dan Brimmicombe:** Dan Brimmicombe has served as Managing Director of Technology of Water Babies US Franchise LLC since its inception. Dan Brimmicombe served

as Associate Director of Technology of Water Babies Group Limited in Devon, England since August 2024. Previously, Dan Brimmicombe was the Head of Technology of Water Babies Group Limited in Devon, England from September 2018 to August 2024.

**Director of Strategic Partnerships - Elyse Kelly:** Elyse Kelly has served as the Director of Strategic Partnerships of Water Babies US Franchise LLC since February 2025. Elyse Kelly has been the owner and operator of Oakshade Events in Tallahassee, Florida since November 2023. Elyse Kelly previously served as the Director of Location Services for British Swim School in Virginia Beach, Virginia from May 2017 through October 2023.

### **ITEM 3 LITIGATION**

No litigation is required to be disclosed in this ITEM 3.

### **ITEM 4 BANKRUPTCY**

No bankruptcy is required to be disclosed in this ITEM 4.

### **ITEM 5 INITIAL FEES**

#### **Single Unit Franchises**

You must pay us an initial franchise fee ("**Initial Franchise Fee**") of \$55,000 when you sign a Franchise Agreement. The Initial Franchise Fee is deemed fully earned by us once you sign either the Franchise Agreement or the Multi-Unit Development Agreement and is non-refundable for any reason. All Initial Franchise Fees are uniform for single unit franchises.

You must also pay a training fee ("**Training Fee**") of \$6,000 when you sign the Franchise Agreement. This fee covers the cost of initial business and aquatics training for one principal and one Aquatics Director (as defined in Item 15), provided they attend the training simultaneously. Recruiting an Aquatics Director at the start of the business is not mandatory; however, it is recommended that this position be filled within 12 months. If the principal and Aquatics Director are trained at different times, an additional training fee may apply. If you wish to have additional participants attend the initial training program, a fee of \$6,000 per person will be charged. The Training Fee is considered fully earned upon signing the Franchise Agreement and is non-refundable for any reason. All Training Fees are uniform and non-negotiable.

You must also pay a technology fee ("**Technology Fee**") of \$1,500 when you sign the Franchise Agreement. The \$1,500 fee represents the first three months of your Technology Fee and covers the cost and maintenance of certain software, including all the areas of our built-in customer relationship management (CRM) system, robust member management and class scheduling tools, integrated point-of-sale (POS) functionality, real-time franchise reporting and automated customer communications ("**Ada**") for the first three months of operations. The Technology Fee is deemed fully earned by us when you sign the Franchise Agreement and is non-refundable for any reason.

When you sign the franchise agreement you must also pay us for a preopening inventory package that includes two Water Babies instructor kits, a photography backdrop, weights and arms, customer welcome packs to cover the first three months of operation, customer reward and recognition badges to cover the first three months of operation, and a pool water testing kit ("**Right Start Franchise Kit**"). The

payment for the Right Start Franchise Kit is deemed fully earned by us once paid and is non-refundable. The total cost for the Right Start Franchise Kit is \$10,000.

When you sign the franchise agreement you must also pay us for a preopening marketing package that includes digital marketing set-up for Google and META, the first three months of local digital marketing fee, and local search engine optimization set-up, (“**Right Start Digital Marketing**”). The payment for the Right Start Digital Marketing is deemed fully earned by us once paid and is non-refundable. The total cost for the Right Start Digital Marketing is \$9,150.

When you sign the franchise agreement you must also pay us for a preopening retail package that includes children swimwear and swim accessories (“**Opening Retail Kit**”). The payment for the Opening Retail Kit is deemed fully earned by us once paid and is non-refundable. The total cost for the Opening Retail Kit is \$2,335.

We are not obligated to sell any additional franchises to any particular applicant.

### **Multi-Unit Developers**

At our discretion, we may offer to qualified candidates a multi-unit development agreement (“**Multi-Unit Development Agreement**”), attached to this Franchise Disclosure Document as **Exhibit C**, pursuant to which the multi-unit developer (“**Multi-Unit Developer**”) obtains the right to develop and operate a prescribed number of Water Babies Businesses. When you sign a Multi-Unit Development Agreement for the development of more than 1 Water Babies Business, we will grant you the right to open and operate a mutually agreed upon number of Water Babies Businesses in a specified Development Area in accordance with a specified Development Schedule.

If you are granted the right to open multiple Water Babies Businesses under a Multi-Unit Development Agreement, you will sign the Multi-Unit Development Agreement and the Franchise Agreement for the first Water Babies Business to be developed. At the time of signing, you must pay the Initial Franchise Fee of \$55,000 and the \$6,000 Training Fee for the first Water Babies Business to be developed. At the time of signing, you must also pay a reduced Initial Franchise Fee of \$44,000 for the second Water Babies Business, and a reduced Initial Franchise Fee of \$35,000 for each additional Water Babies Business to be opened under the Multi-Unit Development Agreement. All Initial Franchise Fees are fully earned by us at the time you sign the Multi-Unit Development Agreement and are not refundable for any reason.

**ITEM 6  
OTHER FEES**

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty † (1)	10% of Gross Revenue per month (per territory) for \$0 - \$400,000; an effective rate of 9% per month for Gross Revenue from \$400,001 - \$600,000; an effective rate of 8% for Gross Revenue over \$600,000.	Payable monthly on or before the 10th of each month or at source	We reserve the right to require you to pay your Royalty on a more frequent basis, including weekly. You may be eligible to receive a rebate of certain Royalties at the end of the year depending on the Gross Revenue you generate in each Territory operated by you.
Minimum Royalty†	\$3,000 per month	Payable monthly on or before the 10th of each month or at source	There is no minimum royalty for the first 12 months from signing the franchise agreement. \$1,000 Payable per month from months 13 to 18 from the date of signing the franchise agreement, \$2,000 payable during months 19 to 30, \$3,000 per month payable from month 31 through the end of the term of your Franchise Agreement.
Brand Fund Contribution† (2)	2% of Gross Revenue	Payable monthly on or before the 10th of each month or at source.	This contribution will be paid to Us and utilized for a system-wide marketing fund (" <b>Brand Fund</b> ") for our use in promoting and building the Water Babies brand.
Local Digital Marketing (3) †	A minimum of \$1,800 per month (\$21,600 per annum) or 3% of Gross Revenue. whichever is greater.	Monthly.	Payable to us or our approved suppliers.
Local Traditional Marketing (4)	\$300 per month or a minimum of \$3,600 per annum.	Monthly or as incurred	Payable to our approved suppliers.
Initial Training for Additional Person(s)(5)†	Then current charge, currently \$700 for full day training or \$250 per person per day if full training is not required, in each case plus the cost of travel, lodging, meals and personal expenses.	Payable before the beginning of the Initial Training Program or as required by Us.	The cost of travel, lodging, meals and personal expenses is not payable directly to Us.
Background Check Fees	\$20 to \$100 per employee	At time background check is ordered	You must conduct a criminal background check on each of your employees. The cost of the background check will depend on the depth of the review, which is dictated by the position held by the employee. These fees are paid to a third-party review company and not to Us.

Type of Fee	Amount	Due Date	Remarks
Franchise Agreement Transfer Fee <sup>†</sup>	\$15,000	Before transfer	Payable before you transfer your Franchise to a third party. No fee is charged to an individual or partnership franchisee that transfers its rights to a corporation controlled by the same interest holders.
Pool Fees (6)	Varies	As incurred	Payable to 3 <sup>rd</sup> party provider.
Photography Services Fee <sup>†</sup>	Varies	As incurred	Payable to us or an approved 3 <sup>rd</sup> party photographer.
Photo Editing Services Fee	Varies	As incurred	Payable to approved 3 <sup>rd</sup> party editor.
Multi-Unit Development Agreement Transfer Fee <sup>†</sup>	\$5,000 for each unopened Water Babies Business to be transferred	Submitted with transfer application	Transfer Fees for Water Babies Businesses which are open and operating as of the date the transfer request is submitted to us will be governed by the terms of the Franchise Agreement signed for each Water Babies Business ( <u>See</u> above). Transferring franchisee will be responsible for payment of any third-party broker fees in addition to the Transfer Fee.
Extension Fee <sup>†</sup>	\$5,000 per extension	When you request and are granted an extension	If you request an extension of time to open your Water Babies Business or a required opening date within your Development Schedule (as applicable), we have the right to charge you an Extension Fee
Successor Franchise Fee <sup>†</sup>	10% of then-current Initial Franchise Fee	Upon the issuance of a Successor Franchise Agreement	
Insurance (7)	At a minimum, comprehensive general liability coverage and such other insurance as we require in the Operations Manual	As incurred	Insurance requirements are set forth in Section 12.1(a) of the Franchise Agreement. Insurance requirements may be changed by us at any time upon 30 days' notice to you, as we determine is necessary.
Late Fee or Interest <sup>†</sup>	\$100 per occurrence plus lesser of the daily equivalent of 18% per year interest or highest rate of interest allowed by law	As incurred	Begins to accrue after any payments are due and unpaid.
Equipment and Signage (8) <sup>†</sup>	Varies	As incurred	
Technology Fee (9) <sup>†</sup>	\$500 per month	Payable monthly on or before the 10th of each month	Adjustable on 30 days' notice (can be increased by as much as 15% per year)

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Cloud Services Subscription Fees (10) <sup>†</sup>	Varies per user and per user requirements	Monthly	Payable when you sign the Franchise Agreement and will increase per user as well as when the 3 <sup>rd</sup> party licensors increase their fees.
Inventory and Supplies (11) <sup>†</sup>	Varies	As incurred	
Late Report Fee <sup>†</sup>	\$100 per violation	As incurred	Payable only if a required report or financial statement is not delivered when due.
Seminars, Conventions or Programs <sup>†</sup>	You must pay your expenses, conference fees, if any, as well as the expenses your Aquatic Director and employees incur in attending these meetings. The estimated range of costs is \$1,000 - \$1,250 per person. If you fail to attend the annual conference, you will be charged the then-current annual conference fee.	As incurred	We reserve the right to conduct periodic meetings of all Franchisees, including a mandatory annual convention. All convention fees must be paid in advance according to the convention fee schedule outlined in the Operations Manual.
Product Testing Fee <sup>†</sup>	We reserve the right to require that you pay or reimburse us for the reasonable cost of investigation in determining whether such products, services, materials, forms, items or supplies satisfy our specifications.	As incurred	
Water Babies Staff Training Fees	Franchisor delivers training courses at the then current charge, currently Swim Instructors (\$1,500), Dippers (\$900), Mentors (\$200), Administrators (\$200) as well as periodic CPDs (\$250 or less per day) (prices exclude travel accommodation and living expenses)	Payable upon registration of said staff into a specific course.	Upon your request, we will train your staff at a location designated by us for a fee.
3 <sup>rd</sup> Party Staff Training Fees	Varies	Payable upon registration of said staff into a specific course	The following courses will be required to be recertified on the 3 <sup>rd</sup> Party Course terms, and at the 3 <sup>rd</sup> Party going rate. Courses are as follows: Certified Pool Operators Course, Safesport Course, Shallow Water Lifeguard, Sexual Harassment Course, USSSA Swim Instructor Course

Type of Fee	Amount	Due Date	Remarks
Payroll & HR Services Fees	Varies depending on number of employees	As arranged	Payable to approved 3 <sup>rd</sup> party provider.
Accountancy, Accountancy Software & Bookkeeping	Varies	As arranged	Payable to approved 3 <sup>rd</sup> party provider.

† Denotes fees which are imposed and payable to us or our Affiliates. All fees paid to us or our Affiliates are uniform and non-refundable under any circumstances once paid. Fees paid to vendors or other suppliers may or may not be refundable depending on your vendors and suppliers. We reserve the right to require you to pay fees and other amounts due to us via electronic funds transfer or other similar means, as described in the Franchise Agreement. If payments are required in this method, you must comply with our procedures and perform all acts and deliver and sign all documents, including authorization (in the form attached to the Franchise Agreement as Attachment D or any other form that we may accept) for direct debits from your business bank operating account, which may be necessary to assist in or accomplish payment by this method. Under this procedure you shall authorize us to initiate debit entries and/or credit correction entries to a designated checking or savings account for payments of fees and other amounts payable to us and any interest that may be owing. You shall make the funds available to us for withdrawal by electronic transfer no later than the payment due date. If you have not timely reported your Water Babies Business's Gross Revenues to us for any reporting period, then we shall be authorized, at our option, to debit your account for (a) the fees transferred from your account for the last reporting period for which a report of the Water Babies Business's Gross Revenues was provided to us; or (b) the amount due based on information retrieved from any approved Computer System.

Notes:

- (1) Royalty. The Royalty is 10% of the month's Gross Revenue. "**Gross Revenue**" means the total selling price of all products and services related to the Water Babies Business sold by franchisee and all income of every other kind and nature related to the Water Babies Business, whether for cash or credit and regardless of collection in the case of credit (See Franchise Agreement for a complete definition of Gross Revenue). The royalty is deducted from the lesson income at source or payable on the 10<sup>th</sup> day of the following month. We reserve the right to change the date and time of the collection of royalties to either another day or the moment you receive payment. You are required to remit the full 10% Royalty on Gross Revenue received by you every month, without exception, all year long. Within 60 days of the close of each calendar year, we will review your total Gross Revenue for the prior full or partial year determine whether you have earned a royalty rebate ("**Royalty Rebate**"). The Royalty Rebate is based upon the total Gross Revenue earned by you in each Territory you operate. You will not earn any Royalty Rebate on the first \$0-\$400,000 of annual Gross Revenue per Territory; you will be entitled to receive a Royalty Rebate equal to 10% of the Royalty you paid to us for Gross Revenue between \$400,001 and \$600,000 per Territory (an effective rate of 9% for \$400,001-\$600,000); you will be entitled to receive a Royalty Rebate equal to 20% of the Royalty you paid to us on Gross Revenue above \$600,000 per Territory (an effective rate of 8% for income over \$600,000).
- (2) Brand Fund Contribution. This contribution will be used for system-wide Brand Fund for our use in promoting and building the Water Babies brand.
- (3) Local Digital Marketing. You are required to spend a minimum of \$1,800 per month (annual cost of \$21,600) on local digital marketing ("**Local Digital Marketing**") within your territory, or 3% of Gross Revenue, whichever is higher. You are required to pay us or an approved supplier each month for your local digital marketing services. The local digital marketing spend is for online

advertising placement services such as pay per click advertising, Facebook advertising administration, remarketing, and other digital advertising services. This is the minimum that you are required to spend but you may choose to spend more.

- (4) Local Traditional Marketing. You are required to spend a minimum of \$300 per month (\$3,600 annually) on local traditional marketing activity within your Territory (“**Local Traditional Marketing**”). This includes partnerships; PR & events; sponsorships & influencer; content creation; print and one direct mail campaign per annum.
- (5) Initial Training for Additional Persons. We provide initial training for each additional person at \$700 for full-day training or \$250 per person, per day if full training is not required. Training fees can be increased or decreased by us at any time in our discretion. You will also need to pay for airfare, lodging, ground transportation, meals, salary and benefits, and other personal expenses for each person attending the initial and any recurring training program.
- (6) Pool Fees. For each and every pool you lease you will incur a monthly charge. This fee is paid directly to the 3<sup>rd</sup> party provider.
- (7) Insurance. You must obtain and maintain, at your own expense and from our designated supplier, the minimum insurance coverage that we periodically require under the Operations Manual, including a minimum of \$2,000,000 per occurrence in general liability, \$2,000,000 personal and advertising liability, \$1,000,000 auto liability, \$2,000,000 products completed operations aggregate and, when necessary, Excess Medical/Accident coverage and, when necessary, property coverage, umbrella liability and workers compensation in amounts required by applicable law. The liability insurance must cover claims for bodily and personal injury, death, and property damage caused by or occurring in connection with your Water Babies Business operation or activities of your personnel in the course of their employment. We reserve the right that you obtain all or a portion of your insurance policies from our designated vendor. We may periodically increase the amounts of coverage required (including reasonable excess liability insurance if required by the facility) at any time to reflect inflation, identification of new risk, changes in law or standards of liability, higher damage awards or other relevant change in circumstances.
- (8) Equipment and Signage. We require all franchisees purchase equipment and signage for each and every new pool secured or for each and every new teacher starting with the Water Babies Business. Each pool must have a sign to display the Water Babies Business. Each teacher /administrator must have a uniform and branded teacher kit. Each pool or teacher must have toys, teaching equipment approved by us that are used as teaching aids during swim lessons. All branded uniform and teacher kits must be replenished if they do not meet the brand standard through general wear and tear.
- (9) Technology Fee. You will pay the Technology Fee to us which covers the cost and maintenance of our consumer website with your local landing and pool pages and Ada, the Water Babies proprietary franchise management system. You must use all the software we designate as core to the business, including but not limited to Ada and its associated payment systems, and the teacher app. You must only use the payment systems we provide, and you must accept any payment methods that we determine (for example, Credit Card, ACH, Debit Card). The term “**Payment Systems**” includes, among other things, companies that provide services for electronic payments (for example, Apple Pay and Google Wallet). The Tech System will enable you to collect information about children, scheduling, prices, sales, staff and payroll. We currently have the right to have independent, unlimited access to all information and data relating to your business generated by your use of Ada and any other software provided. There are no contractual limitations on our right to access and use this information and data. We also reserve the right to have independent access to other information on your Computer System in the future.

- (10) Cloud Services Subscription Fee. You will pay the Cloud Services Subscription Fee to us, which covers the cost and maintenance of access to our designated cloud-based communication, productivity, and collaboration systems. These systems include, but are not limited to, the franchisor’s designated email platform, file storage and sharing tools, calendar services, office productivity applications, and the designated VoIP platform. You must use all cloud-based communication and productivity systems that we designate as required for the operation of your Water Babies Business. You must also comply with all user terms, usage guidelines, and administrative requirements associated with these systems as specified by us or the designated vendor. We reserve the right to access any communications, data, files, or other information stored, transmitted, or processed through these systems in connection with your Water Babies Business, and you grant us the right to access such information without restriction. We reserve the right to modify, replace, or update the designated systems and related requirements at any time in our sole discretion.
- (11) Inventory & Supplies. You are able to sell a range of products in accordance with the Water Babies system. Some of these products must be purchased from us. Other products will be purchased from external approved suppliers.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**  
**YOUR ESTIMATED INITIAL INVESTMENT**  
**SINGLE UNIT**

Type of Expenditure (1)	Low Amount	High Amount	Method of Payment	When Due	To Whom Payment is Made
Initial Franchise Fee (2)	\$55,000	\$55,000	Lump sum	Upon signing the Franchise Agreement	Us
Training Fee (3)	\$6,000	\$6,000	Lump sum	Upon signing the Franchise Agreement	Us
3 <sup>rd</sup> Party Staff Training Fees (4)	\$1,000	\$3,000	As incurred	As specified by 3 <sup>rd</sup> Party Provider	3 <sup>rd</sup> Party Provider
Background Check (5)	\$40	\$300	As incurred	As incurred	3 <sup>rd</sup> Party Provider
Travel and Living Expenses while Training (6)	\$2,000	\$10,000	As incurred	As incurred during training	Airlines, hotels, restaurants, rental car agency
Pool Deposit (7)	\$0	\$4,500	As incurred	As specified in lease	3 <sup>rd</sup> Party Provider
Pool Usage Fee (8)	\$300	\$13,500	As incurred	As specified in lease	3 <sup>rd</sup> Party Provider
Cloud Services Subscription Fee (First Three Months) (9)	\$200	\$285	As incurred	Monthly starting upon signing the franchise agreement	Suppliers, vendors
Technology Fee (First Three Months) (10)	\$1,500	\$1,500	Lump Sum	Upon signing the Franchise Agreement	Us
Right Start Franchise Kit (11)	\$10,000	\$10,000	Lump Sum	Upon signing the Franchise Agreement	Us

Type of Expenditure (1)	Low Amount	High Amount	Method of Payment	When Due	To Whom Payment is Made
Right Start Digital Marketing (12)	\$9,150	\$9,150	Lump Sum	Upon signing the Franchise Agreement	Us
Opening Retail Kit (13)	\$2,335	\$2,335	Lump Sum	Upon signing the Franchise Agreement	Us
Insurance (14)	\$2,000	\$4,000	As incurred	Before opening	Approved supplier
Working Capital (First Three Months) (15)	\$15,085	\$30,572	As incurred	As incurred	Employees, suppliers, 3 <sup>rd</sup> Party Providers
Local Traditional Marketing (16)	\$3,100	\$3,100	As incurred	As incurred	3 <sup>rd</sup> Party Provider
<b>TOTAL (17)</b>	<b>\$107,710</b>	<b>\$153,242</b>			

**Notes:**

- (1) Type of Expenses. The high and low ranges in the table are based on an average Water Babies Business. All fees imposed by us are non-refundable unless otherwise noted. Fees and expenses paid to vendors or other third parties may or may not be refundable depending on the arrangements you make with them. Neither Water Babies nor any agent or Affiliate of ours offers direct or indirect financing of your initial investment. We do not guarantee your note, lease or obligation.
- (2) Initial Franchise Fee. The Initial Franchise Fee payable to us is described in ITEM 5.
- (3) Training Fee. The Training Fee is described in ITEM 5.
- (4) 3<sup>rd</sup> Party Staff Training Fees. The following courses are required to remain qualified and knowledgeable to run a Water Babies franchise. These courses require recertification at each course's own terms. Course costs vary in price from state to state and at the providers' cost discretion. Courses are as follows: Certified Pool Operators Course (ranging from \$350 per person to \$450 per person), Safesport Course (\$20 per person), Shallow Water Lifeguard Qualification (ranges from \$285 per person to \$385 per person), Sexual Harassment Course (\$30 per person), USSSA Swim Instructor Course (\$300 per person).
- (5) Background Check. You and all employees must complete a Background Check to help ensure child safety, build parental trust, and protect your business legally by screening for past offenses or red flags in employees. It's a vital step for any company working closely with infants and young children.
- (6) Travel and Living Expenses While Training. We provide training at our location in Renton, Washington or at another location designated by us and on-site training at your first pool. You must pay for airfare, meals, transportation costs, salaries, benefits, lodging and incidental expenses for all initial training program attendees and for airfare, meals, transportation costs and your share of lodging for our representative to provide the on-site training. The low end of the range assumes you live locally to the training facility and travel home each night. The high end of the range assumes you will travel to the location of training.

- (7) Pool Deposit. You will negotiate the pool deposit when you enter an agreement with the owner or operator of the Pool. Your actual costs may vary from our estimates due to location, demand and availability of other swimming pools in your Territory.
- (8) Pool Usage Fee. You will negotiate the Pool usage fees when you enter an agreement with the owner or operator of the Pool. Your actual costs may vary from our estimates due to location, demand and availability of other swimming pools in your Territory.
- (9) Cloud Services Subscription Fee (First Three Months). You will pay the Cloud Services Subscription Fee to us, which covers the cost and maintenance of access to our designated cloud-based communication, productivity, and collaboration systems. These systems include, but are not limited to, the franchisor's designated email platform, file storage and sharing tools, calendar services, office productivity applications, and the designated VoIP platform. You must use all cloud-based communication and productivity systems that we designate as required for the operation of your Water Babies Business. You must also comply with all user terms, usage guidelines, and administrative requirements associated with these systems as specified by us or the designated vendor. We reserve the right to access any communications, data, files, or other information stored, transmitted, or processed through these systems in connection with your Water Babies Business, and you grant us the right to access such information without restriction. We reserve the right to modify, replace, or update the designated systems and related requirements at any time in our sole discretion
- (10) Technology Fee (First 3 Months). You will pay the Technology Fee to us which covers the cost and maintenance of our consumer website with your local landing and pool pages and Ada, the Water Babies proprietary franchise management system. You must use all the software we designate as core to the business, including but not limited to Ada and its associated payment systems and communication systems, and the teacher app. You must only use the payment systems we provide, and you must accept any payment methods that we determine (for example, credit card, ACH, debit card). The term "**Payment Systems**" includes, among other things, companies that provide services for electronic payments (for example, Apple Pay and Google Wallet). The Tech System will enable you to collect information about children and their caregivers, scheduling, prices, sales, staff and payroll. We currently have/reserve the right to have independent, unlimited access to all information and data relating to your business generated by your use of Ada and any other software provided. There are no contractual limitations on our right to access and use this information and data. We also reserve the right to have independent access to other information on your Computer System in the future.
- (11) Right Start Franchise Kit. Right Start Franchise Kit includes Water Babies instructor kits, a photography backdrop and associated photography equipment, customer welcome packs to cover the first three months of operation, customer reward and recognition awards to cover the first three months of operation, and a pool water testing kit.
- (12) Right Start Digital Marketing. Right Start Digital Marketing includes Digital Marketing set-up for Google and META, the first three months of the local digital marketing fee, and local search engine optimization set-up.
- (13) Opening Retail Kit. You are able to sell a full range of products in accordance with the Water Babies system. Some of these products must be purchased from us. Other products will be purchased from approved external suppliers.
- (14) Insurance. You must obtain and maintain certain types and amounts of insurance through our approved vendor. Insurance costs depend on policy limits, types of policies, nature and value of physical assets, revenue, number of employees, wages paid, location, business contents and other

factors bearing on risk exposure. This estimate contemplates that your Water Babies business will pay an annual installment before you begin teaching swim lessons.

- (15) Working Capital (First Three Months). These funds are required to cover a mix of business expenses that include an Aquatics Director salary, support staff, payroll & human resources, accountancy & bookkeeping, and bookkeeping software. We estimate that the amount stated will be sufficient to cover ongoing expenses for the first three months of the business, although actual amounts may vary. It is not compulsory for the Franchisee to recruit an Aquatics Director at the commencement of the business but it is recommended that within 12 months this role is in place.
- (16) Local Traditional Marketing. During the first three months after signing the Franchise Agreement, you are required to spend a minimum of \$3,100 on local traditional marketing activity within your Territory. This includes press release, direct mail campaign, community or partnership event, and printing of collateral.
- (17) Total Estimated Initial Investment. These figures are estimates only. You should review these figures carefully with a business advisor before making any decision to purchase the Water Babies Business. You may incur additional expenses starting your Water Babies Business. Your costs depend on several factors, including how well you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our services; the prevailing wage rate; competition; and sales levels reached by your Water Babies Business during the initial period.

**YOUR ESTIMATED INITIAL INVESTMENT  
MULTI-UNIT DEVELOPMENT  
(For the right to develop 3 Water Babies Businesses)**

Type of Expenditure (1)	Low Amount	High Amount	Method of Payment	When Due	To Whom Payment is Made
Initial Franchise Fee for three Water Babies Businesses (2)	\$134,000	\$134,000	Lump sum	Upon signing the Franchise Agreement	Us
Training Fee (3)	\$6,000	\$6,000	Lump sum	Upon signing the Franchise Agreement	Us
3 <sup>rd</sup> Party Staff Training Fees (4)	\$1,000	\$3,000	As incurred	As specified by 3 <sup>rd</sup> Party Provider	3 <sup>rd</sup> Party Provider
Background Check (5)	\$40	\$300	As incurred	As incurred	3 <sup>rd</sup> Party Provider
Travel and Living Expenses While Training (6)	\$2,000	\$10,000	As incurred	As incurred during training	Airlines, hotels, restaurants, rental car agency
Pool Deposit (7)	\$0	\$4,500	As incurred	As specified in lease	3 <sup>rd</sup> Party Provider
Pool Usage Fee (8)	\$300	\$13,500	As incurred	As specified in lease	3 <sup>rd</sup> Party Provider
Cloud Services Subscription Fee (9)	\$200	\$285	As incurred	Monthly starting upon signing the franchise agreement	Suppliers, vendors
Technology Fee (First Three Months) (10)	\$1,500	\$1,500	Lump Sum	Upon signing the Franchise Agreement	Us

Type of Expenditure (1)	Low Amount	High Amount	Method of Payment	When Due	To Whom Payment is Made
Right Start Franchise Kit (11)	\$10,000	\$10,000	Lump Sum	Upon signing the Franchise Agreement	Us
Right Start Digital Marketing (12)	\$9,150	\$9,150	Lump Sum	Upon signing the Franchise Agreement	Us
Opening Retail Kit (13)	\$2,335	\$2,335	Lump Sum	Upon signing the Franchise Agreement	Us
Insurance (14)	\$2,000	\$4,000	As incurred	Before opening	Approved supplier
Working Capital (First Three Months) (15)	\$15,085	\$30,572	As incurred	As incurred	Employees, suppliers, 3 <sup>rd</sup> Party Providers
Local Traditional Marketing (16)	\$3,100	\$3,100	As incurred	As incurred	3 <sup>rd</sup> Party Provider
<b>TOTAL (17)</b>	<b>\$186,710</b>	<b>\$232,242</b>			

**Notes:**

- (1) Type of Expenses. The high and low ranges in the table are based on an average Water Babies Business. All fees imposed by us are non-refundable unless otherwise noted. Fees and expenses paid to vendors or other third parties may or may not be refundable depending on the arrangements you make with them. Neither Water Babies nor any agent or Affiliate of ours offers direct or indirect financing of your initial investment. We do not guarantee your note, lease or obligation.
- (2) Initial Franchise Fee. The Initial Franchisee Fee for the first three franchised businesses payable to us is described in ITEM 5.
- (3) Training Fee. The Training Fee is described in ITEM 5.
- (4) 3<sup>rd</sup> Party Staff Training Fees. The following courses are required to remain qualified and knowledgeable to run a Water Babies franchise. These courses require recertification at each course's own terms. Course costs vary in price from state to state and at the provider's cost discretion. Courses are as follows: Certified Pool Operators Course (ranging from \$350 per person to \$450 per person), Safesport Course (\$20 per person), Shallow Water Lifeguard Qualification (ranges from \$285 per person to \$385 per person), Sexual Harassment Course (\$30 per person), USSSA Swim Instructor Course (\$300 per person).
- (5) Background Check. You and all employees will complete a Background Check to help ensure child safety, build parental trust, and protect your business legally by screening for past offenses or red flags in employees. It's a vital step for any company working closely with infants and young children.
- (6) Travel and Living Expenses While Training. We provide training at our location in Renton, Washington or at another location designated by us and on-site training at your first pool. You must pay for airfare, meals, transportation costs, salaries, benefits, lodging and incidental expenses for all initial training program attendees and for airfare, meals, transportation costs and your share of

lodging for our representative to provide the on-site training. The low end of the range assumes you live locally to the training facility and travel home each night. The high end of the range assumes you will travel to the location of training.

- (7) Pool Deposit. You will negotiate the pool deposit when you enter an agreement with the owner or operator of the Pool. Your actual costs may vary from our estimates due to location, demand and availability of other swimming pools in your Territory.
- (8) Pool Usage Fee. You will negotiate the Pool usage fees when you enter an agreement with the owner or operator of the Pool. Your actual costs may vary from our estimates due to location, demand and availability of other swimming pools in your Territory.
- (9) Cloud Services Subscription Fee (First Three Months). You will pay the Cloud Services Subscription Fee to us, which covers the cost and maintenance of access to our designated cloud-based communication, productivity, and collaboration systems. These systems include, but are not limited to, the franchisor's designated email platform, file storage and sharing tools, calendar services, office productivity applications, and the designated VoIP platform. You must use all cloud-based communication and productivity systems that we designate as required for the operation of your Water Babies Business. You must also comply with all user terms, usage guidelines, and administrative requirements associated with these systems as specified by us or the designated vendor. We reserve the right to access any communications, data, files, or other information stored, transmitted, or processed through these systems in connection with your Water Babies Business, and you grant us the right to access such information without restriction. We reserve the right to modify, replace, or update the designated systems and related requirements at any time in our sole discretion.
- (10) Technology Fee (First 3 Months). You will pay the Technology Fee to us which covers the cost and maintenance of our consumer website with your local landing and pool pages and Ada, the Water Babies proprietary franchise management system. You must use all the software we designate as core to the business, including but not limited to Ada and its associated payment systems and communication systems, and the teacher app. You must only use the payment systems we provide, and you must accept any payment methods that we determine (for example, credit card, ACH, debit card). The term "**Payment Systems**" includes, among other things, companies that provide services for electronic payments (for example, Apple Pay and Google Wallet). The Tech System will enable you to collect information about children and their caregivers, scheduling, prices, sales, staff and payroll. We currently have/reserve the right to have independent, unlimited access to all information and data relating to your business generated by your use of Ada and any other software provided. There are no contractual limitations on our right to access and use this information and data. We also reserve the right to have independent access to other information on your Computer System in the future.
- (11) Right Start Franchise Kit. Right Start Franchise Kit includes Water Babies instructor kits, a photography backdrop and associated photography equipment, customer welcome packs to cover the first three months of operation, customer reward and recognition awards to cover the first three months of operation, and a pool water testing kit.
- (12) Right Start Digital Marketing. Right Start Digital Marketing includes Digital Marketing set-up for Google and META, the first three months of the local digital marketing fee, and local search engine optimization set-up.
- (13) Opening Retail Kit. You are able to sell a full range of products in accordance with the Water Babies system. Some of these products must be purchased from us. Other products will be

purchased from approved external suppliers. You are able to recoup this start-up cost by selling inventory to consumers.

- (14) Insurance. You must obtain and maintain certain types and amounts of insurance through our approved vendor. Insurance costs depend on policy limits, types of policies, nature and value of physical assets, revenue, number of employees, wages paid, location, business contents and other factors bearing on risk exposure. This estimate contemplates that your Water Babies business will pay an annual installment before you begin teaching swim lessons.
- (15) Working Capital (First Three Months). These funds are required to cover a mix of business expenses that include an Aquatics Director salary, support staff, payroll & human resources, accountancy & bookkeeping, and bookkeeping software. We estimate that the amount stated will be sufficient to cover ongoing expenses for the first three months of the business, although actual amounts may vary.
- (16) Local Traditional Marketing. During the first three months after signing the Franchise Agreement, you are required to spend a minimum of \$3,100 on local traditional marketing activity within your Territory. This includes press release, direct mail campaign, community or partnership event, and printing of collateral.
- (17) Total Estimated Initial Investment. These figures are estimates only. You should review these figures carefully with a business advisor before making any decision to purchase the Water Babies Business. You may incur additional expenses starting your Water Babies Business. Your costs depend on several factors, including how well you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our services; the prevailing wage rate; competition; and sales levels reached by your Water Babies Business during the initial period.

## **ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

You must establish and operate your Water Babies Business in compliance with your Franchise Agreement and the standards and specifications contained in the Water Babies confidential operations manual (“**Operations Manual**”). We will provide you electronic access to the Operations Manual.

You must provide specified services and sell specified products. The services include providing swimming instruction to children nine and under and provide underwater photography services to customers (“**Services**”). The products include products related to the Services (“**Products**”). We reserve the right to require that you sell additional or different Services and Products in your Water Babies Business with 30 days prior written notice. You must provide the Services and sell the Products per our specifications and standards. We reserve the right to change standards and specifications on 30 days prior written notice to you. Any additional products must meet our standards and specifications and must be approved by us.

We have standards and specifications for your Water Babies Business, equipment, uniforms, supplies, forms, Products, Services, advertising materials and most other services and products used in, sold or provided through your Water Babies Business. We will notify you of our specifications and standards. To maintain our standards of consistent, high quality Products, customer recognition, advertising support, value and uniformity in Water Babies Businesses, you must purchase or lease all of your required equipment, supplies, fixtures, inventory, goods, services and Products used in or sold through your Water Babies Business, per our specifications and standards, only from us or our approved or designated suppliers and distributors. The names of our approved suppliers will be provided in the confidential Operations Manual. We are not, nor are any persons affiliated with us, an approved supplier, but we reserve the right to become an approved supplier at any time in our discretion.

As of the date of this Franchise Disclosure Document we have not received any referral fees from our approved or designated suppliers. As of the date of this Disclosure Document none of our officers own an interest in any approved supplier other than Water Babies. During 2024, neither we or our affiliates derived any revenue based on the required purchases or leases by our franchisees operating in the United States. In the future, we may derive revenue from your purchases or leases of goods, services, supplies, fixtures, equipment, inventory and Products from approved suppliers, which may include us or our affiliates. The precise basis by which we may derive revenue in the future is undetermined at this time. If we derive revenue in the future from your purchases or leases of goods, services, supplies, fixtures, equipment, inventory and Products from our approved or designated suppliers and distributors, the precise basis by which we will do so will be disclosed to you. It is a material breach of your Franchise Agreement if you buy Products, equipment, supplies, fixtures, inventory, goods or services from anyone other than our designated or approved suppliers or distributors without our prior written approval. If you desire to use suppliers other than those which have been approved by us, you must submit your request to us in writing. We will then review the request and notify you of our approval or disapproval within 30 days.

We apply the following general criteria in approving a proposed supplier; ability to provide sufficient quantity of product; quality of products and/or services at competitive prices; production and delivery capability; and dependability and general reputation of the supplier.

You may request that we approve or designate a new supplier by following the procedures, and paying all required fees and expenses for approval, as set forth in the Operations Manual and modified periodically by us as we determine is necessary. We will not unreasonably withhold the approval of a supplier; however, in order to make such determination, we may require that samples from a proposed new supplier be delivered to us for testing and approval prior to use. We reserve the right to require that you pay or reimburse us for the reasonable cost of investigation in determining whether such products, services, materials, forms, items or supplies satisfy our specifications.

We estimate that the purchase of these supplies, equipment, inventory, fixtures, goods, services and Products from us or our designated or approved sources, or those meeting our standards and specifications, will be approximately 20% to 45% of your total cost to establish a Water Babies Business and 8% to 30% of your total cost of operating a Water Babies Business (not including amortization, depreciation, or replacement of worn or obsolete improvements, or equipment).

Franchisees must license from us or our designated supplier certain proprietary computer programs and related materials for use in the operation of Water Babies Business, including the admissions system software (“**Software**”). We or our designated Software vendor may require you to pay a separate license fee for the Software. The purchase of the Software license may include technical support. Ongoing support fees will be required for the maintenance of the Software. You may use the Software only on computer equipment and hardware purchased through our approved suppliers (“**Computer System**”) or obtain our written approval to purchase other equipment.

You must also purchase from our designated vendor and maintain in force, at your sole cost and expense, insurance policies meeting our minimum specifications, protecting you, us, our designated Affiliates and the officers, directors and employees of us and our designated Affiliates against any loss, liability, personal injury, death, property damage, or expense resulting from the operation of your Water Babies Business and all services you provide in connection with your operations. As of the issuance date of this Franchise Disclosure Document, our minimum specifications for required insurance policies and coverage amounts are:

You must obtain and maintain, at your own expense and from our designated supplier, the minimum insurance coverage that we periodically require under the Operations Manual, including a minimum of \$2,000,000 per occurrence in general liability, \$2,000,000 personal and advertising liability, \$1,000,000

auto liability, \$2,000,000 products completed operations aggregate and, when necessary, Excess Medical/Accident coverage and, when necessary, property coverage, umbrella liability and workers compensation in amounts required by applicable law. The liability insurance must cover claims for bodily and personal injury, death, and property damage caused by or occurring in connection with your Water Babies Business operation or activities of your personnel in the course of their employment. We reserve the right that you obtain all or a portion of your insurance policies from our designated vendor. We may periodically increase the amounts of coverage required (including reasonable excess liability insurance if required by the facility) at any time to reflect inflation, identification of new risk, changes in law or standards of liability, higher damage awards or other relevant change in circumstances. We will respond to requests for approval to purchase equipment other than the Computer System and Software oven within 10 business days from the date the request is received.

We do not have any purchasing or distribution co-operatives as of the date of this Franchise Disclosure Document. We may negotiate purchase arrangements with suppliers and distributors of approved products for the benefit of our franchisees and we reserve the right to receive rebates or other consideration from your purchase of products directly from approved suppliers or on products we purchase that we may re-sell to you. We do not provide material benefits, such as renewing or granting additional franchises to franchisees, based on their use of designated or approved suppliers and distributors. There are no caps or limitations on the maximum amount of rebates we may receive from our suppliers and distributors as the result of franchisee purchases.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Franchise Disclosure Document.**

Obligation	Section in Agreement	Item in Franchise Disclosure Document
a. Pool selection and acquisition/lease	Definitions and Section 8 of the Franchise Agreement	ITEM 11
b. Pre-opening purchases/leases	Sections 8 and 9 of the Franchise Agreement	ITEMS 8 & 11
c. Pool development and other pre-opening requirements	Section 8 of the Franchise Agreement	ITEMS 6, 7 & 11
d. Initial and ongoing training	Sections 7 and 8 of the Franchise Agreement	ITEM 11
e. Opening	Section 8 of the Franchise Agreement	Not Applicable
f. Fees	Sections 5, 6 and 11 of the Franchise Agreement and Section 3 of the Multi-Unit Development Agreement	ITEMS 5 & 6
g. Compliance with standards and policies/Operations Manual	Section 8 of the Franchise Agreement	ITEM 11
h. Trademarks and proprietary information	Section 10 and Attachment B of the Franchise Agreement and Attachment C of the Multi-Unit Development Agreement	ITEMS 13 & 14
i. Restrictions on products/services offered	Sections 8 and 9 of the Franchise Agreement	ITEMS 8 & 16
j. Warranty and customer service requirements	Section 8 of the Franchise Agreement	ITEM 11

<b>Obligation</b>	<b>Section in Agreement</b>	<b>Item in Franchise Disclosure Document</b>
k. Territorial development and sales quotas	Section 4 of the Franchise Agreement and Sections 4, 5, and 16 of the Multi-Unit Development Agreement	ITEMS 11 & 12
l. Ongoing product purchases	Sections 8 and 9 of the Franchise Agreement	ITEM 16
m. Maintenance, appearance and remodeling requirements	Sections 3 and 8 of the Franchise Agreement	ITEM 7, note 2
n. Insurance	Section 12 of the Franchise Agreement	ITEM 8
o. Advertising	Section 11 of the Franchise Agreement	ITEM 11
p. Indemnification	Sections 10 and 12 of the Franchise Agreement and Section 14 of the Multi-Unit Development Agreement	Not Applicable
q. Owners participation/ Management/staffing	Section 8 of the Franchise Agreement	ITEM 15
r. Records/reports	Section 6 of the Franchise Agreement	ITEMS 6 & 17
s. Inspection/audits	Sections 6, 7 and 8 of the Franchise Agreement	ITEM 6
t. Transfer	Section 15 of the Franchise Agreement and Section 8 of the Multi-Unit Development Agreement	ITEM 17
u. Renewal	Section 3 of the Franchise Agreement and Section 2 of the Multi-Unit Development Agreement	ITEM 17
v. Post-termination obligations	Sections 10 and 17 of the Franchise Agreement and Sections 7 and 11 of the Multi-Unit Development Agreement	ITEM 17
w. Non-competition covenants	Section 14 of the Franchise Agreement and Section 11 of the Multi-Unit Development Agreement	ITEM 17
x. Dispute resolution	Section 20 of the Franchise Agreement and Section 21 of the Multi-Unit Development Agreement	ITEM 17

## **ITEM 10 FINANCING**

Neither Water Babies nor any agent or Affiliate of ours offers direct or indirect financing. We do not guarantee your note, lease or obligation.

## **ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, Water Babies is not required to provide you with any assistance.**

### **Pre-opening Obligations**

Before you open your Water Babies Business, we (or our designee) will provide the following assistance and services to you:

1. Designate your Territory. (Section 7.3(a) of the Franchise Agreement and Attachment A to the Franchise Agreement).
2. Provide you with specifications and required supplier information for all initial and replacement equipment, tools, inventory, Computer System and supplies required for the operation of your Water Babies Business. (Section 7.3(b) of the Franchise Agreement).
3. Provide you with written pool selection guidelines and criteria and such pool selection assistance to determine an acceptable location or locations from which to operate your Water Babies Business as we have outlined in the Operations Manual. There are no additional charges for this service. (Section 7.3(c) of the Franchise Agreement).
4. Assist you in your pool selection process by authorizing each pool for the Water Babies Business. (Sections 7.3(d), Section 7.3(e) and 7.4 of the Franchise Agreement). Factors we consider in authorizing pool selection are demographics, traffic patterns, parking, and other characteristics including the exterior and interior appearance of the pool facility, ease of finding the location, population density, average income and other characteristics of the surrounding area, natural boundaries, extent of competition and the amount and size of urban, suburban and rural areas. We are not obligated to assist you with conforming the premises to local ordinances and building codes and obtaining any required permits, or constructing, remodeling or decorating the premises or hiring and training your employees. We do not generally own the premises and lease it to you. We will not be a party to the lease.
5. In addition to franchise business training, within the 90 days preceding the projected opening date ("**Projected Opening Date**") in your Franchise Agreement or your receipt of all required licenses and permits, whichever comes later, we will conduct a five to seven calendar day training course for you in Renton, Washington or at another location designated by us. You must pay for airfare, lodging, meals, ground transportation, salaries and benefits, and any other personal expenses for yourself and any additional attendees which are incurred during this time. You must complete the required training 30 days before the scheduled opening date for your first pool unless we designate a different training time frame in our discretion. When you sign the Franchise Agreement, you will pay the Training Fee for such training. (Section 7.3(f) of the Franchise Agreement).
6. Provide you with electronic access to our confidential and proprietary Operations Manual prior to the commencement of your training program. The Operations Manual consists of one or more manuals, technical bulletins or other written materials and may be modified by us periodically in our discretion. We reserve the right to require you to use an electronic version of the Operations Manual and to

require you to access the document using the Internet or an intranet created and supported by us. You will have the opportunity to view the Operations Manual at our headquarters before purchasing the Franchise, provided you agree in writing to keep its content confidential. The Operations Manual is entirely online. As such, there is no page number count that we can disclose. The Table of Contents for the Operations Manual is attached to this Franchise Disclosure Document as Exhibit G. (Section 7.3(g) of the Franchise Agreement).

### **Continuing Obligations**

During the term of the Franchise Agreement, we (or our designee) will provide the following assistance and services to you:

1. Make a representative available to speak with you on the telephone during regular business hours to discuss your operational experiences and support needs (Section 7.5(a) of the Franchise Agreement). There are no additional charges for these services.

2. We may choose to provide you with continuing national, regional or local workshops and seminars, which we hold in our discretion. You must pay the conference fee, ranging from \$100 to \$1,250 per person, and all travel and living expenses. You must attend these conferences. (Section 7.5(b) of the Franchise Agreement).

3. When we have grown to a sufficient size, in our discretion, we will hold an annual meeting of all franchisees. Attendance will be mandatory at these meetings. You will be required to pay a conference fee, ranging from \$1,000 to \$1,250 per person, and all the lodging, food, and transportation costs incurred by you and anyone attending with you. (Section 7.5(c) of the Franchise Agreement).

4. Inform you of mandatory specifications, standards and procedures for the operations of your Water Babies Business, as described in ITEM 8. (Section 7.5(d) of the Franchise Agreement).

5. Research new Products, Services and training methods and provide you with information concerning developments of this research. (Section 7.5(e) of the Franchise Agreement). There are no additional charges for these services.

6. Provide guidance to you, as required in our discretion, in determining the prices you charge for Products or Services. You will be permitted to establish your own prices, but we may set maximum resale prices as part of any national or regional promotion or multi-area marketing plan. (Section 8.5 of the Franchise Agreement).

7. Maintain the national marketing and promotions fund (“**Brand Fund**”) and use these funds to develop promotional and advertising programs for Water Babies Businesses. (Section 7.5(f) of the Franchise Agreement). There are no additional charges for these services.

8. Provide marketing plan templates and advertising materials to you in the form of an arts graphics package, which is included in your Operations Manual. (Section 7.5(g) of the Franchise Agreement). There are no additional charges for these services.

9. A representative of ours may provide additional assistance. (Section 7.5(h) of the Franchise Agreement). There may be additional charges for these services. If we provide additional assistance, we must agree in advance on the charges you will pay and the length of the visit.

10. Reserve the right to manage one or more local advertising cooperatives (Section 7.5(h) and Section 11 of the Franchise Agreement).

Except as listed above, we do not provide any additional assistance to you.

## **Training**

Before beginning operation of your Water Babies Business you and your Aquatics Director (if in place) must first satisfy all of the (“**Self-Learn and Certifications**”) specified in Attachment F of the Franchise Agreement to our satisfaction and advise us in writing that all of the Self-Learn and Certifications have been satisfied. The Self-Learn and Certifications are separate from the mandatory in-person training we provide (“**In-Person Training**”).

We will train you and your Aquatics Director (if in place) on operating a Water Babies Business and provide you and your Aquatics Director (if in place) with training on teaching swim lessons using our Water Babies Program as well as running the Franchised Business in and outside the pool.

The initial business and aquatic training period will last approximately five weeks over a 2–4 month period, or such other period of time as we deem appropriate, consisting of training and instruction in the management and operation of the Water Babies Business together with other training with both Self-Learn and Certifications and In-Person Training (the “**Water Babies Training Program**”).

The Water Babies Training Program may be shortened if the principal(s) have already received portions of the training in other capacities with Water Babies. In such cases the length of the program will change, but there shall be no abatement of fees or credits given for such change.

The Water Babies Training Program is mandatory and is a blend of in–person, self-learn modules, and virtual instruction and shall take place online or at such locations within the United States.

You must pay all expenses incurred by you and your employees in connection with the Water Babies Training Program and any other training, conferences, conventions and other meetings your trainees attend, including, for example, their salaries, transportation costs, meals, lodging and other living expenses.

You and/or your Aquatics Director must complete the Water Babies Training Program to our satisfaction before you begin providing swim lessons at your Water Babies Business, which you must begin no later than 30 days after the Effective Date of the Franchise Agreement, unless we agree in writing to a later scheduled opening. The Water Babies Business must always have an Aquatics Director or Franchisee who has completed in the Water Babies Training Program.

We will not provide Initial Business Training to your employees or independent contractors. We will provide limited training on the Water Babies operating system and other relevant areas of the business when appropriate, such as when new updates are released. (Seek advice on dual employment law etc.)

You will be responsible for training your employees and independent contractors. It is also your responsibility to hire, train, manage and supervise your employees and contractors for the day-to-day operations of your Water Babies Business. Until the Franchisor deems you qualified to train instructors you must contract the Franchisor to complete this training at the cost set out in Item 6.

We will not provide any training or certification with respect to risk assessments and compliance with applicable health, safety and child protection Laws. You must ensure that all directors, officers, employees and contractors are appropriately trained and qualified pursuant to all applicable Laws in order to carry out their respective responsibilities with the Franchise Business.

Our Water Babies Training Program comprises approximately 100 hours of in-person, tutored, or online training in addition to self-learning modules and theory work on the Initial Business Training and Aquatic Training elements. As part of this, Teacher Course involves 5-7 days in-person training, normally

on a residential basis, to learn the Water Babies syllabus in addition to a number of Mentored/Assessed lessons under the supervision of a qualified Water Babies Mentor/Assessor. The Teacher Course and Mentored/Assessed Lessons will be held at locations of our choice within the United States or United Kingdom, though we may agree to provide training at pools in which you will operate.

The Initial Business Training comprises of approximately 40 hours of self-paced, in-person, or tutored modules on operating the Water Babies Business, including training on marketing, pool acquisition, finance, data protection and management, business planning and margin sheets, products and retail, photography, health and safety, customer service, human resources, technology and software, and administrative systems and processes.

We provide instructional materials and resources as part of the Initial Business and Aquatic Training, including the Franchise Operations Manual, and other materials necessary for the running of your business.

The entire training program is subject to change due to updates in materials, methods, manuals and personnel without notice to you. The subjects and time periods allocated to the subjects taught to a specific Franchisee and its personnel may vary based on the experience or individual needs of those persons being trained.

The successful completion of our Water Babies Training Program by the Principal and other select employees is a condition to your opening of your Water Babies Business to the public. If the Principal or any of the select employees do not successfully complete the Training Program, then we may offer additional or repeat training at your sole cost and expense. Failure by the Principal or other select employees to successfully complete the Initial Training Program or any additional or repeat training may result in termination of the Franchise Agreement.

No Water Babies swim instructor may teach a swim lesson until he or she has passed our then-current swim instructor training program that we require. You must also ensure each instructor has a lifeguard qualification or pool rescue certification, has attended and passed a Safesport course, and that they have completed a background check.

If we determine that you or your Aquatics Director are not properly trained to provide the services offered by Water Babies we may require such person to cease providing services and to be trained by one of our senior tutors at our then-current training fee.

### **IN-PERSON TRAINING PROGRAM**

<b>Subject</b>	<b>Hours of Classroom/Online Training</b>	<b>Hours of Practical In-Pool Training</b>	<b>Location</b>
<b>Aquatics</b>	20	46	Renton, Washington
<b>Finance and Business Planning</b>	2	0	Renton, Washington
<b>Human Resources</b>	1	0	Renton, Washington
<b>Marketing</b>	3	0	Renton, Washington
<b>Photography Theory</b>	2	0	Renton, Washington
<b>Dipper Posing Course</b>	0	10	Renton, Washington
<b>Admin and Operations</b>	12	0	Renton, Washington
<b>Pool Acquisition</b>	2	0	Renton, Washington
<b>Other Business Streams</b>	1	0	Renton, Washington
<b>Mentor Course</b>	12	0	Renton, Washington
<b>Total Training Time</b>	<b>55</b>	<b>56</b>	

## Advertising Programs

For the period beginning 30 to 90 days before you open your Water Babies Business to the public and commence swim instructions, we will spend \$9,150 on Digital Marketing set-up for Google and META, the first three months of the local digital marketing fee, and local search engine optimization set-up. You are required to spend \$3,100 on local traditional marketing activity within your Territory during this timeframe. This includes press release, direct mail campaign, community or partnership event, and printing of collateral.

### *Local Advertising*

Local marketing and advertising activities are your responsibility and are necessary to complement the centrally managed Brand Fund. During the first year in which your Water Babies Business is open, you must complete a local marketing plan with our team and submit it via email prior to your Scheduled Opening Date. You must complete and submit a local marketing plan annually by January 31 for each subsequent year. As specified in the Operations Manual, you must use pre-approved marketing templates and collateral, or receive our approval for any marketing collateral not previously approved. You must spend a minimum of \$25,200 on local marketing, comprised of both Local Digital Marketing and Local Traditional Marketing, within your Territory (“**Local Marketing Spend**”) during each calendar year. Upon our request, you must send us, in the manner we prescribe, an accounting of your Local Marketing Spend. We have provided a budget split across of how to allocate this expenditure in Item 6.

Your local advertising and promotions must follow our guidelines. All advertising and promotional materials developed for your Water Babies Business must contain notices of our Franchise System Website's (defined below) domain name in the manner we designate. All advertising, promotion and marketing must be completely clear, factual, and not misleading and conform to both the highest standards of ethics and our advertising and marketing policies.

All advertising, promotion and marketing must conform to our System Standards. You must send us for approval samples of all advertising, promotional and marketing materials which we have not prepared or previously approved at least 10 days before you intend to use them. If we do not approve the materials within 5 days of our receipt of such materials, then they shall be deemed disapproved. You may not use any advertising, promotional or marketing materials that we have not approved or have disapproved.

We, our affiliate, or our designated supplier will provide digital advertising services which includes search engine optimization services and management, pay-per-click, Facebook advertising, remarketing and other digital services. You must pay us, our affiliate or our designated supplier for these services.

### *Local Advertising Cooperative*

There is currently no local advertising cooperatives. We reserve the right to start a local advertising cooperative.

### *National Marketing and Promotions Fund – Brand Fund*

We raise fees related to system marketing through the Brand Fund Contributions and ongoing Brand Fund Contributions collected from our franchisees. You will be required to pay the Brand Fund Contribution, currently equal to 2% of Gross Sales, as more fully described in Item 6. We designate these fees for use in our advertising and marketing activities. We spend them as we determine is most beneficial to promoting our Marks and System, but we are not required to spend any amount on advertising in your particular Territory. We use advertising and marketing fees to develop, produce, distribute and/or conduct advertising programs, marketing programs, public relations, internet and social media, national search

engine optimization, content creation, and marketing research. We may spend marketing fees on local, regional or national advertising as we deem appropriate. We produce advertising in-house and through advertising agencies. Locations that we (or our affiliates) own and operate will contribute Brand Fund Contributions equal to those contributed by our franchisees. (Franchise Agreement - Section 9.C.)

We maintain all Brand Fund Contributions in an account separate from our other funds. We will not use them for any of our expenses, except for reasonable costs and overhead that we incur in activities reasonably related to the direction and implementation of marketing and advertising programs for franchisees and the System. These costs may include costs of personnel for creating and implementing advertising, promotional, and marketing programs. The Brand Fund Contributions are not our asset. Any monies remaining from Brand Fund Contributions at the end of the taxable year in which such monies were received will be used for advertising or promotional purposes in the following taxable year before contributions from that taxable year are used. We reserve the right to terminate the Brand Fund Contributions at any time, in which case all Brand Fund Contributions remaining will be expended for advertising or promotional purposes or returned to the contributors on the basis of their respective contributions. The Brand Fund Contributions and any earnings on them will not otherwise benefit us. We may offset some internal marketing costs with any payments we receive for providing advertising and marketing services. We do not use any Brand Fund Contributions collected from franchisees to solicit new franchise sales. We are not a fiduciary of yours with respect to the Brand Fund Contributions. (Franchise Agreement - Section 9.C.)

You may only use advertising material we have prescribed or approved, and you may only distribute it to people or businesses located in your Territory. With our prior written approval, we may permit advertising outside of your Territory. We recognize that there may be occasions where print, radio, television and digital advertising have reach beyond your Territory. In those instances, prior to you signing any agreement for such advertising or placing, running, approving or engaging in any such advertising, you must secure our prior written approval. (Franchise Agreement - Section 9.B.)

We have the right, but not the obligation, to establish and maintain a website which may, without limitation, promote the Marks, the System, approved products or services, Water Babies Businesses and the franchising of the System. We have the sole right to control all aspects of the website, including, without limitation, its design, content, functionality, links to the websites of third parties, legal notices and policies and terms of usage. We also have the right to discontinue operation of the website at any time and without notice to you.

We have the right, but not the obligation, to designate one or more web page(s) to describe you and/or your Water Babies Business, with such web page(s) to be located within our website. You must comply with our policies with respect to the creation, maintenance and content of any such web page(s), as well as the observance of our privacy policy with information gathered through our forms. We have the right to refuse to post and/or discontinue posting any content and/or the operation of any web page(s).

You may not establish or maintain a separate website, register or use any domain name/URL address, or use any other social media outlet, such as Facebook, Instagram, X (formerly Twitter) or any other outlet, for or in connection with the Franchised Business without our prior written approval (which we shall not be obligated to provide). You may not post, respond to, or otherwise participate in any social media communications unless otherwise authorized by us. (Franchise Agreement - Section 9.E.)

We pay the costs of marketing activities, including a share of corporate overhead related to advertising and marketing, with Brand Fund Contributions. We do not guarantee that you will benefit directly from any advertising or marketing. (Franchise Agreement - Section 9.C.) The marketing fees will be spent in a way, which in our judgment, benefits the franchise system. We have not spent any franchisee marketing fees to solicit new franchisees. Marketing expenditures are not audited other than as part of the Company's annual audit of its financial statements. A summary of Brand Fund Contributions raised and

spent is available to you upon submission of a written request to us. You will not receive a periodic accounting of how we spend the Brand Fund Contributions we collect. However, upon the completion of the Company's annual audit you may obtain an accounting of marketing expenditures by sending a written request to the attention of our Accounting Department.

### *Marketing Resources, Pre-Approvals for Marketing Materials, and Internet Marketing*

You may order sales and marketing material from our designated supplier and digital management system. It is a material breach of the Franchise Agreement to use other marketing material without obtaining our prior written approval. If you desire to use your own advertising materials you must obtain our prior approval, which we have the right to grant or deny. We will review your request and we will respond in writing within 30 days from the date we receive all requested information. Our failure to notify you in the specified time frame will be deemed a disapproval of your request. Use of logos, Marks and other name identification materials must be consistent with our approved standards. You may not use our logos, Marks and other name identification materials on items to be sold or services to be provided without our prior written approval. If we approve of promotional items or services that will be sold in your Water Babies Business, those items or services must be included in your Gross Revenues and will be subject to Royalties, Individual Advertising Expense and the Brand Fund fees.

We retain the sole right to market on the Internet, including all use of websites, domain names, URL's, linking, advertising, and co-branding arrangements. You may not independently market on the Internet, or use any domain name, address, locator, link, metatag, or search technique, with words or symbols similar to the Marks. We intend that any Franchisee website be accessed only through our home page. You will provide us content for our Internet marketing. We retain the right to approve any linking or other use of our website.

### **Schedule for Opening**

We estimate that the typical length of time between the signing of the Franchise Agreement and the opening of your Water Babies Business will be 3 to 6 months. Some factors which may affect this timing are your ability to identify and rent a pool space, your ability to secure any necessary financing, your ability to comply with local zoning and other ordinances, your ability to obtain any necessary permits and certifications, and the timing of the delivery of equipment and inventory.

You must open your Water Babies Business on or before the projected opening date (“**Projected Opening Date**”) set forth on Attachment A to the Franchise Agreement, but in no event more than 9 months from the date the Franchise Agreement becomes effective. Unless we agree to defer your Projected Opening Date, which we have the right to do or not do, your failure to open your Water Babies Business on or before the Projected Opening Date will constitute a default of your Franchise Agreement and allow us to terminate your Franchise Agreement.

You must comply with all applicable ordinances, building codes and permit requirements and with lease requirements and restrictions. You are solely responsible for, and must also apply for, all required licenses and permits within 120 days after signing the Franchise Agreement. If you do not receive all required licenses, permits, and certifications within nine months of executing the Franchise Agreement, we may terminate the Franchise Agreement and retain all fees and other consideration paid by you. (ITEM 5).

We reserve the right to require you to comply with reasonable restrictions on maximum and minimum prices (to the extent permitted by applicable law) of specific goods, programs or services offered and sold by the Franchised Business as required in the Manual or as we otherwise reasonably direct in writing from time to time.

You may not open your Water Babies Business until: (1) we notify you in writing that all of your pre-opening obligations have been fulfilled; (2) initial training is completed to our satisfaction; (3) all amounts due to us have been paid; (4) we have been furnished with copies of all insurance policies and certificates required by the Franchise Agreement, or other documentation of insurance coverage and payment of premiums that we request; (5) you notify us that all approvals and conditions set forth in the Franchise Agreement have been met; (6) you have received all required permits and licenses; (7) you have provided us with a fully executed copy of the lease and/or rental agreement for the first pool to be operated; and (8) you have ordered and received your equipment, supplies, uniforms, tools, products, inventory and Computer System. You must be prepared to begin operating your Water Babies Business immediately after we state that your Water Babies Business is ready for opening.

## **Software and Computer Equipment**

We will require you, at your expense, to purchase or lease, and thereafter maintain, such computer hardware and software, telephone service, wireless broadband internet service, active e-mail account, modem(s), printer(s), and other computer-related accessories or peripheral equipment as we may specify in the Operations Manual to operate the Water Babies Business Model.

We currently require you to obtain a Windows OS or Mac OS X compatible computer system, QuickBooks Online accounting system, broadband internet access, VoIP telephone, and a multi-function printer capable of scanning and printing, meeting the functionality necessary to operate software for your Water Babies Business. You may already have some or all of the designated equipment as well as internet access at your home or current office. Currently, the Computer System components consist of the following: 1 computer per Water Babies Business, 1 printer with scanning functionality, 1 wireless router to enable connection to the internet, all required software platforms, as provided by the franchisor during onboarding, online financial management software, and 1 tablet device per teacher.

You will be responsible for maintaining your Computer System hardware and software in good repair and condition, and you must promptly install such additions, changes, or modifications as we may direct within 30 days after you receive notice from us. There are no limitations on the frequency and cost of your obligation to update the computer software and/or equipment at our request. We are not contractually obligated to maintain, repair, update, or upgrade your computer system. You are also responsible for your connectivity to the Computer System at all times and any and all consequences if the Computer System is not properly operated, maintained, and upgraded.

We estimate the cost of purchasing the Computer System to range between \$1,500 and \$3,000.

You will pay the Technology Fee to us which covers the cost and maintenance of our consumer website with your local landing and pool pages and Ada, the Water Babies proprietary franchise management system. You must use all the software we designate as core to the business, including but not limited to Ada and its associated payment systems and communication systems, and the teacher app. You must only use the payment systems we provide, and you must accept any payment methods that we determine (for example, credit card, ACH, debit card). The term Payment Systems includes, among other things, companies that provide services for electronic payments (for example, Apple Pay and Google Wallet). The Tech System will enable you to collect information about children and their caregivers, scheduling, prices, sales, staff and payroll. We currently have/reserve the right to have independent, unlimited access to all information and data relating to your business generated by your use of Ada and any other software provided. There are no contractual limitations on our right to access and use this information and data. We also reserve the right to have independent access to other information on your Computer System in the future.

## ITEM 12 TERRITORY

### Single Unit Franchise Agreement

You will be granted the right to operate your Water Babies Business from a one or more pool locations we have approved within your designated Territory. All pools that you plan to operate out of must be approved by us. You will be granted a territory (“**Territory**”) in which to market and advertise your Water Babies Business and to sell the Products and Services you are authorized to sell by the Franchise Agreement. Your Territory will be based on demographics and other characteristics, including population density, average household income, and other characteristics of the surrounding area, natural boundaries, extent of competition, and the amount and size of urban, suburban and rural areas. We will use commercially reasonable efforts to grant only one license to a franchisee per 50,000 children aged 9 and under (as determined by the most recent U.S. Census Bureau report) in the designated geographical location (“**Population Limit**”). We will use the most recent population information reasonably available in the U.S. Census Data, or other population statistical sources of our choosing to determine populations. We have the exclusive right to determine the boundaries of your Territory. Once the radius is determined, you will be assigned the zip codes that lie in whole or in part within the boundary we have granted to you for marketing purposes. We reserve the right to change, modify, or delete the Population Limit. You may face competition from other franchisees, from outlets that we own, or from or competitive brands that we control.

We have the right to grant you express permission to promote and advertise your Water Babies Business to customers in an unsold territory adjacent to your Territory (“**Adjacent Territory**”). However, you must agree that when this Adjacent Territory is granted to another franchisee, you will, upon receipt of written notice from us, cease all promotional and advertising efforts within the Adjacent Territory, and return to us, within 10 days of the notice, all customer data and prospect information related to the Adjacent Territory. You do not have any rights of first refusal on the Adjacent Territory.

Customers from your Territory may purchase Services and Products from us and our Affiliates or designees over the Internet, or in other reserved channels of distribution or from other franchisees in different territories. If you advertise or market your Water Babies Business outside of your Territory, unless otherwise approved by us, you will be in breach of your Franchise Agreement, and we would have the right to terminate your Franchise.

You will not receive rights of first refusal to acquire additional franchises within your area. You will maintain rights to your Territory even though the population in the Territory may increase or decrease, and once your Territory is established, we cannot change or modify it under any circumstances. You will not be entitled to any additional zip codes or an expansion of your geographic boundaries if the population decreases or the demographic make-up changes in your Territory. There are no other restrictions on us regarding granting franchised outlets for similar or competitive business within a defined territory.

We reserve the right, among others, to own, franchise, license or use the Marks and System to operate Water Babies Businesses at any location outside of the Territory, regardless of the proximity to your Water Babies Business. We will not establish within your Territory another franchisee or company-owned outlet which may also use the franchisor’s trademarks, service marks, or Marks.

We reserve the right, among others, to offer the Services or Products, or grant others the right to offer the Services or Products, whether using the System and/or Marks or other trademarks or services marks through any alternate channels of distribution within or outside of the Territory. This includes, but is not limited to, retail locations and other channels of distribution such as television, mail order, catalog sales, wholesale to unrelated retail outlets, or over the Internet. We exclusively reserve alternative channels of distribution such as the Internet, catalog sales, telemarketing or other direct marketing, as channels of

distribution for us. You may not independently use alternative channels of distribution to make sales within or outside your Territory.

We reserve the right, among others, to any websites utilizing a domain name incorporating one or more of the words “Water”, “Babies”, “Swim”, “Swimvincible”, “Water Kids”, and/or “Pool” or similar derivatives thereof. We retain the sole right to market on the Internet and use the Marks on the Internet, including all use of websites, domain names, URL’s, directory addresses, metatags, linking, advertising, and co-branding and other arrangements.

We reserve the right, among others, to implement multi-area marketing programs which may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate these multi-area marketing programs.

### **Multi-Unit Development Agreement**

You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands we control. You may purchase Area Development rights to open and operate two or more Water Babies Businesses. If you purchase Area Development rights for Water Babies Businesses, you will be granted a Development Territory which will be comprised of each Water Babies Business’ Territory in which your Water Babies Businesses must be established during implementation of the development schedule. Your Development Territory will include a minimum population base of 50,000 children aged 9 and under (as determined by the most recent U.S. Census Bureau report) multiplied by the number of Water Babies Businesses you commit to open under the terms of the Multi-Unit Development Agreement. When and if the development schedule has been timely satisfied, you will no longer have the entire Development Territory and each Water Babies Business will be limited to its individual Territory, as described above. You will not receive rights of first refusal to acquire additional franchises.

During the term of the Multi-Unit Development Agreement, we do not have the right to establish our own, or to grant to others the right to establish, Water Babies Businesses within the Development Territory; however, we reserve the right to sell Products and Services, under the Marks or any other marks, through any other channels of distribution, and we reserve the same rights with respect to your Development Territory as it has with respect to exclusive territories granted to single unit franchisees.

While preservation of a Development Territory is not contingent upon sales volume, if you do not meet your development schedule, we may elect to terminate your Multi-Unit Development Agreement, reduce or eliminate the territorial protections, or reduce the size of your Development Territory.

Unless a renewal of the Multi-Unit Development Agreement and an extension of the development schedule are negotiated by the parties, the Multi-Unit Developer will no longer have a Development Territory upon the expiration or termination of the Multi-Unit Development Agreement. However, each Water Babies Business in good standing will retain its protected individual Territory as set forth in the Franchise Agreement.

### **ITEM 13 TRADEMARKS**

The Franchise Agreement grants you the nonexclusive right to use our Marks, including the service mark WATER BABIES and various designs and logo types associated with our services. You may also use our other current or future Marks as we may designate to operate your Water Babies Business.

The WATER BABIES Marks and the System are owned by subsidiaries of Water Babies Holdings Inc: Water Babies USA LLC, Water Babies Ltd (UK) and WB Aquatics LLC (collectively the “**Water Babies IP Companies**”). Water Babies IP Companies have granted us a non-exclusive license

(“**Intellectual Property License**”) to use the intellectual property for purposes of franchising the System around the world. The Intellectual Property License extends for 50 years, commencing May 20, 2025 provided that we are not in default or do not materially breach the Intellectual Property License by engaging in any activity which damages the Marks or the goodwill of the System. In the event the Intellectual Property License is terminated, Water Babies IP Companies have agreed to negotiate a license with our licensees to use the WATER BABIES Marks and the System on substantially the same terms as the terms in our Intellectual Property License.

We have registered, or applied to register, the following Marks on the Principal Register of the United States Patent and Trademark Office (“**USPTO**”):

<b>Mark</b>	<b>Registration Date</b>	<b>Registration Number</b>	<b>Status</b>
Waterbabies (Word Mark)	November 22, 2024	4,595,259	Registered on the Principal Register
Water Babies (Word Mark)	July 25, 2017	Serial #: 86/477,888	Pending
Swimvincible (Word Mark)	April 29, 2025	Serial #: 99/160,422	Pending
	October 15, 2015	1,284,842	Registered on the Principal Register
	April 23, 2025	1,428,583	Registered on the Principal Register
	September 10, 2019	5,853,697	Registered on the Principal Register

All required affidavits have been filed. The above-referenced registrations have not been renewed, as renewal has yet to be required.

We may also use a number of unregistered, common law trademarks, which may not have a federal registration. Therefore, such trademark do not have as many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark which may increase your expenses.

You must follow our rules when you use our Marks. You may not use any of the Marks alone or with modifying words, designs or symbols as part of a corporate or business name or in any form on the Internet, including but not limited to URLs, domain names, e-mail addresses, locators, links, metatags or search techniques. You must indicate, as required in the Franchise Agreement and specified in the Operations Manual, that you are an independent operator. Guidelines regarding proper trademark use and notices are in the Operations Manual and will be updated periodically in our discretion. You may not use our Marks with an unauthorized product or service, or in a manner not authorized in writing by us.

There are no currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, any pending infringement, opposition or cancellation proceedings or any pending material litigation involving any of our Marks which are relevant to the use of these Marks. No currently effective litigation affects our use or ownership rights in any Mark. No currently effective agreement limits our right to use or license the use of our Marks.

You must notify us within three days after you learn about an infringement of or challenge to your use of our Marks. We may take the action necessary to prevent the unauthorized use of our Marks. We are not obligated to protect your rights to use the trademark or protect you against any claims of infringement or unfair competition arising out of your use of the Marks. We will have no obligation to defend or indemnify you if a claim against you relates to your use of the Marks in violation of the Franchise Agreement. Nor will you have the right to make any demand or to prosecute any claim against the alleged infringer for the infringement, unless we decide to join you in such action. In such cases, we shall bear all your out-of-pocket expenses for such participation.

We will control any litigation or proceedings.

You must modify or discontinue the use of a Mark if we modify or discontinue the Mark. If this happens, we will reimburse you for your tangible out-of-pocket cost of compliance (for example, changing letterhead and business cards). You must not directly or indirectly contest our right to our trademarks, trade secrets or business techniques that are part of our business.

We do not know of any infringing uses that could materially affect your use of our Marks. You should understand that there could be other businesses using trademarks, trade names, or other commercial symbols similar to our Marks with superior rights to our rights. Before opening your Water Babies Business, you should research this possibility, using telephone directories, trade directories, Internet directories, or otherwise to avoid the possibility of having to change your Water Babies Business name.

We reserve the right, among others, to use, franchise and/or license the use of other proprietary and non-proprietary marks which are not the same as or confusingly similar to the Marks, whether in alternative channels of distribution or in the operation of a business offering swim instruction to children, underwater photography, and other elements and the sale of related products, including within the Territory, which may be similar to or different from the business operated by you.

We reserve the right, among others, to use, license and/or franchise the Marks and the System in connection with the provision of other services and products or in alternative channels of distribution in any location, including the Territory.

#### **ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

The information contained in the Operations Manual is proprietary and is protected by copyright and other laws. The Operations Manual and the limitations of the use of it by you and your employees are described in ITEM 11 and Sections 7, 8 and 10 of the Franchise Agreement. The designs contained in the Marks, the layout of our advertising materials, the content and format of our Products, as well as any other writings, recordings in print or electronic form are also protected by copyright and other laws. Although we have not filed an application for copyright registration for the Operations Manual, the Marks, the advertising materials, the content and format of our Products, or any other writings and recordings, we claim common law and federal copyrights in these items. We grant you the right to use this proprietary and

copyrighted information (“**Copyrighted Works**”) in connection with your operation of your Water Babies Business, but these copyrights remain our sole property.

There are currently no effective determinations of the United States Copyright Office or any court regarding any Copyrighted Works of ours, nor are any proceedings pending, nor are there any currently effective agreements between us and third parties pertaining to the Copyrighted Works that will or may significantly limit your use of our Copyrighted Works.

Our Operations Manual, electronic information and communications, sales and promotional materials, the development and use of our System, standards, specifications, policies, procedures, information, concepts and systems on, knowledge of and experience in the development, operation and franchising of Water Babies Businesses, formulations for and packaging of Products, and training and safety techniques used to provide Services sold at Water Babies Businesses, information concerning Product and Service sales, operating results, financial performance and other financial data of Water Babies Businesses and other related materials are proprietary and confidential (“**Confidential Information**”) and are considered to be our property to be used by you only as described in the Franchise Agreement or the Operations Manual. Where appropriate, certain information has also been identified as trade secrets (“**Trade Secrets**”). You must maintain the confidentiality of our Confidential Information and Trade Secrets and adopt reasonable procedures to prevent unauthorized disclosure of our Trade Secrets and Confidential Information.

We will disclose parts of the Confidential Information and Trade Secrets to you as we deem necessary or advisable for the development of your Water Babies Business during training and in guidance and assistance furnished to you under the Franchise Agreement, and you may learn or obtain from us additional Confidential Information and Trade Secrets during the term of the Franchise Agreement. The Confidential Information and Trade Secrets are valuable assets of ours and are disclosed to you on the condition that you, and your owners, if you are a business entity, and employees agree to maintain the information in confidence by entering into a confidentiality agreement that we can enforce. Nothing contained in the Franchise Agreement will be construed to prohibit you from using the Confidential Information or Trade Secrets in the operation of other Water Babies Businesses during the term of the Franchise Agreement.

You must notify us within three days after you learn about another’s use of language, a visual image, or a recording of any kind, that you perceive to be identical or substantially similar to one of our Copyrighted Works or use of our Confidential Information or Trade Secrets or if someone challenges your use of our Copyrighted Works, Confidential Information or Trade Secrets. We will take whatever action we deem appropriate, in our sole and absolute discretion, to protect our rights in and to the Copyrighted Works, Confidential Information or Trade Secrets, which may include payment of reasonable costs associated with the action. However, the Franchise Agreement does not require us to take affirmative action in response to any apparent infringement of or challenge to your use of any Copyrighted Works, Confidential Information or Trade Secrets or claim by any person of any rights in any Copyrighted Works, Confidential Information or Trade Secrets. You must not directly or indirectly contest our rights to any of our Copyrighted Works, Confidential Information or Trade Secrets. You may not communicate with anyone except us and our counsel with respect to any infringement, challenge or claim. We will have discretion to take action as we deem appropriate regarding any infringement, challenge or claim, and the sole right to control exclusively any litigation or other proceeding arising out of any infringement, challenge or claim under any Copyrighted Works, Confidential Information or Trade Secrets. You must sign any and all instruments and documents, give the assistance, and do acts and things that may, in the opinion of our counsel, be necessary to protect and maintain our interests in any litigation or proceeding or to protect and maintain our interests in the Copyrighted Works, Confidential Information or Trade Secrets.

No patents are material to us at this time, although we reserve the right to file a patent on the design for any future products.

We have the right to inspect, copy and use all records with respect to the customers, suppliers, and other services providers of, and related in any way to your Water Babies Business. This includes, without limitation, all databases (whether in print, electronic, or other form), including, among other things, all names, addresses, phone numbers, e-mail addresses, and customer purchase records. We may use or transfer the records in any way we wish, both before and after any termination, expiration, repurchase, transfer or otherwise. We may contact any or all of your customers, suppliers, and other service providers for quality control, market research, and such other purposes, as we deem appropriate.

You must disclose to us all ideas, techniques and products concerning the development and operation of the Water Babies Business you, your Aquatic Director or your employees conceive or develop during the term of the Franchise Agreement. You must grant to us and agree to obtain from your owners, Aquatic Director or employees a perpetual, non-exclusive and worldwide right to use these ideas, techniques and products concerning the development and operation of the Water Babies Business that you, your Aquatic Director or your employees conceive or develop during the term of the Franchise Agreement in all indoor children's adventure businesses that you operate. We will have no obligation to make any lump sum or on-going payments to you with respect to any idea, concept, method, technique or product. You must agree that you will not use nor will you allow any other person or entity to use any of these ideas, techniques or products without obtaining our prior written approval.

#### **ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You and your Aquatics Director (if any) must provide direct, full-time, in-person supervision of your Water Babies Business. You must also directly supervise your Multi-Unit Developer obligations, if any. Each subsequent Water Babies Business after your first, if any, must have a person designated to manage the business full-time ("**Aquatics Director**"). Your Aquatic Director does not have to own any beneficial interest in a business entity that owns the Water Babies Business.

If you are a legal or business entity, each individual who owns, directly or indirectly, a 5% or greater interest in you (and, if you are an individual, your immediate family defined as your spouse or domestic partner and any adult children involved in any way with the Water Babies Business) must sign the Guaranty and Assumption of Franchisee's Obligations assuming and agreeing to discharge all of your obligations and comply with all restrictions under the Franchise Agreement (See Attachment B to the Franchise Agreement and our Nondisclosure and Noncompetition Agreement attached to this Franchise Disclosure Document as Exhibit H); (See Attachment C to the Multi-Unit Development Agreement).

#### **ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must refrain from using or permitting the use of your Water Babies Business for any other purpose or activity at any time without first obtaining our written consent.

You may sell Services and Products to any customer who visits your Water Babies Business or who is located in your Territory. You may not market and advertise the Services and Products to customers outside of your Territory without our express permission. You may not sell Services and Products to customers within another franchisee's territory. You may not sell Services and Products to customers through other channels of distribution such as wholesale, Internet, or mail order sales.

You may not sell products or services, or advertise products or services, within another franchisee's Territory. You may not sell products through other channels of distribution such as wholesale, Internet, or mail order sales.

Unless we provide prior written approval otherwise, you must sell or offer for sale only those Services and Products which are authorized by us and which meet our standards and specifications. You must follow our policies, procedures, methods, and techniques. Unless we provide prior written approval otherwise, you must sell or offer for sale all types of Services and Products specified by us. We may change or add to our required Services and Products at our discretion with prior notice to you. You must discontinue selling and offering for sale any Services or Products which we may, in our discretion, disapprove in writing at any time. We reserve the right to establish maximum resale prices for use with multi-area marketing programs and special price promotions.

## ITEM 17

### RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

**This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

#### THE FRANCHISE RELATIONSHIP

Provision	Section in Franchise Agreement	Summary
a. Length of the franchise term	Section 3	10 years.
b. Renewal or extension of the term	Section 3	Your successor franchise right permits you to remain as a franchise after the initial term of your Franchise Agreement expires. If you wish to do so, and you satisfy the pre-conditions to obtaining a Successor Franchise, we will offer you the right to obtain an additional two 5-year terms.
c. Requirements for Franchisee to renew or extend	Section 3	“ <b>Renewal</b> ” under the Franchise Agreement means signing our then-current franchise agreement, which could contain materially different terms and conditions from your original franchise agreement. You must sign our then-current franchise agreement (“ <b>Successor Franchise Agreement</b> ”), which may contain materially different terms and conditions from your original franchise agreement, be current in payments, sign release, pay Successor Franchise Fee.
d. Termination by you	Not Applicable	Subject to state law.
e. Termination by us without cause	Not Applicable	
f. Termination by us with cause	Section 17	We can terminate upon certain violations of the Franchise Agreement by you.
g. “Cause” defined - defaults which can be cured	Section 17.2	You have 30 days to cure: failure to maintain operating procedures and standards; failure to obtain Franchisor’s prior written approval as required by the Franchise Agreement; failure to comply with requirements of the Operations Manual; default under any Lease term of the Water Babies Business or any other premises used to operate the Business, any other franchise agreement with Franchisor or any agreement material to the Business; failure to submit required reports when due; failure to accurately report required information; failure to comply with any provision of the Franchise Agreement or any

Provision	Section in Franchise Agreement	Summary
		specification, standard or operating procedure and Franchisee does not correct the failure within specified period of time after receipt of written notice from Franchisor.
h. “Cause” defined – non-curable defaults	Section 17.1	Non-curable defaults: failure to open on or before projected opening date; unauthorized disclosure of any part of Franchisor’s Operations Manual, Confidential Information or Trade Secrets; abandonment of the Water Babies Business for five consecutive days or any shorter period that indicates an intent to discontinue operation of the Business, unless due to causes beyond your control; you are declared bankrupt or insolvent; you have a material judgment or judgments against you that remain unsatisfied or of record for 30 days or longer, execution is levied against your Water Babies Business, or the real or personal property of your Water Babies Business shall be sold after levy by a sheriff; you, your Aquatic Director, or any owner of greater than 10% of the Franchisee entity is charged or convicted of a felony charge, a crime involving moral turpitude, a crime against a child, or any other crime or charge that may materially and unfavorably affect the System, Marks, goodwill or reputation thereof; failure to pay amounts due Franchisor or Affiliates within 10 days after receipt of notice that amounts are overdue; failure to correct misuse or failure to follow Franchisor’s guidelines concerning use of the Marks after notification from Franchisor; receipt of two notices of default under the Franchise Agreement within a 12 month period whether or not such failure to comply is corrected; unauthorized sale, transfer or assignment of the Water Babies Business or an interest therein, the Franchise Agreement or a portion of the assets of the Water Babies Business; understatement by more than 2% of your Gross Revenue on two or more occasions during the Term unless you can demonstrate such understatements were from inadvertent error; failure to submit any required information or late submission on two or more occasions during the Term or any Successor Term; the sale or offer for sale of any unauthorized merchandise, product or service, engagement in unauthorized business or sale of unauthorized products or services under the Marks or a name or mark that is confusingly similar to the Marks; you contest in court or any proceeding the validity of or Franchisor’s ownership of the Marks or copyrighted materials; an action to merge, consolidate, dissolve or liquidate a Franchisee business entity without Franchisor’s prior written consent; failure to successfully complete any training or re-training course; receipt during the Term or any Successor Term of three or more notices of default from Franchisor whether or not

Provision	Section in Franchise Agreement	Summary
		such defaults were corrected; any misrepresentation under Section 1.9 of the Franchise Agreement or violation of Anti-Terrorism Laws by you, your Aquatic Director, or your owners, officers, directors, managers, members, partners, agents or employees.
i. Your obligations on termination/non-renewal	Sections 10, 12, 14 & 17	Obligations include complete de-identification, payment of amounts due and return of Operations Manual, all Confidential Information, Trade Secrets and records.
j. Assignment of contract by us	Section 15.1	No restriction on our right to assign. However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor's obligations under the Franchise Agreement.
k. "Transfer" by you – definition	Section 15	Includes transfer of contract or assets or ownership change.
l. Our approval of transfer by Franchisee	Section 15	We have the right to approve all transfers.
m. Conditions for our approval of transfer	Section 15	New franchisee qualifies, Transfer Fee paid, purchase agreement approved, training arranged, release signed by you and current agreement signed by new franchisee.
n. Our right of first refusal to acquire your business	Section 16	We can match any offer for your business.
o. Our option to purchase your business	Section 16	We may, but are not required to, purchase your inventory and equipment at fair market value if your Franchise is terminated for any reason.
p. Your death or disability	Section 15.9	Your estate or legal representative must apply to us for the right to transfer to the next of kin within 180 days of your death or disability.
q. Non-competition covenants during the term of franchise	Section 14	No involvement in competing business anywhere in US, subject to state law.
r. Non-competition covenants after the franchise is terminated or expires	Sections 14, 17	No competing business for 2 years (i) in the Territory or any other Franchisee's Territory; (ii) within 100 miles of the Territory or any other Franchisee's Territory or (iii) within 100 miles of any of our Affiliate owned Water Babies Business, subject to state law.
s. Modification of agreement	Sections 2.3, 3.3 & 21.11	No modifications of Franchise Agreement during term generally, but Operations Manual subject to change. Modifications permitted on renewal.
t. Integration/merger clause	Section 21.5	Only the terms of the Franchise Agreement are binding (subject to state law); Any representations or promises outside of this Disclosure Document and the Franchise Agreement may not be enforceable, subject to state law. Notwithstanding the foregoing, nothing in the Agreement or any related agreement is intended to disclaim the representations made by the disclosure document.
u. Dispute resolution by arbitration or mediation	Section 20	Except for certain claims, all disputes must be arbitrated in Southern Pines, North Carolina, subject to state law.

Provision	Section in Franchise Agreement	Summary
v. Choice of forum	Sections 20.3 & 21.1	Litigation and arbitration must be in North Carolina, except as provided in a State Specific Addendum, subject to applicable state law.
w. Choice of law	Sections 20.3 & 21.1	North Carolina law applies, except as provided in a State Specific Addendum, subject to applicable state law.

**This table lists important provisions of the area development and related agreements. You should read these provisions in the agreements attached to this Franchise Disclosure Document.**

Provision	Section in Multi-Unit Development Agreement	Summary
a. Length of the Multi-Unit Development Agreement	Sections 2 and 4	The term of the Multi-Unit Development Agreement will be negotiated by the parties.
b. Renewal or extension of the term	Section 2	Any Successor Term must be negotiated by the parties. You must be in good standing to renew.
c. Requirements for Multi-Unit Developer to renew or extend	Sections 2 and 7	Not in default under the Multi-Unit Development Agreement or any Franchise Agreement. The parties must agree in writing to a new Development Schedule. You must sign our then-current Multi-Unit Development (“ <b>Successor Multi-Unit Agreement</b> ”) for the Successor Term, and this new Multi-Unit Development Agreement may have materially different terms and conditions from the Multi-Unit Development Agreement that covered your original term.
d. Termination by you	Not Applicable	Subject to state law.
e. Termination by Franchisor without cause	Not Applicable	
f. Termination by Franchisor with cause	Section 7	Franchisor can terminate you if you are in default.
g. “Cause” defined – curable defaults	Not Applicable	
h. “Cause” defined – non-curable defaults	Section 7	Failure to comply with Development Schedule, failure to comply with any obligations in the Multi-Unit Development Agreement or any Franchise Agreement, termination of approved affiliate of Multi-Unit Developer, etc., cease to be a franchisee in good standing; fail to comply with the transfer provisions
i. Your obligations on termination/ non-renewal	Sections 10 and 11	Confidentiality and non-competition.

<b>Provision</b>	<b>Section in Multi-Unit Development Agreement</b>	<b>Summary</b>
j. Assignment of contract by Franchisor	Section 8.1	No restriction on Franchisor's right to assign.
k. Transfer by you – definition	Section 8.2	Includes transfer of contract, assets, ownership change or any interest in the Area Development or Franchise Agreements. Any transfer of a single-unit Water Babies Business will be governed by the Franchise Agreement to which the single-unit Water Babies Business is bound.
l. Franchisor's approval of transfer by Multi-Unit Developer	Section 8.2	Franchisor must approve all transfers and Franchisor has right of first refusal on all proposed transfers.
m. Conditions for Franchisor's approval of transfer	Section 8.2	Paid up, not in default, release signed, transfer fee paid, transferee is approved, signs current Multi-Unit Development Agreement, etc. (See also r, below).
n. Our right of first refusal to acquire your business	Section 8.2(e)	Franchisor may match any bona fide offer for your area development rights.
o. Our option to purchase your business	Section 8.2(e)	Franchisor may match any bona fide offer for your area development rights.
p. Your death or disability	Not Applicable	
q. Non-competition covenants during the term of the franchise	Section 11	No involvement in competing business anywhere, subject to state law.
r. Non-competition covenants after the franchise is terminated or expires	Section 11.2	No competing business for two years within 100-mile radius of the Development Territory or within 100-mile radius of any Water Babies Business owned by a franchisee, Franchisor, our Affiliates or Multi-Unit Developer, subject to state law.
s. Modification of the Agreement	Section 12	Modifications only upon written agreement of the parties.
t. Integration/merger clause	Section 12	Only the terms of the Multi-Unit Development Agreement are binding (subject to applicable state laws). Any representations or promises outside of this Disclosure Document and the Multi-Unit Development Agreement may not be enforceable, subject to state law.
u. Dispute resolution by arbitration or mediation	Section 21	Except for certain claims, all disputes will be arbitrated in Southern Pines, North Carolina, subject to state law.

Provision	Section in Multi-Unit Development Agreement	Summary
v. Choice of forum	Section 21	Arbitration must be in North Carolina, except as provided in a State Specific Addendum, subject to applicable state law.
w. Choice of law	Section 18	North Carolina law applies, except as provided in a State Specific Addendum, subject to applicable state law.

**ITEM 18  
PUBLIC FIGURES**

We do not currently use any public figure to promote our franchise.

**ITEM 19  
FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location under particular circumstances.

Background of business in Territory 1 and Territory 2: Founded in 1997 as a sole proprietorship by Chris and Vera Garibaldi, Waterbabies was incorporated on November 27, 2002. The business model was to offer group swimming lessons to children from 3 months to 10 year olds using rented or leased pool space. The company started in a therapy pool in the city of Bellevue. It expanded into other pools east of Seattle. In 2014 the business registered the trademark for Waterbabies. In 2016, Waterbabies leased a building in Renton, Washington that was part of an old *24-hour Fitness* gym. It continued to operate other rented pools.

In March 2023, our affiliate Water Babies USA LLC formally acquired the company and has since implemented its own operational systems and practices.

The business manages two neighboring territories in Seattle under a single management structure:

- **Territory 1** includes three hosted pools—two of which have been in operation since approximately 2004, with the third added in 2014. Two of these pools form part of a local athletics club and the third is the Belleview Aquatic Centre operated by the City of Bellevue.
- **Territory 2** includes one leased pool. Originally part of a gym facility, a long-term lease was secured in 2016, allowing for unlimited pool access seven days a week.

Prior to registration, Water Babies Renton operated both territories under one accounting system. Consequently it is not possible to separate operating costs by territory. However, revenue and cost of sales can be calculated by individual pool, as represented in Table 1 below:

**Table 1**

	31 December 2022	31 December 2023	31 December 2024
<b>Gross Revenue</b>	<b>1,190,898</b>	<b>1,896,362</b>	<b>1,989,969</b>

  

	31 December 2022	31 December 2023	31 December 2024
<b>Average Weekly Customer No's</b>	<b>759</b>	<b>1,126</b>	<b>1,188</b>

1. A "customer" is one unique individual.

**Notes to Table 1:**

- (1) A "Customer" is defined one unique person who has received at least one swimming lesson during the measured period.
- (2) Average Weekly Customer Numbers represents the number of Customers swimming on a weekly basis.
- (3) Gross Revenue represents all revenues received from the operation of all four pools in the two territories.

**Table 2**

January 1, 2024 - December 31, 2024 Income Statement Performance						
	Combined	Ratios	Territory 1	Territory 2		
	Average Weekly Customers		Average Weekly Customers	Average Weekly Customers		
	1,188		210	978		
<b>Gross Revenue</b>	<b>\$ 1,989,969</b>	100%	<b>\$ 340,596</b>	<b>\$ 1,649,374</b>		
<b>Cost of Sales</b>						
Pool Rental	365,276	18%				
Labor	503,685	25%				
<b>Total Cost of Sales</b>	<b>1,121,008</b>	56%				
<b>Gross Profit</b>	<b>1,121,008</b>	56%				
	<i>% of Gross Revenue</i>					
	<b>56%</b>					
<b>Operating Expenses</b>						
Product costs	13,627	1%				
Photography costs	2,578	0%				
IT	7,878	0%				
Advertising & Promotion	59,699	3%				
Merchant and Bank Fees	62,297	3%				
Insurance	7,800	0%				
Other cost of sales	9,917					
<b>Total Operating Expenses</b>	<b>163,795</b>	8%				
	<b>8%</b>					
<b>Net Operating Income</b>	<b>957,213</b>	48%				
	<i>% of Gross Revenue</i>					
	<b>48%</b>					
Royalty fees	198,997	10%				
Marketing fund fee	39,799	2%				
	<b>238,796</b>	12%				
	<i>% of Gross Revenue</i>					
	<b>12%</b>					
<b>Net Operating Income</b>	<b>718,417</b>	36%				
	<i>% of Gross Revenue</i>					
	<b>36%</b>					

### **Notes to Table 2:**

- (1) The data contained in Table 2 is derived based upon the two company-owned territories operating throughout 2024. While the Gross Revenue and the average weekly customer counts have been identified by territory, our affiliated effectively operated both territories as one operating unit and therefore all expenses are combined into one P & L.
- (2) A “Customer” is defined one unique person who has received at least one swimming lesson during the measured period.
- (3) Labor costs have been adapted to include two Aquatics Directors to be consistent with the requirements in the Franchise Agreement.
- (4) The IT costs have been normalized to represent a franchise operating two territories. This does not include Microsoft account costs which the franchise will be operating.
- (5) Advertising and promotion costs have been normalized to represent a franchise operating two territories.
- (6) Insurance costs have been normalized to represent a franchise operating two territories.
- (7) Royalty is calculated at 10% of aggregated Gross Revenue per Territory.
- (8) The Marketing Fee (Brand Fund Fee) is calculated at 2% of aggregated Gross Revenue per Water Babies Business.
- (9) Net Operating Income is calculated before payment of any compensation or dividend to the owner of the business.
- (10) Table 2 does not include all other expenses that you may incur and that are not included in the information presented. Such expenses may include, but are not limited to, expenses associated with office locations and facility supplies, training expenses, personal franchise owner expenses, aggregated franchise owner financial expenses, miscellaneous expenses not essential to running a Water Babies Swim School Business, and owner's compensation.

### **General Notes:**

- (1) Written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.
- (2) Other than the preceding financial performance representation, Water Babies US Franchise LLC does not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Carl Higgins at Water Babies USA Franchising, LLC, 115 E Pennsylvania Ave., Suite 16, Southern Pines, NC 28387, telephone 833-268-5650, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

TABLE NO. 1

Systemwide Outlet Summary  
For Fiscal Years 2022, 2023, 2024

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
Franchised	2022	0	0	0
	2023	0	0	0
	2024	0	0	0
Company-Owned	2022	0	0	0
	2023	2	2	2
	2024	2	2	0
<b>Total Outlets</b>	2022	<b>0</b>	<b>0</b>	<b>0</b>
	2023	<b>2</b>	<b>2</b>	<b>2</b>
	2024	<b>2</b>	<b>2</b>	<b>0</b>

TABLE NO. 2

Transfers of Outlets from Franchisees to New Owners  
(other than the Franchisor or an Affiliate)  
For Fiscal Years 2022, 2023, 2024

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
All States	2022	0
	2023	0
	2024	0
<b>Totals</b>	<b>2022</b>	<b>0</b>
	<b>2023</b>	<b>0</b>
	<b>2024</b>	<b>0</b>

TABLE NO. 3

Status of Franchised Outlets  
For Fiscal Years 2022, 2023, 2024

<b>State</b>	<b>Year</b>	<b>Outlets at Start of the Year</b>	<b>Outlets Opened</b>	<b>Terminations</b>	<b>Non-Renewals</b>	<b>Reacquired by Franchisor</b>	<b>Ceased Operations -Other Reasons</b>	<b>Outlets at End of the Year</b>
All States	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
	2024	0	0	0	0	0	0	0

**TABLE NO. 4**

Status of Company-Owned Outlets  
For Fiscal Years 2022, 2023, 2024

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Washington	2022	0	0	0	0	0	0
	2023	0	2	0	0	0	2
	2024	2	0	0	0	0	2

**TABLE NO. 5**

Projected Openings as of December 31, 2024

State	Franchise Agreements Signed But Outlets Not Opened	Projected New Franchised Outlets in Next Fiscal Year	Projected New Company-Owned Outlets in Next Fiscal Year
Florida	0	1	0
Georgia	0	1	0
North Carolina	0	1	0
South Carolina	0	1	0
Texas	0	1	0
Washington	0	0	1
<b>Totals</b>	<b>0</b>	<b>5</b>	<b>1</b>

During the last three (3) fiscal years, we have not had any franchisees sign confidentiality provisions that would restrict their ability to speak opening about their experience with the Water Babies business.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

There are no trademark-specific franchisee associations applicable to you, either created, sponsored or endorsed by Water Babies, or independent franchisee associations.

**ITEM 21  
FINANCIAL STATEMENTS**

Attached as **Exhibit A** to this Franchise Disclosure Document is our audited opening balance sheet as of May 8, 2025. We have not been in business for three years or more and cannot include all financial statements required for Item 21.

**ITEM 22**  
**CONTRACTS**

Attached are the following agreements proposed for use in connection with our offering of franchises:

**Exhibit:**

- B. Franchise Agreement
- C. Multi-Unit Development Agreement
- F. State-Specific Addendum
- H. Non-Disclosure and Non-Competition Agreement

**ITEM 23**  
**RECEIPT**

The last two pages of the Franchise Disclosure Document (following the exhibits and attachments) are receipt pages acknowledging your receipt of the Franchise Disclosure Document. One copy is for your records, and one copy must be signed and dated by you and returned to us.

**EXHIBIT A**  
**WATER BABIES US FRANCHISE LLC**  
**FINANCIAL STATEMENTS**

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# Water Babies US Franchise LLC

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**Financial Report**  
**May 8, 2025**

<b>Independent Auditor's Report</b>	1-2
<b>Financial Statement</b>	
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Notes to Financial Statement	4

## **Independent Auditor's Report**

To the Member  
Water Babies US Franchise LLC

### ***Opinion***

We have audited the financial statement of Water Babies US Franchise LLC (the "Company"), which comprises the balance sheet as of May 8, 2025, and the related notes to the financial statement.

In our opinion, the accompanying financial statement presents fairly, in all material respects, the financial position of the Company as of May 8, 2025 in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statement* section of our report. We are required to be independent of the Company and to meet our ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Responsibilities of Management for the Financial Statement***

Management is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of a financial statement that is free from material misstatement, whether due to fraud or error.

In preparing the financial statement, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statement is issued or available to be issued.

### ***Auditor's Responsibilities for the Audit of the Financial Statement***

Our objectives are to obtain reasonable assurance about whether the financial statement as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and, therefore, is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statement.

To the Member  
Water Babies US Franchise LLC

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statement, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statement.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statement.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*Plante & Moran, PLLC*

May 21, 2025

## Water Babies US Franchise LLC

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## Balance Sheet

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May 8, 2025

<b>Assets - Cash</b>	<b>\$ 330,000</b>
	<b><u>330,000</u></b>
	<b>Liabilities and Member's Equity</b>
<b>Liabilities</b>	\$ -
<b>Member's Equity</b>	
Additional paid-in capital	<u>330,000</u>
Total liabilities and member's equity	<b><u>\$ 330,000</u></b>

**May 8, 2025**

**Note 1 - Nature of Business**

Water Babies US Franchise LLC (the "Company") is a limited liability company formed in January 2025 and is a wholly owned subsidiary of Water Babies U.S. TopCo LLC (the "Parent"). The Parent is a wholly owned subsidiary of Water Babies Holdings, Inc. (the "Ultimate Parent"). The Company was formed through a cash contribution of equity from the Ultimate Parent in the amount of \$330,000. The Company is engaged in franchising and support of franchisees in the establishment and operations of Water Babies swim schools and operates under this name and the related trademark (the "Licensed Marks"). Under an Intercompany Trademark License Agreement with Water Babies USA LLC, an entity related through common ownership, the Company has a limited nonexclusive right to use the Licensed Marks in connection with its operations. As of May 21, 2025, the Company had not signed any franchise agreements.

**Note 2 - Significant Accounting Policies**

***Basis of Presentation***

The financial statement of the Company has been prepared on the basis of accounting principles generally accepted in the United States of America (GAAP). The preparation of the financial statement in conformity with GAAP requires management to make estimates and assumptions that affect amounts reported in the financial statement. Actual results could differ from those estimates.

***Subsequent Events***

The financial statement and related disclosures include evaluation of events up through and including May 21, 2025, which is the date the financial statement was available to be issued.

**EXHIBIT B**  
**WATER BABIES US FRANCHISE LLC**  
**FRANCHISE AGREEMENT**



**WATER BABIES US FRANCHISE LLC**

**FRANCHISE AGREEMENT**

**Franchise #:** \_\_\_\_\_

**Franchisee:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Territory:** \_\_\_\_\_

\_\_\_\_\_

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### ATTACHMENTS:

- A. Territory, Initial Franchise Fee, and Training Fee
- B. Guaranty and Assumption of Franchisee’s Obligations
- C. Statement of Ownership
- D. EFT Authorization
- E. Collateral Assignment of Telephone Numbers, Telephone Listings and Internet Addresses
- F. Self-Learn and Certifications Form

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **WATER BABIES US FRANCHISE LLC**, a Delaware limited liability company, located at 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387 (“**Franchisor**”) and \_\_\_\_\_, located at \_\_\_\_\_ (“**Franchisee**”).

### RECITALS

**WHEREAS**, Franchisor holds the exclusive franchise rights to a proprietary system which has been developed through significant expenditures of time, skill, effort and money (“**System**”) relating to the establishment, development and operation of a business offering swimming and water survival instruction services to babies, toddlers, and children and the sale of underwater photographic services and retail product sales from one or more rented pools (“**Water Babies Business**”); and

**WHEREAS**, the Water Babies Businesses are operated under a business format per a unique system with high standards of service, including valuable know-how, information, Trade Secrets, Confidential Information, training methods, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, and research and development (“**System**”).

**WHEREAS**, the distinguishing characteristics of the System include the design mark WATER BABIES® and other related marks, confidential operating procedures, confidential Operations Manual, standards and specifications for equipment, services and products, methods of service, management and marketing programs and sales techniques and strategies. All of these distinguishing characteristics may be changed, improved, and further developed by Franchisor from time to time. They are Franchisor's Confidential Information and Trade Secrets and are designated by and identified with the Marks described in this Agreement.

**WHEREAS**, Franchisor continues to use, develop and control the use of the Marks in order to identify for the public the source of services and products marketed under the System, and which represent the System's high standards of quality, service and customer satisfaction.

**WHEREAS**, Franchisee acknowledges the benefits to be derived from being identified with the System, and also recognizes the value of the Marks and the continued uniformity of image to Franchisee, Franchisor, and other franchisees of Franchisor.

**WHEREAS**, Franchisee acknowledges the importance to the System of Franchisor's high and uniform standards of quality, service and customer satisfaction, and further recognizes the necessity of opening and operating a Water Babies Business in conformity with the System.

**WHEREAS**, Franchisee recognizes that in order to enhance the value of the System and goodwill associated with it, this Agreement places detailed obligations on Franchisee, including strict adherence to Franchisor's reasonable present and future requirements regarding the types of products sold, services offered, advertising used, operational techniques, marketing and sales strategies and related matters.

**WHEREAS**, Franchisee is aware of the foregoing and is desirous of obtaining the right to use the System and in association therewith, the right to use the Marks, and wishes to be assisted, trained, and franchised to operate a Water Babies Business pursuant to the provisions and within the Territory specified in this Agreement, subject to the terms and conditions contained in this Agreement.

The parties therefore agree as follows:

## DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

(a) “**Agreement**” - means this agreement, attachments, and all instruments in amendment hereof.

(b) “**Affiliate**” - means any person or entity that controls, is controlled by, or is in common control with, Franchisor or Franchisee.

(c) “**Water Babies Business**” - means the business operations conducted or to be conducted by Franchisee consisting of establishment, development and operation of a business offering swimming and water survival instruction services to babies, toddlers, and children and the sale of underwater photographic services and retail product sales from one or more rented pools.

(d) “**Approved Pool(s)**” - means the any of the approved pools from which Franchisee sells Products and provides Services in connection with the Water Babies Business. Approval comes from the Franchisor.

(e) “**Confidential Information**” - means all knowledge, know-how, standards, methods and procedures related to the establishment and operation of the System and includes all records pertaining to customers, suppliers, and other service providers of, and/or related in any way to, Franchisee’s Water Babies Business including, without limitation, all databases (whether in print, electronic or other form), all names, addresses, phone numbers, e-mail addresses, customer purchase records, manuals, promotional and marketing materials, marketing strategies and any other data which Franchisor designates as confidential.

(f) “**Convention Fee**” - means the fee Franchisee pays Franchisor to attend conferences, meetings, seminars and/or workshops.

(g) “**Franchisor’s System**” or “**System**” - means the standards, systems, concepts, identifications, methods, and procedures developed or used by Franchisor, or which may hereafter be developed or used by Franchisor, for the sales and marketing of Franchisor’s Services and Products.

(h) “**Franchise**” - shall mean the business operations conducted or to be conducted using Franchisor’s System and in association therewith the Marks.

(i) “**Gross Revenues**” - means the total of all receipts derived from all sales of products and services at your Water Babies Business, including sales made away from your Approved Pool(s), insurance claims for lost profits to the extent a claim is paid by the insurer, and all other products and services sold or performed by or for you or your Water Babies Business or by means of the business conducted under this Agreement, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property or other means of exchange. Gross Revenues do not include:

- (i) the amount of any tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount of any such tax is shown separately and in fact paid by Franchisee to the appropriate governmental authority; and

- (ii) all customer refunds, valid discounts and coupons, and credits made by the Water Babies Business (exclusions will not include any reductions for credit card user fees, returned checks or reserves for bad credit or doubtful accounts).

Gross Revenues shall be deemed received by Franchisee at the time the Services or Products from which they were derived are delivered or rendered or at the time the relevant sale takes place, whichever occurs first, regardless of whether final payment (e.g., collection on a customer's personal check) actually has been received by Franchisee. Gross Revenues consisting of property, Products or Services shall be valued at the retail prices applicable and in effect at the time that they are received.

(j) **“Lease”** - means any agreement (whether oral or written) under which the right to occupy or rent time at an Approved Pool(s) has been obtained, and any amendment made thereto from time to time, including without limitation, any offer to lease, license or lease agreement.

(k) **“Marks”** - shall mean the wordmark WATER BABIES® and related marks to the extent of Franchisor's rights to same, together with such other trade names, trademarks, symbols, logos, distinctive names, service marks, certification marks, logo designs, insignia or otherwise which may be designated by Franchisor from time to time as part of the System for use by Franchisees, and not thereafter withdrawn.

(l) **“Operations Manual”** - means, but is not limited to, collectively, all directives, books, pamphlets, bulletins, memoranda, order forms, packing slips, invoices, letters, e-mail, Internet or intranet data, or other publications, documents, software programs, video tapes, transmittances or communications, in whatever form (including electronic form) prepared by or on behalf of Franchisor for use by franchisees generally or for Franchisee in particular, setting forth information, advice and standards, requirements, marketing information and procedures, operating procedures, instructions or policies relating to the operation of the Water Babies Business or the operation of franchises, as same may be added to, deleted or otherwise amended by Franchisor from time to time. The form and content of the Operations Manual maintained by Franchisor shall prevail in the event of any dispute regarding the form of or content of the Operations Manual between Franchisor and Franchisee.

(m) **“Products”** - means all supplies, material, equipment, and ancillary items sold, leased, prepared or otherwise dealt with in connection with the Water Babies Business and associated with the Marks.

(n) **“Services”** - means the provision of progression-based swim lessons for children from birth up to nine years of age, the coordination, production and marketing of underwater photography to customers, and the retail sale of products related and complimentary to the Water Babies Business, and any other ancillary or unrelated services provided by the Franchisee in connection with the operation of a Water Babies Business which have been approved by the Franchisor as stipulated in the Operations Manual from time to time.

(o) **“Trade Secret(s)”** - shall mean information, including any formula, pattern, compilation, program, device, method, training technique or process related to the System that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

## **1. COVENANTS, REPRESENTATIONS, AND WARRANTIES OF FRANCHISEE**

Franchisee covenants, represents and warrants as follows and acknowledges that Franchisor is relying upon such covenants, representations and warranties in making its decision to enter into this Agreement.

1.1 Franchisee acknowledges that it has received, has had ample time to read, and has read this Agreement, and all related agreements with Franchisor. Franchisee acknowledges that Franchisor has advised it to obtain independent legal and accounting advice with respect to this Agreement and the transactions arising out of this Agreement. Franchisee further acknowledges that it has had an adequate opportunity to be advised by legal, accounting and other professional advisors of its own choosing regarding all pertinent aspects of the Water Babies Business, Franchisor and this Agreement.

1.2 Franchisee has, or has made firm arrangements to acquire funds to commence, open and operate the Water Babies Business and it is financially and otherwise able to accept the risks attendant upon entering into this Agreement.

1.3 All statements made by Franchisee in writing in connection with its application for this franchise were, to the best of its knowledge, true when made and continue to be true as of the date of this Agreement.

1.4 There are no material financial obligations of Franchisee, whether actual or contingent, which are outstanding as of the date of this Agreement other than those disclosed to Franchisor by Franchisee in writing.

1.5 Franchisee is not a party to nor subject to any court or administrative order or action of any governmental authority which would limit or interfere in any way with the performance by Franchisee of its obligation hereunder.

1.6 Franchisee is not a party to any litigation or legal proceedings other than those which have been disclosed to Franchisor by Franchisee in writing.

1.7 Franchisee represents that it is not a party to nor subject to agreements that might conflict with the terms of this Agreement and agrees not to enter into any conflicting agreements during the Term or any Successor Terms.

1.8 Franchisee agrees and acknowledges that it has not been induced to enter into this Agreement in reliance upon, nor as a result of, any statements, representations, warranties, conditions, covenants, promises or inducements, whatsoever, whether oral or written, and whether directly related to the contents hereof or collateral thereto, made by Franchisor, its officers, directors, agents, employees or contractors except as provided herein. Franchisee acknowledges that the Franchise has been granted in reliance upon the information supplied to Franchisor in Franchisee's application for a Franchise.

1.9 Franchisee and its owners agree to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its owners certify, represent, and warrant that none of their property or interests is subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its owners are not otherwise in violation of any of the Anti-Terrorism Laws.

(a) Franchisee and its owners certify that none of them, their respective employees, or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (which can

be accessed at <http://www.treasury.gov/offices/enforcement/ofac/legal/eo/13224.pdf>). Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

(b) Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its owners, their employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

(c) Franchisee is solely responsible for ascertaining what actions it must take to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities set forth in this Agreement pertain to its obligations under this Section 1.9.

(d) Any misrepresentation under this Section or any violation of the Anti-Terrorism Laws by Franchisee, its owners, agents, its employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of Franchisor's affiliates.

(e) **“Anti-Terrorism Laws”** means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control and any government agency outside the U.S.) addressing or in any way relating to terrorist acts and/or acts of war.

## 2. GRANT OF LICENSE.

2.1 Subject to all the terms and conditions of this Agreement, Franchisor hereby grants to Franchisee, and Franchisee accepts, for the term of this Agreement, the right and license (**“License”**) to:

(a) Operate one Water Babies Business upon the terms and conditions of this Agreement in one territory described in **Attachment A (“Territory”)**;

(b) Use the Marks and the System; and

(c) Offer and market ONLY Franchisor's approved Services and Products, unless Franchisor approves in writing (such approval to be in Franchisor's sole and absolute discretion) Franchisee's request to offer and market complementary and non-competing services or products.

2.2 The License does not include the right to sell Products to any vendor who would in turn sell to consumers.

2.3 Franchisee recognizes that variations and additions to the System may be required from time to time in order to preserve and/or enhance the System. Therefore, Franchisor expressly reserves the right to add to, subtract from, revise, modify or change from time to time the System or any part thereof, and Franchisee agrees to promptly accept and comply with any such addition, subtraction, revision, modification or change and to make such reasonable expenditures as may be necessary to comply pursuant to Section 8.

2.4 Franchisee recognizes that the rights that are granted to Franchisee are for the specific Territory, defined in Section 4.1 below and no other, and cannot be transferred to an alternate Territory, without the prior written approval of Franchisor, which approval may be granted or withheld in Franchisor's sole discretion.

### 3. TERM OF THE AGREEMENT AND LICENSE

3.1 This Agreement and the License granted shall become effective on the date this Agreement is executed by Franchisor and shall continue until midnight on the day before the tenth anniversary of the date the Franchisee began operating at the first Approved Pool (“**Term**”), subject, however, to termination in accordance with the provisions of this Agreement. When the initial Term expires, Franchisee shall have the option at Franchisor’s sole and absolute discretion to extend Franchisee’s rights to operate the Water Babies Business for two additional terms (“**Successor Terms**”) of 5 years each. Franchisee must pay the Successor Franchise Fee set forth in Section 3.4(b) and otherwise comply with the requirements set forth in this Section 3.

3.2 Franchisor may refuse to renew this Agreement and License if Franchisee has:

(a) Failed to remedy any breach of this Agreement specified by Franchisor in a written notice to Franchisee as per Sections 17.1, 17.2 or 17.3; or

(b) Committed and received notice of two or more breaches of this Agreement in the 24 months prior to the end of the Term, even if such breaches were timely remedied; or

(c) Franchisee has failed to give Franchisor a written notice of intent to renew no less than six months or more than nine months prior to expiration of the Term; or

(d) Franchisee is not current in payment obligations to Franchisor or to Franchisee’s Lessor, suppliers, or trade creditors.

3.3 If Franchisee opts to extend its rights to operate the Water Babies Business at the end of the Term, and Franchisor consents to such extension, Franchisee shall execute a new Franchise Agreement (“**Successor Franchise Agreement**”) and all other agreements in the form then being used by Franchisor in granting new franchises. Franchisor reserves the right to change any term(s) of the Franchise Agreement form to be signed by Franchisee at the time Franchisee extends its rights to operate the Water Babies Business (except as specified below). There shall not, however, be another Initial Franchise Fee charged at the time Franchisee signs the Successor Franchise Agreement. **IN FRANCHISOR'S SOLE DISCRETION, FRANCHISEE MAY BE DEEMED TO HAVE IRREVOCABLY DECLINED TO EXTEND ITS RIGHTS TO OPERATE THE FRANCHISE (AND ITS OPTION SHALL THEREUPON TERMINATE) IF IT FAILS TO EXECUTE AND RETURN TO FRANCHISOR THE SUCCESSOR FRANCHISE AGREEMENT AND OTHER DOCUMENTS REQUIRED BY FRANCHISOR WITHIN 30 DAYS AFTER THEIR DELIVERY TO FRANCHISEE, OR FAILS TO COMPLY IN ANY OTHER WAY WITH THE PROVISIONS OF THIS SECTION 3.**

3.4 As additional conditions to renewal, in Franchisor’s sole discretion, Franchisee may be required to:

(a) Execute a general release of all claims Franchisee may have against Franchisor, its officers, directors, members, shareholders, agents, Affiliates, and employees, whether in their corporate and/or individual capacities. This release shall include all claims arising under any federal, state, or local law, rule, or ordinance arising out of or concerning this Agreement (to the

fullest extent permitted by law) and shall be in a form satisfactory to Franchisor. Franchisee's failure or refusal to sign such a release in the form presented by Franchisor shall be deemed to be a rejection by Franchisee of its option to extend its rights to operate the Water Babies Business;

(b) Pay the successor franchise fee ("**Successor Franchise Fee**") of 10% of the then-current Initial Franchise Fee, which is due and payable to Franchisor at the time of signing the renewal Franchise Agreement;

(c) Upgrade the computer system and equipment used in operations of the Water Babies Business to Franchisor's current standards;

(d) Comply with all other provisions contained in the Operations Manual, as modified periodically by Franchisor in Franchisor's sole discretion;

(g) Provide proof of current certifications, insurance and permits.

3.5 If Franchisee does not sign a new Franchise Agreement prior to the expiration of this Agreement and continues to accept the benefits of this Agreement after the expiration of this Agreement, then at the option of Franchisor, this Agreement may be treated either as (i) expired as of the date of expiration with Franchisee then operating without a franchise to do so and in violation of Franchisor's rights; or (ii) continued on a month-to-month basis ("**Interim Period**") until one party provides the other with written notice of such party's intent to terminate the Interim Period, in which case the Interim Period will terminate 30 days after receipt of the notice to terminate the Interim Period. In the latter case, all obligations of Franchisee shall remain in full force and effect during the Interim Period as if this Agreement had not expired, and all obligations and restrictions imposed on Franchisee upon expiration of this Agreement shall be deemed to take effect upon termination of the Interim Period.

#### 4. TERRITORY

4.1 During the Term and for so long as Franchisee is in compliance with all of its obligations hereunder, except as otherwise provided in this Agreement, and subject to Franchisor's reservation of rights as set forth in Section 4.2 and as provided in Section 4.4 **below**, neither Franchisor nor any Affiliate will establish or license another person or entity to establish a Water Babies Business using the Marks licensed to Franchisee within the Territory encompassed by the boundaries set forth in **Attachment A**, attached hereto and incorporated herein by reference. Except as otherwise specifically provided in this Agreement, this Agreement does not restrict Franchisor or its Affiliates and does not grant rights to Franchisee to pursue any of Franchisor's or its Affiliates other business concepts other than the Water Babies Business.

4.2 Franchisee acknowledges that the Franchise granted hereunder is non-exclusive and that Franchisor and its Affiliates retain the exclusive right, among others:

(a) to use, franchise and/or license others to use, the Marks and System for the operation of Water Babies Businesses at any location other than in the Territory, regardless of proximity to the Territory;

(b) to offer the Services or Products, or grant others the right to offer the Services or Products, whether using the System and /or Marks or other trademarks or service marks, through alternative channels of distribution, including without limitation, television, catalog sales, wholesalers, retail outlets or other distribution outlets (other than Water Babies Businesses), or by

Internet commerce (e-commerce), mail order or otherwise, whether inside or outside the Territory;

(c) to use, license and/or franchise the use of trademarks or service marks other than the Marks, whether in alternative channels of distribution or at any location including the Territory, in association with operations that are similar to or different than the Water Babies Business;

(d) to use, license and/or franchise the Marks and the System in connection with the provision of other services and products or in alternative channels of distribution such as those described in 4.2(b), at any location including the Territory;

(e) to any websites utilizing a domain name incorporating one or more of the words “Water”, “Babies”, “Swimming”, “Swimvincible”, “Water Kids”, and/or “Pool” or similar derivatives thereof. Franchisor retains the sole right to market on the Internet and use the Marks on the Internet, including all use of websites, domain names, URL’s, directory addresses, metatags, linking, advertising, and co-branding and other arrangements. Franchisee may not independently market on the Internet, or use any domain name, address, locator, link, metatag, or search technique, with words or symbols similar to the Marks or otherwise establish any presence on the Internet without Franchisor’s prior written approval. Franchisor intends that any Franchisee website be accessed only through Franchisor’s home page. Franchisee will provide Franchisor with content for Franchisor’s Internet marketing, and will sign Internet and intranet usage agreements, if any. Franchisor retains the right to approve any linking or other use of its website;

(f) to acquire businesses that are the same as or similar to the Water Babies Business and operate such businesses regardless of where such businesses are located, including inside the Territory and to be acquired by any third party which operates businesses that are the same as or similar to the Water Babies Business regardless of where such businesses are located, including inside the Territory;

(g) to acquire and convert to the System any businesses offering services and products related to swim instructions for babies, toddlers, children, families, teens and young adults including such businesses operated by competitors or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned and whether located inside or outside of the Territory; and

(h) to implement multi-area marketing programs which may allow Franchisor or others to solicit or sell customers anywhere. Franchisor reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

4.3 Franchisee may be granted, at Franchisor’s sole discretion, express permission to market to and solicit customers in an unsold territory adjacent to Franchisee’s Territory (“**Adjacent Territory**”); provided that Franchisee agrees that when the Adjacent Territory is granted to another franchisee by Franchisor, Franchisee will, upon receipt of written notice from Franchisor, cease all its sales and service efforts within the Adjacent Territory and return all customer and prospect lists to Franchisor within 10 days of such notice. Franchisee shall pay all fees to Franchisor for sales made to all customers coming from another Territory.

4.4 Notwithstanding Franchisor's exclusive right to sell Products and Services on the Internet in accordance with Section 4.2(b), if Franchisor sells Products or Services that Franchisee is required to

sell and provide pursuant to this Agreement using the Marks to a customer located in Franchisee's Territory, Franchisor or its supplier or distributor, in Franchisor's sole discretion, may provide Franchisee with a credit against future Royalty Fees or Brand Fund Fees due to Franchisor in an amount to be determined by Franchisor, in its sole discretion.

4.5 Franchisor will use commercially reasonable efforts to grant only one license to a franchisee per 50,000 people aged 9 and under (or incremental portion thereof) residing in a designated geographical location (“**Population Limit**”). Franchisor will use the most recent population information available in the U.S. Census Data, or other population statistical sources of our choosing, to determine populations. The designated geographical area will generally be delineated using zip codes but Franchisor reserves the right to utilize streets, city or county boundaries, or other geographic markers to establish the boundaries of the Territory. Franchisor reserves the right to change, modify, or delete the Population Limits.

## 5. FEES.

5.1 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state or municipal taxes, as a non-recurring initial franchise fee (“**Initial Franchise Fee**”) to Franchisor upon the execution of this Agreement. The Initial Franchise Fee shall be paid by means of cashier’s check, money order or wire transfer. The Initial Franchise Fee shall be deemed to have been fully earned by Franchisor when this Agreement is executed. The Initial Franchise Fee is non-refundable once paid.

5.2 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable training fee (“**Training Fee**”) to Franchisor upon execution of this Agreement. The Training Fee shall be paid by means of cashier’s check, money order or wire transfer. The Training Fee entitles Franchisee to receive the initial training for one Franchisee and one Aquatics Director, provided they attend the training simultaneously. If Franchisee elects to have additional attendees, Franchisee will pay Franchisor its then current fee for each additional person to attend the initial training (“**Initial Training for Additional Person(s)**”).

5.3 Franchisee shall pay to Franchisor a royalty fee (“**Royalty Fee**”) equal to 10% of Gross Revenue per month (per territory) for \$0 - \$400,000; an effective rate of 9% per month for Gross Revenue from \$400,001 - \$600,000; an effective rate of 8% for Gross Revenue over \$600,000. Franchisee is required to remit the full 10% Royalty on Gross Revenue received by Franchisee every month, without exception, all year long. Within 60 days of the close of each calendar year, Franchisor will review Franchisee’s total Gross Revenue for the prior full or partial year determine whether you have earned a royalty rebate (“**Royalty Rebate**”). The Royalty Rebate is based upon the total Gross Revenue earned by Franchisee in each Territory Franchisee operates. Franchisee will not earn any Royalty Rebate on the first \$0–\$400,000 of annual Gross Revenue per Territory; Franchisee will be entitled to receive a Royalty Rebate equal to 10% of the Royalty Franchisee pays to Franchisor for Gross Revenue between \$400,001 and \$600,000 per Territory (an effective rate of 9% for \$400,001-\$600,000); Franchisee will be entitled to receive a Royalty Rebate equal to 20% of the Royalty Franchisee pays to Franchisor on Gross Revenue above \$600,000 per Territory (an effective rate of 8% for income over \$600,000). There is no minimum royalty for the first 12 months from signing the Agreement. A \$1,000 minimum royalty payment will be payable per month from months 13 to 18 from the date of signing the agreement, with \$2,000 payable during months 19 to 30, and \$3,000 per month payable from month 31 through the end of the term the Agreement (“**Minimum Royalty**”).

5.4 The Royalty Fee is deducted from the lesson income at source or payable on the 10<sup>th</sup> day of the following month and shall be payable through the entire Term of this Agreement; provided, however, that Franchisor reserves the right to require that Royalties be paid as often as weekly upon advanced written notice to Franchisee. Franchisee shall pay the Royalty Fee monthly or in such other frequency as Franchisor may in its sole discretion require upon written notice to Franchisee by Franchisor. Franchisee shall not subordinate to any other obligation its obligation to pay the Royalty Fee or any other fee or charge due Franchisor or any Affiliate of Franchisor under this Agreement. Each Royalty Fee payment will be accompanied by a report as set forth in Section 5.4(a). There is a minimum royalty.

(a) Ada (as defined in Section 5.5) will calculate the royalty deducted and allow franchisee to reconcile royalty paid. For any Gross Revenue not reported to Ada where Royalty Fee has not been automatically deducted from lesson income at source then the additional. Each Royalty Fee payment shall be, without exception, accompanied by a statement of the previous month's Gross Revenues on a form approved and provided to Franchisee by Franchisor. **Each failure to include a fully completed statement of the previous month's Gross Revenues with the Royalty Fees payable to Franchisor when due shall constitute a material breach of this Agreement.**

(b) Franchisor reserves the right to require Franchisee to remit fees and other amounts due to Franchisor hereunder via electronic funds transfer (“EFT”) or other similar means utilizing a Franchisor approved computer system or otherwise. The EFT Authorization is attached to the Franchise Agreement as **Attachment D**. If Franchisor notifies Franchisee to use such payment method, Franchisee agrees to comply with procedures specified by Franchisor and/or perform such acts and deliver and execute such documents, including authorization for direct debits from Franchisee's business bank operating account, as may be necessary to assist in or accomplish payment by such method. Under this procedure Franchisee shall authorize Franchisor to initiate debit entries and/or credit correction entries to a designated checking or savings account for payments of fees and other amounts payable to Franchisor and any interest charged due thereon. Franchisee shall make funds available to Franchisor for withdrawal by electronic transfer no later than the due date for payment therefore. If Franchisee has not timely reported the Gross Revenues to Franchisor for any reporting period, then Franchisor shall be authorized, at Franchisor's option, to debit Franchisee's account in an amount equal to (a) the fees transferred from Franchisee's account for the last reporting period for which a report of the Gross Revenues was provided to Franchisor as required hereunder; or (b) the amount due based on information retrieved from Franchisor approved computer system.

5.5 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable technology fee (“**Technology Fee (First Three Months)**”) to Franchisor upon execution of this Agreement. The Technology Fee (First Three Months) shall be paid by means of cashier's check, money order or wire transfer. The Technology Fee (First Three Months) entitles Franchisee to receive certain software, including all the areas of Franchisor's built-in customer relationship management (CRM) system, robust member management and class scheduling tools, integrated point-of-sale (POS) functionality, real-time franchise reporting and automated customer communications (“**Ada**”) for the first three months of operations. After the first three months of operation, a regular technology fee (“**Technology Fee**”) of \$500 per month will be paid by the Franchisee to the Franchisor on or before the 10<sup>th</sup> of each month.

5.6 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable payment to Franchisor upon execution of this Agreement entitling Franchisee to receive a preopening inventory package that

includes two Water Babies instructor kits, a photography backdrop, weights and arms, customer welcome packs to cover the first three months of operation, customer reward and recognition badges to cover the first three months of operation, and a pool water testing kit (“**Right Start Franchise Kit**”). The payment for the Right Start Franchise Kit shall be paid by means of cashier’s check, money order or wire transfer.

5.7 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable payment to Franchisor upon execution of this Agreement entitling Franchisee to receive a preopening marketing package that includes digital marketing set-up for Google and META, the first three months of local digital marketing fee, and local search engine optimization set-up (“**Right Start Digital Marketing**”). The payment for the Right Start Digital Marketing shall be paid by means of cashier’s check, money order or wire transfer.

5.8 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable payment to Franchisor upon execution of this Agreement entitling Franchisee to receive a preopening retail package that includes children swimwear and swim accessories (“**Opening Retail Kit**”). The payment for the Opening Retail Kit shall be paid by means of cashier’s check, money order or wire transfer.

## **6. ACCOUNTING, RECORDS, AUDITS AND LATE PAYMENT CHARGES**

6.1 Franchisee shall keep such complete records of its Water Babies Business as a prudent and careful businessperson would normally keep. Franchisee must use the accounting system and the preformatted template required by Franchisor, if any. Franchisee shall keep its financial books and records as Franchisor may from time to time direct in the Operations Manual or otherwise, including retention of all invoices, order forms, payroll records, cash register tapes, check records, bank deposit receipts, sales tax records, refunds, cash disbursements, journals and general ledgers. Franchisee shall advise Franchisor of the location of all original documents and shall not destroy any records without the written consent of Franchisor.

6.2 Franchisee shall prepare on a current basis, complete and accurate records concerning all financial, marketing and other operating aspects of the Water Babies Business conducted under this Agreement. Franchisee shall maintain an accounting system which accurately reflects all operational aspects of the Water Babies Business including uniform reports as may be required by Franchisor. Franchisee’s records shall include an annual financial and business plan prepared in advance of the new financial year, tax returns, daily reports, monthly scorecard with key business performance indicators, statements of Gross Revenues (to be prepared each month for the preceding month), profit and loss statements (to be prepared at least quarterly by an Certified Public Accountant), and balance sheets (to be prepared at least annually by an Certified Public Accountant). Franchisee must use a Certified Public Accountant designated by the Franchisor, as communicated in the Operations Manual.

6.3 Franchisee shall also submit to Franchisor current financial statements and other reports as Franchisor may reasonably request to evaluate or compile research and performance data on any operational aspect of the Water Babies Business. Franchisee shall submit local advertising expense (“**Local Advertising Expense**”) statements to Franchisor once each quarter, in Franchisor’s sole discretion, beginning July 1 of each year. On or before April 15 of each year, Franchisee shall provide Franchisor with a copy of its federal tax return for the previous tax year.

6.4 The records required under this Section 6 pertain only to Franchisee’s operation of the Water Babies Business. Franchisor has no right to inspect, audit or copy the records of any unrelated business activity Franchisee may have. Franchisee shall keep the books and records of the Water Babies Business separate from the records of any unrelated business activity or personal activity.

6.5 From the date Franchisee and Franchisor sign this Agreement until three years after the end of the Term of this Agreement, including any Successor Terms, Franchisor or Franchisor's authorized agent shall have the right to request, receive, inspect and audit any of the records referred to above wherever they may be located. Franchisor agrees to do inspections and audits at reasonable times. Franchisee agrees to keep all records and reports for seven years from the date such records are created. Should any inspection or audit disclose a deficiency in the payment of any Royalty Fee, Brand Fund Fee (as defined in Section 11.4) or other amounts required to be paid under this Agreement, Franchisee shall immediately pay the deficiency to Franchisor, without prejudice to any other remedy of Franchisor under this Agreement. In addition, if Franchisee (1) fails to furnish required reports or supporting records on a timely basis for two or more consecutive reporting periods, (2) fails to have the books and records available for an audit after receiving reasonable, advanced notice from Franchisor, (3) otherwise fails to cooperate with Franchisor's requested audit, or (4) the deficiency for any audit period discloses a deficiency in the amount of any Royalty Fee, Brand Fund Fee or other amounts due by 2% or more, Franchisee will also immediately pay to Franchisor the entire cost of the inspection or audit including travel, lodging, meals, salaries and other expenses of the inspecting or auditing personnel. For the purposes of this Section 6.5, an audit period will be each fiscal year. Should the audit disclose an overpayment of any Royalty Fees, Brand Fund Fees, or other amounts due, Franchisor shall credit the amount of the overpayment to Franchisee's payments of Royalty Fees, and Brand Fund Fees next falling due.

6.6 If Franchisee's records and procedures are insufficient to permit a proper determination of Gross Revenues, Franchisor shall have the right to either require Franchisee to deliver to Franchisor an estimate, made by Franchisor, of Gross Revenues for the period under consideration and Franchisee shall immediately pay to Franchisor any amount shown thereby to be owing on account of the Royalty Fee, Brand Fund Fee and other sums due on account of any understatement. Any such estimate shall be final and binding upon Franchisee.

6.7 To encourage prompt payment and to cover the costs and expenses involved in handling and processing late payments Franchisee shall also pay, upon demand, a late interest charge equal to the lesser of (i) 1.5% per month; or (ii) the highest legal rate permitted by applicable law, whichever is lower, on all payments due to Franchisor during the period of time said payments are due and unpaid. Each failure to pay Royalty Fees, Brand Fund Fees, and other amounts payable to Franchisor when due shall constitute a material breach of this Agreement. Franchisee acknowledges that this Section 6.7 shall not constitute Franchisor's agreement to accept such payments after same are due or a commitment by Franchisor to extend credit to, or otherwise finance Franchisee's operation of the Water Babies Business. Further, Franchisee acknowledges that failure to pay all such amounts when due shall, notwithstanding the provisions of this Section 6.7, constitute grounds for termination of this Agreement, as provided in this Agreement.

6.8 Any report of Franchisor's auditor rendered from time to time pursuant to this Section 6, shall be final and binding upon all of the parties hereto.

6.9 Franchisee hereby authorizes Franchisor to make reasonable inquiries of Franchisee's bank, suppliers and trade creditors concerning the Water Babies Business and hereby directs such persons and companies to provide to Franchisor such information and copies of documents pertaining to the Water Babies Business as Franchisor may request.

6.10 Franchisee acknowledges and agrees that Franchisor owns all business records ("**Business Records**") with respect to customers and other service professionals of, and/or related to, the Water Babies Business including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, telephone numbers, e-mail addresses, customer purchase records,

and all other records contained in the database, and all other Business Records created and maintained by Franchisee. Franchisee further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion.

6.11 If Franchisee pays the Royalty Fee or any other sums due to Franchisor under this Agreement with a check returned for non-sufficient funds more than one time in any calendar year, in addition to all other remedies which may be available, Franchisor shall have the right to require that Royalty Fee payments and any other sums due to Franchisor under this Agreement be made by certified or cashier's checks. If Franchisee fails to pay the Royalty Fee or any other sums due to Franchisor under this Agreement by the due date two times during the Term or any Successor Terms, in addition to all other remedies which may be available, Franchisor reserves the right to require, in its sole discretion, that Franchisee pay the Royalty Fee or any other sums due to Franchisor under this Agreement weekly.

6.12 Franchisee agrees that, during the Term and for three years after the expiration and termination of this Agreement, Franchisee shall supply to Franchisor Franchisee's home address and telephone number.

## 7. SERVICES AND ASSISTANCE

7.1 The Initial Franchise Fee and Royalty Fee are paid for the License, which includes the use of the Marks, the System and the use of Franchisor's Trade Secrets and Confidential Information provided pursuant to this Agreement and for certain services rendered by Franchisor.

7.2 Franchisor shall offer Franchisee initial and continuing services, as Franchisor deems necessary or advisable in furthering Franchisee's Water Babies Business and the business of the System as a whole and in connection with protecting the Marks and goodwill of Franchisor. Failure by Franchisor to provide any particular service, either initial or continuing, shall not excuse Franchisee from any of its obligations under this Agreement.

7.3 Currently, initial services provided by Franchisor (or its designee) prior to Franchisee opening the Water Babies Business shall include:

- (a) Designating Franchisee's Territory as stipulated in Section 4 and in **Attachment A**.
- (b) Furnishing Franchisee with specifications and required supplier information for all initial and replacement equipment, tools, inventory, computer system and supplies required for the operation of Franchisee's Water Babies Business as stipulated in Section 9.
- (c) Authorizing in writing Franchisee's proposed Approved Pool(s) in accordance with Section 7.4.
- (d) Prior to the Projected Opening Date set forth on **Attachment A** or Franchisee's receipt of all required licenses, permits, and certifications, whichever comes later, provide Franchisee and, if in place, a person designated to manage the Water Babies Business ("**Aquatics Director**") with an initial training program. A portion of the training will be delivered in an online format. The training program may include a discussion of the System, techniques, procedures, methods of training and operation, advertising, sales techniques, promotional ideas, marketing plans, customer relations, patron safety, instructions on quality standards and practical experience

in the operation of a Water Babies Business. You must pay for airfare, lodging, meals, ground transportation, salaries and benefits and any other personal expenses for yourself and additional attendees which are incurred to attend training.

(e) Providing to Franchisee during the Term (including any Successor Terms) one copy of Franchisor's confidential Operations Manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by Franchisor as further stipulated in this Section 7, and containing information relative to other obligations of Franchisee hereunder. Specifications, standards and operating procedures prescribed from time to time by Franchisor in the Operations Manual or otherwise communicated to Franchisee in writing shall constitute provisions of this Agreement as if fully set forth herein. Franchisee shall operate the Water Babies Business strictly in accordance with the Operations Manual. Failure to comply with the standards set forth in the Operations Manual shall constitute a material breach of this Agreement. Franchisor reserves the right to provide the Operations Manual and updates to the Operations Manual in electronic form or other form determined by Franchisor. Franchisor shall have the right to add to, delete, and otherwise modify, the Operations Manual from time to time to reflect changes in authorized Products and Services, business image or the operation of the Water Babies Business; provided, however, no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Some of the revisions to the Operations Manual may include changes with respect to: (i) sales and marketing strategies; (ii) equipment and supplies; (iii) accounting and reporting systems and forms; (iv) insurance requirements; (v) operating procedures; (vi) Services; (vii) Products; and (viii) Pool Selection Assistance.

(i) Franchisee covenants to accept, implement and adopt any such modifications at its own cost, except as provided in this Agreement.

7.4 Franchisee is solely responsible for locating the pools using the services from which to operate at the Approved Pool(s) and negotiating a Lease. The Approved Pool(s) are subject to Franchisor's written authorization, which may be granted or denied in Franchisor's sole discretion. Franchisee agrees that the location of the Approved Pool(s) is a factor in the potential success of the Water Babies Business and Franchisor may reject any location in its sole discretion. However, Franchisee agrees that Franchisor's assistance in no way constitutes a representation or warranty with respect to the success or viability of the property or the Lease. Franchisee acknowledges that Franchisor's authorization of the Approved Pool(s) indicates only that Franchisor believes that the pools fall within acceptable criteria established by Franchisor as of the approval date.

7.5 Currently, the services provided by Franchisor (or its designee) to Franchisee after Franchisee opens the Water Babies Business are as follows:

(a) Making a representative reasonably available to speak with Franchisee on the telephone during normal business hours, as Franchisor determines is necessary, to discuss Franchisee's business and financial planning, operational issues, business key performance indicators, and support needs.

(b) Franchisor may hold periodic meetings to discuss sales techniques, new Product and Service developments, bookkeeping, training, accounting, inventory control, Approved Pool(s) safety and maintenance issues, performance standards, advertising programs, merchandising procedures and other topics. Franchisee must pay a Convention Fee and all its travel and living expenses to attend. These meetings are held at a location chosen by Franchisor in Franchisor's discretion and, except as set forth in Section 7.5(c), Franchisee's attendance is

strongly encouraged but not required for these periodic meetings. Franchisee must pay the Convention Fee and all personal travel and living expenses and must attend these annual conferences at a location chosen by Franchisor.

(c) Franchisor may also hold an annual conference to discuss sales techniques, new Services and Products, training techniques, bookkeeping, accounting, performance standards, advertising programs, merchandising procedures and other topics. Franchisee must pay the Convention Fee and all personal travel and living expenses and must attend these annual conferences at a location chosen by Franchisor.

(d) Informing Franchisee of mandatory specifications, standards and procedures for the operations of the Water Babies Business.

(e) Researching new Products, Services, and methods of doing business, from time to time, and providing Franchisee with information concerning developments of this research. If Franchisee requests that Franchisor add a specific element or product to the System, Franchisor may charge a product research fee.

(f) Maintaining the Brand Fund and using these funds to develop promotional and advertising programs and public relations coverage for Water Babies Businesses.

(g) A representative of Franchisor may, in its sole discretion, provide additional assistance. There may be additional charges for this additional assistance. If Franchisor provides additional assistance, Franchisor and Franchisee must agree in advance on the charges for the visit and the length of the visit.

7.6 If Franchisee believes Franchisor has failed to adequately provide pre-opening services to Franchisee as provided in this Agreement in Sections 7.3 and 7.5, Franchisee shall notify Franchisor in writing within 30 days following the opening of the Water Babies Business. Absent the timely provision of such notice to Franchisor, Franchisee shall be deemed to conclusively acknowledge that all pre-opening and opening services required to be provided by Franchisor were sufficient and satisfactory in Franchisee's judgment.

7.7 Franchisor is not obligated to perform services set forth in this Agreement to Franchisee's particular level of satisfaction, but as a function of Franchisor's experience, knowledge and judgment. Franchisor does not represent or warrant that any other services will be provided to Franchisee, other than as set forth in this Agreement. To the extent any other services, or any specific level or quality of service is expected, Franchisee must obtain a commitment to provide such service or level of service in writing signed by an authorized officer of Franchisor, otherwise Franchisee acknowledges and agrees that Franchisor shall not be obligated to provide any other services or specific level or quality of services.

## **8. FRANCHISEE'S DUTIES, OBLIGATIONS AND OPERATING STANDARDS**

8.1 Franchisee shall, consistent with the terms of this Agreement, diligently develop the Water Babies Business and use its best efforts to market and promote the required Services and Products.

8.2 Subject to the terms of this Agreement, Franchisee shall begin operating at the Approved Pool(s) on or before the projected opening date ("**Projected Opening Date**") set forth on **Attachment A**, but in no event more than 9 months from the effective date of this Agreement, unless Franchisee obtains Franchisor's express written permission to extend the Projected Opening Date, which permission may be

granted or denied in Franchisor's sole discretion. Any and all extensions may be conditioned upon the payment of a \$5,000 extension fee ("**Extension Fee**").

8.3 Subject to the terms of this Agreement, including Subsections 7.3(g)(i) and (ii), during the Term, Franchisee shall strictly comply with all present and future standards, specifications, processes, procedures, requirements, and instructions of Franchisor, as set forth in the Operations Manual, which may be modified by Franchisor at any time in Franchisor's discretion, regarding the operation of the Water Babies Business and must also comply with the following requirements:

(a) Prior to opening the Water Babies Business, Franchisee and, if in place, Franchisee's Aquatics Director, must attend and successfully complete all initial programs before beginning operation of the Water Babies Business. Franchisee shall be responsible for travel, meals, personal expenses and living expenses incurred by itself or the Aquatics Director, and additional persons that participate in the initial training program. During the Term, Franchisee and Franchisee's Aquatics Director must comply with all ongoing training requirements set forth in the Operations Manual, which may be modified by Franchisor at any time. Prior to opening the Water Babies Business, Franchisee and, if in place, its Aquatics Director, must fully complete the self-learn and certification form attached to this Agreement as Attachment F.

(b) Franchisee or its Aquatics Director must attend mandatory annual conferences at such locations as Franchisor may reasonably designate, and Franchisee will pay all salary and other expenses of each person attending, including any conference fees, travel expenses, meals, living expenses and personal expenses. If Franchisee fails to attend an annual conference for any reason, Franchisor shall be entitled to use the accumulated Convention Fee paid by Franchisee for any purpose in Franchisor's sole discretion. The Convention Fee is non-refundable for any reason once paid.

(c) Subject to Section 8.7, any additional required Service or Product introduced into the System by Franchisor must be offered for sale on a continuing basis at the Water Babies Business at the time and in the manner required by Franchisor. Franchisor will provide at least 30 days prior written notice of any new required Service or Product introduced into the System. All equipment, facilities, vehicles, products, supplies, tools and other items necessary to add the newly required Services or Products must be acquired, installed, and utilized at the time and in the manner required by Franchisor. The marketing of new Services and Products must begin at the Water Babies Business as reasonably required by Franchisor.

(d) No service or product, except approved Services or Products, may be offered for sale from the Approved Pool(s) or in the Territory by Franchisee or any of Franchisee's owners, employees, or affiliates, unless Franchisee receives the prior written consent of Franchisor (which may be granted or denied in Franchisor's sole discretion).

(e) Only advertising and promotional materials, services, equipment, tools, inventory, products, signage, supplies, and uniforms that meet Franchisor's standards and specifications shall be used at the Water Babies Business. Advertising and promotional materials, tools, services, equipment, inventory, products, signage, supplies and uniforms produced or approved by Franchisor for use by Franchisee may be used only in the manner and during the period specified by Franchisor.

(f) Equipment, tools, Services, Products, inventory, supplies, signage, uniforms and other items must be added, eliminated, substituted and modified at the Water Babies Business as soon as possible in accordance with changes in Franchisor's specifications and requirements.

(g) The Water Babies Business and everything related to the Water Babies Business must be maintained in good condition and must be kept clean, neat and sanitary. All maintenance, repairs and replacements reasonably requested by Franchisor or required in connection with the Water Babies Business must be promptly made. All employees must be clean and neat in appearance and wear appropriate Water Babies attire at all times.

(h) No alterations of the Water Babies Business materially affecting the image of the Water Babies Business may be made except at Franchisor's request or approval, and any alterations must strictly conform to specifications and requirements established or approved by Franchisor.

(i) The Water Babies Business and the Services provided and Products sold by Franchisee must comply with all applicable federal, state, and local laws, ordinances, rules, regulations and other requirements applicable to the care and safety of children, including securing all necessary licenses and complying with all licensing requirements and regulations, if any. Franchisee must obtain all business licenses and permits required by federal, state and local laws, ordinances, rules and regulations before operating its Water Babies Business. If Franchisee does not obtain all required permits and licenses and other certifications necessary to operate its Water Babies Business within nine months after Franchisee's execution of the Franchise Agreement, Franchisor may terminate this Franchise Agreement.

(j) The employees, equipment, tools, supplies, inventory, products, and other items on hand at the Water Babies Business, must be at all times sufficient to efficiently meet the anticipated volume of business and to ensure the safety and security of Franchisee's patrons.

(k) Franchisee shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that its employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service, and meet such minimum standards as Franchisor may establish from time to time in the Operations Manual or otherwise in writing. Franchisee shall conduct background checks on all employees as required by the terms of the Operations Manual. Franchisee shall be solely responsible for all employment decisions and functions of the Water Babies Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, record keeping, supervision, and discipline of employees, regardless of whether Franchisee has received advice from Franchisor on these subjects.

(l) All debts and taxes arising in connection with the Water Babies Business, except those duly contested in a bona fide dispute, must be paid when due.

(m) Franchisee will use its best efforts to ensure customer satisfaction; use good faith in all dealings with customers, potential customers, referral sources, suppliers and creditors; respond to customer complaints in a courteous, prompt and professional manner; use its best efforts to promptly and fairly resolve customer disputes in a mutually agreeable manner; and take such actions as Franchisor deems necessary or appropriate to resolve customer disputes.

(n) Franchisee will operate the Water Babies Business, in-person, full time, for a minimum of six days a week, including both weekend days, except that Franchisee may be closed on Thanksgiving Day, Christmas Day, New Year's Day, any other legal holiday authorized by Franchisor in the Operations Manual or in writing, in Franchisor's discretion, or any day that Franchisee is authorized to close by Franchisor in writing, in Franchisor's discretion.

(o) Franchisee shall, at Franchisor's request, accept debit cards, credit cards, stored value gift cards, or other non-cash systems specified by Franchisor to enable customers to purchase the Products and Services offered by the Water Babies Business. Franchisee shall acquire, at its expense, all necessary hardware and software used in connection with these non-cash systems.

(p) Franchisee shall comply with all terms and pay all fees that may be due under a software license agreement, as Franchisor determines in Franchisor's sole discretion, for any software Franchisee is required to use in the operation of its Water Babies Business as prescribed by Franchisor.

(q) Franchisee shall promptly pay to Franchisor any amount equal to all taxes levied or assessed, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipts taxes, taxes on Royalties, or any similar taxes or levies imposed upon or required to be collected or paid by Franchisor by reason of the furnishing of products, intangible property (including trademarks or trade names) or services by Franchisor to Franchisee through the sale, license or lease of property or property rights provided by this Agreement.

(r) In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Approved Pool(s), or any improvements thereon.

(s) Franchisee shall comply with the advertising requirements set out in Section 11.

(t) Franchisee will not use any materials that are false or misleading.

(u) Franchisee will ensure that all advertising, labeling, packaging and other materials associated with the Services and Products fully conforms to all applicable laws and regulations.

(v) Franchisee will comply with all daily (and other periodic) inspection requirements and reporting requirements set forth in the Operations Manual, which may be modified by Franchisor at any time.

(x) In Franchisor's sole discretion, Franchisor may arrange for a third party inspection company to conduct periodic attraction inspections at Franchisee's expense and provide an assessment of the installation, safety and maintenance of the equipment used in the operation of Franchisee's Water Babies Business.

(y) Franchisee will comply all insurance audit requirements set forth in the Operations Manual, which may be modified by Franchisor at any time, will remediate any deficiencies discovered by an insurance audit, and will provide Franchisor with the results of all insurance audits related to the Water Babies Business.

(z) Franchisee will at all times adhere to all insurance guidelines set forth in the Operations Manual, which may be modified by Franchisor at any time.

(aa) Franchisee will conduct its business operations in accordance with all applicable laws and regulations, including but not limited to, consumer protection laws and regulations and children's privacy and safety laws. Franchisee will control the quality of the Services and Products to avoid quality problems or product liability claims that could reflect adversely on Franchisee or Franchisor in the minds of consumers.

8.4 In prescribing standards, specifications, processes, procedures, requirements or instructions under Section 8.4 or any other provision of this Agreement, Franchisor will provide guidance to Franchisee, as required in Franchisor's sole discretion, in determining the prices to be charged by Franchisee for Services or Products. Franchisor shall not have control over the day-to-day managerial operations of the Water Babies Business, and Franchisee shall be free to establish its own prices; provided, however, Franchisor shall have the right to set maximum resale prices as part of any national or regional promotion or multi-area marketing plan.

8.5 Franchisor and Franchisor's representatives will have the right during business hours to inspect the Water Babies Business and all other facilities used for providing Services and selling approved Products. Franchisor and Franchisor's representatives will have the right to observe the manner in which Franchisee is rendering its Services and conducting its operations of the Water Babies Business. Franchisor and Franchisor's representatives will have the right to discuss with Franchisee, or other personnel Franchisee may designate, all matters that may pertain to compliance with this Agreement and with Franchisor's standards, specifications, requirements, instructions and procedures and Franchisor may video tape or take photographs of Franchisee's safety training, maintenance procedures and techniques as it relates to the Water Babies Business. Franchisor and Franchisor's representatives will have the right to have any of Franchisor's required Services rendered by any employee at the Water Babies Business. Franchisee shall in all respects cooperate with Franchisor's rights under this Section 8.6; provided that Franchisor's exercise of these rights shall not unreasonably interfere with Franchisee's conduct of the Water Babies Business.

8.6 Franchisee will not be required to offer or sell new Services or Products as set out in Section 8.4(c) if Franchisee demonstrates to Franchisor's reasonable satisfaction that:

(a) A substantial capital improvement not contemplated by this Agreement or in the Operations Manual is required, thereby resulting in a material hardship to Franchisee; or

(b) A material reduction in sales or profitability would result therefrom. For the purposes of this Subsection 8.7(b), a 40% decrease in sales from the average sales in the prior 12 months would be considered a material reduction in sales, and a 30% reduction in profitability from the average profitability during the previous 12 months would be considered a material reduction in profitability.

8.7 Franchisor may require Franchisee's compliance with the provisions of this Section 8 even if it does not require such compliance by all franchisees.

8.8 If Franchisee is an individual, Franchisee must directly supervise the Water Babies Business. If Franchisee is a corporation or other business entity, or if Franchisee has, in Franchisor's sole judgment, insufficient experience in a business similar to the franchise or experience in business management in general, then Franchisee shall nominate a Aquatics Director having the required experience who shall have direct responsibility for all operations of the Water Babies Business.

8.9 Franchisee shall become a member of such trade associations or other organizations which, in the reasonable opinion of Franchisor, are useful in the operation of the Water Babies Business.

Franchisee shall have the option to become a member of all benefit programs which are offered from time to time by Franchisor to all of its franchisees. The costs of participating in such trade associations, organizations, and benefit programs shall be borne by Franchisee and its employees (if applicable to the employees). Nothing in this Section 8.10 limits Franchisee's freedom to join any franchise or franchisees association of its choosing.

8.10 Franchisee shall at all times have sufficient computer skills to operate Franchisee's computer, understand how to utilize any software Franchisor requires to be used in the Water Babies Business, and to access email and the Internet. If Franchisor determines that Franchisee requires additional computer training, Franchisor will notify Franchisee in writing regarding the nature of the additional training required, and Franchisee will have 90 days to complete such training at a local computer training school at Franchisee's sole cost and expense. Franchisor reserves the right to designate the computer training school which Franchisee must attend. At the end of the training program, Franchisee shall present a certificate reasonably acceptable to Franchisor establishing that Franchisee passed the training course. Franchisee's failure to seek additional training or to pass the course shall constitute a default of this Agreement.

8.11 Franchisee acknowledges and understands that computer systems are vulnerable to computer viruses, bugs, power disruptions, communication line disruptions, Internet access failures, Internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders. Franchisor does not guarantee that information or communication systems supplied by Franchisor or its suppliers will not be vulnerable to these problems. Franchisee acknowledges and agrees that Franchisee is solely responsible for protecting itself from these problems. Franchisee must also take reasonable steps to verify that Franchisee's suppliers, lenders, Lessors, customers, and governmental agencies on which Franchisee relies, are reasonably protected. This may include taking reasonable steps to secure Franchisee's systems, including, but not limited to, firewalls, access code protection, anti-virus systems, and use of backup systems.

8.12 Franchisee shall acquire, maintain, and upgrade hardware, software, information processing and communication systems, and Internet and other network access providers, as prescribed in the Operations Manual and as modified periodically by Franchisor in Franchisor's sole discretion. Franchisee shall comply with any separate software or other license agreements that Franchisor or its designee use in connection with the System. Franchisee shall utilize Franchisor's required software, proprietary database management and intranet system, when available, as the exclusive means for tracking and maintaining customer, vendor, and related information, and for such other uses as prescribed by Franchisor periodically in the Operations Manual, in Franchisor's sole discretion. Monthly sales and royalty reporting may occur through mandatory software including the automatic draft via electronic transfer of Royalty Fees and Brand Fund Fees.

8.13 Franchisee shall at all times maintain an active email account and shall check the account at least once each day. If available, Franchisee shall maintain an email account on Franchisor's proprietary database management and intranet system. Franchisee must check Franchisee's email account at least once every day.

8.14 Franchisee may not open its Water Babies Business until: (1) Franchisor notifies Franchisee in writing that all of Franchisee's obligations have been fulfilled; (2) the initial training program has been completed to Franchisor's satisfaction; (3) all amounts due to Franchisor have been paid; (4) Franchisor has been furnished with copies of all insurance policies and certificates required by Section 12, or other documentation of insurance coverage and payment of premiums that Franchisor may request, in Franchisor's discretion; (5) Franchisee notifies Franchisor that all approvals and conditions set forth in this Agreement have been met; (6) Franchisee has obtained all necessary permits and licenses; (7)

Franchisee has provided Franchisor with a copy of the Lease for Franchisee's Approved Pool(s) negotiated in accordance with the terms of Section 8.3(b), and (8) Franchisee has ordered, received and installed all equipment, supplies, inventory, tools, products, uniforms and computer hardware and software required by Franchisor (“**Computer System**”). Franchisee shall begin operating the Water Babies Business immediately after Franchisor determines that the Water Babies Business is ready for opening.

8.15 In the operation of the Water Babies Business, Franchisee will receive “Customer Data.” “Customer Data” is information, records, lists or data that contains “Personal Information.” “Personal Information” includes information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, potential consumer, individual or household, as such term may be further defined or amended by applicable federal, state and local statutes, regulations, ordinances and requirements, including but not limited to, the North Carolina Consumer Privacy Act. Personal Information is collected, maintained or generated in the operation of the Water Babies Business, including through the use of a point of sale system.

Franchisee agrees, at its sole cost and expense, to at all times:

- (a) comply with the data protection, collection, maintenance and use requirements for Customer Data set out in the Operations Manual and this Franchise Agreement, including all policies, procedures and controls that Franchisor implements now or in the future;
- (b) comply with all applicable federal, state and local statutes, regulations, ordinances and requirements, including but not limited to, the North Carolina Consumer Privacy Act, relating to the data protection, collection, maintenance and use of Customer Data (collectively, “**Privacy Laws**”);
- (c) assist and otherwise cooperate with Franchisor to ensure Franchisor’s and Franchisee’s compliance with applicable Privacy Laws;
- (d) promptly notify Franchisor in writing of any Security Incident (defined below) that Franchisee becomes aware of or discovers. Franchisee will assist and otherwise cooperate with Franchisor to investigate any such Security Incident and will take all required steps, as determined by Franchisor, to remedy Franchisee’s noncompliance with applicable Privacy Laws, this Agreement or the Operations Manual. For purposes of this Section 8.16, “Security Incident” means any actual or suspected accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data in violation of applicable Privacy Laws, this Agreement or the Operations Manual;
- (e) promptly provide Franchisor with the ability to delete, access or copy Customer Data in Franchisee’s possession or control;
- (f) promptly notify Franchisor of any request regarding Customer Data received by the Franchisee from a “consumer” as defined by applicable Privacy Laws;
- (g) adopt policies, procedures and controls, including those set out in the Operations Manual, if any, that enable Franchisee to respond, and to cause its agents and employees to respond, promptly to any rights request made pursuant to applicable Privacy Laws, including any disclosure request, deletion request, or opt-out request;

(h) adopt policies, procedures, and controls, including those set out in the Operations Manual, if any, that limit access to Customer Data to only those employees that have a need-to-know basis based on specific job function or role. Franchisee will provide data privacy and security training to employees who have access to Customer Data or who operate or have access to system controls and will require employees to adhere to data confidentiality terms providing for the protection of Customer Data in accordance with this Agreement and the Operations Manual; and

(i) maintain Customer Data in confidence in accordance with Section 14 of this Franchise Agreement.

## **9. PURCHASE OF EQUIPMENT, INVENTORY AND SUPPLIES**

9.1 Franchisee must purchase all Products, services, equipment, tools, inventory, supplies and hardware and software from Franchisor's designated or approved suppliers, manufacturers and distributors. The standards and specifications for equipment, Computer System, inventory, tools, signage, supplies, Approved Pool(s), Services and Products required by Franchisor shall be maintained in the Operations Manual. Franchisor has the right to require Franchisee to discontinue purchasing any Products, services, equipment, tools, inventory, supplies and/or Computer System from a designated or approved supplier, manufacturer or distributor and may designate or approve new suppliers, manufacturers or distributors at any time in Franchisor's sole discretion.

9.2 Franchisee acknowledges and agrees that Franchisor may receive from designated or approved suppliers of Franchisee's Products, services, equipment, tools, inventory, supplies and hardware and software, periodic volume rebates or other revenue or consideration as a result of Franchisee's purchases. Franchisee further acknowledges and agrees that Franchisor shall be entitled to keep for its own use and account such rebates and revenue.

9.3 The names and addresses of Franchisor's required or approved suppliers, manufacturers and distributors shall be maintained in the Operations Manual. Franchisor reserves the right to approve all of the Products, supplies, Services, equipment, tools, inventory, hardware and software used in connection with Franchisee's Water Babies Business.

9.4 Franchisee may request that Franchisor approve or designate a new supplier by following the procedures, and paying all required fees and expenses for approval, as set forth in the Operations Manual and modified periodically by Franchisor in Franchisor's discretion. Franchisor will not unreasonably withhold the approval of a supplier; however, in order to make such determination, Franchisor may require that samples from a proposed new supplier be delivered to Franchisor for testing and approval prior to use. Franchisor reserves the right to require that Franchisee pay or reimburse Franchisor for the reasonable cost of investigation in determining whether such products, services, materials, forms, items or supplies satisfy Franchisor's specifications.

## **10. MARKS, COPYRIGHTED WORKS AND OWNERSHIP OF IMPROVEMENTS.**

10.1 Franchisee acknowledges and agrees that:

(a) Franchisor is the owner or exclusive licensee of all right, title and interest, together with all the goodwill of the Marks. Franchisee further acknowledges that the Marks designate the origin or sponsorship of the System, the Water Babies Business, and the Products and Services, and that Franchisor desires to protect the goodwill of the Marks and to preserve and enhance the value of the Marks. In the event that Franchisee acquires any rights, title or interest

in the Marks, Franchisee agrees to assign and hereby assigns all such rights, title or interest to Franchisor.

(b) All right, title and interest in and to all materials, including but not limited to, all artwork and designs, created by Franchisor, and used with the Marks or in association with the Water Babies Business (“**Copyrighted Materials**”) are the property of Franchisor. Additionally, all Copyrighted Materials created by Franchisee or any other person or entity retained or employed by Franchisee are works made for hire within the meaning of the United States Copyright Act and are the property of Franchisor, who shall be entitled to use and license others to use the Copyrighted Materials unencumbered by moral rights. To the extent the Copyrighted Materials are not works made for hire or rights in the Copyrighted Materials do not automatically accrue to Franchisor, Franchisee irrevocably assigns and agrees to assign to Franchisor, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such Copyrighted Materials, which Franchisee and the author of such Copyrighted Materials warrant and represent as being created by and wholly original with the author. Where applicable, Franchisee agrees to obtain any other assignments of rights in the Copyrighted Materials from another person or entity necessary to ensure Franchisor's right in the Copyrighted Materials as required in this Section 10.1(b).

(c) Franchisee will never dispute, contest, or challenge, directly or indirectly, the validity or enforceability of the Marks or Copyrighted Materials or Franchisor’s ownership of the Marks or Copyrighted Materials, nor counsel, procure, or assist anyone else to do the same, nor will it take any action that is inconsistent with Franchisor’s ownership of the Marks or Copyrighted Materials, nor will it represent that it has any right, title, or interest in the Marks or Copyrighted Materials other than those expressly granted by this Agreement.

(d) Franchisor may decide, in its sole and absolute discretion, to apply to register or to register any trademarks or copyrights with respect to the Services, Products and any other products and services and the Copyrighted Materials. Failure of Franchisor to obtain or maintain in effect any such application or registration is not a breach of this Agreement. Franchisee will not, before or after termination or expiration of the Agreement, register or apply to register any of the Marks or any trademark, service mark or logo confusingly similar thereto or any Copyrighted Materials, anywhere in the world.

(e) Upon Franchisor’s request, Franchisee will cooperate fully, both before and after termination or expiration of this Agreement and at Franchisor’s expense, in confirming, perfecting, preserving, and enforcing Franchisor’s rights in the Marks and Copyrighted Materials, including but not limited to, executing and delivering to Franchisor such documents as Franchisor reasonably requests for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents showing sale and advertising of the Services and Products and other products and services. Franchisee hereby irrevocably appoints Franchisor as its attorney-in-fact for the purpose of executing such documents.

(f) All usage of the Marks by Franchisee and any goodwill established by Franchisee’s use of the Marks shall inure to the exclusive benefit of Franchisor. This Agreement does not confer any goodwill or other interests in the Marks to Franchisee upon expiration or termination of the Agreement.

**(g) FRANCHISOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS OR COPYRIGHTED MATERIALS.**

10.2 Franchisee acknowledges and agrees that:

(a) Franchisee's right to use the Marks and Copyrighted Materials are derived solely from this Agreement. Franchisee may only use the Marks and Copyrighted Materials in its operation of the Water Babies Business and only in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor in the Operations Manual and elsewhere from time to time during the Term and any Successor Term. Franchisee will make every effort consistent to protect, maintain, and promote the Marks as identifying the System and only the System.

(b) Any unauthorized use of the Marks or Copyrighted Materials by Franchisee constitutes a breach of this Agreement and an infringement of the rights of Franchisor and in and to the Marks and Copyrighted Materials.

(c) Franchisee will not use any Marks or portion of any Marks as part of a corporate or trade name, or with any prefix, suffix or other modifying words, terms, designs or symbols, or in any modified form. Franchisee shall obtain such fictitious or assumed name registrations as may be required by Franchisor or under applicable law.

(d) In order to preserve the validity and integrity of the Marks and Copyrighted Materials licensed herein and to assure that Franchisee is properly employing the same in the operation of its Water Babies Business, Franchisor or its agents shall have the right of entry and inspection of Franchisee's Water Babies Business and operating procedures pursuant to Section 8.6.

(e) Franchisee will safeguard and maintain the reputation and prestige of the Marks and Copyrighted Materials and will not do anything that would tarnish the image of or adversely affect the value, reputation or goodwill associated with the Marks. Franchisee will not do anything that would dilute, directly or indirectly, the value of the goodwill attached to the Marks, nor counsel, procure or assist anyone else to do the same.

(f) Franchisee will use the Marks and Copyrighted Materials only in lettering, logos, print styles, forms, and formats, including but not limited to, advertising and promotional materials, invoices, signage, business checks, business cards, stationery, and promotional items such as clothing, hats, pens, mugs, etc., which have been approved by Franchisor in accordance with this Agreement, and promptly follow instructions regarding the Marks and Copyrighted Materials as provided in the Operations Manual and otherwise given by Franchisor from time to time.

(g) Franchisee will use the following copyright notice at least once on each piece of advertising, promotional, or other material used in connection with the Products and Services:

© (year of first publication). WATER BABIES US FRANCHISE LLC. All Rights Reserved.

(h) Franchisee will use the Marks with a superscript "®" or "™", as specified by Franchisor, unless and until advised by Franchisor to use a different notice.

10.3 Franchisee acknowledges and agrees that:

(a) If, in Franchisor's reasonable determination, the use of Marks or Copyrighted Materials in connection with the Services, Products, other products and services or the Water Babies Business will infringe or potentially infringe upon the rights of any third party, weakens or impairs Franchisor's rights in the Marks or Copyrighted Materials, or it otherwise becomes advisable at any time in Franchisor's sole discretion for Franchisor to modify or discontinue use of the Marks or Copyrighted Materials then upon notice from Franchisor, Franchisee will immediately terminate or modify such use in the manner prescribed by Franchisor. Franchisor may require Franchisee to use one or more additional or substitute trade names, trademarks, service marks or other commercial symbols or copyrighted materials. Franchisor shall reimburse Franchisee for the tangible out-of-pocket cost of compliance with this requirement (such as the cost of printing new letterhead and business cards), but Franchisee will have no rights of damages, offset, or right to terminate this Agreement as a result thereof and Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of any Marks or Copyrighted Materials.

(b) Franchisee shall notify Franchisor within three days after receiving notice of any claim, demand or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Marks or any colorable imitation thereof or the Copyrighted Materials. Upon receipt of timely notice of an action, claim or demand against Franchisee relating to the Marks or Copyrighted Materials, Franchisor shall have the sole right, but not the duty, to defend any such action. Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Marks or Copyrighted Materials and shall exercise such right in the sole discretion of Franchisor. Franchisor shall control all actions but not be obligated to take any action. In any defense or prosecution of any litigation relating to the Marks, Copyrighted Materials or components of the System undertaken by Franchisor, Franchisee shall cooperate with Franchisor, execute any and all documents, and take all actions as may be desirable or necessary in the opinion of Franchisor's counsel, to carry out such defense or prosecution. At Franchisor's option, Franchisee will join in any action, in which case Franchisor shall bear all the out-of-pocket costs of Franchisee for such participation. If Franchisee joins in an action, then the recovery, if any, from such legal action shall be first applied to the total expenses associated therewith and then split equally between Franchisor and Franchisee.

10.4 All provisions of this Agreement applicable to the Marks and Copyrighted Materials apply to any and all additional trademarks, service marks, commercial symbols and copyrighted materials authorized for use by and licensed to Franchisee by Franchisor after the date of this Agreement.

10.5 If Franchisee, during the Term of the franchise relationship, or any Interim Period or Successor Term, conceives or develops any improvements or additions to the System, Copyrighted Materials, website or any other documents or information pertaining to or relating to the System or the Water Babies Business, or any new trade names, trade and service marks, logos, or commercial symbols related to the Water Babies Business or any advertising and promotional ideas or inventions related to the Water Babies Business (collectively, the "**Improvements**") Franchisee shall fully disclose the Improvements to Franchisor, without disclosure of the Improvements to others, and shall obtain Franchisor's written approval prior to using such Improvements. Any such Improvement may be used by Franchisor and all other franchisees without any obligation to Franchisee for royalties or other fees. Franchisee shall assign and does hereby assign to Franchisor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Franchisor, at its discretion, may make application for and own copyrights, patents, trade names, trademarks and service

marks relating to any such Improvement and Franchisee shall cooperate with Franchisor in securing such rights. Franchisor may also consider such Improvements as the property and Trade Secrets of Franchisor. In return, Franchisor shall authorize Franchisee to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other franchisees.

## 11. ADVERTISING AND PROMOTION

11.1 Franchisee Local marketing and advertising activities are the responsibility of the Franchisee and are necessary to complement the centrally managed Brand Fund. During the first year in which the Franchisee's Water Babies Business is open, the Franchisee must complete a local marketing plan with the Franchisor's team and submit it via email prior to the Scheduled Opening Date. The Franchisee must complete and submit a local marketing plan annually by January 31 for each subsequent year. As specified in the Operations Manual, the Franchisee must use pre-approved marketing templates and collateral, or receive the Franchisor's approval for any marketing collateral not previously approved. The Franchisee must spend a minimum of \$25,200 on local marketing within the Territory ("**Local Marketing Spend**") during each calendar year. This is made up of \$21,600 on local digital marketing ("**Local Digital Marketing**") and \$3,600 on local traditional marketing ("**Local Traditional Marketing**"). Upon the Franchisor's request, the Franchisee must send the Franchisor, in the manner prescribed, an accounting of the Local Traditional Marketing spend. The Franchisee is required to spend a minimum of \$1,800 per month (annual cost of \$21,600) on Local Digital Marketing within the Franchisee's territory, or 3% of Gross Revenue, whichever is higher. The Franchisee is required to pay the Franchisor or an approved supplier each month for Local Digital Marketing services. The Local Digital Marketing spend is for online advertising placement services such as pay-per-click advertising, Facebook advertising administration, remarketing, and other digital advertising services. This is the minimum that the Franchisee is required to spend, but the Franchisee may choose to spend more. The Franchisee is required to spend a minimum of \$300 per month (\$3,600 annually) on Local Traditional Marketing activity within the Franchisee's Territory. This includes partnerships, PR & events, sponsorships & influencer activities, content creation, print, and one direct mail campaign per annum. The Franchisee's local advertising and promotions must follow the Franchisor's guidelines. All advertising and promotional materials developed for the Franchisee's Water Babies Business must contain notices of the Franchisor's domain name in the manner designated by the Franchisor. All advertising, promotion, and marketing must be completely clear, factual, and not misleading and conform to both the highest standards of ethics and the Franchisor's advertising and marketing policies. All advertising, promotion, and marketing must conform to the Franchisor's System Standards. The Franchisee must send the Franchisor for approval samples of all advertising, promotional, and marketing materials which the Franchisor has not prepared or previously approved at least 10 days before the Franchisee intends to use them. If the Franchisor does not approve the materials within 5 days of receipt, then they shall be deemed disapproved. The Franchisee may not use any advertising, promotional, or marketing materials that the Franchisor has not approved or has disapproved. Franchisor, the Franchisor's affiliate, or the Franchisor's designated supplier will provide digital advertising services which include search engine optimization services and management, pay-per-click, Facebook advertising, remarketing, and other digital services. The Franchisee must pay the Franchisor, the Franchisor's affiliate, or the Franchisor's designated supplier for these services.

11.2 During the Term, Franchisee shall furnish Franchisor an accounting of Franchisee's previous month's expenditures for advertising and promotion on a form approved by Franchisor.

11.3 Franchisor will make available to Franchisee all advertising and promotion materials for the Water Babies Business which are used by Franchisor and other franchisees. Franchisee may not develop advertising materials for use in the Water Babies Business without Franchisor's approval. If Franchisor approves the advertising materials prepared by Franchisee in writing, Franchisor may make

available to other franchisees such advertising and promotion materials. Franchisee must pay duplication costs of any advertising or promotion material provided by Franchisor.

11.4 Franchisor has formed a Brand fund (“**Brand Fund**”). The Franchisee shall remit 2% of the Gross Revenues which is deducted from the income at source or payable on the 10<sup>th</sup> day of the following month and shall be payable through the entire Term of this Agreement, Franchisee shall remit 2% of the Gross Revenues for the preceding month or portion thereof to Franchisor (“**Brand Fund Fee**”). No action taken by Franchisee shall diminish Franchisee’s obligations to pay the Brand Fund Fee to the Brand Fund. The Brand Fund Fee is in addition to Franchisee’s obligations in Section 11.1.

11.5 Advertising materials and services will be provided to Franchisee through the Brand Fund. Franchisor may occasionally provide for placement of advertising, development of promotional materials, and undertaking public relations activities on behalf of the entire System, including franchisees, or on behalf of a particular region, that may not include Franchisee, through the Brand Fund. Franchisor reserves the right to use the Brand Fund Fee from the Brand Fund to place advertising in national media or regional media (including broadcast, print or other media) in the future. Franchisee acknowledges that the Brand Fund is intended to maximize the general brand recognition of the System. Franchisor is not obligated to expend Brand Funds on Franchisee’s behalf or benefit or expend Brand Funds equivalent or proportionate to Franchisee’s Brand Fund Fees on Franchisee’s behalf or benefit.

11.6 National or regional advertising, public relations, and promotions will be started and continued by Franchisor, when, in Franchisor’s sole discretion, Franchisor deems that it has accumulated sufficient moneys for that purpose. The Brand Fund will be used to promote the System, Services and Products sold by Franchisees and will not be used for the purpose of selling additional franchises; provided, however, that Franchisee acknowledges and agrees that Franchisor may undertake certain activities using funds from the Brand Fund that have the effect of increasing the visibility of, and interest in, the Water Babies System by prospective franchisees. Franchisor’s accounting and marketing personnel or a representative designated by Franchisor will administer the Brand Fund. The Brand Fund will collect Brand Fund Fees from all franchisees and Franchisor’s Affiliate-owned stores. All payments to the Brand Fund must be spent on advertising, public relations, market research, trade show attendance, promotion, point-of-sale materials, point-of-sale systems, marketing of goods and services provided by Franchisor and outside vendors, including but not limited to marketing agencies, and administration of the Brand Fund, including but not limited to, salaries, overhead, administrative, accounting, collection and legal costs and expenses. The Brand Funds will be maintained by Franchisor in a separate account. An annual un-audited financial statement of the Brand Fund, at the expense of the Brand Fund, will be available 120 days after Franchisor’s fiscal year end to Franchisee for review once a year upon request.

11.7 The Brand Fund Fees collected by the Brand Fund are non-refundable. The Brand Fund may be terminated at any time by Franchisor, in its sole discretion. In the event that the Brand Fund is terminated, any remaining balance in the Brand Fund will be expended as provided for in Section 11.6 or returned to Franchisee on a pro-rata basis.

11.8 Franchisee shall fully participate in all such promotional campaigns, prize contests, special offers, and other programs, national, regional, or local in nature (including the introduction of new Services, Products, new franchises or other marketing programs directed or approved by Franchisor), which are prescribed from time to time by Franchisor. Franchisee shall be responsible for the costs of such participation. In addition, Franchisee shall honor any coupons, gift certificates or other authorized promotional offers of Franchisor at Franchisee’s sole cost unless otherwise specified in writing by Franchisor. Franchisee will maintain an adequate supply of marketing brochures, pamphlets and promotional materials as may be required by Franchisor from time to time. The cost for such participation will be applied to Franchisee's Local Advertising Expense.

11.9 Franchisor (and any designee of Franchisor) will have no direct or indirect liability or obligation to Franchisee or the Brand Fund or otherwise with respect to the management, maintenance, direction, administration or otherwise of the Brand Fund. Franchisee and Franchisor agree that their rights and obligations with respect to the Brand Fund and all related matters are governed solely by this Agreement and neither this Agreement or the Brand Fund creates a trust, fiduciary relationship, or similar arrangement.

11.10 Franchisor may establish and maintain an Internet website that provides information about the Water Babies System and the Products and Services that the Water Babies Business offers. Franchisor will have sole discretion and control over the website's design and contents. Franchisor may use part of the marketing fees it collects under Section 11.4 and part of the Marketing and Promotions Fund's revenues to pay or reimburse itself for the costs of maintaining and updating the website, except that Franchisor may not use marketing fees or Marketing and Promotions Fund Contributions to pay for those components of the website that are devoted to the sale of franchises for Water Babies Businesses.

(a) The website may include a section that provides the address, telephone number and e-mail address of each Water Babies Business in the Water Babies chain, including Franchisee's Approved Pool(s).

(b) Franchisee will not have any independent right to advertise its services on the Internet.

## **12. INSURANCE AND INDEMNITY**

12.1 Franchisee shall, upon commencement of the Term, purchase and at all times maintain in full force and effect:

(a) Insurance policies, in such amounts and on such terms, as prescribed by the Operations Manual, issued by an insurance company acceptable to Franchisor at all times during the Term of this Agreement and any Successor Terms. Insurance coverage must include, but is not limited to, comprehensive general liability, automobile, bodily injury and all-risk property damage insurance and all other occurrences against claims of any person, employee, customer, agent or otherwise in an amount per occurrence of not less than such amount set forth in the Operations Manual and adjusted by Franchisor periodically in Franchisor's sole discretion, unemployment and workers compensation insurance and any other additional insurance required by the terms of any Lease or lender for the Water Babies Business. Insurance policies must insure Franchisee, Franchisor, Franchisor's Affiliates, and Franchisor's and Franchisor Affiliates' respective officers, directors, shareholders, managers, members and all other parties designated by Franchisor, as additional named insureds against any liability which may accrue against them because of the ownership, maintenance or operation by Franchisee of the Water Babies Business. The policies must also stipulate that Franchisor shall receive a 30-day prior written notice of cancellation and must contain endorsements by the insurance companies waiving all rights of subrogation against Franchisor. Original or duplicate copies of all insurance policies, certificates of insurance, or other proof of insurance (collectively, "**Certificates of Insurance**") acceptable to Franchisor, including original endorsements effecting the coverage required by this Section, shall be furnished to Franchisor together with proof of payment within 10 days of issuance thereof. Franchisee shall also furnish Franchisor with certificates and endorsements evidencing such insurance coverage within 10 days after each of the following events: (i) at all policy renewal periods, no less often than annually, and (ii) at all instances of any change to, addition to, or replacement of any insurance. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates

and endorsements are subject to approval by Franchisor. Franchisor reserves the right to require complete, certified copies of all required insurance policies at any time in Franchisor's sole discretion. In the event Franchisee fails to obtain the required insurance and to keep the same in full force and effect, Franchisor may, but shall not be obligated to, purchase insurance on Franchisee's behalf from an insurance carrier of Franchisor's choice, and Franchisee shall reimburse Franchisor for the full cost of such insurance, along with a reasonable service charge to compensate Franchisor for the time and effort expended to secure such insurance, within five days of the date Franchisor delivers an invoice detailing such costs and expenses to Franchisee. Notwithstanding the foregoing, failure of Franchisee to obtain insurance constitutes a material breach of this Agreement entitling Franchisor to terminate this Agreement or exercise any or a combination of the other default remedies set forth in Section 17 of this Agreement. Franchisee shall also procure and pay for all other insurance required by state or federal law. Franchisor reserves the right to modify minimum insurance requirements or the types of coverage required at any time in its sole discretion by updating the Operations Manual.

(b) All public liability and property damage policies shall contain a provision that Franchisor, although named as an additional insured, shall nevertheless be entitled to recover under such policies on any loss occasioned to Franchisor or its shareholders, members, directors, managers, employees or agents.

(c) All liability insurance policies procured and maintained by Franchisee in connection with the Water Babies Business will require the insurance company to provide and pay for attorneys to defend any legal actions, lawsuits or claims brought against Franchisee, Franchisor, Franchisor's Affiliates and their respective officers, directors, managers, members, agents, employees, and all other entities or individuals designated by Franchisor as additional insureds.

(d) Franchisee must purchase insurance policies set out in this Section 12.1 from Franchisor's designated supplier if required by Franchisor in the Operations Manual.

12.2 Franchisee shall, during the Term and any Successor Terms and after the termination or expiration of this Agreement, indemnify and defend Franchisor, its Affiliates and their respective officers, directors, managers, members, and employees, and hold them harmless against all claims, demands, losses, damages (including punitive damages), costs, suits, judgments, penalties, expenses (including reasonable attorneys' fees and amounts paid in settlement or compromise) and liabilities of any kind, whether or not ultimately determined to be meritorious (and including damages suffered by Franchisee or any of its property) (collectively, "**Damages**") for which they are held liable, or which they incur (including travel, investigation and living expenses of employees and witness fees) in any litigation or proceeding as a result of or arising out of:

(a) a breach of this Agreement, or any other agreement between the parties, or any breach of a Lease or other instrument by which the right to occupy any Approved Pool(s) or any other premises used by Franchisee to operate the Water Babies Business is held, by Franchisee;

(b) any injury to, or loss of property of, any person in, or on, the Approved Pool(s) or any other premises used by Franchisee to operate the Water Babies Business in relation to the Water Babies Business;

(c) Franchisee's taxes, liabilities, costs or expenses of its Water Babies Business;

(d) any negligent or willful act or omission of Franchisee, its officers, directors, managers, members, partners, employees, agents, servants, contractors or others for whom it is, in law, responsible;

(e) any violation of any federal, state or local law, ordinance or regulation imposing requirements or prohibitions on Franchisee in the operation of the Water Babies Business, including but not limited to Privacy Laws; and

(f) any advertising or promotional material distributed, broadcasted or in any way disseminated by Franchisee, or on its behalf unless such material has been produced, or approved in writing, by Franchisor.

### **13. RELATIONSHIP**

13.1 Franchisee acknowledges that it is an independent contractor and is not an agent, partner, joint venturer or employee of Franchisor and no training or supervision given by, or assistance from, Franchisor shall be deemed to negate such independence. Neither party is liable or responsible for the other's debts or obligations, nor shall either party be obligated for any damages to any person or property directly or indirectly arising out of the operation of the other party's business authorized by or conducted pursuant to this Agreement. Franchisor and Franchisee agree that no partnership, fiduciary relationship, joint venture or employment relationship exists between them. Franchisee shall conspicuously identify itself in all dealings with the public as a sole operator that is an entity separate from Franchisor and state that Franchisor has no liability for the Water Babies Business being conducted from the Approved Pool(s). It is expressly agreed that the parties intend by this Agreement to establish between Franchisor and Franchisee the relationship of franchisor and franchisee. It is further agreed that Franchisee has no authority to create or assume in Franchisor's name or on behalf of Franchisor, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Franchisor for any purpose whatsoever. Franchisee agrees that it will not hold itself out as the agent, employee, partner or co-venturer of Franchisor. All employees hired by or working for Franchisee shall be the employees of Franchisee and shall not, for any purpose, be deemed employees of Franchisor or subject to Franchisor's control. Each of the parties agrees to file its own tax, regulatory and payroll reports with respect to its respective employees and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

13.2 Neither party hereto shall make any agreements, representations or warranties (except by Franchisor in advertising as provided herein) in the name of, or on behalf of, the other party; neither party hereto shall be obligated by, nor have any liability for, any agreements, representations or warranties made by the other (except by Franchisor in advertising as provided herein) nor shall Franchisor be liable for any damages to any person or property, directly or indirectly, arising out of the operation of Franchisee's Water Babies Business, whether caused by Franchisee's negligent or willful action or failure to act.

13.3 Franchisor shall have no liability for Franchisee's obligations to pay any third parties, including without limitation, any product vendors, or any value added, sales, use, service, occupation, excise, Gross Revenues, income, property or other tax levied upon Franchisee, Franchisee's property, the Water Babies Business or upon Franchisor in connection with the sales made or business conducted by Franchisee (except any taxes Franchisor is required by law to collect from Franchisee with respect to purchases from Franchisor).

### **14. RESTRICTIVE COVENANTS**

14.1 Franchisee acknowledges and agrees that:

(a) Franchisee's entire knowledge of the operation of the Water Babies Business, the System, and the concepts and methods of promoting the Water Babies Business hereunder, that it has now or obtains in the future, is derived from Franchisor's Confidential Information and Trade Secrets. Franchisee further acknowledges and agrees that all of the Confidential Information and Trade Secrets are the sole property of Franchisor, represent valuable assets of Franchisor and that Franchisor has the right to use the Confidential Information and Trade Secrets in any manner it wishes at any time.

(b) During the Term and any Successor Terms, Franchisee, and Franchisees' owners, Aquatics Directors, officers, directors, managers, members, partners, and employees who have access to the Confidential Information and Trade Secrets agree that they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information and Trade Secrets; and (4) will adopt and implement all reasonable procedures Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring employees, Aquatics Directors, training class attendees, and Franchisee owners who have access to the Confidential Information and Trade Secrets to execute such nondisclosure and noncompetition agreements as Franchisor may require periodically, and provide Franchisor, at Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(c) After the Agreement expires or is terminated, Franchisee, and Franchisees' owners, Aquatics Directors and employees who have access to the Confidential Information and Trade Secrets agree that for a period of two years after the termination or expiration of the Agreement (unless such information is a Trade Secret in which case the requirements in this Section 14.1(c) will remain in place for as long as such information constitutes a Trade Secret) they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information or Trade Secrets; and (4) will adopt and implement all reasonable procedures Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring written nondisclosure and noncompetition agreements for those individuals as Franchisor may require and provide Franchisor, at Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(d) Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to the following: (a) Confidential Information in the public domain after it was communicated to Franchisee through no fault of Franchisee, its owners, Aquatics Directors or employees; (b) Confidential Information in Franchisee's possession free of any obligation of confidence at the time it was communicated to Franchisee; or (c) the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that Franchisee is legally compelled to disclose the information, if Franchisee has notified Franchisor before disclosure and used Franchisee's best efforts, and afforded Franchisor the opportunity, to obtain an appropriate protective order or other assurance satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

14.2 Franchisee covenants and agrees that:

(a) During the Term of this Agreement and any Successor Terms thereof, Franchisee, its owners, Aquatics Directors, officers, directors, managers, members, and partners shall not, without the prior written consent of Franchisor, either individually or in a partnership, corporation, limited liability company, joint venture or other business entity or jointly or in conjunction with any person, firm, association, syndicate or corporation, as principal, agent, shareholder, member, partner or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business operating in competition with any business offering swimming and water survival instruction services to babies, toddlers, and children and the sale of underwater photographic services and retail product sales from one or more pools, or any business similar to the Water Babies Business (“**Competitive Business**”) as carried on from time to time during the Term of this Agreement, including any Successor Term.

(b) Upon termination or expiration of the Term or any Successor Term, or the transfer, sale or assignment of this Agreement by Franchisee, neither Franchisee, the Aquatics Director nor Franchisee’s owners, officers, directors, managers, members, or partners will have any direct or indirect interest (i.e. through a relative) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent, for two years, in any Competitive Business in: (1) the Territory or any other franchisee’s territory; (2) within 100 miles of the Territory or any other franchisee’s territory; or (3) within 100 miles of any Franchisor or Affiliate-owned Water Babies Business.

14.3 During the Term (including any Successor Term) of this Agreement and for a period of two years thereafter, Franchisee, Franchisee’s owners, officers, directors, managers, members, partners, and the Aquatics Director shall not attempt to attain an unfair advantage over other franchisees or Franchisor or any Affiliates thereof by soliciting for employment any person who is, at the time of such solicitation, employed by Franchisor, other franchisees or any Affiliates, nor shall Franchisee, Franchisee’s owners, officers, directors, managers, members, partners, nor the Aquatics Director, directly or indirectly induce or attempt to induce any such person to leave his or her employment as aforesaid.

14.4 If any person restricted by this Section 14 refuses to voluntarily comply with the foregoing obligations, the two-year period will commence with the entry of any order of a court or arbitrator enforcing this Section 14.

14.5 The parties have attempted in Section 14.2 above to limit Franchisee’s right to compete only to the extent necessary to protect Franchisor from unfair competition. The parties hereby expressly agree that if the scope of enforceability of the provision of Section 14.2 is disputed at any time by Franchisee, a court or arbitrator, as the case may be, may modify Section 14.2 to the extent that it deems necessary to make such provision enforceable under applicable law. In addition, Franchisor reserves the right to reduce the scope of said provision without Franchisee’s consent, at any time or times, effective immediately upon notice to Franchisee. Franchisee EXPRESSLY ACKNOWLEDGES THAT IT POSSESSES SKILLS AND ABILITIES OF A GENERAL NATURE AND HAS OTHER OPPORTUNITIES TO EXPLOIT SUCH SKILLS. CONSEQUENTLY, ENFORCEMENT OF THE COVENANTS SET FORTH ABOVE WILL NOT DEPRIVE FRANCHISEE OF THE ABILITY TO EARN A LIVING.

14.6 Nothing in this Section 14 shall prevent any active officer of Franchisee or member of Franchisee’s family, either individually or collectively, from owning not more than a total of 5% of the stock of any company which is subject to the reporting requirements of the U.S. Securities and Exchange Act of 1934, provided that Franchisee or any member of Franchisee’s family is otherwise not actively

involved in the management or operation of that business and does not serve that business in any capacity other than as a shareholder.

14.7 Franchisor must be protected against the potential for unfair competition by Franchisee's use of Franchisor's training, assistance, Confidential Information and Trade Secrets in direct competition with Franchisor. Franchisee further acknowledges that Franchisor would not have entered into this Agreement or shared the Confidential Information, Trade Secrets and other information with Franchisee absent Franchisee's agreement to strictly comply with the provisions of this Section 14. Franchisee acknowledges that as a Franchisee of Franchisor, it will have access to Franchisor's Trade Secrets and Confidential Information and therefore be in a unique position to use the special knowledge gained as a franchisee. Franchisee acknowledges that a breach of the covenants contained in this Section 14 will be deemed to threaten immediate and substantial irreparable injury to Franchisor. Accordingly, Franchisee agrees that Franchisor will have the right, without prior notice to Franchisee, to obtain immediate injunctive relief without limiting any other rights or remedies and without posting a bond.

14.8 In the event that Franchisee is not an individual, this Section 14 will also apply to the officers, directors, stockholders, partners, members, trustees, beneficiaries and/or principals of Franchisee, Franchisee, and any persons controlled by, controlling or under common control with Franchisee.

## **15. ASSIGNMENT**

15.1 Franchisee acknowledges that Franchisor's obligations under this Agreement are not personal. Franchisor shall have the absolute right, in its sole discretion and at any time, to unconditionally transfer or assign this Agreement or any of its rights or obligation under this Agreement to any person, corporation or other party.

15.2 Franchisor reserves the right to assign the franchise System to anyone, including the operator of a competing national or regional chain or franchise system. Franchisee acknowledges and agrees that Franchisor may sell its assets, the Marks or the System to any third party of Franchisor's choice; may offer its securities privately or publicly; may merge with or acquire other business entities or be acquired by another business entity; may permit and participate in any transfer or distribution of its securities in connection with a spin-off; may undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring; or may terminate or cease to exist or dissolve, in any such case without Franchisee's consent and, provided the transferee expressly assumes and undertakes to perform Franchisor's obligations in all material respects, do so free of any responsibility or liability whatsoever to Franchisee after the transaction occurs.

15.3 With regard to any of the above sales, assignment and dispositions, Franchisee expressly and specifically waives any claims, demands, or damages against Franchisor arising from or related to the transfer of the Marks, assets or the System from Franchisor to any other party.

15.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee. Accordingly, this Agreement, Franchisee's rights and interests hereunder, the property and assets owned and used by Franchisee in connection with the Water Babies Business, and any shares, stock, membership or interest in any corporation, limited liability company, or other entity having an interest in the Water Babies Business, shall not be voluntarily or involuntarily, directly or indirectly sold, pledged, assigned, transferred, shared, subdivided, sub-franchised, encumbered or transferred in any way (including, without limitation, in the event of the death of Franchisee if Franchisee is an individual), in whole or in part, in any manner whatsoever without the prior written approval of Franchisor, which approval will not be unreasonably withheld or delayed, and compliance

with all terms of this Section 15. Any unauthorized sale, assignment, transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void and grounds for termination of this Agreement by Franchisor.

15.5 With and after each valid assignment of this Agreement pursuant to this Section 15, the assignee or assignees of Franchisee shall be deemed to be Franchisee under this Agreement and will be bound by and liable for all of Franchisee's existing and future obligations. No stockholder in any corporation, member in any limited liability company or partner in any partnership which becomes Franchisee shall have any rights under this Agreement by reason of his, her or its stock ownership, membership interest or partnership interest.

15.6 If Franchisee shall at any time determine to sell, in whole or in part, the Water Babies Business, Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the Water Babies Business together with all real or personal property, leasehold improvements and other assets used by Franchisee in its Water Babies Business from a responsible, arms' length, and fully disclosed purchaser and shall submit an exact copy of such Purchase Offer to Franchisor. Franchisor will have a right of first refusal to purchase the Water Babies Business as provided in Section 16.

15.7 No transfer or assignment of this Agreement will be approved by Franchisor or be effective unless and until all the following conditions are satisfied:

(a) Franchisee being then in full compliance herewith and paying to Franchisor all outstanding debts or amounts owing to Franchisor and any Affiliates or suppliers of Franchisor;

(b) the transferee executing Franchisor's then-current form of franchise agreement (which, in Franchisor's sole discretion, may have terms equal to the remainder of Franchisee's initial Term, or may include a new full length Term, and which may otherwise contain provisions substantially different from those contained herein, including a higher royalty and greater required expenditures for advertising and promotion than are provided hereunder, and such other documents then customarily used by Franchisor to grant franchises, but which shall not require the payment of another Initial Franchise Fee), all other documents as may be reasonably requested by Franchisor and paying to Franchisor a transfer fee ("**Transfer Fee**") in the amount of Fifteen Thousand Dollars (\$15,000.00);

(c) Franchisee's execution of a general release of Franchisor, including its officers, directors, members, agents, and employees and Affiliates from such parties' obligations under the Agreement;

(d) the transferee is purchasing all of Franchisee's assets used in the Water Babies Business in accordance with all applicable bulk sales legislation and assuming all of the liabilities of the Water Babies Business unless such liabilities have been paid prior to the closing of the transaction of purchase and sale or unless the sale is a sale of shares in the capital stock or membership interest of Franchisee;

(e) the transferee shall be an individual, corporation, limited liability company, partnership or other business entity having adequate financial resources who shall meet all criteria established by Franchisor for franchisees. The transferee shall also complete Franchisor's then-current training program established by Franchisor for franchisees unless: (i) the transferee is a current franchisee in good standing in the System, or (ii) the transferee is or has been a Aquatics Director for a period of one year or more of a Water Babies Business in good standing and has completed the then-current training program;

(f) Franchisee shall, at Franchisor's request, prepare and furnish to the transferee and/or Franchisor such financial reports and other data relating to the Water Babies Business and its operations as Franchisor deems reasonably necessary or appropriate for the transferee and/or Franchisor to evaluate the Water Babies Business and the proposed transfer. Franchisee authorizes Franchisor to confer with a proposed transferee and furnish it with information concerning the Water Babies Business and the terms and conditions of the proposed transfer, and Franchisor may do so without any liability, except for intentional misstatements made to a transferee;

(g) the parties to the proposed transaction will have entered into a binding agreement subject only to the rights of Franchisor set out in Section 16. Franchisor shall be furnished a copy of this binding agreement, and such agreement shall be subject to Franchisor's approval in writing. Franchisee must advise each prospective transferee of this provision and the other terms of this Agreement;

(h) the proposed transferee or the stockholders, partners, members or owners of a beneficial interest in a proposed corporation, partnership, limited liability company or other entity transferee, provide jointly and severally such personal guarantees as Franchisor may request, guaranteeing the proposed transferee's performance of its obligations under the agreements to be entered into;

(i) the proposed transferee shall have demonstrated to Franchisor's satisfaction that it, he or she will meet in all respects Franchisor's standards applicable to new franchisees regarding experience, personal and financial reputation and stability, willingness and ability to devote its, his or her full time, in-person in the Territory, and best efforts to the operation of the Water Babies Business, and any other conditions as Franchisor may reasonably apply in evaluating new franchisees. Franchisor must be provided with all information about the proposed transferee as Franchisor may reasonably require. Because of the confidential information and trade secrets available to a franchisee, no assignment to a competitor of Franchisor will be permitted; and

(j) the transferee paying all costs of Franchisor with respect to (i) the granting of its approval, as hereinbefore contemplated, including but not limited to all of its legal costs with respect to the preparation and execution of the above noted then-current form of Franchise Agreement, and all other documents then customarily used by Franchisor to grant franchises; and (ii) the transfer, including but not limited to, all professional fees (attorney's fees, broker fees, and the like), leasing expenses, brokerage commissions or fees, document preparation costs and due diligence.

15.8 Notwithstanding anything to the contrary herein contained, Franchisor shall, upon Franchisee's compliance with such requirements as may from time to time be prescribed by Franchisor (including the obtaining of all necessary approvals to the assignment of the Lease, if any, of the Approved Pool(s)), consent to an assignment of Franchisee's right, title and interest in and to this Agreement, and the property and assets owned and used by Franchisee in connection therewith and any other agreement then in effect between Franchisee and Franchisor to a corporation, limited liability company or other business entity which is wholly owned and controlled by Franchisee, subject to the following (provided that such assignment shall in no way release Franchisee from any liability under this Agreement):

(a) Contemporaneously with such assignment and thereafter upon the appointment or election of any person as director, officer, partner or manager of such corporation, limited liability company or other business entity, such corporation, limited liability company,

partnership or other business entity shall cause each shareholder, partner, member, manager, director(s) and officer(s) of the corporation, limited liability company, partnership or other business entity to execute a written agreement with Franchisor, personally guaranteeing full payment and performance of Franchisee's obligations to Franchisor and individually undertaking to be bound, jointly and severally, by all the terms of this Agreement or any new current form of Franchise Agreement and jointly and severally liable;

(b) No shares or interest in the capital of such corporation, limited liability company, partnership or other business entity shall be issued nor shall Franchisee directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, donate, pledge, mortgage or otherwise encumber any such shares or interest or offer or attempt to do so or permit the same to be done without Franchisor's prior written consent;

(c) The corporation shall maintain stop transfer instructions against the transfer of shares or membership interests on its records subject to the restrictions of this Section and shall have all outstanding shares or membership interest certificates endorsed with the following legend printed conspicuously upon the face of each share or certificate:

*"The transfer of this certificate is subject to the terms and conditions of a certain Franchise Agreement with WATER BABIES US FRANCHISE LLC. Reference is made to said Franchise Agreement and to the restrictive provisions of the articles of this corporation."*

(d) The articles of incorporation, articles of organization, operating agreement, partnership agreement, shareholder agreement, and by-laws of the corporation, limited liability company, partnership or other business entity shall provide that its objectives or business is confined exclusively to the operation of the Water Babies Business as provided for in this Agreement, and recite that the issuance and transfer of any shares, membership interest, partnership interest or other interest is restricted by the terms of this Agreement, and copies thereof shall be furnished to Franchisor upon request;

(e) Franchisor's consent to a transfer of any interest subject to the restrictions of this Section shall not constitute a waiver of any claim it may have against the assignor, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the assignee;

(f) The corporation, partnership, limited liability company or other business entity shall advise Franchisor and keep Franchisor current as to the names and addresses of the directors, officers, members, partners and shareholder of and those persons financially involved in the corporation, partnership, limited liability company or other business entity; and

(g) Franchisee agrees to devote its full time and best efforts to manage the day-to-day operations of the Water Babies Business unless it has an operational partner or Aquatics Director who is providing direct, in-person in the Territory, full time, supervision.

15.9 Upon the death or permanent disability of an individual Franchisee (or the controlling shareholder, member or partner if Franchisee is a legal entity), the personal representative of such person shall transfer all right, title and interest in this Agreement or such interest in Franchisee to any approved third party, which may include an heir or legatee that otherwise satisfies Franchisor's then-current standards and qualifications for new Franchisee. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance, provided such transfer is in accordance

with the requirements of this Section 15.9) shall be completed within a reasonable time, not to exceed six months from the date of death or permanent disability (unless extended by probate proceedings), and shall be subject to all the terms and conditions applicable to transfers contained in this Section. Franchisor shall have the right, in Franchisor's sole discretion, to operate at the Approved Pool(s) or to appoint a representative or designee to operate at the Approved Pool(s), for a period of up to 180 days, or until such time as Franchisee's interest shall have been transferred to an approved third party, whichever occurs first. Franchisor or the appointed representative shall be entitled to retain all revenues, and shall pay all operating expenses from the operation at the Approved Pool(s), without the right to seek or require reimbursement by Franchisee's estate or personal representative, during the period of operation at the Approved Pool(s). Failure to transfer the interest in this Agreement or such interest in Franchisee within said period of time shall constitute a breach of this Agreement and shall entitle Franchisor to terminate this Agreement without further notice or the opportunity to cure. For purposes hereof, the term "**Permanent Disability**" shall mean a mental or physical disability, impairment or condition that prevent Franchisee or Franchisee's controlling shareholder, member or partner from performing the essential functions of Franchisee.

15.10 Franchisee shall grant no security interest in any of the assets of the Water Babies Business unless the secured party agrees that in the event of any default by Franchisee under any documents related to the security interest, Franchisor shall have the right and the option to be substituted as obligor to the secured party and to cure any default of Franchisee, except that any acceleration of indebtedness due to Franchisee's default shall be void.

15.11 Franchisee shall not have the right to grant a subfranchise.

## **16. OPTION TO PURCHASE — RIGHT OF FIRST REFUSAL**

16.1 Unless otherwise explicitly provided by this Agreement, Franchisor shall be entitled to exercise the rights provided in this Section immediately upon:

- (a) The expiration without extension of Franchisee's rights to operate the Water Babies Business or the termination for any reason of the License or this Agreement;
- (b) Any breach, default or other event that gives Franchisor the right to terminate the License or this Agreement, after expiration of any applicable notice and cure period; or
- (c) The receipt by Franchisor of a copy of a Purchase Offer.

16.2 Upon any event described in Subsection 16.1, Franchisor shall have the option to purchase all of Franchisee's rights, title and interest in the Water Babies Business, and all its improvements, furniture, fixtures, equipment and products, and all of Franchisee's accounts, contract rights, customer and vendor lists, work in progress and other business assets.

16.3 The purchase price for assets itemized in Subsection 16.2 will be, subject to Section 16.4: (i) the current fair market value if Subsection 16.1(a) or 16.1(b) is applicable; or (ii) the price specified in the Purchase Offer received by Franchisee if Subsection 16.1(c) is applicable. If Franchisee and Franchisor cannot agree on fair market value within a reasonable time, an independent appraiser will be designated by Franchisee and Franchisor and an average of the two appraised values will be binding. Appraised values will exclude any and all consideration for goodwill or going concern value created by the Marks and business system licensed to Franchisee.

16.4 If Franchisor elects to exercise any option to purchase provided in this Section 16, Franchisor will have the right to set off all amounts due from Franchisee under the Franchise Agreement or any other agreements between the parties, any commissions or fees payable to any broker, agent or other intermediary and the cost of the appraisal, if any, against any payment. Franchisee shall also have the right to substitute cash for any other form of consideration specified in the Purchase Offer and to pay in full the entire purchase price at the time of closing.

16.5 Franchisor will notify Franchisee of its intention to exercise or not exercise its rights to purchase (“**Notice of Intent**”) within 60 days following an event described in Subsection 16.1(a) or (b) or within 15 days following an event described in Subsection 16.1(c). The Notice of Intent will specify the assets to be purchased, and the current fair market value as determined by Franchisor if Subsection 16.1(a) or 16.1(b) is applicable. In the event Franchisor is purchasing the assets pursuant to Subsections 16.1(a) or (b), Franchisee will have 14 days following receipt of Franchisor’s Notice of Intent to object to any of the prices specified therein, and any disputes over pricing shall be resolved through appraisal as specified by Subsection 16.3. If Franchisor declines to exercise its rights under this Section within the 15 or 60 day period described above, as applicable, Franchisee may thereafter sell or dispose of the Water Babies Business to any third party in the event of a sale under Subsection 16.1(a) or 16.1(b) or to the third party identified in the Purchase Offer in the event of a sale under Subsection 16.1(c), but not at a lower price nor on more favorable terms than set forth in the Purchase Offer, if any, or the Notice of Intent and subject to the prior written permission of Franchisor and satisfaction of the other conditions to assignment set forth in Section 15. If the sale to such third party purchaser is not completed within 90 days after Franchisor delivers the Notice of Intent to Franchisee, Franchisor shall again have the right of first refusal provided in this Agreement.

16.6 If Franchisor provides Franchisee with its Notice of Intent to exercise its rights under this Section 16, the purchase and sale contemplated in this Section shall be consummated as soon as possible. In the event Franchisor is purchasing the assets pursuant to Subsections 16.1(a) or (b), following the delivery of a Notice of Intent as specified in Subsection 16.5, Franchisor or Franchisor’s designee shall have the immediate right to take possession of the Water Babies Business and to carry on and develop the Water Babies Business for the exclusive benefit of Franchisor or its designee.

## **17. DEFAULT AND TERMINATION**

17.1 Franchisor shall have the right, at its option, to (i) suspend performance of certain or all of its services to Franchisee during the time period Franchisee is in default of this Agreement; or (ii) terminate this Agreement and all rights granted Franchisee hereunder (subject to the provisions of applicable state law governing franchise termination and renewal), effective upon receipt of notice by Franchisee, addressed as provided in Section 18, upon the occurrence of any of the following events:

(a) Franchisee fails or refuses to begin operating at the Approved Pool(s) on or before the Projected Opening Date;

(b) Franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of Franchisor’s Operations Manual, Confidential Information or Trade Secrets of Franchisor;

(c) Franchisee voluntarily abandons the Water Babies Business for a period of five consecutive days, or any shorter period that indicates an intent by Franchisee to discontinue operation of the Water Babies Business, unless such abandonment is due to fire, flood, earthquake or other similar causes beyond Franchisee’s control and not related to the availability of funds to Franchisee;

(d) Franchisee becomes insolvent or is adjudicated a bankrupt; or any action is taken by Franchisee, or by others against Franchisee under any insolvency, bankruptcy or reorganization act, or if Franchisee makes an assignment for the benefit of creditors, or a receiver is appointed for Franchisee;

(e) Any material judgment (or several judgments which in the aggregate are material) is obtained against Franchisee and remains unsatisfied or of record for 30 days or longer (unless a supersedeas or other appeal bond has been filed); or if execution is levied against Franchisee's Water Babies Business or any of the property used in the operation of the Water Babies Business and is not discharged within five days; or if the real or personal property of Franchisee's Water Babies Business shall be sold after levy thereupon by any sheriff, marshal or constable;

(f) Franchisee, the Aquatics Director, or any owner of greater than 10% of the Franchisee entity is charged or convicted of a any felony charge, or a crime involving moral turpitude, or a felony or misdemeanor of any type against a child, or any crime or offense that is reasonably likely, in the sole opinion of Franchisor, to materially and unfavorably affect the System, Marks, goodwill or reputation thereof;

(g) Franchisee fails to pay any amounts due Franchisor or Affiliates within 10 days after receiving notice that such fees or amounts are overdue;

(h) Franchisee misuses or fails to follow Franchisor's directions and guidelines concerning use of the Marks and fails to correct the misuse or failure within 10 days after notification from Franchisor;

(i) Franchisee has received two notices of default with respect to Franchisee's obligations hereunder from Franchisor within a 12 month period, regardless of whether the defaults were cured by Franchisee;

(j) Franchisee sells, transfers or otherwise assigns the Water Babies Business, an interest in the Water Babies Business or Franchisee entity, this Agreement, or a substantial portion of the assets of the Water Babies Business owned by Franchisee without complying with the provisions of Section 15;

(k) Franchisee submits on two or more occasions during the Term a report, financial statement, tax return, schedule or other information or supporting record which understates its Gross Revenue by more than 2%, unless Franchisee demonstrates that such understatement resulted from inadvertent error;

(l) Franchisee fails, or refuses, to submit any report, financial statement, tax return, schedule or other information or supporting records required herein, or submits such reports more than five days late on two or more occasions during the Term or any Successor Term unless due to circumstances beyond the control of Franchisee;

(m) Franchisee sells or offers for sale any unauthorized merchandise, product or service, engages in any unauthorized business or practice or sells any unauthorized product or service under the Marks or under a name or mark which is confusingly similar to the Marks;

(n) Franchisee contests in any court or proceeding the validity of or Franchisor's ownership of the Marks or copyrighted materials;

(o) Franchisee is a corporation, limited liability company, partnership or other business entity and any action is taken which purports to merge, consolidate, dissolve or liquidate such entity without Franchisor's prior written consent;

(p) Franchisee or its Aquatics Director fails to successfully complete Franchisor's training or re-training course(s);

(q) Franchisee receives from Franchisor during the Term and any Successor Term three or more notices of default regardless whether such notices of default relate to the same or different defaults, or whether such defaults have been remedied by Franchisee; or

(r) Any misrepresentation under Section 1.9 or any violation of Anti-Terrorism Laws by Franchisee, its Aquatics Director, its owners, officers, directors, managers, members, partners, agents or employees.

17.2 Franchisor shall have the right, at its option, to (i) suspend performance of certain or all of its services to Franchisee during the time period Franchisee is in default of this Agreement; (ii) reduce the size of Franchisee's Territory, as determined by Franchisor in Franchisor's discretion, or (iii) terminate this Agreement (subject to any state laws to the contrary, where state law shall prevail), effective upon 30 days written notice to Franchisee, if Franchisee breaches any other provision of this Agreement and fails to cure the default during such 30 day period. In that event, this Agreement will terminate without further notice to Franchisee, effective upon expiration of the 30-day period. Defaults shall include, but not be limited to, the following:

(a) Franchisee fails to maintain the then-current operating procedures and standards established by Franchisor as set forth herein or in the Operations Manual or otherwise communicated to Franchisee;

(b) Franchisee fails, refuses or neglects to obtain Franchisor's prior written approval or consent as required by this Agreement;

(c) Franchisee fails or refuses to comply with the then-current requirements of the Operations Manual;

(d) Franchisee, or any partnership, joint venture, limited liability company, corporation or other business entity in which Franchisee has a controlling equity interest or which has a controlling interest in Franchisee, defaults under any term of the Lease of the Approved Pool(s) or any other premises used by Franchisee to operate the Water Babies Business, any other franchise agreement with Franchisor or any other agreement material to the Water Babies Business and such default is not cured within the time specified in such Lease, other franchise agreement or other agreement;

(e) Franchisee fails, refuses or neglects to submit a statement of monthly revenues accompanying the Royalty Fee or Brand Fund Fees or any other report required under the Agreement when due;

(f) Franchisee fails, refuses or neglects to accurately report Gross Revenues, sales information or other information required by Franchisor to be reported; or

(g) Franchisee fails to comply with any other provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor and does not correct such

failure within 10 days (or 30 days if this is the first non-compliance or breach) after written notice from Franchisor (which shall describe the action that Franchisee must take) is delivered to Franchisee.

17.3 Notwithstanding the foregoing, if the breach is curable, but is of a nature which cannot be reasonably cured within such 30 day period and Franchisee has commenced and is continuing to make good faith efforts to cure the breach during such 30 day period, Franchisee shall be given an additional reasonable period of time to cure the same, but in no event longer than 30 additional days.

17.4 A termination of this Agreement by Franchisee shall be deemed to be a termination without cause, and a breach hereof, by Franchisee. Franchisee agrees that it shall not, on grounds of an alleged nonperformance by Franchisor of any of its obligations or any other reason, withhold payment of any amount due to Franchisor whatsoever or set off amounts owed to Franchisor under this Agreement, against any monies owed to Franchisee, which right of set off is hereby expressly waived by Franchisee.

17.5 No endorsement or statement on any check or payment of any sum less than the full sum due to Franchisor shall be construed as an acknowledgment of payment in full or an accord and satisfaction, and Franchisor may accept and cash such check or payment without prejudice to its right to recover the balance due or pursue any other remedy provided herein or by law. Franchisor may apply any payments made by Franchisee against any past due indebtedness of Franchisee as Franchisor may see fit. Franchisor may set off against any payment due to Franchisee hereunder any outstanding debts of Franchisee to Franchisor, and may, at Franchisor's option, pay Franchisee's trade creditors out of any sum otherwise due to Franchisee.

17.6 Franchisee agrees to pay within five days of the effective date of termination or expiration of the Franchise all amounts owed to Franchisor, the Lessor of the Approved Pool(s) or other premises used in the Water Babies Business (if applicable) and Franchisee's trade and other creditors which are then unpaid.

17.7 All royalty and advertising contributions, all amounts due for goods purchased by Franchisee from time to time from Franchisor or its Affiliates, and any other amounts owed to Franchisor or its Affiliates by Franchisee pursuant to this Agreement or any other agreement shall bear interest after the due date at the rate of 18% per annum or the highest rate permitted by law, whichever is lower, both before and after default, with interest on overdue interest at the aforesaid rate. The acceptance of any interest payment shall not be construed as a waiver by Franchisor of its rights in respect of the default giving rise to such payment and shall be without prejudice to Franchisor's right to terminate this Agreement in respect of such default.

17.8 Should Franchisee, or any partnership or joint venture or corporation in which Franchisee has a controlling equity interest, be a franchisee pursuant to another Franchise Agreement with Franchisor, respecting another franchised Water Babies Business using the Marks, a default under this Agreement shall constitute a default under such other Franchise Agreement and vice versa, with like remedies available to Franchisor. Should such other Franchise Agreement cease to be valid, binding and in full force and effect for any reason then Franchisor may, at its option, terminate this Agreement and this Agreement shall be forthwith surrendered by Franchisee and terminated, and likewise should this Agreement cease to be valid binding and in full force and effect for any, reason, Franchisor may at its option terminate the other Franchise Agreement and the other Franchise Agreement shall be forthwith surrendered and terminated. In the event that there is more than one Franchisee, or if Franchisee should consist of more than one legal entity, Franchisee's liability hereunder shall be both joint and several. A breach hereof by one such entity or Franchisee shall be deemed to be a breach by both or all.

17.9 Franchisee agrees that upon termination or expiration of this Agreement, it shall take the following action:

(a) Immediately discontinue the use of all Marks, signs, structures, forms of advertising, telephone listings, facsimile numbers, e-mail addresses, the Operations Manual, and all materials, Products and Services of any kind which are identified or associated with the System and return all these materials and Products to Franchisor;

(b) Immediately turn over to Franchisor all materials, including the Operations Manual, customer lists, records, files, instructions, brochures, advertising materials, agreements, Confidential Information, Trade Secrets and any and all other materials provided by Franchisor to Franchisee or created by a third party for Franchisee relating to the operation of the Water Babies Business (all of which are acknowledged to be Franchisor's property). Under no circumstances shall Franchisee retain any printed or electronic copies of the Operations Manual, Confidential Information or Trade Secrets or portions thereof upon expiration or termination of this Agreement;

(c) Franchisee hereby acknowledges that all telephone numbers, facsimile numbers and Internet addresses used in the operation of the Water Babies Business constitute assets of Franchisor, and upon termination or expiration of this Agreement, Franchisee shall take such action within five days to cancel or assign to Franchisor or its designee as determined by Franchisor, all Franchisee's right, title and interest in and to Franchisee's telephone numbers, facsimile numbers and Internet addresses and shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee's right to use any telephone number, facsimile number, and Internet and e-mail addresses, and any regular, classified or other telephone directory listing associated with the Marks and to authorize a transfer of same to or at the direction of Franchisor. Franchisee acknowledges as between Franchisor and Franchisee, Franchisor has the sole rights to, and interest in, all telephone numbers, facsimile numbers, directory listings and Internet addresses used by Franchisee to promote the Water Babies Business and/or associated with the Marks. Franchisee hereby irrevocably appoints Franchisor, with full power of substitution, as its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing. **Attachment E** evidences such appointment;

(d) Immediately take all steps necessary to amend or terminate any registration or filing of any d/b/a or business name or fictitious name or any other registration or filing containing the Marks so as to delete the Marks and all references to anything associated with the System;

(e) Franchisee shall, at Franchisor's option, immediately assign to Franchisor any interest in which Franchisee has in any Lease for the Approved Pool(s). In the event Franchisor does not elect to exercise its option to acquire the Lease for the Approved Pool(s), then, to the extent, if any, Franchisee is permitted to conduct any business at the Approved Pool(s) pursuant to the terms of this Agreement or a separate written agreement with Franchisor, and acknowledging the distinctiveness of Franchisor's interior design and décor, Franchisee shall make such modifications or alterations to the premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of such premises from that of other Approved Pool(s) operating under the System and Marks, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose. In the event Franchisee fails or refuses to comply with the requirements of this Section 17.9(e), Franchisor shall have the right to enter the Approved Pool(s) without being guilty of trespass or

any other tort, for the purposes of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand;

(f) Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Marks, and further agrees not to use any designation of origin, description, representation, trademark, or trade name which suggests or represents a past or present association or connection with Franchisor, the System, or the Marks;

(g) Provide Franchisor the option to purchase as set forth in Section 16; and

(h) Comply with the provisions of Sections 10.1(c) and (e) and Section 14.

17.10 If, within 30 days after termination or expiration of this Agreement by Franchisor, Franchisee fails to remove all displays of the Marks from the Water Babies Business, which are identified or associated with the System, Franchisor may enter the Water Babies Business to effect removal. In this event, Franchisor will not be charged with trespass nor be accountable or required to pay for any displays or materials.

17.11 If, within 30 days after termination or expiration of this Agreement Franchisee has not taken all steps necessary to amend or terminate any registration or filing of any business name or d/b/a or any other registration or filing containing the Marks, Franchisee hereby irrevocably appoints Franchisor as Franchisee's true and lawful attorney for Franchisee, and in Franchisee's name, place and stead and on Franchisee's behalf, to take action as may be necessary to amend or terminate all registrations and filings, this appointment being coupled with an interest to enable Franchisor to protect the System.

17.12 Termination or expiration of this Agreement shall not affect, modify or discharge any claims, rights, causes of action or remedies which Franchisor may have against Franchisee, whether such claims or rights arise before or after termination or expiration.

17.13 All obligations of the parties hereto which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect notwithstanding such expiration or termination. In particular, but without limiting the generality of the foregoing, the provisions of Articles 10, 12, 14 and 16, hereof shall survive termination or expiration of this Agreement.

17.14 In the event that this Agreement expires or is terminated for any reason whatsoever and Franchisor is the lender under any loan agreement ("**Loan**") or the holder of any promissory note ("**Note**") or the holder of any personal property, security interest, chattel mortgage, debenture or mortgage of any nature whatsoever ("**Security Interest**") from Franchisee concerning assets used at any time by Franchisee in the Water Babies Business or which are situated on the Water Babies Business premises, such Loan, Note or Security Interest shall, upon the effective date of termination or expiration, immediately become fully due and payable as to all principal and interest so loaned and secured.

17.15 If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder, the prior notice or other action required by such law or rule shall be substituted for the notice requirements hereof. Such modifications to this Agreement shall be effective only in such jurisdiction and shall be enforced as originally made and entered into in all other jurisdictions.

17.16 In the event of termination of the Agreement for any reason whatsoever the parties shall accept the default remedies contained herein as full and final satisfaction of all claims. The parties waive, to the extent permitted by law, any claim against the other for punitive or exemplary damages; except for such punitive or exemplary damages for violation of the Lanham Act, trademark infringement or dilution, unauthorized dissemination of the Confidential Information or Trade Secrets or arising under the indemnification set out in Section 12.

17.17 The rights of the parties hereto are cumulative and no exercise or enforcement by a party of any right or remedy hereunder shall preclude the exercise or enforcement by that party of any other right or remedy herein contained, or to which it is entitled by law.

17.18 Nothing herein shall prevent Franchisor or Franchisee from seeking injunctive relief to prevent irreparable harm, in addition to all other remedies. If it is necessary for Franchisor to seek preliminary or permanent injunctive relief, Franchisor may do so without a bond.

17.19 THE PARTIES ACKNOWLEDGE THAT IN THE EVENT THAT THE TERMS OF THIS AGREEMENT REGARDING TERMINATION OR EXPIRATION ARE INCONSISTENT WITH APPLICABLE STATE OR FEDERAL LAW, SUCH LAW SHALL GOVERN FRANCHISEE'S RIGHTS REGARDING TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## **18. CONDEMNATION AND CASUALTY**

18.1 Franchisee shall promptly advise Franchisor upon Franchisee's receipt of a notice of default or termination under Franchisee's Lease or mortgage, and shall promptly provide Franchisor a copy of the notice. Franchisee shall also give Franchisor notice of any proposed taking of the Approved Pool(s) or any portion thereof through the exercise of the power of eminent domain at the earliest possible time. If the Approved Pool(s) or a substantial part thereof is to be taken or closed, the Water Babies Business may be relocated within the Territory specified in **Attachment A**, or elsewhere with Franchisor's written approval in accordance with Franchisor's relocation procedures set forth in the Operations Manual. If Franchisee opens a new business as provided above at another location in accordance with Franchisor's standards and general specifications within one year of the closing of the old Approved Pool(s), the new Water Babies Business shall be deemed to be the Water Babies Business licensed under this Agreement. If a condemnation, Lease termination or mortgage default takes place and a new Water Babies Business does not, for any reason, become the Water Babies Business as provided in this Section 18.1, then the License shall terminate upon notice by Franchisor.

18.2 The Term will not be extended by any interruption in the Water Babies Business's operations, except for an act of God that results in the Water Babies Business being closed not less than 60 days nor more than 180 days. Franchisee must apply for any extension within thirty 30 days following the reopening of the Water Babies Business. No event during the Term will excuse Franchisee from paying Royalty Fees or Brand Fund Fees as provided in this Agreement.

## **19. NOTICES**

19.1 Any notice of default under this Agreement shall be delivered personally or by courier to the appropriate location. Any other notice, request, demand, approval, consent or other communication which the parties hereto may be required or permitted to be given hereunder shall be in writing and may be given to the party for whom it is intended by personal delivery, facsimile transmission or delivering it to such party by mailing it by prepaid registered mail, or by recognized overnight delivery or courier services, in the case of Franchisor to:

**To Franchisor:**

WATER BABIES US FRANCHISE LLC  
115 E Pennsylvania Ave, Suite 16,  
Southern Pines, NC 28387

with a copy (which shall not constitute Notice) to:

Kevin Hein  
Akerman LLP  
1900 Sixteenth Street, Suite 950  
Denver, CO 80202

**To Franchisee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax (\_\_\_\_) \_\_\_\_\_

with a copy (which shall not constitute Notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Fax (\_\_\_\_) \_\_\_\_\_

Any such notice or other document delivered personally or by facsimile transmission shall be deemed to have been received by and given to the addressee on the day of delivery and any such other notice or other document mailed as aforesaid, shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing, and any delivery made by recognized overnight delivery or courier services shall be deemed to be delivered the next business day. Any party may at any time give notice in writing to any other party of any change of address.

**20. DISPUTE RESOLUTION**

20.1 The parties will first attempt to resolve any dispute relating to or arising out of this Agreement by negotiation. Franchisor will provide a procedure for internal dispute resolution as set forth in the Operations Manual, and the parties acknowledge and agree that this procedure may be revised periodically in Franchisor’s discretion.

20.2 To protect from violations that would cause immediate loss and damages or irreparable harm, Franchisor and Franchisee shall each have the right to seek from a state or federal court located in North Carolina as more fully set forth in Section 20.1:

- (a) injunctive relief and any related incidental damages;
- (b) an action for disputes or claims related to or based on the Marks;

- (c) enforcement of a covenant not to compete; and
- (d) issues related to the disclosure of or misuse of Confidential Information or Trade Secrets.

**20.3 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY CONTROVERSY OR DISPUTE ARISING OUT OF, OR RELATING TO THE FRANCHISE OR THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, ANY CLAIM BY FRANCHISEE OR ANY PERSON IN PRIVITY WITH OR CLAIMING THROUGH, ON BEHALF OF OR IN THE RIGHT OF FRANCHISEE, CONCERNING THE ENTRY INTO, PERFORMANCE UNDER, OR TERMINATION OF, THIS AGREEMENT OR ANY OTHER AGREEMENT ENTERED INTO BY FRANCHISOR, OR ITS SUBSIDIARIES OR AFFILIATES, AND FRANCHISEE; ANY CLAIM AGAINST A PAST OR PRESENT EMPLOYEE, OFFICER, DIRECTOR, MEMBER, SHAREHOLDER OR AGENT OF FRANCHISOR; ANY CLAIM OF BREACH OF THIS AGREEMENT; AND ANY CLAIMS ARISING UNDER STATE OR FEDERAL LAWS, SHALL BE SUBMITTED TO FINAL AND BINDING ARBITRATION AS THE SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH CONTROVERSY OR DISPUTE. "PERSONS IN PRIVITY" WITH OR CLAIMING THROUGH, ON BEHALF OF OR IN THE RIGHT OF FRANCHISEE INCLUDE BUT ARE NOT LIMITED TO, SPOUSES AND OTHER FAMILY MEMBERS, DOMESTIC PARTNERS, HEIRS, EXECUTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS. SUBJECT TO THIS SECTION, THE RIGHT AND DUTY OF THE PARTIES TO THIS AGREEMENT TO RESOLVE ANY DISPUTES BY ARBITRATION SHALL BE GOVERNED EXCLUSIVELY BY THE FEDERAL ARBITRATION ACT, AS AMENDED, AND ARBITRATION SHALL TAKE PLACE ACCORDING TO THE COMMERCIAL ARBITRATION RULES (IN EFFECT AS OF THE DATE THE DEMAND FOR ARBITRATION IS FILED) OF, AND UNDER THE AUSPICES OF, THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATION, WHICH SHALL BE HELD BEFORE A SINGLE ARBITRATOR, SHALL BE HELD IN THE SOUTHERN PINES, NORTH CAROLINA OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION, OR AT SUCH OTHER LOCATION AS SHALL BE MUTUALLY AGREED UPON BY THE PARTIES IN WRITING. HOWEVER, ARBITRATION WILL NOT BE REQUIRED TO BE USED FOR ANY DISPUTE WHICH INVOLVES THE TYPE OF DISPUTES IDENTIFIED IN SECTION 20.2. THE PARTIES EXPRESSLY CONSENT TO PERSONAL JURISDICTION IN THE STATE OF NORTH CAROLINA AND AGREE THAT SUCH COURT (S) WILL HAVE EXCLUSIVE JURISDICTION OVER ANY DETERMINATION OF THE "PREVAILING PARTY" IN ACCORDANCE WITH SUCH ISSUES NOT SUBJECT TO ARBITRATION.**

20.4 A single arbitrator shall be selected by the parties from a panel of neutral arbitrators provided by the American Arbitration Association and shall be chosen by the striking method. Subject to the provisions contained in Section 21.3, the parties each shall bear all of their own costs of arbitration; however, the fees of the arbitrator shall be divided equally between the parties. The arbitrator shall have no authority to amend or modify the terms of this Agreement. The award or decision by the arbitrator shall be final and binding on the parties and may be enforced by judgment or order of a court having subject matter jurisdiction in the state where the arbitration took place. The parties consent to the exercise of personal jurisdiction over them by such court and to the propriety of venue of such court for the purpose of carrying out this provision; and they waive any objections that they would otherwise have concerning such matters.

20.5 Parties to arbitration under this agreement shall not include, by consolidation, joinder or in any other manner, any person other than Franchisee and any person in privity with or claiming through, in the right of or on behalf of Franchisee or Franchisor, unless both parties consent in writing. 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 Franchisor and Franchisee or any Person in Privity with or claiming through, in the right of or on behalf of Franchisee or Franchisor.

20.6 The parties agree that any arbitration arising out of a dispute relating to this Agreement is only a matter between Franchisor and Franchisee and no other franchisees, multi-unit developers or area developers. Franchisee agrees not to join or attempt to join other franchisees, multi-unit developers, area developers, or other third-parties in any arbitration proceeding and to refrain from participating in any “class action” litigation or arbitration proposed or asserted by one or more other franchisees.

20.7 Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or arbitration proceeding brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms of this Agreement must be brought or instituted within a period of two years from the date of discovery of the conduct or event that forms the basis of the legal action or proceeding.

## 21. MISCELLANEOUS

21.1 Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other applicable federal law, this Agreement shall be interpreted under the laws of the State of North Carolina, and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of the State of North Carolina, which laws shall prevail in the event of any conflict of law; provided, however, the parties expressly agree that this Agreement is not intended to confer on any franchisee that is not a resident of the State of North Carolina the benefit of any North Carolina law providing specific protection to franchisees residing or operating in the State of North Carolina. **FRANCHISEE AND FRANCHISOR HAVE NEGOTIATED REGARDING A FORUM IN WHICH TO RESOLVE ANY DISPUTES THAT MAY ARISE BETWEEN THEM AND HAVE AGREED TO SELECT A FORUM IN ORDER TO PROMOTE STABILITY IN THEIR RELATIONSHIP. THEREFORE, IF A CLAIM IS ASSERTED IN ANY LEGAL PROCEEDING INVOLVING FRANCHISEE, ITS OFFICERS DIRECTORS, MANAGERS, MEMBERS, OR PARTNERS AND FRANCHISOR, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MANAGERS, MEMBERS, EMPLOYEES OR AFFILIATES OF BOTH PARTIES AGREE THAT THE EXCLUSIVE VENUE FOR DISPUTES BETWEEN THEM SHALL BE IN THE STATE OF NORTH CAROLINA AND EACH WAIVE ANY OBJECTION EITHER MAY HAVE TO THE PERSONAL JURISDICTION OF OR VENUE IN THE STATE OF NORTH CAROLINA. FRANCHISEE IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY OBJECTION FRANCHISEE MAY HAVE TO EITHER THE JURISDICTION OR VENUE IN SUCH COURT. FRANCHISOR AND FRANCHISEE FURTHER WAIVE EACH OF THEIR RIGHTS TO A JURY TRIAL FOR ANY MATTER THAT IS TRIED BEFORE A COURT OF LAW.**

21.2 All provisions of this Agreement are severable and this Agreement shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein; all partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable.

21.3 If either party institutes a legal proceeding, including court proceedings or arbitration, and prevails entirely or in part in any action at law or in equity against the other party based entirely or in part on the terms of this Agreement, the prevailing party shall be entitled to recover from the losing party,

in addition to any judgment, reasonable attorneys' fees, court costs and all of the prevailing party's expenses in connection with any action at law.

21.4 No failure, forbearance, neglect or delay of any kind on the part of Franchisor in connection with the enforcement or exercise of any rights under this Agreement shall affect or diminish Franchisor's right to strictly enforce and take full benefit of each provision of this Agreement at any time, whether at law for damages, in equity for injunctive relief or specific performance, or otherwise. No custom, usage or practice with regard to this Agreement by Franchisee or Franchisor's other franchisees shall preclude the strict enforcement of this Agreement in accordance with its literal terms. No waiver by Franchisor of performance of any provision of this Agreement shall constitute or be implied as a waiver of Franchisor's right to enforce that provision at any future time. No interpretation, change, termination or waiver of any provision of this Agreement, and no consent or approval under this Agreement, shall be binding upon Franchisee or Franchisor or effective unless in writing signed by Franchisee and Franchisor's CEO, President or Vice President, except that a waiver need be signed only by the party waiving.

21.5 This Agreement, together with the Franchise Disclosure Document, Operations Manual, any written related agreements, all Exhibits, Attachments, and the State Addenda attached to the Disclosure Document as **Exhibit F**, constitutes the entire understanding and agreement between Franchisee and Franchisor and supersedes all prior understandings, whether oral or written, pertaining to this Agreement, the License, the System or the Water Babies Business. Nothing in the Franchise Agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document.

21.6 The headings of the sections hereof are for convenience only and do not define, limit or construe the contents of the sections of such Sections or other Sections. The term "**Franchisee**" as used herein is applicable to one or more persons, a corporation, limited liability company, a partnership or other business entity, as the case may be, and the singular usage (where applicable) includes the plural and the masculine and neuter usages (where applicable) include the other and the feminine. The term "**Lease**" shall include a sublease, and a renewal or extension of a lease or sublease.

21.7 When calculating the date upon which or the time within which any act is to be done pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded; if the last day of such period is a non-business day, the period in question shall end on the next business day. Time shall be of the essence of this Agreement and of every part thereof.

21.8 Neither party hereto shall be liable for any loss or damage due to any delay in the due performance of the terms hereof (except for the payment of money) by reason of strikes, lockouts and other labor relations, fires, riots, wars, embargoes and civil commotion, or acts of God ("**Force Majeure Event**"). Any such delay shall extend performance only so long as such event is in progress except such Force Majeure Event will not affect or change Franchisee's obligation to pay Royalty Fees and Brand Fund Fees when due. Notwithstanding the foregoing, if there is a Force Majeure Event, Franchisor, may in its sole discretion, elect to waive the Royalty Fees and Brand Fund Fees during the period of delay caused by the Force Majeure Event or such shorter period.

21.9 Franchisee shall execute and deliver such further instruments, contracts, forms and other documents, and shall perform such further acts, as may be necessary or desirable, to carry out, complete and perform all terms, covenants and obligations herein contained. Franchisee hereby irrevocably appoints Franchisor as his attorney, which appointment is coupled with an interest, and hereby empowers it to execute such instruments regarding the Marks for and in Franchisee's name in order to give full

effect to Sections 10, 12, 15, and 17 of this Agreement. Franchisee hereby declares that the power of attorney herein granted may be exercised during any subsequent legal incapacity on its part.

21.10 This Agreement shall be binding upon, and subject to Section 15 hereof, shall inure to the benefit of, Franchisor's and Franchisee's successors and permitted assigns.

21.11 This Agreement may only be modified or amended by a written document executed by Franchisee and Franchisor. Franchisee acknowledges that Franchisor may modify its standards and specifications and operating and marketing techniques set forth in the Operations Manual unilaterally under any conditions and to the extent in which Franchisor, in its sole discretion, deems necessary to protect, promote, or improve the Marks, and the quality of the System, but under no circumstances will such modifications be made arbitrarily without such determination. Notwithstanding anything herein to the contrary, Franchisor shall have the right unilaterally to reduce the scope of any covenants of Franchisee contained in this Agreement upon notice to Franchisee, whereupon Franchisee shall comply therewith as so modified.

21.12 From time to time, Franchisor shall have the right to delegate the performance of any portion or all of its obligations and duties hereunder to third parties, whether the same are agents of Franchisor or independent contractors which Franchisor has contracted with to provide such services. Franchisee agrees in advance to any such delegation by Franchisor of any portion or all of its obligations and duties hereunder.

## **22. ACKNOWLEDGEMENT**

BEFORE SIGNING THIS AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL.

FRANCHISEE ACKNOWLEDGES AND AGREES THAT:

1. NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS AGREEMENT, IS BINDING ON FRANCHISOR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT; AND

2. FRANCHISEE HAD A COMPLETE COPY OF THIS AGREEMENT, WITH ALL BLANKS FILLED IN, IN ITS POSSESSION FOR A PERIOD OF TIME NOT LESS THAN SEVEN DAYS, DURING WHICH TIME FRANCHISEE HAD THE OPPORTUNITY TO SUBMIT THE SAME FOR PROFESSIONAL REVIEW AND ADVICE OF FRANCHISEE'S CHOOSING PRIOR TO FREELY EXECUTING THIS AGREEMENT. FRANCHISEE ACKNOWLEDGES THAT IT HAS HAD AMPLE TIME AND OPPORTUNITY TO INVESTIGATE FRANCHISOR'S WATER BABIES BUSINESS AND TO CONSULT WITH LEGAL AND FINANCIAL ADVISORS OF ITS CHOICE; AND

3. FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE SYSTEM AND RECOGNIZES THAT THE WATER BABIES BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT AND ITS SUCCESS INVOLVES SUBSTANTIAL BUSINESS RISK AND WILL BE LARGELY DEPENDENT UPON THE ABILITY OF FRANCHISEE AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE WATER BABIES BUSINESS. FRANCHISEE HEREBY ASSUMES THE RESPONSIBILITY FOR ITS SUCCESS OR FAILURE OF THE WATER BABIES BUSINESS VENTURE; AND

4. FRANCHISOR HAS NOT PROVIDED ANY STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION OF ACTUAL, AVERAGE, PROJECTED, FORECASTED OR POTENTIAL PURCHASES, SALE, COST, EARNINGS, INCOME OR PROFITS TO FRANCHISEE OTHER THAN STATED IN THE FRANCHISE DISCLOSURE DOCUMENT; AND

5. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE ACKNOWLEDGES THAT IT HAS NOT RECEIVED, ANY ASSURANCE, WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS, EARNINGS OR SUCCESS OF THE WATER BABIES BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT.

*[Signatures on Following Page]*

This entire Agreement, including corrections, changes, and all attachments and addenda, will only be binding upon Franchisor when executed or initialed by Franchisor's authorized representative.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above set forth.

**WATER BABIES US FRANCHISE LLC**

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

Date: \_\_\_\_\_

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

**FRANCHISEE:**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Individually

OR:  
(if a corporation or partnership)

\_\_\_\_\_

Company Name

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

Date: \_\_\_\_\_

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

**ATTACHMENT A  
TO FRANCHISE AGREEMENT  
TERRITORY, INITIAL FRANCHISE FEE, AND TRAINING FEE**

**1. Territory.**

The Territory set forth in Section 4.1 of the Agreement shall be:

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**2. Initial Franchise Fee.** Franchisee shall pay to Franchisor an Initial Franchise Fee equal to

- Fifty Five Thousand Dollars (\$55,000.00)
- Forty Four Thousand Dollars (\$44,000.00)
- Thirty Five Thousand Dollars (\$35,000.00)
- Forty Four Thousand Dollars, Previously paid at the time of signing the Multi-Unit Development Agreement (\$44,000.00)
- Thirty Five Thousand Dollars, previously paid at the time of signing the Multi-Unit Development Agreement (\$35,000.00)

plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement.

**3. Training Fee.** Franchisee shall pay to Franchisor a Training Fee of Six Thousand Dollars (\$6,000.00) plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement.

**4. Technology Fee (first three months).** Franchisee shall pay to Franchisor a Technology Fee of One Thousand Five Hundred Dollars (\$1,500.00) plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement.

**5. Right Start Franchise Kit.** Franchisee shall pay to Franchisor Ten Thousand Dollars (\$10,000.00) plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement for the Right Start Franchise Kit.

**6. Right Start Digital Marketing.** Franchisee shall pay to Franchisor Nine Thousand One Hundred and Fifty Dollars (\$9,150.00) plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement for the Right Start Digital Marketing.

**7. Opening Retail Kit.** Franchisee shall pay to Franchisor Two Thousand Three Hundred and Thirty-Five Dollars (\$2,335.00) plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement for the Opening Retail Kit.

**8. Projected Opening Date.** Franchisee anticipates that Franchisee will open the Approved Pool(s) on or about \_\_\_\_\_.

*[Signatures are on the following page]*

**FRANCHISOR:**

**WATER BABIES US FRANCHISE LLC**

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

Name: \_\_\_\_\_

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

**FRANCHISEE:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**ATTACHMENT B  
TO FRANCHISE AGREEMENT**

**GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution of the Franchise Agreement executed between \_\_\_\_\_ (“**Franchisee**”) and WATER BABIES US FRANCHISE LLC (“**Franchisor**”) on \_\_\_\_\_, 20\_\_ (“**Agreement**”) each of the undersigned hereby personally and unconditionally:

1. Guarantees to Franchisor and its successors and assigns, for the Term, including all Interim Periods and Successor Terms thereof, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and
2. Agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, including but not limited to, the terms of Section 14.

**Each of the undersigned waives the following:**

1. Acceptance and notice of acceptance by Franchisor of the foregoing undertaking;
2. Notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
3. Protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;
4. Any right he or she may have to require that any action be brought against Franchisee or any other person as a condition of liability; and
5. Any and all other notices and legal or equitable defenses to which he or she may be entitled.

**Each of the undersigned consents and agrees that:**

1. His or her direct and immediate liability under this guaranty shall be joint and several;
2. He or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;
3. Such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and
4. Such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the Term, including renewals thereof.

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature effective on the same day and year as the Agreement was executed.

**WITNESS:**

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**GUARANTOR(S):**

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Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

Franchisee, and its shareholders, members, or partners, as applicable, jointly and severally acknowledge that they have carefully read this Agreement and all other related documents to be executed concurrently or in conjunction with the execution hereof, that they have obtained the advice of counsel in connection with entering into this Agreement, that they understand the nature of this Agreement, and that they intend to comply herewith and be bound hereby.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the first date set forth above.

ACCEPTED on this \_\_ day of \_\_\_\_\_, 20\_\_.

**FRANCHISOR:**

**WATER BABIES US FRANCHISE LLC**

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

Its \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_

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

Its \_\_\_\_\_

\_\_\_\_\_  
an Individual  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT C  
TO FRANCHISE AGREEMENT  
STATEMENT OF OWNERSHIP**

**Franchisee:** \_\_\_\_\_

**Trade Name** (if different from above): \_\_\_\_\_

**Form of Ownership  
(Check One)**

\_\_\_ **Individual** \_\_\_ **Partnership** \_\_\_ **Corporation** \_\_\_ **Limited Liability Company**

If a **Partnership**, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a **Corporation**, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

If a **Limited Liability Company**, give the state and date of formation, the name and address of the manager(s), and list the names and addresses of every member and the percentage of membership interest held by each member.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Franchisee acknowledges that this Statement of Ownership applies to the Water Babies Business authorized under the Franchise Agreement.

Use additional sheets if necessary. Any and all changes to the above information must be reported to Franchisor in writing.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

**ATTACHMENT D  
TO FRANCHISE AGREEMENT**

**BY AND BETWEEN WATER BABIES US FRANCHISE LLC  
AND**

\_\_\_\_\_ (“FRANCHISEE”)

**EFT AUTHORIZATION AGREEMENT  
(DIRECT DEBITS)**

The undersigned depositor (“**Depositor**”) hereby authorizes WATER BABIES US FRANCHISE LLC (“**Company**”) to initiate debit entries and/or credit correction entries to the undersigned’s checking and/or savings account(s) indicated below and the depository designated below (“**Depository**”) to debit such account pursuant to Company’s instructions.

Depository	Branch
Address	City, State, Zip Code
Bank Transit/ABA Number	Account Number

This authority is to remain in full force and effect until Depository has received joint written notification from Company and Depositor of the Depositor’s termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity on which to act. If an erroneous debit entry is initiated to Depositor’s account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if (a) within fifteen (15) calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or (b) forty-five (45) days after posting, whichever occurs first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws.

<b>Depositor</b>	<b>Depository</b>
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

**ATTACHMENT E  
TO FRANCHISE AGREEMENT**

**COLLATERAL ASSIGNMENT OF TELEPHONE NUMBERS AND  
TELEPHONE LISTINGS AND INTERNET ADDRESSES**

THIS ASSIGNMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in accordance with the terms of the Water Babies US Franchise LLC Franchise Agreement (“**Franchise Agreement**”) between \_\_\_\_\_ (“**Franchisee**”) and WATER BABIES US FRANCHISE LLC (“**Franchisor**”), executed concurrently with this Assignment, under which Franchisor granted Franchisee the right to own and operate a Water Babies Business (“**Franchise Business**”) located at \_\_\_\_\_.

FOR VALUE RECEIVED, Franchisee hereby assigns to Franchisor (1) those certain telephone numbers and regular, classified or other telephone directory listings (collectively, the “**Telephone Numbers and Listings**”) and (2) those certain Internet website addresses (“**URLs**”) associated with Franchisor’s trade and service marks and used from time to time in connection with the operation of the Franchise Business at the address provided above. This Assignment is for collateral purposes only and, except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment, unless Franchisor shall notify the telephone company and/or the listing agencies with which Franchisee has placed telephone directory listings (all such entities are collectively referred to herein as “**Telephone Company**”) and/or Franchisee’s Internet service provider (“**ISP**”) to effectuate the assignment pursuant to the terms hereof.

Upon termination or expiration of the Franchise Agreement (without extension), Franchisor shall have the right and is hereby empowered to effectuate the assignment of the Telephone Numbers and Listings and the URLs, and, in such event, Franchisee shall have no further right, title or interest in the Telephone Numbers and Listings and the URLs, and shall remain liable to the Telephone Company and the ISP for all past due fees owing to the Telephone Company and the ISP on or before the effective date of the assignment hereunder.

Franchisee agrees and acknowledges that as between Franchisor and Franchisee, upon termination or expiration of the Franchise Agreement, Franchisor shall have the sole right to and interest in the Telephone Numbers and Listings and the URLs, and Franchisee irrevocably appoints Franchisor as Franchisee’s true and lawful attorney-in-fact, which appointment is coupled with an interest, to direct the Telephone Company and the ISP to assign same to Franchisor, and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Franchisee shall immediately notify the Telephone Company and the ISP to assign the Telephone Numbers and Listings and the URLs to Franchisor. If Franchisee fails to promptly direct the Telephone Company and the ISP to assign the Telephone Numbers and Listings and the URLs to Franchisor, Franchisor shall direct the Telephone Company and the ISP to effectuate the assignment contemplated hereunder to Franchisor. The parties agree that the Telephone Company and the ISP may accept Franchisor’s written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor’s exclusive rights in and to the Telephone Numbers and Listings and the URLs upon such termination or expiration and that such assignment shall be made automatically and effective immediately upon Telephone Company’s and ISP’s receipt of such notice from Franchisor or Franchisee. The parties further agree that if the Telephone Company or the ISP requires that the parties execute the Telephone Company’s or the ISP’s assignment forms or other documentation at the time of termination or expiration of the Franchise Agreement, Franchisor’s execution of such forms or documentation on behalf of Franchisee shall effectuate Franchisee’s consent and agreement to the assignment. The parties agree that at any time after the date hereof they will perform such acts and execute and deliver such documents as may be necessary to assist

in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

**ASSIGNEE:**

**ASSIGNOR:**

**WATER BABIES US FRANCHISE LLC**

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT F  
TO FRANCHISE AGREEMENT**

**SELF-LEARN AND CERTIFICATION FORM**

The following prerequisites (“**Self-Learn and Certifications**”) must be completed in full before Franchisee and/or Aquatics Director can begin operation of their Water Babies business:

<b>TASKS</b>	<b>ESTIMATED COMPLETION TIME</b>	<b>DATE COMPLETED</b>	<b>INITIALS</b>
3 <sup>rd</sup> Party Provided Pool Rescue Certification/Shallow Water Lifeguard Course	Varies by provider		
3 <sup>rd</sup> Party Provided Safeguarding/Child Protection training	90 mins		
3 <sup>rd</sup> Party Provided Background Check	N/A		
Customer Service – the WB Operating System	9 hours		
HR and Payroll	1-2 hours		
Tech Department	1 hour		
Aquatics: Operations, Program introduction, lesson resources, running lessons	3 hours		
Photography	3 hours		
Products & Retail	1-2 hours		
Business Finance: Pool Margin Sheets & Business Plans	2-3 hours		
Shadowing WB Lessons on LMS with Observation Task	3 hours		

Corporate Finance overview	1 hour
Aquatics: Pre- and Post-Practical Training Course theory modules	3 hours
Pools & Facilities: Health & Safety	2 hours
Marketing: National and Global marketing overview	1-2 hours
Practical Teacher Course written theory workbook	15 hours

Once all of these tasks have been completed, please sign this certification form and submit it to the Franchisor. Upon receipt of this completed form, Franchisee or Franchisee's Aquatics Director can begin operation.

#### FRANCHISEE CERTIFICATION

I certify that on or before \_\_\_\_\_, 20\_\_\_. I completed each of the above-referenced Training and Certification Prerequisites and I am ready to schedule training.

#### **FRANCHISEE:**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

#### **AQUATICS DIRECTOR (If applicable):**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**EXHIBIT C**

**WATER BABIES US FRANCHISE LLC  
MULTI-UNIT DEVELOPMENT AGREEMENT**



**Water Babies US Franchise LLC**

**MULTI-UNIT DEVELOPMENT AGREEMENT**

**Multi-Unit Developer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Territory:** \_\_\_\_\_

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**ATTACHMENTS:**

Attachment A:	Description of Development Territory
Attachment B:	Development Schedule
Attachment C:	Personal Guaranty
Attachment D:	Statement of Shareholders/Members/Partners

**WATER BABIES US FRANCHISE LLC  
MULTI-UNIT DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“**Effective Date**”) by and between Water Babies US Franchise LLC, a Delaware limited liability company (“**Franchisor**”), with a business address at 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387 and \_\_\_\_\_, with its business address at \_\_\_\_\_ (“**Multi-Unit Developer**”).

**WITNESSETH:**

**WHEREAS**, Franchisor holds the exclusive franchise rights to a proprietary system which has been developed through significant expenditures of time, skill, effort and money (“**System**”) relating to the establishment, development and operation of a business offering swimming and water survival instruction services to babies, toddlers, and children and the sale of underwater photographic services and retail product sales from one or more rented pools (“**Franchised Business**”); and

**WHEREAS**, the System features use of the Marks (defined below), uniform standards, specifications, methods, policies and procedures for Franchised Business operations, proprietary inventory and management control, training and assistance, and advertising and promotional programs (all as further defined in the Operations Manual), all of which may be changed, improved upon, and further developed occasionally by Franchisor;

**WHEREAS**, Franchisor, through its dedicated operations, marketing methods, and merchandising policies, has developed the reputation, public image and goodwill of its System and established a firm foundation for its franchised operations consisting of the highest standards of training, management, supervision, appearance, and quality of services and products;

**WHEREAS**, the System is identified by means of certain trademarks, the design mark WATER BABIES® and other related marks any other trade names, service marks, and trademarks as are now, and may hereafter be, designated for use in connection with the System (“**Marks**”);

**WHEREAS**, Franchisor continues to develop, expand, use, control and add to the Marks and the System for the benefit of and exclusive use by Franchisor and its franchisees in order to identify for the public the source of the products and services marketed thereunder and to represent the System’s high standards of quality and service;

**WHEREAS**, Multi-Unit Developer desires to obtain the exclusive right to develop, manage and operate a series of Franchised Businesses under the development schedule described in **Attachment B** attached hereto (“**Development Schedule**”) and within the territory described in **Attachment A** attached hereto (“**Development Territory**”), under the System and Marks, as well as to receive the training and other assistance provided by Franchisor in connection therewith;

**WHEREAS**, the Multi-Unit Developer hereby acknowledges that it has read this Agreement and Franchisor’s Franchise Disclosure Document (“**Disclosure Document**”), and that it has no knowledge of any representations about the Water Babies franchise or about Franchisor or its franchising program or policies made by Franchisor or by its officers, directors, shareholders, employees or agents which are contrary to the statements in Franchisor’s Disclosure Document or to the terms of this Agreement, and that it understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain Franchisor’s high standards of quality and service and the uniformity of

those standards at all Franchised Businesses which operate pursuant to the System and thereby to protect and preserve the goodwill of the System and the Marks; and

**WHEREAS**, Multi-Unit Developer understands and acknowledges the importance of Franchisor's uniformly high standards of quality and service and the necessity of operating the Water Babies franchises in strict conformity with Franchisor's quality control standards and specifications.

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

## **1. GRANT**

1.1 Franchisor hereby grants to Multi-Unit Developer the right and license to develop, operate, and manage \_\_\_\_\_ (\_\_\_) Franchised Businesses in strict accordance with the System and under the Marks within the Development Territory described in **Attachment A**. Each Franchised Business shall be operated according to the terms of the individual franchise agreement ("**Franchise Agreement**") with respect thereto.

1.2 If the Multi-Unit Developer is developing Franchised Businesses, and complies with the terms of this Agreement, the Development Schedule, and the individual Franchise Agreement for each Franchised Business, then Franchisor will not franchise or license others, nor will it itself directly or indirectly develop, own, lease, construct or operate in any manner, any Franchised Businesses in the Development Territory during the term hereof; however, Franchisor reserves the right to sell products and services under the Marks or any other marks, through any other retail location or through any other channels of distribution, including through mail order, catalogue sales or over the Internet. Franchisor also reserves the right to (a) establish, operate or license to any other person or entity the right to establish or operate a Franchised Business owned or licensed by Franchisor at any location outside the Development Territory; (b) develop, lease and license the use of, at any location side or outside of the Development Territory, trademarks other than the Marks, in connection with the operation of a system which offers products or services which are similar to or different from those offered under the System, on any terms or conditions which Franchisor deems advisable; (c) merge with, or be acquired by any other business, including a business that competes with Franchised Businesses operated by Multi-Unit Developer, or to acquire and convert to the System operated by Franchisor any business offering swimming and water survival instruction services and the sale of underwater photographic services operated by competitors, located inside or outside of the Development Territory or otherwise operated independently as part of, or in association with, any other system or chain, whether franchised or corporately owned; and (d) implement multi-area marketing programs which may allow Franchisor or others to solicit or sell to customers anywhere, and to issue mandatory policies to coordinate these multi-area marketing programs. Upon the expiration or termination of this Agreement, the Multi-Unit Developer will no longer have an exclusive Development Territory and each Franchised Business will be limited to operating solely at the franchised location ("**Franchised Location**") described in the individual Franchise Agreement. Multi-Unit Developer understands, acknowledges and agrees that as a Franchisee, Multi-Unit Developer will not receive any exclusive or protected territorial rights other than the territory granted with each Franchised Business at each Franchised Location.

1.3 This Agreement is not a franchise agreement and Multi-Unit Developer shall have no right to use in any manner the Marks or System by virtue hereof. Each Franchised Business will be governed by the individual Franchise Agreement signed by Franchisor and Multi-Unit Developer for each Franchised Business.

1.4 The Multi-Unit Developer must contribute some amount of its personal capital to the development of each Franchised Business and must own at least a 51% equity interest in each Franchised Business developed hereunder. In addition, Multi-Unit Developer shall ensure that a person (“**Aquatics Director**”) shall at all times devote his or her full time and attention to managing, supervising, and developing each Franchised Business and that the person is at all times identified to Franchisor. Multi-Unit Developer shall identify all equity owners of Multi-Unit Developer by completing the Statement of Shareholders/Members/Partners attached to this Agreement as **Attachment D**. Multi-Unit Developer shall provide Franchisor with an updated form of **Attachment D** within 10 business days of any change in the equity ownership of Multi-Unit Developer. The failure of Multi-Unit Developer to provide Franchisor with an updated **Attachment D** within the time frame specified in this Section 1.4 shall constitute a material default of this Agreement.

## 2. TERM

Unless sooner terminated pursuant to the provisions of Section 7, the term of this Agreement shall expire upon the earlier of (a) \_\_\_\_\_ years from the Effective Date, or (b) completion of the term of the Development Schedule. Franchisor, in its sole discretion, may permit Multi-Unit Developer to renew this Agreement for an additional term; provided that, without limiting the foregoing, the Multi-Unit Developer has not defaulted in its obligations under this Agreement or any other agreement with Franchisor or any affiliate of Franchisor, and the parties agree in writing to a new Development Schedule.

## 3. FRANCHISE AGREEMENT, INITIAL FRANCHISE FEE, AREA DEVELOPMENT FEE AND INITIAL TRAINING

3.1 With respect to each Franchised Business to be developed under this Agreement:

(a) As soon as Multi-Unit Developer locates a pool or pools within the Development Territory that it believes is suitable operating a Franchised Business in accordance with Franchisor’s criteria, Multi-Unit Developer shall submit to Franchisor the information about the proposed location including, without limitation, lease terms, demographic criteria, and certain other information, as Franchisor may require periodically in Franchisor’s operations manual (“**Operations Manual**”). If Multi-Unit Developer proposes that another entity will own and operate the Franchised Business, Multi-Unit Developer must also submit information to Franchisor regarding the proposed franchisee entity. Franchisor reserves the right to request as much additional information regarding the pool(s) and the proposed franchisee entity as it deems necessary, in its sole discretion, and Multi-Unit Developer agrees to provide the information immediately upon request.

(b) Should Franchisor grant preliminary authorization to proceed with the pool per Section 3.1(a) above, it will give its written authorization to the Multi-Unit Developer to proceed. Upon receipt of the pool authorization, Multi-Unit Developer should make an offer to secure the pool time via lease, which offer must be contingent upon final approval by Franchisor of the pool and of the proposed franchisee entity.

(c) Should Franchisor provide final pool authorization and approve of the proposed franchisee entity for a Franchised Business, Franchisor and Multi-Unit Developer (or its affiliate) shall promptly enter into an individual Franchise Agreement for this Franchised Business before the date Multi-Unit Developer begins operation at in the territory , which agreement shall be in the form of Franchisor’s then-current form of Franchise Agreement. The terms of the individual Franchise Agreement will then govern the further development of the Franchised Business.

3.2 Multi-Unit Developer shall pay to Franchisor an Initial Franchise Fee for each Franchised Business to be developed hereunder. The initial franchise fee (“**Initial Franchise Fee**”) for the first Franchised Business to be developed under this Multi-Unit Development Agreement shall be Fifty Five Thousand Dollars (\$55,000). The Initial Franchise Fee for the second Franchised Business to be developed under this Multi-Unit Development Agreement shall be Forty Four Thousand Dollars (\$44,000). The Initial Franchise Fee for each subsequent Franchised Business to be developed under this Multi-Unit Development Agreement past the second Franchised Business shall be Thirty Five Thousand Dollars (\$35,000). The Initial Franchise Fee for each Franchised Business is due upon the execution of this Agreement. All amounts collected shall be deemed fully earned immediately upon receipt and shall be non-refundable, regardless of whether Multi-Unit Developer opens any of the Franchised Businesses it is obligated to open in the Development Territory.

3.3 Franchisor shall provide the Multi-Unit Developer with Franchisor’s then-current training program for each Franchised Business to be developed hereunder pursuant to the applicable Franchise Agreement.

#### **4. DEVELOPMENT SCHEDULE AND MANNER FOR EXERCISING DEVELOPMENT RIGHTS**

4.1 Multi-Unit Developer shall exercise the development rights granted under this Agreement only by entering into a separate Franchise Agreement with Franchisor for each Franchised Business for which a development right is granted. The Franchise Agreement to be executed for the first Franchised Business to be developed by Multi-Unit Developer under this Agreement shall be executed and delivered, and the Initial Franchise Fee for the Franchised Business shall be paid, to Franchisor concurrently with the execution and delivery of this Agreement. At the time of execution and delivery of this Agreement, Multi-Unit Developer must also pay the Initial Franchise Fee for all subsequent Franchised Businesses to be developed. All subsequent Franchised Businesses developed under this Agreement shall be established and operated pursuant to the form of Franchise Agreement then being used by Franchisor for a Franchised Business. Multi-Unit Developer acknowledges that the then-current form of Franchise Agreement may differ from the form attached, and may include different economic terms, including, but not limited to, higher royalty rates and advertising contributions.

##### 4.2 Development Schedule.

(a) Acknowledging that time is of the essence, Multi-Unit Developer agrees to exercise its development rights according to Section 3.1 and according to the Development Schedule set forth on **Attachment B**, which schedule designates the number of Franchised Businesses in the Development Territory to be established and in operation by Multi-Unit Developer upon the expiration of each of the designated development periods (“**Development Periods**”).

(b) During any Development Period, Multi-Unit Developer may, with Franchisor’s prior written consent, develop more than the number of Franchised Businesses that Multi-Unit Developer is required to develop during that Development Period. Any Franchised Businesses developed during a Development Period in excess of the minimum number of Franchised Businesses required to be developed upon expiration of that Development Period shall be applied to satisfy Multi-Unit Developer’s development obligation during the next succeeding Development Period. Multi-Unit Developer shall not open more than the cumulative total number of Franchised Businesses Multi-Unit Developer is obligated to develop under this Agreement, as set forth above in the Development Schedule; provided, however, that Multi-Unit Developer may be permitted to open Franchised Businesses in excess of the number permitted by the

Development Schedule if, in Franchisor's sole discretion, Franchisor determines that the Development Territory can support additional Franchised Businesses and Multi-Unit Developer receives Franchisor's advanced written permission to develop more Franchised Businesses.

(c) If during the term of this Agreement, Multi-Unit Developer ceases to operate any Franchised Business developed under this Agreement for any reason, Multi-Unit Developer shall develop a replacement Franchised Business to fulfill Multi-Unit Developer's obligation to have open and in operation the required number of Franchised Businesses upon the expiration of each Development Period. The replacement Franchised Business shall be developed within a reasonable time to be agreed upon by the parties after Multi-Unit Developer ceases to operate the Franchised Business to be replaced. If during the term of this Agreement, Multi-Unit Developer, in accordance with the terms of any Franchise Agreement for a Franchised Business developed under this Agreement, transfers its interest in such Franchised Business, the transferred Franchised Business shall continue to be counted in determining whether Multi-Unit Developer has complied with the Development Schedule so long as it continues to be operated as a Franchised Business. If the transferred Franchised Business ceases to be operated as a Franchised Business during the term of this Agreement, Multi-Unit Developer shall develop a replacement Franchised Business within a reasonable time, not to exceed six months, after the transferred Franchised Business ceases to be operated as a Franchised Business. In either case, the reasonable time period shall apply to the development of the replacement Franchised Business only and, in Franchisor's sole discretion, extend the term of the applicable Development Period to the end of the mutually agreed upon time period; provided that in no event shall such time period exceed one year.

(d) Opening Schedule.

(i) Multi-Unit Developer shall open each Franchised Business and shall commence business in accordance with the Development Schedule set forth on **Attachment B**, unless, subject to Franchisor's approval, Multi-Unit Developer obtains an extension of the Development Period from Franchisor to locate an initial pool and commence operation of a particular Franchised Business. Each extension shall be for an additional 30-day period commencing upon the expiration of the applicable Development Period, including any previous extensions thereof ("**Extension Date**"). No more than two extensions of any Development Period will be permitted. If an extension of a Development Period is granted by Franchisor, the Opening Date for the Franchised Business (as defined in the Franchise Agreement) shall be extended to the Extension Date. No extension of any Development Period shall affect the duration of any other Development Period or any of Multi-Unit Developer's other development obligations. If an extension is requested in the final Development Period, the term of this Agreement shall be extended to the Extension Date, and thereafter Multi-Unit Developer shall have no further rights under this Agreement except as provided in Section 2. The provisions of this Section 4.2(d)(i) do not apply to the development of a replacement Franchised Business under Section 4.2(c). Each extension may be conditioned upon payment of a \$5,000 extension fee ("**Extension Fee**") as set forth in the Operations Manual.

(ii) Multi-Unit Developer shall notify Franchisor in writing at least 30 days prior to the Projected Opening Date (defined below) for a Franchised Business if Multi-Unit Developer will be unable to locate an initial pool and commence operation of the Franchised Business by the expiration date of the Development Period in which such Franchised Business was to have been opened. In such notice Multi-Unit Developer shall request that the Franchisor consider its request for an extension and shall include a

description of the reasons for its failure to develop the Franchised Business in a timely manner and the expected date of starting operations, if the extension were to be granted, along with payment of the Extension Fee if required.

(e) Failure by Multi-Unit Developer to adhere to the Development Schedule (including any extensions approved by Franchisor) or to adhere to any time period for the development of replacement Franchised Businesses as set forth in Section 3.2(c) shall constitute a material event of default under this Agreement.

4.3 Multi-Unit Developer acknowledges that the projected opening dates (“**Projected Opening Dates**”) for each Franchised Business set forth on **Attachment B** are reasonable and consistent with the requirements of the Development Schedule. Multi-Unit Developer shall execute a Franchise Agreement for each Franchised Business at or prior to the applicable execution deadline (“**Execution Deadline**”) set forth on **Attachment B**. Multi-Unit Developer and Franchisor agree that, except with respect to the Franchise Agreements executed concurrently herewith, the Execution Deadline shall be a date no later than nine months prior to the Projected Opening Date for each subsequent Franchised Business to be developed.

## **5. LOCATION OF FRANCHISED BUSINESSES**

The location of each Franchised Business shall be selected by the Multi-Unit Developer in accordance with the terms set forth in each Franchise Agreement signed by Multi-Unit Developer, within the Development Territory, subject to Franchisor’s prior authorization as set forth in Section 3 hereof, which authorization shall take into account all relevant demographic information then available to Franchisor. Operation in any proposed pool by Multi-Unit Developer before approval of Franchisor shall be the sole risk and responsibility of Multi-Unit Developer and shall not obligate Franchisor in any way to authorize the same. The authorization of a proposed pool by Franchisor does not in any way constitute a warranty or representation by Franchisor as to the suitability of the pool.

## **6. FRANCHISE AGREEMENT**

Multi-Unit Developer shall not open any Franchised Business until, among other things, the individual Franchise Agreement for said Franchised Business has been signed by both the Multi-Unit Developer and Franchisor.

## **7. DEFAULT AND TERMINATION**

7.1 Multi-Unit Developer shall be in default under this Agreement should Multi-Unit Developer (or its affiliate): (a) fail to comply with the Development Schedule; (b) fail to perform any of its obligations under this Agreement or any individual Franchise Agreement; (c) cease to be a franchisee of Franchisor in good standing; or (d) fail to comply with the provisions on transfer contained herein.

7.2 Upon the default, Franchisor shall have the right, at its option, and in its sole discretion, to do any or all of the following:

- (a) terminate this Agreement;
- (b) terminate the territorial exclusivity granted to Multi-Unit Developer;

(c) reduce the size of the Multi-Unit Developer's Development Territory or the number of Franchised Businesses Multi-Unit Developer may develop in the Development Territory; or

(d) accelerate the Development Schedule on immediate written notice.

7.3 In addition, if any individual Franchise Agreement issued to Multi-Unit Developer or an approved affiliate of Multi-Unit Developer, whether or not issued pursuant to this Agreement, is terminated for any reason, Franchisor shall have the right to terminate this Agreement on immediate written notice to Multi-Unit Developer. Upon termination or expiration of the term of this Agreement, this Agreement shall be of no further effect, and Franchisor shall have the right to itself open, or license others to open, Franchised Businesses within the Development Territory. For purposes of this Section 7, any Franchise Agreement issued by Franchisor to Multi-Unit Developer or its approved affiliates, or any corporation, partnership or joint venture, or their affiliates, in which Multi-Unit Developer or any stockholder, partner or joint venturer of Multi-Unit Developer, has any direct or indirect ownership or participation interest, shall be deemed a Franchise Agreement issued to Multi-Unit Developer.

## 8. ASSIGNMENT

8.1 Franchisor shall have the absolute right to transfer or assign all or any part of its rights or obligations hereunder to any person or legal entity which assumes its obligation under this Agreement and Franchisor shall thereby be released from any and all further liability to Multi-Unit Developer.

8.2 By Multi-Unit Developer.

(a) Multi-Unit Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Multi-Unit Developer and are granted in reliance upon the personal qualifications of Multi-Unit Developer or Multi-Unit Developer's principals. Multi-Unit Developer has represented to Franchisor that Multi-Unit Developer is entering into this Agreement with the intention of complying with its terms and conditions and not for the purpose of transferring the development and option rights hereunder.

(b) Neither Multi-Unit Developer nor any partner, member, or shareholder thereof shall, without Franchisor's prior written consent, directly or indirectly assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest in this Agreement or in Multi-Unit Developer. Any proposed assignment occurring by operation of law or otherwise, including any assignment by a trustee in bankruptcy, without Franchisor's prior written consent, shall be a material default of this Agreement.

(c) Any assignment, transfer or other disposition by the Multi-Unit Developer of a single-unit Franchised Business within the Development Territory will be governed by the Franchise Agreement to which the single-unit Franchised Business is bound.

(d) Subject to the other provisions of Section 8 herein, including Section 8.2(c) above and Section 8.2(e) below, if Multi-Unit Developer wishes to sell, transfer or otherwise assign any portion, or all, of the Development Territory, the Multi-Unit Developer shall notify Franchisor, which may approve or disapprove the same in its sole discretion, and in addition Franchisor may require any or all of the following as conditions of its approval:

(i) All of the Multi-Unit Developer's accrued monetary obligations and all other outstanding obligations to Franchisor, its affiliates and suppliers must be fully paid and satisfied;

(ii) The Multi-Unit Developer must not be in default of any provision of its Franchise Agreements, any amendments thereof or successors thereto, or any other agreement between the Multi-Unit Developer and Franchisor, its subsidiaries or affiliates;

(iii) The Multi-Unit Developer and each of its affiliates, shareholders, members, partners, officers and directors must sign a general release, under seal, the consideration for which shall be the approval of the transfer, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

(iv) The transferee must enter into a written assignment, under seal and in a form satisfactory to Franchisor, assuming and agreeing to discharge all of the Multi-Unit Developer's obligations under the relevant Franchise Agreements and, if deemed necessary by Franchisor, the transferee's principals, individually, shall guarantee the performance of all these obligations in writing in a form satisfactory to Franchisor;

(v) The transferee must demonstrate to Franchisor's satisfaction that the transferee meets Franchisor's then-current educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to open and operate the Franchised Businesses (as may be evidenced by prior related experience or otherwise); has at least the same managerial and financial acumen required of new Multi-Unit Developers, and has sufficient equity capital, as determined by Franchisor in Franchisor's sole discretion, to open and operate the Franchised Businesses required under the terms of this Multi-Unit Development Agreement;

(vi) At Franchisor's option, the transferee must sign (and, upon Franchisor's request, shall cause all interested parties to sign), for a term ending on the expiration date of the Franchise Agreement(s) and with the successor term as may be provided by the Franchise Agreement(s), the standard form of Franchise Agreement and Multi-Unit Development Agreement then being offered to new Multi-Unit Developers and any other ancillary agreements as Franchisor may require for the Franchised Businesses, which agreements shall supersede the Franchise Agreements and the Multi-Unit Development Agreement between the Multi-Unit Developer and Franchisor in all respects and the terms of which agreements may differ from the terms of the Franchise Agreements and Multi-Unit Development Agreement, including, without limitation, the implementation of other fees and different royalty rates;

(vii) The Multi-Unit Developer and its principals must remain liable for all direct and indirect obligations to Franchisor in connection with the Franchised Businesses before the effective date of transfer and will continue to remain responsible for their obligations of nondisclosure, noncompetition and indemnification as provided in the Franchise Agreements and Personal Guaranty, attached into this Agreement as **Attachment C**, and shall sign any and all instruments reasonably requested by Franchisor to further evidence this liability; and

(viii) Multi-Unit Developer or its approved transferee shall pay to Franchisor, at the time of said transfer, a transfer fee (“**Development Transfer Fee**”) equal to Five Thousand Dollars (\$5,000) for each unopened Franchised Business to be transferred, and Fifteen Thousand Dollars (\$15,000), or such other amount as required by the terms of each individual Franchise Agreement, for each Franchised Business which is open and operating at the time Multi-Unit Developer notifies Franchisor of its intent to transfer or assign this Agreement (which transfer or assignment shall be in compliance with the terms of each open Franchised Business’s individual Franchise Agreement), to cover Franchisor’s administrative and other expenses in connection with the transfer of the Franchised Businesses by the Multi-Unit Developer.

(e) If Multi-Unit Developer or its principals shall at any time determine to sell, transfer or otherwise dispose of all or part of the rights under this Agreement or an ownership interest in Multi-Unit Developer, and Multi-Unit Developer or its principals shall obtain a bona fide, signed written offer from a responsible and fully disclosed purchaser, Multi-Unit Developer shall notify Franchisor in writing of each offer, and Franchisor shall have the right and option, exercisable within a period of 30 days from the date of delivery of this offer, by written notice to Multi-Unit Developer or its owners, to purchase the rights under this Agreement or this ownership interest for the price and on the terms and conditions contained in said purchaser’s offer. If Franchisor does not exercise its right of first refusal, Multi-Unit Developer or its principals may complete the sale of Multi-Unit Developer or this ownership interest, subject to Franchisor’s approval of the purchaser and all other conditions set forth in this Section 8.2, provided that if this sale is not completed within 120 days after delivery of this offer to Franchisor, Franchisor shall again have the right of first refusal herein provided. In the event that the Multi-Unit Developer wishes to publicly offer its shares in any partnership or corporation which has an ownership interest in the Multi-Unit Developer, said public offering shall be subject to the approval of Franchisor, this approval to not be unreasonably withheld.

8.3 Each shareholder, member, or partner of the corporation, limited liability company, or partnership which is granted the rights to serve as the Multi-Unit Developer hereunder shall be a party to a shareholders’ agreement, operating agreement, or partnership agreement which shall provide, inter alia, that upon any dissolution of the corporation, limited liability company, or partnership, or upon any divorce decree among the parties who are also shareholders, members, or partners, that ownership of the shares, membership interest, or partnership interest shall be transferred to the shareholder, member, or partner for agreed upon consideration, which has primary responsibility for sales and marketing activities, typically the President, following any dissolution or decree. The form and content of the shareholders’ agreement, operating agreement, or partnership agreement must be approved by Franchisor before execution. Multi-Unit Developer’s failure to comply with this Section 8.3 shall constitute a material default of this Agreement.

## **9. FORCE MAJEURE**

In the event that Multi-Unit Developer is unable to comply with the Development Schedule due to strike, riot, civil disorder, war, failure to supply, fire, natural catastrophe or other similar events beyond its control, and upon notice to Franchisor, the Development Schedule and this Agreement shall be extended for a corresponding period, not to exceed 90 days; provided, however, that this Section 9 shall not extend the time for payment of any monetary obligations owed to Franchisor.

## 10. CONFIDENTIALITY

10.1 Nothing contained in this Agreement shall be construed to require Franchisor to divulge to Multi-Unit Developer any trade secrets, techniques, methods or processes except the material contained in Franchisor's Operations Manuals and training materials, and then only pursuant to the terms, conditions and restrictions contained in the applicable Franchise Agreement. Multi-Unit Developer acknowledges that its knowledge of Franchisor's know-how, processes, techniques, information and other proprietary data is derived entirely from information disclosed to it by Franchisor and that the information is proprietary, confidential and a trade secret of Franchisor. Multi-Unit Developer agrees to adhere fully and strictly to the confidentiality of the information and to exercise the highest degree of diligence in safeguarding Franchisor's trade secrets during and after the term of this Agreement. Multi-Unit Developer shall divulge the material only to its employees and agents and only to the extent necessary to permit the efficient operation of the Franchised Businesses. It is expressly agreed that the ownership of all the items and property is and shall remain vested solely in Franchisor.

10.2 Multi-Unit Developer agrees that all terms of this Agreement shall remain confidential and shall not make any public announcement, issue any press release or publicity, make any confirmation of statements made by third parties concerning the terms of this Agreement, or make any other disclosures other than the existence of this Agreement without the prior written consent of Franchisor unless compelled by law or ordered to do so by a court of competent jurisdiction. It is agreed and understood that Multi-Unit Developer may disclose the terms of this Agreement to its professional advisors and lenders. Franchisor shall be free to make the disclosure of the terms of this Agreement as it determines, in its sole discretion, to be in the best interest of Franchisor or the System.

## 11. NONCOMPETITION

11.1 Multi-Unit Developer has heretofore specifically acknowledged that, pursuant to this Agreement, Multi-Unit Developer will receive valuable specialized Confidential Information and information regarding the business of Franchisor, and its System. Multi-Unit Developer covenants that during the term of this Agreement and subject to the post-term provisions contained herein, except as otherwise approved in writing by Franchisor, Multi-Unit Developer shall not, either directly or indirectly, for itself or through, on behalf of or in conjunction with any person, persons, partners or corporations:

(a) Divert or attempt to divert any business or customer of the Franchised Businesses 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 Franchisor's Marks or the System;

(b) Employ or seek to employ any person who is at that time employed by Franchisor or by Multi-Unit Developer or any other Multi-Unit Developer or franchisee of Franchisor, or otherwise directly or indirectly induce this person to leave his or her employment;  
or

(c) Own, maintain, engage in, be employed by, advise, assist, invest in, franchise, make loans to or have any interest in any business which is the same as or substantially similar to the Franchised Businesses.

11.2 Multi-Unit Developer covenants that, except as otherwise approved in writing by Franchisor, Multi-Unit Developer shall not, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement, regardless of the cause for termination, and continuing for two years thereafter, either directly or indirectly, for itself or through, on behalf of or in conjunction with

any person, persons, partnership or corporation, own, maintain, engage in, be employed by, advise, assist, invest in, franchise, make loans to, or have any interest in any business which is the same as or substantially similar to the Franchised Business and which is located within a radius of 100 miles of the Development Territory hereunder or within a radius of a 100 miles of the location of any Multi-Unit Developer, company-owned Franchised Business, affiliate owned Franchised Business, or franchisee-owned Franchised Business under the System which is in existence on the date of expiration or termination of this Agreement.

11.3 Sections 11.1 and 11.2 shall not apply to ownership by Multi-Unit Developer of less than a 5% beneficial interest in the outstanding equity securities of any publicly-held corporation provided that Multi-Unit Developer has no management responsibility or advisory responsibility with such publicly-traded company.

11.4 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If any or all portions of the covenants in this Section 11 are held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Multi-Unit Developer expressly agrees to be bound by any lesser covenant subsumed within the terms of this covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 11.

11.5 Multi-Unit Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 11.1 and 11.2 in this Agreement, or any portion thereof, without Multi-Unit Developer's consent, effective immediately upon receipt by Multi-Unit Developer of written notice thereof, and Multi-Unit Developer agrees that it shall forthwith comply with any covenant as so modified, which shall be fully enforceable.

11.6 Multi-Unit Developer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 11. Multi-Unit Developer agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 11 provided Franchisor prevails in any or all of its claims against Multi-Unit Developer.

11.7 Multi-Unit Developer acknowledges that Multi-Unit Developer's violation of the terms of this Section 11 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Multi-Unit Developer accordingly consents to the issuance of an injunction by any court of competent jurisdiction or arbitrator having jurisdiction over the Agreement prohibiting any conduct by Multi-Unit Developer in violation of the terms of this Section 11.

11.8 At Franchisor's request, Multi-Unit Developer shall require and obtain execution of covenants similar to those set forth in this Section 11 (including covenants applicable upon the termination of a person's relationship with Multi-Unit Developer) from any or all of the following persons: (a) all directors and managers of each Franchised Business; (b) all officers, directors and holders of a beneficial interest of 5% or more of the securities of Multi-Unit Developer and of any corporation directly or indirectly controlling Multi-Unit Developer if Multi-Unit Developer is a corporation; and (c) the members or general partners and any limited partners (including any corporation, and the officers, directors and holders of a beneficial interest of 5% or more of the securities of any corporation which controls, directly or indirectly, any general or limited partner) if Multi-Unit Developer is a limited liability company or partnership. All covenants required by this Section 11 shall be in forms satisfactory to Franchisor, including, without limitation, specific identification of Franchisor as a third party

beneficiary of these covenants with the independent right to enforce them. Failure by Multi-Unit Developer to obtain execution of a covenant required by this Section 11 shall constitute a material default under Section 7 hereunder.

## **12. ENTIRE AGREEMENT**

This Agreement, along with the Franchise Disclosure Document, constitutes the entire understanding of the parties with respect to the development of the Development Territory, and shall not be modified except by a written agreement signed by the parties hereto. Nothing in the Multi-Unit Development Agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document. Where this Agreement and any Franchise Agreement between the parties conflict with respect to initial training, the amount or payment terms of Initial Franchise Fees or equity interests held by the franchisee or operating partners and unit managers, the terms of this Agreement shall govern. Under no circumstances do the parties intend that this Agreement be interpreted in a way as to grant Multi-Unit Developer any rights to grant sub-franchises in the Development Territory.

## **13. MONTHLY REPORTS**

Multi-Unit Developer agrees that it shall provide to Franchisor a monthly report of its activities and progress in developing and establishing Franchised Businesses as provided herein. The monthly reports shall be submitted no later than the 5<sup>th</sup> day following the end of the preceding month during the term of this Agreement. A form of this report is in the Operations Manual.

## **14. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

14.1 It is acknowledged and agreed that Multi-Unit Developer and Franchisor are independent contractors and nothing contained herein shall be construed as constituting Multi-Unit Developer as the agent, partner or legal representative of Franchisor for any purpose whatsoever. Multi-Unit Developer shall enter into contracts for the development of the Development Territory contemplated by this Agreement at its sole risk and expense and shall be solely responsible for the direction, control and management of its agents and employees. Multi-Unit Developer acknowledges that it does not have authority to incur any obligations, responsibilities or liabilities on behalf of Franchisor, or to bind Franchisor by any representations or warranties, and agrees not to hold itself out as having this authority.

14.2 Multi-Unit Developer agrees to protect, defend, indemnify and hold Franchisor harmless from and against all claims, actions, proceedings, damages, costs, expenses and other losses and liabilities, directly or indirectly incurred as a result of, arising from, out of, or in connection with Multi-Unit Developer's carrying out its obligations hereunder.

## **15. COMPLIANCE WITH APPLICABLE LAWS**

Multi-Unit Developer shall develop all Franchised Businesses in the Development Territory in accordance and compliance with all applicable federal, state and local statutes, laws, including all child care laws, child safety laws, and laws related to the operation of swimming pools, ordinances and regulations (where applicable) and agrees to promptly pay all financial obligations incurred in connection therewith. Multi-Unit Developer must obtain all business licenses and permits required for the operation of a Franchised Business by federal, state, and local laws, ordinances, rules and regulations before operating any Franchised Business.

## **16. CHANGE IN DEVELOPMENT TERRITORY**

The parties acknowledge that the development of the Development Territory as anticipated hereunder has been determined according to the needs of the Multi-Unit Developer's targeted market in the Development Territory, as determined by Franchisor, as of the date of execution of this Agreement. The Multi-Unit Developer understands that, if there is an increased public demand for the products and services offered by Franchisor due to an increase in the number of individuals or families in the Development Territory, Franchisor will expect the Multi-Unit Developer to establish additional Franchised Businesses within the Development Territory. While Franchisor will not require the Multi-Unit Developer to establish the additional Franchised Businesses, Franchisor will strongly encourage Multi-Unit Developer to do so. Any additional Franchised Business shall be governed by Franchisor's then-current form of individual Franchise Agreement.

## **17. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their heirs, successors, permitted assigns and personal representatives.

## **18. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, which laws shall govern in the event of any conflict of laws, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et. seq.). The parties expressly consent to personal jurisdiction in the State of North Carolina and agree that, except as set forth in Section 21, the state and federal court(s) located in North Carolina will have exclusive jurisdiction for the purposes of carrying out this provision.

## **19. RECEIPT OF DOCUMENTS**

Multi-Unit Developer acknowledges receipt of the Disclosure Document, Multi-Unit Development Agreement, Franchise Agreement, and other contracts for the Franchised Business at least 14 calendar days before execution hereof or payment of any monies.

## **20. NOTICE**

Whenever this Agreement requires notice, it shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the other party at the addresses set forth below, unless written notice is given of a change of address.

All notices to Multi-Unit Developer shall be conclusively deemed to have been received by Multi-Unit Developer upon the delivery or attempted delivery of this notice to Multi-Unit Developer's address listed herein, or the changed address.

**To Franchisor:**

WATER BABIES US FRANCHISE LLC  
115 E Pennsylvania Ave, Suite 16  
Suite 16  
Southern Pines, NC 28387  
Attention: Carl Higgins

**Notice to Multi-Unit Developer:**

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**21. ARBITRATION**

21.1 The parties agree that all controversies, claims and disputes between them arising out of or relating to this Agreement, the rights and obligations of the parties hereto, or any other claims or causes of action relating to the performance of either party, and/or the purchase of the development rights by Multi-Unit Developer shall be finally resolved by submitting this matter to binding arbitration under the auspices of, and using the commercial arbitration rules of, the American Arbitration Association as such rules are in effect as of the date the demand for arbitration is filed. Each party shall agree on one arbitrator selected from a panel of neutral arbitrators provided by the American Arbitration Association or such other arbitration body as the parties mutually agree upon, and the arbitrator shall be chosen by the striking method. In accordance with the terms of the Federal Arbitration Act, the Arbitrator shall hear the dispute in North Carolina. Each party shall bear its own costs and attorney fees and one-half of the arbitrator's expenses. The arbitrator shall have no authority to amend or modify the terms of this Agreement. Each party further agrees that, unless a limitation is prohibited by applicable law, the other party shall not be liable for punitive or exemplary damages and the arbitrator shall have no authority to award the same. The decision of the arbitrator shall be final and binding. The Multi-Unit Developer knows, understands, and agrees that it is the intent of the parties that any arbitration between Franchisor and the Multi-Unit Developer shall be of the Multi-Unit Developer's individual claims and that the claims subject to arbitration shall not be arbitrated in conjunction with the claims of other Multi-Unit Developers or franchisees or on a class-wide basis, and Multi-Unit Developer hereby waives any right it may assert to have its claims arbitrated in conjunction with the claims of other Multi-Unit Developers or franchisees or on a class-wide basis.

21.2 Notwithstanding any provision contained in this Section 21, Franchisor may, at its sole option, institute an action or actions for temporary or preliminary injunctive relief or seeking any other temporary or permanent equitable relief against the Multi-Unit Developer that may be necessary to protect its trademarks or other rights or property. However, in Franchisor's sole discretion, the final right of determination of the ultimate controversy, claim or dispute shall be decided by arbitration as aforesaid and recourse to the courts shall thereafter be limited to seeking an order to enforce an arbitral award. In no event shall the Multi-Unit Developer be entitled to make, the Multi-Unit Developer shall not make, and the Multi-Unit Developer hereby waives, any claim for money damages by way of set-off, counterclaim, defense or otherwise based upon any claim or assertion by the Multi-Unit Developer that Franchisor has unreasonably withheld or unreasonably conditioned or delayed any consent or approval to a proposed act by the Multi-Unit Developer under any of the terms of this Agreement. The Multi-Unit Developer's sole remedy for any claim shall be an action or proceeding to enforce any provisions, for specific performance or declaratory judgment.

## **22. MODIFICATION BY FRANCHISOR**

Franchisor may modify and update its Operations Manual, the Marks and the System unilaterally under any conditions and to any extent which Franchisor, in the exercise of its sole discretion, deems necessary to meet competition, protect trademarks or trade name, or improve the quality of the products or services provided through the Franchised Businesses, and Multi-Unit Developer shall exclusively incur the costs of any change in the Franchised Business or the System which has been caused by this modification. In the event that any improvement or addition to the Operations Manual, the System or the Marks is developed by Multi-Unit Developer, then Multi-Unit Developer agrees to assign all right, title, and interest to such improvement or addition or, if such assignment is prohibited by law, to grant to Franchisor an irrevocable, world-wide, exclusive, royalty-free license, with the right to sub-license the improvement or addition.

## **23. ACKNOWLEDGEMENTS**

23.1 Multi-Unit Developer acknowledges and recognizes that different terms and conditions, including different fee structures, may pertain to different Multi-Unit Development Agreements and franchise agreements offered in the past, contemporaneously herewith, or in the future, and that Franchisor does not represent that all Multi-Unit Development Agreements or franchise agreements are or will be identical.

23.2 Multi-Unit Developer acknowledges that it is not, nor is it intended to be, a third party beneficiary of this Agreement or any other agreement to which Franchisor is a party.

23.3 Multi-Unit Developer represents to Franchisor that it has the business acumen, corporate authority, and financial wherewithal to enter into this Agreement and to perform all of its obligations hereunder and furthermore that the execution of this Agreement is not in contravention of any other written or oral obligation of the Multi-Unit Developer.

23.4 Multi-Unit Developer acknowledges that it received from Franchisor this Agreement with all blanks filled in at least seven calendar days before the execution of this Agreement.

23.5 Multi-Unit Developer acknowledges and accepts the following:

THE SUCCESS OF THE MULTI-UNIT DEVELOPER IN MANAGING AND OPERATING MULTIPLE FRANCHISED BUSINESSES IS SPECULATIVE AND WILL DEPEND ON MANY FACTORS INCLUDING, TO A LARGE EXTENT, MULTI-UNIT DEVELOPER'S INDEPENDENT BUSINESS ABILITY. MULTI-UNIT DEVELOPER HAS BEEN GIVEN THE OPPORTUNITY AND BEEN ENCOURAGED TO OBTAIN INDEPENDENT ADVICE FROM LEGAL AND OTHER PROFESSIONALS BEFORE ENTERING INTO THIS AGREEMENT. THIS OFFERING IS NOT A SECURITY AS THAT TERM IS DEFINED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS. THE OBLIGATION TO TRAIN, MANAGE, PAY, RECRUIT AND SUPERVISE EMPLOYEES OF THE FRANCHISED BUSINESSES RESTS SOLELY WITH MULTI-UNIT DEVELOPER. MULTI-UNIT DEVELOPER HAS NOT RELIED ON ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL SUCCESS OR PROJECTED INCOME OF THE BUSINESS VENTURE CONTEMPLATED HEREBY. NO REPRESENTATIONS OR PROMISES HAVE BEEN MADE BY FRANCHISOR TO INDUCE MULTI-UNIT DEVELOPER TO ENTER INTO THIS AGREEMENT EXCEPT AS SPECIFICALLY INCLUDED HEREIN. FRANCHISOR HAS NOT MADE ANY REPRESENTATION, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, AS TO THE

POTENTIAL REVENUES, PROFITS OR SERVICES OF THE BUSINESS VENTURE TO MULTI-UNIT DEVELOPER AND CANNOT, EXCEPT UNDER THE TERMS OF THIS AGREEMENT, EXERCISE CONTROL OVER MULTI-UNIT DEVELOPER'S BUSINESS. MULTI-UNIT DEVELOPER ACKNOWLEDGES AND AGREES THAT IT HAS NO KNOWLEDGE OF ANY REPRESENTATION MADE BY FRANCHISOR OR ITS REPRESENTATIVES OF ANY INFORMATION THAT IS CONTRARY TO THE TERMS CONTAINED HEREIN.

*[SIGNATURES ON THE FOLLOWING PAGE]*

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

**FRANCHISOR:**

**WATER BABIES US FRANCHISE LLC,  
a Delaware limited liability company**

By: \_\_\_\_\_  
Its

**MULTI-UNIT DEVELOPER:**

\_\_\_\_\_  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MULTI-UNIT DEVELOPMENT AGREEMENT**  
**ATTACHMENT A**  
**DESCRIPTION OF DEVELOPMENT TERRITORY**

**ATTACHMENT A**

**DESCRIPTION OF THE DEVELOPMENT TERRITORY**

The first (1st) territory (which is a part of the whole Development Territory) within which Multi-Unit Developer may locate the first Franchised Business pursuant to the first Franchise Agreement to be signed pursuant to this Agreement:

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(however, in the event of a discrepancy between the above stated zip codes and the below depicted map, the above stated zip codes will prevail and control):

[INSERT MAP]

The second (2nd) territory (which is a part of the whole Development Territory) within which Multi-Unit Developer may locate the second Franchised Business pursuant to the second Franchise Agreement to be signed:

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(however, in the event of a discrepancy between the above stated zip codes and the below depicted map, the above stated zip codes will prevail and control):

[INSERT MAP]

Nothing beyond what is mentioned in this Attachment A is part of the Multi-Unit Developer's Development Territory.

**TOTAL INITIAL FRANCHISE FEES FOR ALL FRANCHISED BUSINESSES**

Number of Franchised Businesses \_\_\_\_\_

Total Fee (To be paid at time of execution of this Agreement): \$\_\_\_\_\_

**APPROVED:**

WATER BABIES US FRANCHISE LLC

By: \_\_\_\_\_  
Its

**MULTI-UNIT DEVELOPER:**

\_\_\_\_\_

a(n) \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MULTI-UNIT DEVELOPMENT AGREEMENT**  
**ATTACHMENT B**  
**DEVELOPMENT SCHEDULE**

**ATTACHMENT B**  
**DEVELOPMENT SCHEDULE**

<b>Franchised Business</b>	<b>Franchise Agreement Execution Deadline</b>	<b>Opening Date</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		

**MULTI-UNIT DEVELOPMENT AGREEMENT**

**ATTACHMENT C**

**PERSONAL GUARANTY**

## ATTACHMENT C

### PERSONAL GUARANTY

In consideration of, and as an inducement to, the execution of that certain Multi-Unit Development Agreement, and any revisions, modifications, addenda and amendments thereto, (hereinafter collectively the “**Agreement**”) dated \_\_\_\_\_, 20\_\_\_\_, by and between **Water Babies US Franchise LLC**, a Delaware limited liability company (“**Franchisor**”) and (“**Multi-Unit Developer**”), each of the undersigned Personal Guarantors agrees as follows:

1. The Personal Guarantors do hereby jointly and severally unconditionally guaranty the full, prompt and complete performance of the Multi-Unit Developer under the terms, covenants and conditions of the Agreement, including without limitation, compliance with all confidentiality requirements, protection and preservation of confidential information, compliance with all non-compete provisions, compliance with the terms of any and all other agreements signed by Multi-Unit Developer in order to open and operate the Franchised Businesses (as defined in the Agreement), and the complete and prompt payment of all indebtedness to Franchisor under the Agreement. The word “**indebtedness**” is used herein in its most comprehensive sense and includes, without limitation, any and all advances, debts, obligations and liabilities of the Multi-Unit Developer, now or hereafter incurred, either voluntarily or involuntarily, and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, or whether recovery thereof may be now or hereafter barred by any statute of limitation or is otherwise unenforceable.

2. The obligations of the Personal Guarantors are independent of the obligations of the Multi-Unit Developer and a separate action or actions may be brought and prosecuted against any or all of the Personal Guarantors, whether or not actions are brought against the Multi-Unit Developer or whether the Multi-Unit Developer is joined in any action.

3. Franchisor shall not be obligated to inquire into the power or authority of the Multi-Unit Developer or its partners or the officers, directors, agents, members or managers acting or purporting to act on the Multi-Unit Developer’s behalf and any obligation or indebtedness made or created in reliance upon the exercise of this power and authority shall be guaranteed hereunder. Where the Personal Guarantors are corporations, limited liability companies, or partnerships it shall be conclusively presumed that the Personal Guarantors and the shareholders, members, partners, agents, officers and directors acting on their behalf have the express authority to bind these corporations, limited liability companies, or partnerships and that these corporations, limited liability companies, or partnerships have the express power to act as the Personal Guarantors pursuant to this Personal Guaranty and that this action directly promotes the business and is in the interest of these corporations, limited liability companies, or partnerships.

4. Franchisor, its successors and assigns, may occasionally, without notice to the undersigned: (a) resort to the undersigned for payment of any of the indebtedness, whether or not it or its successors have resorted to any property securing any of the indebtedness or proceeded against any other of the undersigned or any party primarily or secondarily liable on any of the indebtedness; (b) release or compromise any indebtedness of any of the undersigned hereunder or any indebtedness of any party or parties primarily or secondarily liable on any of the indebtedness; (c) extend, renew or credit any of the indebtedness for any period (whether or not longer than the original period); (d) alter, amend or exchange any of the indebtedness; or (e) give any other form of indulgence, whether under the Agreement or otherwise.

5. The undersigned further waive presentment, demand, notice of dishonor, protest, nonpayment and all other notices whatsoever, including without limitation: notice of acceptance hereof; notice of all contracts and commitments; notice of the existence or creation of any liabilities under the Agreement and of the amount and terms thereof; and notice of all defaults, disputes or controversies between the Multi-Unit Developer and Franchisor resulting from the Agreement or otherwise, and the settlement, compromise or adjustment thereof.

6. This Personal Guaranty shall be enforceable by and against the respective administrators, executors, successors and assigns of the Personal Guarantors and the death of any Personal Guarantor shall not terminate the liability of the Personal Guarantor or limit the liability of the other Personal Guarantors hereunder.

7. If more than one person has signed this Personal Guaranty, the term “**the undersigned,**” as used herein shall refer to each person, and the liability of each of the undersigned hereunder shall be joint and several and primary as sureties.

**IN WITNESS WHEREOF**, each of the undersigned has signed this Personal Guaranty under seal effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Home Address

\_\_\_\_\_ Home Address

\_\_\_\_\_ Home Telephone

\_\_\_\_\_ Home Telephone

\_\_\_\_\_ Business Telephone

\_\_\_\_\_ Business Telephone

\_\_\_\_\_ Date

\_\_\_\_\_ Date

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[Signature]

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[Signature]

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[Printed Name]

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[Printed Name]

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Home Address

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Home Address

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Home Telephone

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Home Telephone

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Business Telephone

---

Business Telephone

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Date

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Date

**MULTI-UNIT DEVELOPMENT AGREEMENT**

**ATTACHMENT D**

**STATEMENT OF SHAREHOLDERS/  
MEMBERS/PARTNERS**

**ATTACHMENT D**

**STATEMENT OF SHAREHOLDERS/MEMBERS/PARTNERS**

The shareholders, members, or partners (collectively the “**Shareholders**”) of the Multi-Unit Developer and their respective shareholdings are as follows:

<b>NAME OF SHAREHOLDER</b>	<b>NUMBER AND DESIGNATION OF SHARES</b>	<b>OWNERSHIP PERCENTAGE</b>
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**EXHIBIT D**

**WATER BABIES US FRANCHISE LLC**

**LIST OF CURRENT FRANCHISEES,  
FORMER FRANCHISEES AND CORPORATE OPERATIONS**

**EXHIBIT D**

**LIST OF CURRENT FRANCHISEES, FORMER FRANCHISEES  
AND CORPORATE LOCATIONS as of December 31, 2024**

**CURRENT FRANCHISEES**

<b>OWNER NAME/ CONTACT NAME</b>	<b>STREET ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>	<b>PHONE</b>
N/A	N/A	N/A	N/A	N/A	N/A

**FRANCHISES NOT YET OPERATIONAL AS OF DECEMBER 31, 2024**

<b>OWNER NAME/ CONTACT NAME</b>	<b>STREET ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>	<b>PHONE</b>
N/A	N/A	N/A	N/A	N/A	N/A

**FORMER FRANCHISEES THAT EXITED THE SYSTEM IN FISCAL YEAR 2024**

N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**CORPORATE OPERATIONS**

<b>ENTITY</b>	<b>Location</b>
Water Babies US Franchise LLC	Territory 1, Seattle, Washington
Water Babies US Franchise LLC	Territory 2, Seattle, Washington

**EXHIBIT E**

**WATER BABIES US FRANCHISE LLC**

**LIST OF STATE ADMINISTRATORS AND  
AGENTS FOR SERVICE OF PROCESS**

**EXHIBIT E**

**LIST OF STATE ADMINISTRATORS AND  
AGENTS FOR SERVICE OF PROCESS**

<b>STATE</b>	<b>STATE ADMINISTRATOR</b>	<b>AGENT FOR SERVICE OF PROCESS</b>
<b>CALIFORNIA</b>	California Department of Financial Protection & Innovation One Sansome Street, Suite 600 San Francisco, CA 94104 415-972-8559 1-866-275-2677 <a href="http://www.dfpi.ca.gov">www.dfpi.ca.gov</a> ask.dfpi@dfpi.ca.gov	California Commissioner Department of Financial Protection & Innovation 320 West 4th Street, Suite 750 Los Angeles 90013-2344 1-866-275-2677 <a href="http://www.dfpi.ca.gov">www.dfpi.ca.gov</a> ask.dfpi@dfpi.ca.gov
<b>CONNECTICUT</b>	Securities and Business Investment Division Connecticut Department of Banking 260 Constitution Plaza Hartford, CT 06103 860-240-8230	Connecticut Banking Commissioner Same Address
<b>FLORIDA</b>	Department of Agriculture & Consumer Services Division of Consumer Services Mayo Building, Second Floor Tallahassee, FL 32399-0800 850-245-6000	Same
<b>GEORGIA</b>	Office of Consumer Affairs 2 Martin Luther King Drive, S.E. Plaza Level, East Tower Atlanta, GA 30334 404-656-3790	Same
<b>HAWAII</b>	Department of Commerce and Consumer Affairs Business Registration Division Commissioner of Securities 335 Merchant Street, Room 203 Honolulu, HI 96813 808-586-2722	Commissioner of Securities of the State of Hawaii Dept. of Commerce and Consumer Affairs Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, HI 96813
<b>ILLINOIS</b>	Franchise Division Office of the Attorney General 500 South Second Street Springfield, IL 62706 217-782-4465	Illinois Attorney General Same Address
<b>INDIANA</b>	Securities Commissioner Indiana Securities Division 302 West Washington Street, Room E 111 Indianapolis, IN 46204 317-232-6681	Indiana Secretary of State 201 State House 200 West Washington Street Indianapolis, IN 46204
<b>IOWA</b>	Iowa Securities Bureau Second Floor Lucas State Office Building Des Moines, IA 50319 515-281-4441	Same

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>KENTUCKY</b>	Kentucky Attorney General's Office Consumer Protection Division 1024 Capitol Center Drive Frankfort, KY 40602 502-696-5389	Same
<b>LOUISIANA</b>	Department of Urban & Community Affairs Consumer Protection Office 301 Main Street, 6th Floor One America Place Baton Rouge, LA 70801 504-342-7013 (gen. info.) 504-342-7900	Same
<b>MAINE</b>	Department of Business Regulations State House - Station 35 Augusta, ME 04333 207-298-3671	Same
<b>MARYLAND</b>	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202 410-576-6360	Maryland Securities Commissioner Same Address
<b>MICHIGAN</b>	Michigan Department of Attorney General Consumer Protection Division Antitrust and Franchise Unit 525 W. Ottawa Street G. Mennen Williams Building, 1 <sup>st</sup> Floor Lansing, MI 48913 517-373-7117	Michigan Department of Commerce Corporations and Securities Bureau Same Address
<b>MINNESOTA</b>	Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, MN 55101 651-539-1500	Minnesota Commissioner of Commerce Same Address
<b>NEBRASKA</b>	Department of Banking and Finance Bureau of Securities/Financial Institutions Division 1526 K Street, Suite 300 Lincoln, NE 68508-2732 P.O. Box 95006 Lincoln, Nebraska 68509-5006 Tele: 402-471-2171	Same
<b>NEW HAMPSHIRE</b>	Attorney General Consumer Protection and Antitrust Bureau State House Annex Concord, NH 03301 603-271-3641	Same
<b>NEW YORK</b>	NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21st Floor New York, NY 10005 212-416-8222	Secretary of State 99 Washington Avenue Albany, New York 12231
<b>NORTH CAROLINA</b>	Secretary of State's Office/Securities Division 2 South Salisbury Street Raleigh, NC 27601 919-733-3924	Secretary of State Secretary of State's Office Same Address

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>NORTH DAKOTA</b>	North Dakota Securities Department 600 East Boulevard Avenue State Capitol, 14 <sup>th</sup> Floor, Dept 414 Bismarck, ND 58505-0510 701-328-4712; Fax: 701-328-0140	North Dakota Securities Commissioner Same Address
<b>OHIO</b>	Attorney General Consumer Fraud & Crime Section State Office Tower 30 East Broad Street, 15th Floor Columbus, OH 43215 614-466-8831 or 800-282-0515	Same
<b>OKLAHOMA</b>	Oklahoma Securities Commission 2915 Lincoln Blvd. Oklahoma City, OK 73105 405-521-2451	Same
<b>OREGON</b>	Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, OR 96310 503-378-4387	Director Department of Insurance and Finance Same Address
<b>RHODE ISLAND</b>	State of Rhode Island Department of Business Regulation 1511 Pontiac Avenue, Bldg. 68-2 Cranston, RI 02920 401-462-9527	Director, Rhode Island Department of Business Regulation Same address
<b>SOUTH CAROLINA</b>	Secretary of State P.O. Box 11350 Columbia, SC 29211 803-734-2166	Same
<b>SOUTH DAKOTA</b>	South Dakota Department of Labor and Regulation Division of Insurance Securities Regulation 124 S. Euclid Avenue, Suite 104 Pierre, SD 57501 605-773-3563	Director of the South Dakota Division of Insurance, Securities Regulation Same Address
<b>TEXAS</b>	Secretary of State Statutory Documents Section P.O. Box 12887 Austin, TX 78711-2887 512-475-1769	Same
<b>UTAH</b>	Utah Department of Commerce Consumer Protection Division 160 East 300 South (P.O. Box 45804) Salt Lake City, UT 84145-0804 TELE: 801-530-6601 FAX: 801-530-6001	Same
<b>VIRGINIA</b>	State Corporation Commission Division of Securities and Retail Franchising Tyler Building, 9 <sup>th</sup> Floor 1300 E. Main Street Richmond, VA 23219 804-371-9051	Clerk of the State Corporation Commission Tyler Building, 1st Floor 1300 E. Main Street Richmond, VA 23219 804-371-9733

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>WASHINGTON</b>	Department of Financial Institutions Securities Division P.O. Box 41200 Olympia, WA 98504-1200 360-902-8760	Director, Dept. of Financial Institutions Securities Division 150 Israel Rd S.W. Tumwater, WA 98501
<b>WISCONSIN</b>	Wisconsin Dept. of Financial Institutions Division of Securities 345 W. Washington Avenue, 4th Floor Madison, WI 53703 608-266-8557	Wisconsin Commissioner of Securities Same Address

**EXHIBIT F**

**TO FRANCHISE DISCLOSURE DOCUMENT OF WATER BABIES US FRANCHISE LLC**

**STATE-SPECIFIC ADDENDUM TO  
FRANCHISE DISCLOSURE DOCUMENT, FRANCHISE AGREEMENT,  
AND MULTI-UNIT DEVELOPMENT AGREEMENT**

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
CALIFORNIA FRANCHISE INVESTMENT LAW**

**FOR RESIDENTS OF THE STATE OF CALIFORNIA**

**The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.**

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT AT LEAST 14 DAYS PRIOR TO THE EXECUTION OF AGREEMENT.

The following paragraph is added to Item 1 of the FDD under Industry Specific Regulation:

“Because you collect information from customers, it may contain personal information of individuals which is protected by law. You are responsible for complying with all applicable current and future federal, state, and local laws, regulations and requirements, including the California Consumer Privacy Act (as applicable), pertaining to the collection, protection, use, sale, disposal and maintenance of such personal information. Personal information includes information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, potential consumer, individual or household, as such term may be further defined or amended by applicable federal, state and local laws, regulations and requirements. You may also be required to comply with opt-in requirements on your website.”

None of the franchisor, any person or franchise broker in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

California Business and Professions Code 20000 through 20043 provide rights to the franchisee concerning termination, transfer or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.

The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law. (11 U.S.C.A. Sec. 101 et seq.).

The franchise agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

The franchise agreement and multi-unit development agreement requires application of the laws of North Carolina. This provision may not be enforceable under California law.

The franchise agreement and any document signed in connection with the franchise are supplemented with the following language:

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.

You must sign a general release if you renew or transfer your franchise. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516). Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).

California's Franchise Investment Law (Corporations Code sections 31512 and 31512.1) states that any provision of a franchise agreement or related document requiring the franchisee to waive specific provisions of the law is contrary to public policy and is void and unenforceable. The law also prohibits a franchisor from disclaiming or denying (i) representations it, its employees, or its agents make to you, (ii) your ability to rely on any representations it makes to you, or (iii) any violations of the law.

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION at [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

**HAWAII ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

The following is added to the Cover Page:

**“THESE FRANCHISES WILL BE / HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED WITHIN THE FRANCHISE DISCLOSURE DOCUMENT IS TRUE, COMPLETE AND NOT MISLEADING.**

**THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO YOU AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY YOU OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY YOU, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTY US AND YOU.”**

The following list reflects the status of the franchise registrations of the Franchisor in the states which require registration:

1. This proposed registration is effective in the following states:

None

2. This proposed registration is or will shortly be on file in the following states:

California, Florida, Hawaii, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Texas, Utah, Virginia, and Wisconsin.

3. States which have refused, by order or otherwise, to register this franchise are:

None

4. States which have revoked or suspended the right to offer the franchise are:

None

5. States in which the proposed registration of this franchise has been withdrawn are:

None

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**ILLINOIS ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

Illinois law governs the Agreements.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a form outside of the state of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Section 19 of the Illinois Franchise Disclosure Act sets forth the conditions and notice requirements for termination of a franchise agreement.

Section 20 of the Illinois Franchise Disclosure Act sets forth the conditions of non-renewal of a franchise agreement, along with the compensation requirements.

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on behalf of the Franchisor, franchise seller, or other person acting on behalf of a Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**FRANCHISOR:**

**FRANCHISEE:**

**WATER BABIES FRANCHISING LLC**

\_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**INDIANA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

Item 13 of the FDD is amended to add the following:

Under Indiana Code Section 23-2-2.7-1(4), Franchisor will not accept any rebates from any person with whom Franchisee does business or associate in relation to transactions between Franchisee and the other person, other than for compensation for services rendered by Franchisor, unless the rebate is properly accounted for and submitted to Franchisee.

Item 17 of the FDD is amended to add the following:

Indiana Code 23-2-2.7-1(7) makes it unlawful for Franchisor to unilaterally terminate Franchisee's Franchise Agreement unless there is a material violation of the Franchise Agreement and termination is not in bad faith.

Indiana Code 23-2-2.7-1(5) prohibits Franchisor to require Franchisee to agree to a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Act.

The "Summary" column in Item 17 of the FDD is deleted and the following is inserted in its place:

Notwithstanding anything to the contrary in this provision, Franchisee does not waive any right under the Indiana Statutes with regard to prior representations made by Franchisor.

The "Summary" column in Item 17 of the FDD is deleted and the following is inserted in its place:

Litigation regarding Franchise Agreement in Indiana; other litigation in the Franchisor's Choice of Law State. This language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement, including all venue provisions, is fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

The "Summary" column in Item 17. of the FDD is deleted and the following is inserted in its place:

Indiana law applies to disputes covered by Indiana franchise laws; otherwise Franchisor's Choice of Law State law applies.

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of the FDD, the Franchise Agreement, or Franchisor's Choice of Law State law, if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the Franchise without good cause or in bad faith, good cause being defined under law as including any material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement

relating to termination for cause, to the extent those provisions may be inconsistent with such prohibition.

3. Any provision in the Franchise Agreement that would require Franchisee to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by the Indiana Deceptive Franchise Practices Law is void to the extent that such provision violates such law.
4. The covenant not to compete that applies after the expiration or termination of the Franchise Agreement for any reason modified to the extent necessary to comply with Indiana Code 23-2-2.7-1 (9).
5. The following provision will be added to the Franchise Agreement:

No Limitation on Litigation. Despite the foregoing provisions of this Agreement, any provision in the Agreement which limits in any manner whatsoever litigation brought for breach of the Agreement will be void to the extent that any such contractual provision violates the Indiana Deceptive Franchise Practices Law.

No statement, questionnaire, or acknowledgement signed or agreed to by Franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by Franchisor, any franchise seller, or any other person acting on Franchisor's behalf. This provision supersedes any other term of any document executed in connection with the franchise.

**MARYLAND ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

Item 17 of the FDD and the Franchise Agreement are amended to state: “The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.”

Representations in the Franchise Agreement are not intended to, nor shall they act as, a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the FDD and sections of the Franchise Agreement are amended to state that Franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the Franchise.

The Franchise Agreement and/or Multi-Unit Development Agreement are amended to state that the franchise agreement and/or multi-unit development agreement provides that disputes are resolved through arbitration. A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

No statement, questionnaire, or acknowledgement signed or agreed to by Franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by Franchisor, any franchise seller, or any other person acting on Franchisor’s behalf. This provision supersedes any other term of any document executed in connection with the franchise.

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A Sec. 101 et seq.).

Exhibit I – Statement of Franchisee is hereby deleted in its entirety.

**MICHIGAN ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

**THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST FRANCHISEE.**

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

- (a) A prohibition on Franchisee's right to join an association of franchisees.
- (b) A requirement that Franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives Franchisee of rights and protections provided in this act. This shall not preclude Franchisee, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits Franchisor to terminate a Water Babies Franchise prior to the expiration of its term except for good cause. Good cause shall include Franchisee's failure to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits Franchisor to refuse to renew Franchisee's Water Babies Franchise without fairly compensating Franchisee by repurchase or other means for the fair market value at the time of expiration of Franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to Franchisor, and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the Water Babies Franchise business are not subject to compensation. This subsection applies only if: (i) the term of the Franchise is less than five (5) years; and (ii) Franchisee is prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the Water Babies Franchise or Franchisee do not receive at least six (6) months' advance notice of Franchisee's intent not to renew the Franchise.
- (e) A provision that permits Franchisor to refuse to renew a Franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside the State of Michigan. This shall not preclude Franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits Franchisor to refuse to permit a transfer of ownership of a Franchise, except for good cause. This subdivision does not prevent Franchisor from exercising a right of first refusal to purchase the Franchise. Good cause shall include, but is not limited to:
  - (i) the failure of the proposed transferee to meet Franchisor's then-current reasonable qualifications or standards.
  - (ii) the fact that the proposed transferee is a competitor of Franchisor or its subfranchisor.

(iii) the unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) Franchisee or proposed transferee's failure to pay any sums owing to Franchisor or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

(h) A provision that requires Franchisee to resell to Franchisor items that are not uniquely identified with Franchisor. This subdivision does not prohibit a provision that grants to Franchisor a right of first refusal to purchase the assets of a Franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants Franchisor the right to acquire the assets of a Franchise for the market or appraised value of such assets if Franchisee has breached the lawful provisions of the Franchise Agreement and have failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits Franchisor to directly or indirectly convey, assign, or otherwise transfer Franchisor's obligations to fulfill contractual obligations to Franchisee unless provision has been made for providing the required contractual services.

**THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.**

Any questions regarding this notice should be directed to:

State of Michigan  
Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Section  
670 Law Building  
525 W. Ottawa Street  
Lansing, Michigan 48913  
Telephone Number: (517) 373-7117

**MINNESOTA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

Despite anything to the contrary in the FDD and the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Minnesota:

1. Any provision in the Franchise Agreement which would require Franchisee to assent to a release, assignment, novation or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22 will be void to the extent that such contractual provision violates such law.
2. Minnesota Statute Section 80C.21 and Minnesota Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota. In addition, nothing in the Franchise Disclosure Document or Franchise Agreement can abrogate or reduce any of Franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or Franchisee's rights to any procedure, forum, or remedies provided for by the laws of Minnesota.
3. Minn. Rule Part 2860.4400J. prohibits a franchisee from waiving his rights to a jury trial or waiving his rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes. Any provision in the Franchise Agreement which would require Franchisee to waive its rights to any procedure, forum or remedies provided for by the laws of the State of Minnesota is deleted from any agreement relating to Water Babies Franchises offered and sold in the State of Minnesota; provided, however, that this paragraph will not affect the obligation in the Franchise Agreement relating to arbitration.
4. With respect to franchises governed by Minnesota law, Franchisor will comply with Minnesota Statute Section 80C.14, Subds. 3-5, which require, (i) good cause for termination and except in certain specified cases that a franchisee be given 90 days' notice of termination (with 60 days to cure), and (ii) 180 days' notice for non-renewal of the franchise agreement and that consent to the transfer of the franchise will not be unreasonably withheld.
5. Item 13 of the FDD is hereby amended to state that Franchisor will protect Franchisee's rights under the Franchise Agreement to use the Marks, or indemnify Franchisee from any loss, costs, or expenses arising out of any third-party claim, suit or demand regarding Franchisee's use of the Marks, if Franchisee's use of the Marks is in compliance with the provisions of the Franchise Agreement and Franchisor's System standards.
6. Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release. As a result, the Franchise Disclosure Document and the Franchise Agreement, which require Franchisee to sign a general release prior to renewing or transferring Franchisee's Water Babies Franchise, are hereby deleted from the Franchise Agreement, to the extent required by Minnesota law.
7. The following language will appear as a new paragraph of the Franchise Agreement:

No Abrogation. Pursuant to Minnesota Statutes, Section 80C.21, nothing in the dispute resolution section of this Agreement will in any way abrogate or reduce any of Franchisee's rights as provided for in Minnesota Statutes, Chapter 80.C.

8. Minnesota Statute Section 80C.17 states that no action for a violation of Minnesota Statutes, Sections 80C.01 to 80C.22 may be commenced more than three (3) years after the cause of action accrues. To the extent that the Franchise Agreement conflicts with Minnesota law, Minnesota law will prevail.
9. The Franchisee cannot consent to the Franchisor obtaining injunctive relief. The Franchisor may seek injunctive relief. See Minn. Rule 2860.4400J. Also, a court will determine if a bond is required.
10. Minnesota Rules 2860.4400(G) prohibits a franchisor from imposing on a franchisee by contract or rule, whether written or oral, any standard of conduct that is unreasonable.
11. NSF checks and related interest and attorneys' fees are governed by Minnesota Statute § 604.113, which puts a cap of \$30 on initial service charges and requires notice and opportunity to cure prior to assessing interest and attorneys' fees.
12. No statement, questionnaire, or acknowledgement signed or agreed to by Franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by Franchisor, any franchise seller, or any other person acting on Franchisor's behalf. This provision supersedes any other term of any document executed in connection with the franchise.

**NEW YORK ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

The following information is added to the cover page of the Franchise Disclosure Document:

**THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH FRANCHISEE ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

The following is added at the end of Item 3:

Except as provided above, the following applies to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, that is significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten years immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the "Summary" sections of Item 17(c), titled "**Requirements for franchisee to renew or extend,**" and Item 17(m), entitled "**Conditions for franchisor approval of transfer**":

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “**Termination by franchisee**”:

You may terminate the agreement on any grounds available by law.

The following is added to the end of the “Summary” sections of Item 17(v), titled “**Choice of forum**”, and Item 17(w), titled “**Choice of law**”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

Franchise Questionnaires and Acknowledgements -- No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Receipts – Any sale must be made in compliance with § 683(8) of the Franchise Sales Act (N.Y. Gen. Bus. L. § 680 et seq.), which describes the time period a Franchise Disclosure Document (offering prospectus) must be provided to a prospective franchisee before a sale may be made. New York law requires a franchisor to provide the Franchise Disclosure Document at the earliest of the first personal meeting, ten (10) business days before the execution of the franchise or other agreement, or the payment of any consideration that relates to the franchise relationship.

The undersigned does hereby acknowledge receipt of this addendum. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Franchisor Name

\_\_\_\_\_  
Prospective Franchise

## **NORTH DAKOTA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT, FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

Sections of the FDD or the Franchise Agreement requiring that Franchisee sign a general release, estoppel or waiver as a condition of renewal and/or assignment may not be enforceable as they relate to releases of the North Dakota Franchise Investment Law.

Sections of the FDD or the Franchise Agreement requiring resolution of disputes to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Sections of the FDD or the Franchise Agreement relating to choice of law may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Any sections of the FDD or the Franchise Agreement requiring Franchisee to consent to liquidated damages and/or termination penalties may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Any sections of the FDD or the Franchise Agreement requiring Franchisee to consent to a waiver of trial by jury may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Any sections of the FDD or the Franchise Agreement requiring Franchisee to consent to a waiver of exemplary and punitive damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Item 17(r) of the FDD and Section 15 of the Franchise Agreement disclose the existence of certain covenants restricting competition to which Franchisee must agree. The Commissioner has held that covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The Franchise Disclosure Document and the Franchise Agreement are amended accordingly to the extent required by law.

Item ITEM 17(v) of the Franchise Disclosure Document, Sections 20.3 and 21.1 of the Franchise Agreement, and Sections 21 and 18 of the Multi-Unit Development Agreement is amended with the following language:

“Any action will be brought in the appropriate state or federal court in North Dakota.”

No statement, questionnaire, or acknowledgement signed or agreed to by Franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by Franchisor, any franchise seller, or any other person acting on Franchisor’s behalf. This provision supersedes any other term of any document executed in connection with the franchise.

**OHIO**

The following language will be added to the front page of the Franchise Agreement:

**READ THIS CAREFULLY**

The state of Ohio has not reviewed and does not approve, recommend, endorse, or sponsor this or any other business opportunity plan. If Franchisee has any questions about this plan, the information contained in this disclosure document should be reviewed with an attorney or financial advisor before Franchisee signs any agreement.

Franchisee, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date Franchisee signs this agreement. See the attached notice of cancellation for an explanation of this right.

Initials \_\_\_\_\_ Date \_\_\_\_\_

**NOTICE OF CANCELLATION**

\_\_\_\_\_ (enter date of transaction)

Franchisee may cancel this transaction, without penalty or obligation, within five (5) business days from the above date. If Franchisee cancels, any payments made by Franchisee under the agreement, and any negotiable instrument executed by Franchisee will be returned within ten (10) business days following the seller's receipt of Franchisee's cancellation notice, and any security interest arising out of the transaction will be cancelled. If Franchisee cancels, Franchisee must make available to the seller at Franchisee's business address all goods delivered to Franchisee under this agreement; or Franchisee may, if it wishes, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If Franchisee does make the goods available to the seller and the seller does not pick them up within 20 days of the date of Franchisee's notice of cancellation, Franchisee may retain or dispose of them without further obligation. If Franchisee fails to make the goods available to the seller, or if Franchisee agrees to return them to the seller and fails to do so, then Franchisee remains liable for the performance of all obligations under this agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Water Babies US Franchise LLC, at 115 E. Pennsylvania Ave., Suite 16, Southern Pines, NC 28387, or an email to Water Babies US Franchise LLC at carl.higgins@waterbabies.co.uk, not later than midnight of the fifth business day after the Effective Date.

I hereby cancel this transaction.

Franchisee:

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**RHODE ISLAND ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.” The Franchise Disclosure Document and the Franchise Agreement are amended accordingly to the extent required by law.

The above language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement including all choice of law provisions, are fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

No statement, questionnaire, or acknowledgement signed or agreed to by Franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by Franchisor, any franchise seller, or any other person acting on Franchisor’s behalf. This provision supersedes any other term of any document executed in connection with the franchise.

## **SOUTH DAKOTA**

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**VIRGINIA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT AND MULTI-UNIT DEVELOPMENT AGREEMENT**

The following information applies to franchises and franchisees subject to the Virginia retail Franchising Act. Item numbers correspond to those in the main body of the Franchise Disclosure Document:

Item 17

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it shall be unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

Further, any provision in any of the contracts that you sign with us which provides for termination of the franchise upon the bankruptcy of the franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. 101 et. seq.).

The franchise agreement and any document signed in connection with the franchise are supplemented with the following language:

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**WASHINGTON ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT,  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT, STATEMENT  
OF FRANCHISEE. AND RELATED AGREEMENTS**

The provisions of this Addendum form an integral part of, are incorporated into, and modify the Franchise Disclosure Document, the franchise agreement, and all related agreements regardless of anything to the contrary contained therein. This Addendum applies if: (a) the offer to sell a franchise is accepted in Washington; (b) the purchaser of the franchise is a resident of Washington; and/or (c) the franchised business that is the subject of the sale is to be located or operated, wholly or partly in Washington.

1. **Conflict of Laws.** In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, chapter 19.100 RCW will prevail.
2. **Franchisee Bill of Rights.** RCW 19.100.180 may supersede provisions in the franchise agreement or related agreements concerning your relationship with the franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions that supersede the franchise agreement or related agreements concerning your relationship with the franchisor. Franchise agreement provisions, including those summarized in Item 17 of the Franchise Disclosure Document, are subject to state law.
3. **Site of Arbitration, Mediation, and/or Litigation.** In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of the arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring actions or proceedings arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
4. **General Release.** A release or waiver of rights in the franchise agreement or related agreements purporting to bind the franchisee to waive compliance with any provision under the Washington Franchise Investment Protection Act or any rules or orders thereunder is void except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel, in accordance with RCW 19.100.220(2). In addition, any such release or waiver executed in connection with a renewal or transfer of a franchise is likely void except as provided for in RCW 19.100.220(2).
5. **Statute of Limitations and Waiver of Jury Trial.** Provisions contained in the franchise agreement or related agreements that unreasonably restrict or limit the statute of limitations period for claims under the Washington Franchise Investment Protection Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
6. **Transfer Fees.** Transfer fees are collectable only to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
7. **Termination by Franchisee.** The franchisee may terminate the franchise agreement under any grounds permitted under state law.
8. **Certain Buy-Back Provisions.** Provisions in franchise agreements or related agreements that permit the franchisor to repurchase the franchisee's business for any reason during the term of the

franchise agreement without the franchisee's consent are unlawful pursuant to RCW 19.100.180(2)(j), unless the franchise is terminated for good cause.

9. **Fair and Reasonable Pricing.** Any provision in the franchise agreement or related agreements that requires the franchisee to purchase or rent any product or service for more than a fair and reasonable price is unlawful under RCW 19.100.180(2)(d).
10. **Waiver of Exemplary & Punitive Damages.** RCW 19.100.190 permits franchisees to seek treble damages under certain circumstances. Accordingly, provisions contained in the franchise agreement or elsewhere requiring franchisees to waive exemplary, punitive or similar damages are void, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel, in accordance with RCW 19.100.220(2).
11. **Franchisor's Business Judgement.** Provisions in the franchise agreement or related agreements stating that the franchisor may exercise its discretion on the basis of its reasonable business judgement may be limited or superseded by RCW 19.100.180(1), which requires the parties to deal with each other in good faith.
12. **Indemnification.** Any provision in the franchise agreement or related agreements requiring the franchisee to indemnify, reimburse, defend, or hold harmless the franchisor or other parties is hereby modified such that the franchisee has no obligation to indemnify, reimburse, defend, or hold harmless the franchisor or any other indemnified party for losses or liabilities to the extent that they are caused by the indemnified party's negligence,, willful misconduct, strict liability or fraud.
13. **Attorneys' Fees.** If the franchise agreement or related agreements require a franchisee to reimburse the franchisor for courts costs or expenses, including attorneys' fees, such provision applies only if the franchisor is the prevailing party in any judicial or arbitration proceeding.
14. **Noncompetition Covenants.** Pursuant to RCW 49.62.20, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earning from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted for inflation). As a result, any provision contained in the franchise agreement or elsewhere that conflicts with these limitation is void and unenforceable in Washington.
15. **Nonsolicitation Agreements.** RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor.
16. **Questionnaires and Acknowledgements.** No statement, questionnaire, or acknowledgement or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

17. **Prohibitions on Communicating with Regulators.** Any provision in the franchise agreement or related agreements that prohibits the franchisee from communicating with or complaining to regulators is inconsistent with the express instructions in the Franchise Disclosure Document and is unlawful under RCW 19.100.180(2)(h).
18. **Advisory Regarding Franchise Brokers.** Under the Washington Franchise Investment Protection Act, a “franchise broker” is defined as a person that engages in the business of the offer or sale of franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. If a franchisee is working with a franchise broker, franchisees are advised to carefully evaluate any information provided by the franchise broker about a franchise.

The undersigned parties to hereby acknowledge receipt of this Addendum.

The undersigned does hereby acknowledge receipt of this addendum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Franchisor Name

\_\_\_\_\_  
Prospective Franchisee

## **WISCONSIN**

The Wisconsin Fair Dealership Law, Chapter 135 of the Wisconsin Statutes supersedes any provision of the Franchise Agreement if such provision is in conflict with that law. The Franchise Disclosure Document and the Franchise Agreement are amended accordingly.

No statement, questionnaire, or acknowledgement or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of franchisor. This provision supersedes any other term of any document executed in connection with the franchise

**APPLICABLE ADDENDA**

If any one of the preceding Addenda for specific states (“**Addenda**”) is checked as an “Applicable Addenda” below, then that Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement and any other specified agreement(s) entered into by Franchisor and the undersigned Franchisee. To the extent any terms of an Applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement, Multi-Unit Development Agreement and other specified agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Disclosure Document.

- California
- Hawaii
- Illinois
- Indiana
- Maryland

- Michigan
- Minnesota
- New York
- North Dakota
- Ohio

- Rhode Island
- South Dakota
- Virginia
- Washington
- Wisconsin

Dated: \_\_\_\_\_

**FRANCHISOR:**

**WATER BABIES US FRANCHISE LLC**

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

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

**FRANCHISEE:**

\_\_\_\_\_

\_\_\_\_\_

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

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

**EXHIBIT G**  
**WATER BABIES US FRANCHISE LLC**  
**OPERATIONS MANUAL TABLE OF CONTENTS**

## Operations Manual Table of Contents – Online Manual

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**EXHIBIT H**

**WATER BABIES US FRANCHISE LLC**

**NONDISCLOSURE AND NONCOMPETITION AGREEMENT**

## EXHIBIT H

### NONDISCLOSURE AND NONCOMPETITION AGREEMENT

This Nondisclosure and Noncompetition Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Water Babies US Franchise LLC, a Delaware limited liability company (“Company”), located at 115 E Pennsylvania Ave, Suite 16, Southern Pines, NC 28387 and \_\_\_\_\_ (“Associate”), who resides or has a principal place of address at \_\_\_\_\_.

#### RECITALS

A. The Company is engaged in the business of selling franchises for the operation of a business offering swim instruction for children, underwater photography, and other elements and the sale of related products (“Franchise Business”). The Franchise Business is operated under the Company’s “Water Babies” and other service marks, trademarks, logo types, designs, and other commercial symbols (collectively “Marks”).

B. The Company has developed methods for establishing, operating and promoting Franchise Businesses pursuant to the Company’s distinctive business format, plans, methods, data, processes, supply systems, marketing systems, formulas, techniques, designs, layouts, operating procedures, Marks and information and know-how of the Company (“Confidential Information” and “Trade Secrets”) and such Confidential Information and Trade Secrets as may be further developed from time to time by the Company.

C. The Company and its affiliates have established substantial goodwill and an excellent reputation with respect to the quality of its System, which goodwill and reputation have been and will continue to be of major benefit to the Company.

D. Associate desires to become involved with the Company or a franchisee of the Company in the capacity of an officer, partner, director, agent, manager, employee, Aquatic Director or as a beneficial owner of the Franchise Business, or is an immediate family member or domestic partner of a principal owning an interest in the Franchise Business, and will become privileged as to certain Confidential Information and Trade Secrets. Associate may or may not have signed the Franchise Agreement or Guaranty and Assumption of Franchisee’s Obligations form.

E. Associate agrees to the terms of this Agreement as partial consideration for the Company’s willingness to allow Associate to engage in a business relationship with Company or a franchisee of the Company using the Company’s Confidential Information and Trade Secrets.

**NOW THEREFORE**, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Associate and the Company, intending legally to be bound, agree as follows:

1. Definitions.

(a) “Associate” shall mean the individual or entity described on page 1 of this Agreement and the Associate’s managers, officers, beneficial owners, directors, employees, partners, members, principals and immediate family members.

(b) “Competitive Business” as used in this Agreement means any business operating in competition with or similar to the Franchise Business, and specifically offering swim instruction for

children, underwater photography and other elements and the sale of related products; provided, however, Associate will not be prohibited from owning not more than a total of 5% of the stock of any company which is subject to the reporting requirements of the U.S. Securities and Exchange Act of 1934.

(c) “Confidential Information” shall mean without limitation, all knowledge, know-how, standards, formulas, methods and procedures related to the establishment and operation of the Franchise Business and includes all records pertaining to customers, suppliers, and other service providers of, and/or related in any way to, the Franchise Business including, without limitation, all databases (whether in print, electronic or other form), all names, addresses, phone numbers, e-mail addresses, customer purchase records, mail lists, manuals, promotional and marketing materials, marketing strategies and any other data and information which the Company or its affiliates designate as confidential including all information contained in the Company’s Operations Manual, which may be provided as one or more separate manuals, written instructional guides, CD Rom, or other communications from the Company or its affiliates, which may be changed or supplemented from time to time.

(d) “Franchise Agreement” shall mean the franchise agreement between Company and \_\_\_\_\_, dated \_\_\_\_\_, as amended or renewed from time to time.

(e) “Territory” shall have the meaning defined in the Franchise Agreement.

(f) “Term” shall have the meaning defined in the Franchise Agreement.

(g) “Trade Secret(s)” shall mean information, including a formula, pattern, compilation, program, device, method, technique or process related to the Franchise Business that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(h) All other capitalized terms not defined in this Agreement shall have the meaning given to them in the Franchise Agreement.

2. Confidential Information and Trade Secrets. Associate and the Company acknowledge that the Confidential Information and Trade Secrets which are developed and utilized in connection with the operation of the Franchise Business are unique and the exclusive property of the Company or its affiliates. Associate acknowledges that any unauthorized disclosure or use of the Confidential Information and Trade Secrets would be wrongful and would cause irreparable injury and harm to the Company or its affiliates. Associate further acknowledges that the Company or its affiliates has expended a great amount of effort and money in obtaining and developing the Confidential Information and Trade Secrets, that the Company or its affiliates has taken numerous precautions to guard the secrecy of the Confidential Information and Trade Secrets, and that it would be very costly for competitors to acquire or duplicate the Confidential Information and Trade Secrets.

3. Nondisclosure of Confidential Information and Trade Secrets. During the Term and any Successor Term of the Franchise Agreement and for a period of 2 years after the expiration or termination of the Franchise Agreement (unless such information is a Trade Secret in which case the requirements in this Section 3 will remain in place for as long as such information constitutes a Trade Secret), Associate shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of the

Company or the Franchise Business, any of the Confidential Information or Trade Secrets of the Company or its affiliates.

4. Exceptions to Disclosing Confidential Information. Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to the following: (a) information that was in the public domain prior to being communicated to the Associate through no fault of the Associate; (b) information that entered the public domain after it was communicated to the Associate through no fault of the Associate; (c) information that was in the Associate's possession free of any obligation of confidence at the time it was communicated to the Associate; or (d) the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that the Associate is legally compelled to disclose the information, if the Associate has notified the Company before disclosure and used the Associate's best efforts, and afforded the Company the opportunity, to obtain an appropriate protective order or other assurance satisfactory to the Company of confidential treatment for the information required to be so disclosed.

5. Noncompetition Covenant. Associate acknowledges that the Company must be protected against the potential for unfair competition by Associate's use of the Confidential Information and Trade Secrets in direct competition with the Company. Associate further acknowledges that the Confidential Information and Trade Secrets would not have been divulged to the Associate absent the Associate's agreement to strictly comply with the provisions of this Agreement. Associate therefore agrees that, other than the Franchise Business licensed under the Franchise Agreement, Associate will not during the Term and Successor Term of the Franchise Agreement:

(a) have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business;

(b) perform services as a manager, officer, beneficial owner, director, principal, employee, partner, member, consultant, representative, agent or otherwise for a Competitive Business; or

(c) divert or attempt to divert any business related to, or any customer or account of the Franchise Business, the Company's business, the business of any affiliate of the Company or any other franchisee's business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of the Company or another franchisee licensed by Company, to any Competitive Business by any direct inducement or otherwise.

6. Post-Termination Covenant Not to Compete. Upon termination or expiration of Associate's relationship with the Company, the Franchise Business or the Franchise Agreement for any reason, Associate agrees that, for a period of 2 years commencing on the effective date of termination or expiration of the Franchise Agreement, Associate will not have any direct or indirect interest (through any immediate family member of Associate or its beneficial owners or otherwise) as a disclosed or beneficial owner, investor, partner, director, officer, manager, employee, consultant, representative or agent or in any other capacity in any Competitive Business, located or operating: (a) in the Territory or any other franchisee's territory; (b) within 100 miles of the Territory or any other franchisee's Territory; or (3) within 100 miles of any Company or Company's affiliate owned Franchise Business.

The restrictions of this Section 6 will not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 5% or less of the number of shares of that class of securities issued and outstanding.

The parties have attempted in this Agreement to limit the Associate's right to compete only to the extent necessary to protect the Company from unfair competition. The parties hereby expressly agree that if the scope of enforceability of the provision of Sections 5 and 6 are disputed at any time by the Franchisee, a court or arbitrator, as the case may be, may modify Sections 5 and 6 to the extent that it deems necessary to make such provisions enforceable under applicable law. THE ASSOCIATE EXPRESSLY ACKNOWLEDGES THAT THE ASSOCIATE POSSESSES SKILLS AND ABILITIES OF A GENERAL NATURE AND HAS OTHER OPPORTUNITIES TO EXPLOIT SUCH SKILLS. CONSEQUENTLY, ENFORCEMENT OF THE COVENANTS SET FORTH ABOVE WILL NOT DEPRIVE ASSOCIATE OF THE ABILITY TO EARN A LIVING.

7. Injunction. Associate hereby acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, the Company shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which the Company may be entitled. Associate agrees that the Company may obtain such injunctive relief, without posting a bond or bonds. Associate's sole remedy, in the event of the entry of such injunctive relief, shall be dissolution of such injunctive relief, if warranted, upon a hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by Associate. In any litigation, arbitration or other proceeding concerning the entry of any requested injunction against Associate, Associate, for value, voluntarily waives such defenses as Associate might otherwise have under the law of the jurisdiction in which the matter is being litigated, arbitrated or otherwise relating to any claimed "prior breach" on the part of the Company; it being specifically understood and agreed between the parties that no action or lack of action on the part of the Company will entitle or permit the Associate to disclose any such Confidential Information and Trade Secrets in any circumstances.

8. Effect of Waiver. The waiver by Associate or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Associate and the Company and their respective heirs, executors, representatives, successors and assigns.

10. Entire Agreement. This instrument contains the entire agreement of Associate and the Company relating to the matters set forth herein. It may not be changed verbally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

11. Governing Law. This instrument shall be governed by and construed under the laws of the State of North Carolina; provided, however, the parties agree that the covenant against competition will be governed by the law of the state in which the franchisee operates the franchised business.

12. Jurisdiction and Venue. In the event of a breach or threatened breach by Associate of this Agreement, Associate hereby irrevocably submits to the jurisdiction of the state and federal courts of North Carolina, and irrevocably agrees that venue for any action or proceeding shall be in the state and federal courts of North Carolina. Both parties waive any objection to the jurisdiction of these courts or to venue in the state and federal courts of North Carolina. Notwithstanding the foregoing, in the event that the laws of the state where the Associate resides prohibit the aforesaid designation of jurisdiction and venue, then such other state's laws shall control.

13. Severability. If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction,

government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect.

14. Attorneys' Fees. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including without limitation such costs, expenses and fees on any appeals), and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

**IN WITNESS WHEREOF**, the parties have signed this Agreement on the date first above written.

**COMPANY:**

**ASSOCIATE:**

**WATER BABIES FRANCHISING , LLC**

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

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

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

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**

**WATER BABIES US FRANCHISE LLC**

**STATEMENT OF FRANCHISEE**

**EXHIBIT I**

**STATEMENT OF FRANCHISEE**

**California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin franchisees should not complete this Statement of Franchisee. If a franchisee in one of these states does so, we will disregard and not rely on the Statement of Franchisee.**

**[Note: Dates and Answers Must be Completed in the Prospective Franchisee’s Own Handwriting]**

In order to make sure that no misunderstanding exists between you, the Franchisee, and us, Water Babies US Franchise LLC (also called “Water Babies “, the “Franchisor” or “we”), and to make sure that no violations of law might have occurred, and understanding that we are relying on the statements you make in this document, you assure us as follows:

A. The following dates are true and correct:

Date	Initials	
1. _____, 20__	_____	The date on which I received a Franchise Disclosure Document regarding the Water Babies Business.
2. _____, 20__	_____	The date of my first face-to-face meeting with Marketing Representative to discuss a possible purchase of a Water Babies Business.
3. _____, 20__	_____	The date on which I received a completed copy (other than signatures) of the Franchise Agreement which I later signed.
4. _____, 20__	_____	The date on which I signed the Franchise Agreement.
5. _____, 20__	_____	The earliest date on which I delivered cash, check or other consideration to the Marketing Representative or an officer of Franchisor.

B. Representations.

1. No oral, written, visual or other promises, agreements, commitments, representations, understandings, “side agreements,” options, rights-of-first-refusal or otherwise have been made to or with me with respect to any matter (including but not limited to advertising, marketing, site location, operational, marketing or administrative assistance, exclusive rights or exclusive or protected territory or otherwise), nor have I relied in any way on same, except as expressly set forth in the Franchise Agreement or an attached written Addendum signed by me and Water Babies, except as follows:

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(If none, you should write NONE in your own handwriting and initial.)

2. No oral, written, visual or other promises, agreements, commitments, representation, understandings, “side agreements” or otherwise which expanded upon or were inconsistent with the Franchise Disclosure Document or the Franchise Agreement or any attached written addendum signed by me and an officer of Water Babies, were made to me by any person or entity, nor have I relied in any way on same, except as follows:

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(If none, you should write NONE in your own handwriting and initial.)

3. No oral, written, visual or other claim or representation (including but not limited to charts, tables, spreadsheets or mathematical calculations to demonstrate actual or possible results based on a combination of variables, such as multiples of price and quantity to reflect gross sales, or otherwise) which stated or suggested a specific level or range of actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise (or from which such items might be ascertained) from the Water Babies Business was made to me by any person or entity, nor have I relied in any way on same, except as follows:

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(If none, you should write NONE in your own handwriting and initial.)

4. No contingency, prerequisite, reservation or otherwise exists with respect to any matter (including but not limited to my obtaining financing, or my fully performing any of my obligations), nor have I relied in any way on same, except as expressly set forth in the Franchise Agreement or any attached written addendum signed by me and Water Babies :

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(If none, you should write NONE in your own handwriting and initial.)

5. The individuals signing for me constitute all of the executive officers, partners, shareholders, investors and/or principals. Each of such individuals has reviewed the Franchise Disclosure Document and all exhibits and carefully read, discussed, understands and agrees to the Franchise Agreement, each attached written Addendum and any personal guaranties.

6. I have had an opportunity to consult with an independent professional advisor, such as an attorney or accountant, prior to signing any binding documents or paying any sums, and Water Babies has strongly recommended that I obtain such independent advice. I have also been strongly advised by Water Babies to discuss my proposed purchase of Water Babies Business with any existing Water Babies franchisees prior to signing any binding documents or paying any sums and Water Babies has supplied me with a list of all existing franchisees if any exist.

7. I understand that a) entry into any business venture necessarily involves some unavoidable risk of loss or failure; b) while the purchase of a franchise may improve the chances for success, the purchase of a Water Babies Business or any other franchise is a speculative investment; c) investment beyond that outlined in the Franchise Disclosure Document may be required to succeed; d) there exists no guaranty against possible loss or failure in this or any other business; and e) the most important factors in the success of any Water Babies Business, including the one to be operated by me, are my personal business skills, which include marketing, sales, and management, sound judgment, and extremely hard work.

8. If there are any matters inconsistent with the statements in this document or if anyone has suggested that you sign this document without all of its statements being true, correct and complete, immediately inform Water Babies (Phone: 833-268-5650) and our CEO.

You understand and agree that we do not furnish, or authorize our salespersons, brokers or others to furnish any oral or written information concerning actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise (or information from which such items might be ascertained), from franchise or non-franchised units, that no such results can be assured or estimated, and that actual results will vary from unit to unit.

You understand and agree to all of the foregoing and represent and warrant that all of the above statements are true, correct and complete.

**PROSPECTIVE FRANCHISEE:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**MARKETING REPRESENTATIVE:**

\_\_\_\_\_  
Date

**REVIEWED BY FRANCHISOR:**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**\*\*This Statement of Franchisee does not waive any liability the franchisor may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.**

### **State Effective Dates**

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<b>State</b>	<b>Effective Date</b>
California	
Hawaii	Not Registered
Illinois	
Indiana	
Maryland	
Michigan	
Minnesota	
New York	
North Dakota	Not Registered
Rhode Island	
South Dakota	Not Registered
Virginia	
Washington	Not Registered
Wisconsin	July 7, 2025

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**EXHIBIT J**  
**WATER BABIES US FRANCHISE LLC**  
**RECEIPTS**



