

## FRANCHISE DISCLOSURE DOCUMENT



The Convenience Stores For Metal®

**Metal Supermarkets Franchising America Inc.**

an Ontario corporation  
5399 Eglinton Avenue West, Suite 210  
Toronto, Ontario, Canada M9C 5K6  
(905) 362-8226

<http://metalsupermarketsfranchise.com>  
Franchising@metalsupermarkets.com

The franchise offered is for a Metal Supermarkets® store (as defined below) that will sell a wide variety of metals and related services primarily to the maintenance and engineering departments of manufacturing facilities as well as maintenance providers, food processors, machine shops, tool and die shops, contractors, welders, fabricators, hospitals, schools, universities and other institutions and service companies, as well as to welders, fabricators, and machine shop and tool and die shop operators. The total investment necessary to begin operation of a Metal Supermarkets franchised business is from \$340,500 to \$592,500. This includes \$62,500 that must be paid to us or our affiliates.

If you enter into a development agreement to establish multiple Metal Supermarkets stores, the development fee (which is paid instead of the initial franchise fees that would be due for those stores) is \$44,500 for the first store, \$34,000 for the second store, and \$31,000 for the third and each store after that. The number of Metal Supermarkets stores that you will develop under the development agreement is determined by a mutual agreement between you and us, but it must be a minimum of two.

This Disclosure Document summarizes certain provisions of your franchise agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with, or make any payment to, us or an affiliate in connection with the proposed franchise sale. **Note, however that no government 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 Andrew Arminen at 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario Canada M9C 5K6 (905) 362-8227.

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. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this Disclosure Document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP 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 on franchising.

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

Issuance Date: January 26, 2024

## 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 E.
<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 B 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 Metal Supermarkets 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 a Metal Supermarkets franchisee?</b>	Item 20 or Exhibit E 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 A.

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 development agreement require you to resolve disputes with us by mediation in Washington, D.C. and litigation in New York. Out of state mediation and litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate and litigate in Washington, D.C. and New York than in your own state.
- 2 **Mandatory Minimum Payments.** You must make minimum royalty or advertising fund payments, regardless of your sales levels. Your inability to make the payments may result in termination of your franchise and loss of your investment.
- 3 **Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.

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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## ITEM 1

### THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES

Unless the context otherwise requires, all references to “Metal Supermarkets,” “MSFA,” “we,” “us,” or “our” refer to the franchisor, Metal Supermarkets Franchising America Inc. and all references to “Franchisee,” “you,” or “your” refer to the person who is granted the right to operate a Metal Supermarkets store under a Franchise Agreement. If you are a corporation, limited liability company, partnership or any other type of legal entity, the provisions of the Franchise Agreement also apply to your owners by virtue of the requirement that all your owners personally guarantee, and be personally bound by, your obligations under the Franchise Agreement and your other contracts with us.

We are a corporation that was formed under the laws of Ontario on October 1, 2023, and we began operations on October 1, 2023. We have offered franchises for Metal Supermarkets stores since October 1, 2023 and have not offered franchises in any other line of business. We do not operate, and have not operated, any Metal Supermarkets stores, but as noted below our affiliates operate or have in the past operated Metal Supermarkets stores. We conduct business under our corporate name and as Metal Supermarkets. Our principal business address is 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario, Canada M9C 5K6. Our agents for service of process are listed in Exhibit A.

Our parent company is MSKS IP, Inc. (“MSKS”). On October 1, 2023 we acquired assets through an amalgamation process from three predecessor companies owned by MSKS: Metal Supermarkets Service Company Inc., an Ontario corporation, (“MSSC”), Metal Supermarkets Franchising Corporation, an Ontario corporation, (“MSFC”) and Metal Supermarkets Franchising America Inc., an Ontario corporation (“Prior MSFA”). Prior MSFA, which merged into us as part of the amalgamation, offered franchises in the U.S. for Metal Supermarkets stores from November 2010 to September 2023. MSFC, which also merged into us as part of the amalgamation, offered franchises in Canada from November 2010 until September 2023.

MSKS acquired the Metal Supermarkets trademarks and franchise system on November 8, 2010, from Retail Metal Stores, Inc. (formerly known as Metal Supermarkets Corporation), a Delaware corporation (“RMS”) and from Retail Metal Stores, Inc. (formerly known as Metal Supermarkets Corporation), a Canadian corporation (“MS(Canada)”). The last known principal business address of RMS and MS (Canada) was 77 King Street West, Suite 3000, Toronto, Ontario M5K 2A1. RMS and MS (Canada) and their affiliates owned, operated and franchised to others the right to operate Metal Supermarkets stores in Canada, the United States, the United Kingdom and Austria. RMS operated Metal Supermarkets stores (through controlled subsidiaries or affiliates) from June 1997 until August 2011 and offered Metal Supermarkets franchises from July 1994 until November 2010. MS(Canada) operated Metal Supermarkets stores from 1985 until February 2011 and offered Metal Supermarkets franchises from June 1987 until November 2010.

On November 8, 2010, RMS assigned to Prior MSFA its U.S. Metal Supermarkets franchise agreements. MSKS has granted to us an exclusive license to use, and to sublicense others to use, the System in the United States and Canada. MSKS has also granted Metal Supermarkets International Inc. (“MSII”), an affiliate of ours, an exclusive license to use, and to sublicense others to use, the System everywhere in the world except the United States, Canada, the United Kingdom and the Republic of Ireland. MSKS has also granted to Metal Supermarkets Franchising UK Limited, an English company (“MSFK”) an affiliate of ours owned by MSII, an exclusive license to use and to sublicense others to use the System in the United Kingdom and Ireland. MSFK has offered franchises for Metal Supermarkets stores in the United Kingdom and Ireland since October 2011. The principal business address for MSFK and MSUK is Blaby Business Centre, First Floor, 33 Leicester Road, Blaby, Leics. LE8 4GR, United Kingdom. MSFK owns Metal Supermarkets UK Limited, a English Company (“MSUK”), which has operated Metal Supermarkets stores in the United Kingdom since 1995, and operated seven Stores in the United Kingdom as of December 31, 2023.

From 2018 to 2020, our affiliate KAM Sharp Franchising America Inc. (“KSFA”) offered franchises for “FlannelJax’s” businesses, which offer services and certain recreational items and merchandise pertaining to or focused on axe-throwing and various other lumberjack-themed recreation and sport activities. As of September 30, 2023 (which was the end of KSFA’s last fiscal year), there were three company-owned, “FlannelJax’s” businesses in the U.S. owned by KSFA’s and our affiliate, KAM Sharp Enterprises Inc. (“KSEI”).

Except as noted above, the principal business address for each of our affiliates is 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario, Canada M9C 5K6, and none of our affiliates have offered franchises in any line of business.

We grant to qualified individuals and business entities (“you”) franchises to own and operate Metal Supermarkets stores (“Stores”). In this Disclosure Document, “you” means the person or legal entity with whom we enter into an agreement. The term “you” also refers to the direct and indirect owners of a corporation, partnership, limited liability company, limited liability partnership, or other entity that signs a Franchise Agreement as the “franchisee.” Metal Supermarkets Stores are metal warehouse and distribution centers that offer a wide variety of metals and related materials and provide specialized metal services including metal processing, “cut to size” metal pieces, fast delivery, computerized ordering facilities, and sourcing of non-stock and “hard to find” items, with no required minimum limit on order size. Stores sell various grades, sizes and shapes of metals such as aluminum, steel, stainless steel, brass and copper to customers who are typically the maintenance and/or engineering departments of businesses such as manufacturing facilities as well as maintenance providers, food processors, machine shops, tool and die shops, contractors, welders, fabricators, schools and universities, hospitals, hotels other institutions and service companies. Stores are authorized to offer metal processing services which includes, among other things, fabricating, painting, welding, polishing, notching, galvanizing, bending, drilling, punching or cutting of metal.

Franchisees must sign our standard form of franchise agreement (the “Franchise Agreement”), a copy of which is attached as Exhibit C-2. The Franchise Agreement grants you the right to operate a Store using trademarks and service marks, including the mark “Metal Supermarkets” and other service marks and trademarks that we may designate for your use (the “Marks”), market analyses, supplier relationships, sales and marketing methods, training, record keeping, custom-designed computer software and business management, all of which we or our affiliates may periodically improve, further develop or otherwise modify (as fully defined in the Franchise Agreement, the “System”).

We also offer to qualified individuals and business entities (a “Developer” or “you”) the right to develop an agreed-upon number of Stores within a specific geographic area (“Development Area”) under our area development (letter) agreement (the “Development Agreement”) (a copy of which is attached as Exhibit C-6). Under a Development Agreement, you will be required to establish an agreed-upon number of Stores within the Development Area, at specific locations (to be specified in separate Franchise Agreements). An important part of the Development Agreement is a development schedule (the “Development Schedule”), which spells out the number of Stores that you agree to have established by certain benchmark dates. As and when Stores are developed under a Development Agreement, you will sign the then-current form of Franchise Agreement that we are offering to new franchisees under the System at that time, which may differ from the current Franchise Agreement attached to this Disclosure Document.

The market for the products and services of Metal Supermarkets stores is developed. By “developed,” we mean that the products and services have been offered by the Metal Supermarkets brand for over 30 years. As of the date of this Disclosure Document, there are no national competitors with widespread physical presence in the sale of small quantities of metal, but there are several small chains of three to 10 locations in existence and, in some markets, similar single, independent operators have a market presence. Further, certain

larger distributors may sell in small quantities as an adjunct to their normal business, including, in some cases, from separate, dedicated locations from their main distribution locations, but typically do not offer the same level of service, value-added processing, inventory diversity or delivery lead times that are offered by Metal Supermarkets stores. On-line competitors are also active on a national basis. You will compete with other metal distributors and on-line competitors that sell in small quantities.

Other than Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the use of conflict metals and the safety regulations which vary from state to state, we are not aware of any regulations specific to the metals distribution industry. You must, however, comply with all local, state, and federal laws that apply to your Store operations, including, for example, zoning, building code, health, sanitation, no-smoking, EEOC, OSHA, discrimination, employment, sexual harassment, and tax laws. The Americans with Disability Act of 1990 and state equivalents require readily accessible accommodation for disabled persons and therefore may affect your building construction, site elements, entrance ramps, doors, etc. For example, you must obtain permits for your building, and zoning, as well as operational licenses. You must comply with all applicable federal, state, and local laws and regulations during the operation of your Store. You should consult with your attorney concerning those and other local laws and ordinances that may affect your Store's operation.

## ITEM 2

### BUSINESS EXPERIENCE

#### President, Chief Executive Officer and Member of the Board of Directors: G. Stephen Schober

Stephen Schober has been our President, Chief Executive Officer and a Member of our Board of Directors since October 1, 2023. He was President, Chief Executive Officer and a Member of the Board of Directors of Prior MSFA from November 2010 to September 2023. He has also served as President, Chief Executive Officer and a Member of the Board of Directors of MSKS since November 2010, as a Member of the Board of Directors of MSFK and MSUK since October 2011, a Member of Board of Directors of MSEI since June 2017, Chief Executive Officer and Member of the Board of Directors KSE since August 2017, Chief Executive Officer and a Member of the Board of Directors of KSFA since December 2018 and Chief Executive Officer and a Member of the Board of Directors of MSII since September 27, 2023. Since April, 2018 Mr. Schober has also served on Board of Directors of the Canadian Franchise Association.

#### Member of the Board of Directors: Christopher Henniker

Christopher Henniker has been a Member of our Board of Directors since October 1, 2023. He was a Member of the Board of Directors of Prior MSFA from November 2010 to September 2023. He has also been a Member of the Board of Directors of MSKS since November 2010, a Member of the Board of Directors of MSFK and MSUK since October 2011, a Member of Board of Directors of MSEI since June 2017, a Member of Board of Directors of KSEI since August 2017, a Member of the Board of Directors of KSFA since December 2018 and a Member of the Board of Directors of MSII since September 27, 2023. He was a partner (practicing in commercial law) with Kidd Rapinet, a UK law firm based in London, England from November 1997 to April 2022.

#### Chief Operations & Development Officer and Member of the Board of Directors: Andrew Arminen

Andrew Arminen has been our Chief Operations & Development Officer and a Member of our Board of Directors since October 1, 2023. He was Chief Operations & Development Officer for Prior MSFA from October 2021 to September 2023, a Member of Prior MSFA's Board of Directors from October 2010 to

September 2023, and was Vice President of Franchising for Prior MSFA from August 2011 to October 2021. He has also been Vice President of Franchising and a Member of the Board of Directors of MSKS since November 2010, a Member of the Board of Directors of MSFK and MSUK since October 2011, a Member of Board of Directors of MSEI since June 2017, a Member of the Board of Directors KSEI since August 2017, a Member of the Board of Directors of KSFA since December 2018 and Vice-President and a Member of the Board of Directors of MSII since September 27, 2023 .

Chief Financial Officer: John Silva

John Silva has been our Chief Financial Officer since October 1, 2023, and has been Chief Financial Officer of MSKS, MSFK, MSUK, MSEI, KSEI, KSFA, MSII since November 2022. He was Chief Financial Officer of Prior MSFA from November 2022 to September 2023. Before that, he served as Director of Finance and Member of the Board of Directors of Ammega Canada Inc. in Mississauga, Ontario and Green Belting Industries Limited in Mississauga, Ontario from May 2021 until November 2022. From April 2018 to April 2021, Mr. Silva was Vice President of Finance and Chief Financial Officer for NTN Bearing Corporation of Canada Ltd. in Mississauga, Ontario.

Vice President of Franchise Services and Operations: Ryan Shorten

Ryan Shorten has been our Vice President of Franchise Services and Operations since December 2023. He was our Director of Franchise Services and Operations from October 2023 to December 2023. He was Director of Franchise Services and Operations for MSFC and Prior MSFA from April 2019 to September 2023. Before that, he was Director of Operations for Pizza Nova in Toronto, Ontario from August 2011 to March 2019.

### ITEM 3

#### LITIGATION

Minnebo et al. v. Prior MSFA et al., Case 1:22-cv-05999-KMW-AMD (D.N.J.). The plaintiffs are a former Metal Supermarkets franchisee in Deptford, New Jersey and its sole owner. The franchisee operated its Metal Supermarkets store for less than one year and decided to close it in June 2022. Prior MSFA then issued a notice of termination of the franchise agreement for abandonment of the business. The plaintiffs filed suit in state court in New Jersey on August 4, 2022 against Prior MSFA and two of Prior MSFA's officers (currently our officers), Stephen Schober and Andrew Arminen. By virtue of the amalgamation process we are now substituted for Prior MSFA in this case. The complaint alleges that the defendants failed to disclose that the supplier in the franchisee's market was also a retail competitor, which the plaintiffs allege made it impossible for the franchisee to compete effectively. The complaint alleges fraud, negligent misrepresentation, breach of contract, and violation of the New York and New Jersey franchise statutes and the New York deceptive trade practices act. The complaint seeks damages in an amount to be proved at trial but which are alleged to exceed \$1,000,000, as well as declaratory relief, attorney's fees, and costs. The defendants removed the case to the United States District Court for the District of New Jersey, and filed a motion to transfer the case to the United States District Court for the Western District of New York in accordance with the provisions of the forum selection clause in the franchise agreement, and to dismiss the claim under the New Jersey franchise statute. On November 22, 2022, the plaintiffs filed an amended complaint, which is substantially similar to the initial complaint. The defendants renewed their motion to transfer the case and to dismiss the claim under the New Jersey franchise statute. That motion was granted on September 6, 2023 and the plaintiff's filed to appeal this decision on September 12, 2023. The appeal has yet to be decided. The defendants have yet to respond to the amended complaint on the merits, and intend at the appropriate time to deny the material allegations in the amended complaint and to assert counterclaims. No discovery or initial disclosures have taken place. We do not believe that the claims have merit, and intend to defend this case vigorously.

Other than the above action, no litigation is required to be disclosed in this Item.

#### ITEM 4

#### BANKRUPTCY

No bankruptcy is required to be disclosed in this Item.

#### ITEM 5

#### INITIAL FEES

##### **Initial Franchise Fee**

You must pay us an application fee of \$5,000 when you sign the Franchise Application (“Application Fee”). The Application Fee is fully refundable, without interest, provided that you have not signed a Franchise Agreement with us. A copy of the Franchise Application is attached as Exhibit C-1.

The standard initial franchise fee is \$44,500 which is payable in full at the time you sign the Franchise Agreement. We will credit your Application Fee against the initial franchise fee.

We participate in the International Franchise Association VetFran Program (the “Vet Fran Program”), which provides a discount on initial franchise fees to veterans of the U.S. Armed Forces who otherwise meet the requirements of the program. For qualified veterans participating in the Vet Fran Program, we will reduce the amount of the initial franchise fee by \$5,000 for the first Franchise Agreement you enter into with us. Thus, the initial franchise fee under the Vet Fran Program is reduced to \$39,500. To qualify, veterans must provide us with adequate documentation of honorable discharge, and the initial franchisee for the Store to be operated must be at least 51% owned by the veteran participating in the Vet Fran program. Veterans participating in the Vet Fran Program who wish to transfer the franchise before opening the Store must pay us the portion of the initial franchise fee that is waived under the program (\$5,000) as a condition to the transfer.

The initial franchise fee is not refundable under any circumstances, including your failure to obtain financing, your failure to successfully complete training, or your failure to lease or purchase the site for the Store within the required time period.

Except as described above, the initial franchise fee is uniform for all franchisees currently being granted a franchise.

##### **Development Fee**

If you are going to be a Developer, then you will sign a Development Agreement and pay us a non-refundable development fee (“Development Fee”). The Development Fee is calculated as follows: \$44,500 for the first Franchise Agreement you are obligated to enter into under the Development Agreement, \$34,000 for the second Franchise Agreement you are obligated to enter into under the Development Agreement, and \$31,000 for the third and each additional Franchise Agreement you are obligated to enter into under the Development Agreement. For example, if you are to develop and establish three Stores under the Development Agreement, the amount of the Development Fee will be \$109,500 (which is the sum of \$44,500 for the first Franchise Agreement, \$34,000 for the second Franchise Agreement, and \$31,000 for the third Franchise Agreement).

If you (and your affiliates) are in full compliance with the Development Agreement, each Franchise Agreement you enter into with us, and all other contracts with us (and our affiliates), then the Development Fee that is paid under the Development Agreement will be in lieu of any initial franchise fees that are due to us under the Franchise Agreements entered into in connection with the Development Agreement. You must, however, pay all other fees associated with opening and operating each Store under the Franchise Agreement and other applicable contracts pertaining to each Store. The Franchise Agreement for the first Store to be developed under a Development Agreement will be in the form that is attached to the Development Agreement, and the Franchise Agreement for each additional Store to be developed under a Development Agreement will be the then-current form of franchise agreement that we are generally offering when the Franchise Agreement is to be signed. The then-current form of Franchise Agreement may differ from the form of Franchise Agreement attached to this disclosure document.

The Development Fee will be due in a lump sum at the time you sign the Development Agreement. The Development Fee is calculated in a uniform manner, but may not be the same absolute number for all developers, because of differences in how many Stores a developer may agree to develop in a particular Development Area.

### **Initial Advertising Deposit**

You must deposit \$15,000 with us upon signing the Franchise Agreement, which is the minimum amount you are required to spend on approved advertising during the first 12 months of the operation of your Store. No interest will be accrued or paid on this deposit. The funds must be spent on approved advertising, and we can periodically revise and specify the expenditures that constitute approved advertising. You must make these advertising expenditures in reasonable regular intervals during this 12-month period, and we have the right to make some of these advertising expenditures on your behalf. You and we will periodically reconcile our expenditures for these purposes, and provide each other with appropriate verification (receipts, etc.) as we specify to substantiate these advertising expenditures. We will draw from your advertising deposit for advertising expenditures we make on your behalf and otherwise adjust the balance of that deposit accordingly. Funds from the advertising deposit will also be released to you to reimburse you for the approved advertising expenditures you make during the first 12 months of the operation of your Store. The initial advertising deposit is not refundable.

### **Initial Telephone and Facsimile Number Charges**

We will obtain, in MSKS's name, the telephone and facsimile numbers and email addresses for use in the operation of your Store before the opening of your Store. You must purchase, lease and/or license a telephone system which we may specify and pay the initial cost/installation. We estimate that the cost for the telephone system and installation costs will not exceed \$3,000. This cost is not refundable. We, or MSKS, will own and control the numbers and email addresses, but they will be provided only to you while you are in good standing under your franchise agreement. You will be obligated to reimburse us for all charges we incur in obtaining these numbers as well as any installation charges. You must reimburse us for the continuing monthly service and any long-distance charges associated with the telephone numbers as further disclosed in Item 6.

## ITEM 6

## OTHER FEES

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Royalty Fee	On monthly Gross Sales up to \$140,402 a royalty fee of 6% of such Gross Sales; on Gross Sales from \$140,403 to \$207,794 a royalty fee of 5% of such Gross Sales; and on Gross Sales from \$207,797 or more, a royalty fee of 3% of such Gross Sales; all subject to annual CPI adjustments and the minimum annual royalty requirement as described in Note 2.	Payable by electronic fund transfer on or before the 20 <sup>th</sup> day of each month on Gross Sales for the prior full or partial month	See Note 2 for definition of Gross Sales and minimum annual royalty  If you are operating a newly opened Store, you pay a reduced royalty fee for the first 12 months of operation equal to 60% of the regular royalty rate.
Brand Fund Contribution	Currently, 2% of Gross Sales, subject to an annual maximum contribution of \$33,781, and subject to annual CPI adjustments.	Payable by electronic fund transfer on or before the 20 <sup>th</sup> day of each month on Gross Sales for the prior month	We have the right to increase up to a maximum of 2.5% of Gross Sales with increasing maximums and reduced rates for additional stores under common ownership. See Note 3.
Advertising Expenditures	After the initial year, the greater of \$10,000 or 1% of Gross Sales each year	As expended	Includes amounts spent for advertising, media and materials. All expenditures must be approved by us. This is in addition to the Brand Fund Contribution.
Premium Desktop Software and Service Package	Currently \$115.50 per month for up to 5 computers and \$25 per month for each additional computer.	Payable by electronic fund transfer on or before the 20 <sup>th</sup> day of each month for the next month	Includes access to our current suite (which we may periodically change) of back office and email software, task automation and configuration management software, installation, configuration, and support.
Successor Franchise Fee	\$10,000	The successor franchise fee is payable in full when you notify us that you intend to apply for a successor franchise.	This fee is non-refundable unless we determine not to grant you a successor franchise.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Late Fees; Interest on Late Payments	Late Fee of \$100 for any late payment or for insufficient funds. Interest at 16% per annum (not to exceed legal maximum)	Upon demand	This interest charge and late fee applies to any money you owe us or any of our affiliates after the due date.
Hosting Fees	\$583 per month if annual Gross Sales are less than \$1,000,000; \$670 per month if annual Gross Sales are between \$1,000,000 and \$1,999,999; or \$773 per month if annual Gross Sales are \$2,000,000 or higher. In addition, you must pay a fee of \$3 per month for each gigabyte (or portion of a gigabyte) of data storage used at any time during the month in excess of three gigabytes. These fees are subject to annual changes of up to 5% or the CPI adjustment (Note 2), whichever is greater.	On or before the 20 <sup>th</sup> day of each month for hosting services rendered during the month	You must pay us these amounts to receive hosted software services under the Hosting Support and Software Agreement.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Audit	Cost of audit plus an administrative fee of \$3,500	Upon demand	If (i) you fail to submit the periodic reports as required under the Franchise Agreement, (ii) you fail to maintain and provide us with access to your books and records (whether in hard copy or electronic form) as required under the Franchise Agreement, (iii) an audit reveals an understatement of Gross Sales for any month in a twelve consecutive month period of more than 2%, or (iv) you fail to produce all of your books and records as required by us or our authorized agents within 10 days after we request them, you must pay the entire cost of the audit (including the cost of travel, lodging, meals and wages of auditors), plus an administrative fee of \$3,500 to cover our administrative expenses
Transfer Fees	A transfer approval request fee of \$2,500, a transferee training fee of \$10,000, and a transfer closing fee of \$10,500.	\$2,500 is due upon your request for our approval (and is non-refundable), \$10,000 is due before training begins, and \$10,500 is due before closing of the transaction.	You must pay us a transfer fee. If you have purchased a franchise with a discounted initial franchise fee, the amount of the discount must be paid as an additional transfer fee under certain circumstances (see Item 5).
Annual Conference Fee	Currently, \$112 per month.  If you fail to attend the annual conference, you must also pay a \$3,455 fee to cover our costs in communicating information to you that was presented at the conference.	Same as royalty fee  30 days after the end of the conference	You must pay us a monthly fee to cover a portion of the cost of our annual conference. See Note 4.

<b>TYPE OF FEE<sup>1</sup></b>	<b>AMOUNT</b>	<b>DUE DATE</b>	<b>REMARKS</b>
Special Assistance	Varies, based on our actual costs to provide such assistance.	As incurred	At your request, we may provide special assistance to you.
Insurance	Varies, based on our costs and expenses necessary to obtain required insurance coverage for you.	As incurred	If you do not obtain the required insurance coverage for your Store, we may obtain coverage at your expense.
Premises Repair or Maintenance	Varies, based on our actual costs in connection with performing such repairs	As incurred	If you do not maintain the condition of your Store, we may perform the repair or maintenance at your expense.
Attorneys' Fees and Other Costs	Varies, based on our actual attorneys' fees, costs and damages in connection with noncompliance or a lawsuit.	As incurred	This fee is payable if you do not comply with the Franchise Agreement or if we are joined in a lawsuit based upon your operation of a Store.
Relocation Fee	\$1,258 plus our out-of-pocket costs	As incurred	You may not relocate the Store without our prior written consent. If we approve a relocation of the Store, you must pay this fee.
Indemnification	Varies, based on our damages and liabilities for indemnified claims	As incurred	You must reimburse us if we are held liable for claims arising from your operation of a Store.
Additional Personnel for Initial Training Program	\$1,285 for each additional individual to be trained	Before training begins	We will train, at our expense, up to three individuals. If you want to send additional personnel to the initial training program, the training fee will be \$1,285 for each individual to be trained.
Alternative Supplier Evaluation Costs	Our actual costs to evaluate an alternative supplier.	As incurred.	Except for products and services for which we designate a single source of supply, if you propose to order any metals or other products either of a type or from a supplier that is not approved by us, we must first evaluate and approve an alternative supplier.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Computer Support Fee	\$58 per hour of support, subject to annual CPI adjustments.	As incurred	If you request, and we agree to provide, computer software and record keeping systems support and we determine that such support is necessary because you did not comply with our specifications, standards or procedures, then you agree to pay our then-current computer support fee for those services.
Additional Training	Will vary based upon courses taken. Currently \$375 per day per instructor, plus travel and accommodation expenses.	As incurred	We will charge per diem fees for instructors' time and materials as we determine.
VoIP Charges	Monthly costs of \$20 for voice per user phone). Includes long distance within the US and Canada, and \$10 per month for each Toll-Free Phone number with a per minute charge of \$0.0293.	On or before the 20 <sup>th</sup> day of each month for services rendered during the month	You must pay us this fee to receive hosted software services. These amounts may be increased from time to time to account for charges from third party VoIP services.

NOTE 1: All fees are imposed by and payable to us, except as otherwise noted. All fees are nonrefundable. Generally, all fees are uniformly imposed on our franchisees; however, in certain circumstances we may reduce or waive a fee.

NOTE 2: Gross Sales means all revenue from the sale of all services and products and all other income of every kind and nature related to, derived from, or originating from the Store and the business operated under the Franchise Agreement, including barter and the proceeds of any business interruption insurance policies, whether for cash or credit, and regardless of theft, fraud or of collection. Gross Sales does not include (i) sales taxes or other taxes that you collect from customers and actually pay to the appropriate taxing authorities, or (ii) revenue from the sale of products to other Metal Supermarkets stores.

For purposes of calculating the first 12 months of operation of the Store:

- a. if the Store opens on the 1<sup>st</sup> through 10<sup>th</sup> day of a month, then the month in which the Store opens and begins operation shall be deemed the 1<sup>st</sup> month of operation; and

- b. if the Store opens on the 11<sup>th</sup> day or later of a month, then the next calendar month shall be considered the 1<sup>st</sup> month of operation of the Store (even though the royalty fee is due for the partial month in which the Store opens).

Starting in your second full year after the date your Store first opens for business, you must pay us a monthly minimum royalty as follows:

- i. For the second (2nd) year, a monthly minimum royalty of \$1,928;
- ii. For the third (3rd) year, a monthly minimum royalty of \$2,504;
- iii. For the fourth (4th) year, a monthly minimum royalty of \$2,751;
- iv. For the fifth (5th) year, a monthly minimum royalty of \$2,914;
- v. For the sixth (6th) year, a monthly minimum royalty of \$3,160;
- vi. For the seventh (7th) year, a monthly minimum royalty of \$3,406;
- vii. For the eighth (8th) year, a monthly minimum royalty of \$3,696; and
- viii. For the ninth (9th) year and all years after that, a monthly minimum royalty of \$4,021.

If you are an existing franchisee who is entering into a successor franchise agreement, the monthly minimum royalty is \$4,021, subject to annual CPI adjustments effective as of our fiscal year end and the base period being our fiscal year ended September 30, 2023.

Your failure to pay the minimum royalty constitutes a default under the Franchise Agreement and grounds for termination.

All ranges in the charts above are subject to an annual CPI adjustment effective as of our fiscal year end, and the base year is our fiscal year ended September 30, 2023. CPI means the index number in the table means the index number in the table relating to "Consumer Price Index for All items in U.S. city average, urban wage earners and clerical workers, not seasonally adjusted" as presently published by the Bureau of Labor Statistics for the United States Department of Labor (the "Bureau"). In the event the Bureau ceases publishing the Consumer Price Index or materially changes the methods of its computation or other features of it, we may substitute comparable statistics on the purchasing power of the consumer dollar published by the Bureau, another governmental agency or a responsible financial periodical or recognized authority to be chosen by us.

NOTE 3: You must contribute to the Brand Fund. Currently, the amount of the Brand Fund Contribution is 2% of Gross Sales. We have the right to increase the Brand Fund Contribution up to a maximum of 2.5% of Gross Sales, with a maximum annual contribution of \$43,336 (subject to CPI adjustment).

We will notify you each year of the amount of the Brand Fund Contribution for that year. There will be a cap on the maximum amount you are required to contribute as set forth below:

<u>Brand Fund Contribution</u>	<u>Maximum Annual Contribution</u>
0.5% of Gross Sales	\$10,143
1.0% of Gross Sales	\$16,928
1.5% of Gross Sales	\$23,022
2.0% of Gross Sales	\$33,781
2.5% of Gross Sales	\$43,336

The Maximum Annual Contribution is subject to annual CPI adjustments effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023. Effective October 1, 2024, the Maximum Annual Contribution shall no longer be a cap or maximum contribution. As of October 1, 2024, once your Brand Fund Contribution equals the Maximum Annual Contribution, you shall continue to provide a Brand Fund Contribution at 50% of the declared Brand Fund Contribution rate.

If you operate other Metal Supermarkets stores pursuant to other franchise agreements with us and such other Metal Supermarkets stores are in contiguous Protected Territories, then the Metal Supermarkets stores in contiguous Protected Areas are considered to be “Adjoining Stores.”

If you are not in default under the Franchise Agreement, or any other agreements you may have with us or our affiliates, then, with respect only to the Adjoining Stores, the Maximum Annual Contribution described above will be the maximum contribution payable in each year by such Metal Supermarkets store operated by you which generated the greatest Gross Sales in the preceding fiscal year (the “Maximum Contribution Store”), and all other such Metal Supermarkets stores (which are not the Maximum Contribution Store) shall be required to contribute, as a Brand Fund Contribution, a maximum amount equal to (i) 50% of the Maximum Annual Contribution until September 30, 2024, and (ii) 75% of the Maximum Annual Contribution beginning October 1, 2024 and after.

See Item 11 for more information on the Brand Fund Contribution.

NOTE 4: If the final cost is greater than this amount, you will pay additional amount within 30 days of the conference, whether or not you attend. Only one conference fee is due regardless of how many Stores you own. We will notify you of the fee for the subsequent year within 30 days after the end of our fiscal year. We have the right to increase the amount by the greater of (i) 5% over the previous year’s conference fee or (ii) the CPI adjustment (see Note 2 regarding CPI adjustments). The fee noted in the table is for one individual to attend the annual conference. If you choose to send any other individuals, there will be an additional fee, in an amount that we will determine, due to us for each additional individual attending. A Manager, or any other employee of yours, may only attend the annual conference when your Operating Principal is also in attendance. If we choose not to have an annual conference in any given year, then no fee will be due. If you have already paid the annual conference fee for such given year, we will refund it to you without interest.

## ITEM 7

## ESTIMATED INITIAL INVESTMENT

<b>YOUR ESTIMATED INITIAL INVESTMENT FRANCHISE AGREEMENT</b>				
<b>CATEGORY OF INVESTMENT</b>	<b>AMOUNT</b>	<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAID</b>
Initial Franchise Fee (Note 1)	\$44,500	Lump sum	Upon signing Franchise Agreement	Us
Equipment, Furnishings and Fixtures (Note 2)	\$130,000 - \$180,000	As incurred	As required	Third Party Suppliers
Permits, Licenses and Professional Fees (Note 3)	\$3,000 - \$10,000	As incurred	As required	Local Government, Third Party Suppliers, Accountants and Attorneys
Computer System and Software and Telecommunication System (Note 4)	\$7,000 - \$15,000	As incurred	As required	Suppliers and Us
Insurance	\$4,000 - \$7,000	As incurred	As required	Insurers
Travel and Living Expenses While Training	\$5,000 - \$10,000	As incurred	As required	Airlines, Motels, Restaurants
Security Deposits, Utility Deposits	\$5,000 - \$10,000	Lump sum	Before Opening	Utilities Companies
Leasehold Improvements	\$15,000- \$35,000	As incurred	Before Opening	Contractors
Signage	\$3,000 - \$6,000	As incurred	Before Opening	Suppliers
Opening Inventory	\$50,000 - \$90,000	As incurred	Before Opening	Suppliers
Initial Advertising (Note 5)	\$15,000 - \$30,000	As incurred	As required	Local Advertising Agency, Suppliers and Us
Real Estate Leasing (Note 6)	\$9,000 - \$45,000	As incurred	As agreed	Landlord or land owner
Additional Funds – 3 Months (Note 7)	\$50,000 - \$110,000	As incurred	As required	Employees, suppliers, utilities, Brand Fund, etc.
<b>TOTAL: \$340,500 TO \$592,500</b>				

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<b>YOUR ESTIMATED INITIAL INVESTMENT DEVELOPMENT AGREEMENT</b>				
<b>CATEGORY OF INVESTMENT</b>	<b>AMOUNT (Note 8)</b>	<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAID</b>
<b>Development Fee (Note 9)</b>	\$44,500 for the first Store, plus \$34,000 for the second Store, plus \$31,000 for the third and each additional Store; minimum commitment is one Store in addition to the initial Store.	Lump sum	Upon signing the Development Agreement	Us

NOTE 1 When you sign the Franchise Agreement, you must pay an initial franchise fee in an amount that varies depending on the circumstances. See Item 5. We do not finance this or any other fee. See Item 5 for a discussion of the Development Fee due under the Development Agreement.

NOTE 2 You will need to purchase certain items of equipment, including one or more trucks, saws, a shear, as well as office furniture, racking, fixtures, security systems and other improvements. We may recommend that you acquire other processing equipment.

NOTE 3 This estimate includes professional fees (accounting, legal, and required bookkeeping, tax and records services), incorporation fees, business permits and licenses.

NOTE 4 You must purchase a computer system (including computer hardware, premium desktop software, and printers), telephone handsets and headsets and associated hardware outlined in Item 11 for access to the software which is hosted by us on our system or a third-party system. You will receive hosting services through us to allow you to use the software and you will incur monthly hosting fees (as described in Item 6). You must use a VoIP telephone system that we select and manage as well as the Premium Desktop Software and Service Package (all as described in Item 6). These fees are subject to periodic changes. You will still be responsible for any additional third-party charges associated with any of these services including, but not restricted to, Internet connections.

NOTE 5 You must deposit \$15,000 with us upon signing the Franchise Agreement, which is the minimum amount you are required to spend on approved advertising during the first 12 months of the operation of your Store. No interest will be accrued or paid on this deposit. The funds must be spent on approved advertising, and we can periodically revise and specify the expenditures that constitute approved advertising. You must make these advertising expenditures in reasonable regular intervals during this 12-month period, and we have the right to make some of these

advertising expenditures on your behalf. You and we will periodically reconcile our expenditures for these purposes, provide each other with appropriate verification (receipts, etc.) as we specify to substantiate these advertising expenditures. We will draw from your advertising deposit for advertising expenditures we make on your behalf and otherwise adjust the balance of that deposit accordingly. Funds from the advertising deposit will also be released to you to reimburse you for the approved advertising expenditures you make during the first 12 months of the operation of your Store.

NOTE 6 If you do not own a location for your Store, you must purchase or lease a space approved by us. Stores typically are either free-standing street locations or in multi-tenanted buildings in industrial areas. The cost of purchasing and developing a site for a Store will vary considerably depending on such factors as the location and size of the site and the local real estate market. You will need to purchase or lease a site of approximately 4,000 to 6,000 square feet. We estimate that net lease costs may range from \$5.50 to \$18.00 per square foot but may vary greatly depending primarily upon the location of the premises.

The figures in the estimate are calculated on the following assumptions: (a) you will have to pay five months' rent (made up of one month's rent before you open, three months' rent after you open, and one month's rent as a security deposit); (b) for space in the range of 4,000-6,000 sq. ft.; (c) at \$5.50 to \$18 per square foot per year. If the site you choose is larger, or has a higher rental cost, or if you cannot negotiate a pre-opening abatement of rent down to one month, then your costs will be higher than those in the chart.

Rent varies considerably from market to market, and from location to location within each market. Rents may vary, based on factors such as availability, general industrial market conditions in the relevant area, the type and nature of improvements needed to the premises, the size of the Store, the terms of the lease, and the desirability of the location. If you decide to purchase the property for the location of your Store, you will incur additional costs that we cannot estimate.

NOTE 7 This estimate, based on our and our affiliates' experience operating stores, is of your pre-opening expenses and working capital requirements for your first three months of operations. We estimate that you will need working capital of \$50,000 to \$110,000 for general operating expenses, including inventory, payroll, payroll expenses, employee withholding taxes, worker's compensation costs, facility operating expenses (such as electricity and gas), insurance, security, repairs and maintenance, local marketing, (excluding the \$15,000 deposited with us for approved advertising) and other costs. Your Store must, at all times, at a minimum be staffed by you (or the Operating Principal) and a minimum of two qualified employees. In our experience, employees typically are paid between \$14 and \$28 per hour, but those amounts may be different depending on the market in which you operate your Store and the compensation approach you choose to take. These figures are estimates, and we cannot assure you that you will not have additional expenses in starting the Store. Your actual cost will depend on factors such as your management skill, experience and business acumen; local economic conditions; the local market for the Store; the prevailing wage rate; competition in the market area; and the sales level reached during the start-up phase. This estimate does not include any amounts for debt service or any of your personal living expenses.

NOTE 8 You may incur additional legal, accounting and other fees for reviewing the Development Agreement. The table does not include an estimate for this. Except as indicated, these fees are not refundable.

NOTE 9 For each Store you develop under the Development Agreement, you will also incur the expenses in the above table for Franchised Stores.

Except as otherwise noted, none of these payments are refundable. These estimates are based on our (and Prior MSFA's) experience in establishing franchises. You should review these figures carefully with a business advisor, accountant or attorney before making any decision to purchase a franchise.

We do not offer any financing for your initial investment.

## ITEM 8

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

The reputation and goodwill of Metal Supermarkets stores are based on the sale of high-quality metals, other products and services. For this reason, you may only sell and/or provide from your Store metals, other products and services, including metal processing, of a type and at a quality that conforms to our specifications and standards and/or are purchased from suppliers that we approve (which may include us or our affiliates). Currently, we are not an approved supplier of any metals or other products for your Store.

You must purchase or lease and/or install and use all fixtures, furnishings, furniture, equipment, signs and other materials and supplies for your Store of the types, brands and models that we approve as meeting our standards and specifications. Except as otherwise specified, you may purchase or lease approved brands and types of fixtures, furniture, equipment, signs and other materials and supplies from any supplier, which may include us or our affiliates. We may designate ourselves, an affiliate or another third party as the sole approved supplier to provide you with particular equipment, furnishings, fixtures and signs.

Your Store must sell the full range of metals and metal services, and other products and services that we authorize or mandate from time to time. We can add, modify or delete products and services offered by, or mandated by us to, Stores periodically. Additional authorized products and services may require you to incur additional costs for equipment, inventory, additional personnel, personnel training and leasehold improvements.

We may modify our specifications and standards and the list of approved suppliers periodically. After notice of a modification, you may not reorder any metal products or other products that do not meet our then-current specifications and standards and you may not reorder any items from any supplier which is no longer approved.

We establish and modify specifications and standards we impose on franchisees. We do not maintain written standards and specifications for every item. If written standards or specifications exist, we will make them available to you through the Store Operations Manual or other communications in the ordinary course of business. In the absence of written standards or specifications, we may require you to submit a sample and other information about a proposed new item for examination or testing.

As of the date of this Disclosure Document, we or our affiliates are the only approved suppliers of certain computer software and digital services. During the fiscal year ended September 30, 2023, Prior MSFA received hosting fees in the amount of US\$630,273 and e-mail address fees of \$39,076, which was 5.9% of Prior MSFA's total revenues of US\$11,333,431. In addition, during the fiscal year ended September 30, 2023, MSSC received telecommunication fees, e-mail address and management fees, and spam and virus protection fees in the amount of US\$146,627, which was 2.7% of MSSC's total revenues of US\$ \$5,363,359. Except for these services and fees, neither we, Prior MSFA nor any persons affiliated with us are an approved supplier of any product or service, and during our most recent fiscal year, neither we, Prior MSFA nor any persons

affiliated with us received any revenues from franchisee purchases of products or services. We reserve the right to be an approved supplier of other products and services in the future. Except for products and services for which we designate a single source of supply, if you propose to order any metals or other products either of a type or from a supplier that is not approved by us, you must first send us sufficient information, specifications and samples concerning the type of product or the supplier so that we can decide whether the product or supplier meets our criteria. Our criteria will be made available to you upon written request. We can charge you or the supplier reasonable fees to cover our actual costs to evaluate the proposed supplier. We may prescribe procedures for the submission of requests for approval and impose obligations on suppliers that will be incorporated in written agreements. We generally will notify you of our approval of a product or supplier within two weeks after you submit the necessary information to us. We may impose limits on the number of suppliers for any item. We or one of our affiliates may be an approved supplier and, in some circumstances, may be the sole approved supplier.

We will maintain and provide to you a list of our approved third-party accounting services providers, and you must engage and use such an approved accounting services provider to provide the Store with the bookkeeping, tax and records services that we periodically specify.

We may solicit or accept rebates, fees, commissions, extraordinary discounts or other similar allowances (collectively, "rebates") from third-party suppliers as a result of sales to you or business conducted with you. During the last fiscal year, Prior MSFA did not receive any rebates. We may establish preferred vendor programs. If you participate in any preferred vendor program, you must comply with all requirements of such program. If we designate suppliers, you will be required to purchase products and/or services from them and enter into such contracts or agreements with them or us as we may require.

We may attempt to negotiate purchase arrangements with suppliers (including price terms) for the benefit of all Metal Supermarkets stores. We will not provide material benefits (e.g., renewal or additional franchises) to you based on your use of designated or approved suppliers.

We estimate that your purchases from approved suppliers or in accordance with our specifications will represent approximately 80% to 90% of your total purchases in the establishment of your Store and approximately 80% to 90% of your total purchases in the continuing operation of your Store.

There are no franchisee purchasing or distribution cooperatives. There is no supplier in which an officer of ours owns an interest.

### **Site Selection**

You must select a site for your Store which is acceptable to us (See Item 11).

### **Purchase and Lease of Premises**

Any lease or sublease for the premises of your Store must include the required Addendum to Lease. (See Exhibit C-3) Before you sign any purchase or lease agreement for Premises, you must submit the agreement to us for our approval.

### **Development of the Premises**

You are responsible for developing your Store and for all expenses associated with it. We will furnish you with prototype plans for a Store. You must modify those prototype plans so that the plans and all specifications comply with all applicable ordinances, building codes and permit requirements and any lease requirements and restrictions. You must submit your plans to us for approval before you start to develop the

Premises. All development must be in accordance with the plans and specifications we have approved and must comply with all applicable laws, ordinances and local rules and regulations.

### **Telephone, Facsimile, Email Address and Other Telecommunications Numbers**

We will obtain, in our or MSKS's name, a telephone and facsimile numbers and e-mail address for use only in the operation of your Store. The telephone and facsimile numbers, as well as the e-mail address will belong to us; however, you must reimburse us immediately for all charges in connection with these numbers.

### **Digital Participation Agreement**

You must participate in our digital programs and you must execute a Digital Participation Agreement, a copy of which is attached as Exhibit H. We or our Affiliate will own and control the Metal Supermarkets digital website.

### **Specifications and Standards**

You must comply with all mandatory standards and procedures including: (a) all aspects (other than prices) of authorized products and services offered by your Store and the manner in which they are promoted and sold; (b) sales procedures and services; (c) marketing and advertising programs, (including use of websites and e-mail addresses); (d) dress standards; (e) safety, appearance, cleanliness and standards of service and operation of your Store; (f) days and hours of operation; and (g) accounting and record keeping systems and forms. Our mandatory standards and procedures are described in the Store Operations Manual and the Store Opening Manual. The tables of contents of the Store Operations Manual and the Store Opening Manual are attached to this Document Disclosure as Exhibit D.

### **Insurance**

You must purchase insurance policies, including from a broker/carrier we may designate, and must maintain in force and furnish us evidence of the following coverages: (i) comprehensive general liability and product liability insurance coverage of at least \$2,000,000 in the aggregate and \$1,000,000 per occurrence, and \$1,000,000 for Errors and Omissions; (ii) general casualty insurance covering fire, extended coverage, vandalism and malicious mischief for the replacement value of your Store and its contents; (iii) comprehensive vehicle liability insurance for owned, leased, hired and non-owned vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damages per occurrence; (iv) business interruption insurance equal to nine (9) months of operating expenses or an actual loss sustained; (v) umbrella liability insurance with minimum limits of \$1,000,000; (vi) worker's compensation insurance as prescribed by state law; (vii) any other such insurance coverages or amounts as required by law by your Lease or by agreement related to your Store; and (viii) any other insurance or increases in limits to the above policies that we may periodically require. All liability insurance policies must name us (and our affiliates, officers, directors and employees), as additional insureds, must provide that such insurance is primary insurance with respect to the interests of all additionally named insureds, and must provide that any other insurance maintained by us or by you and/or any subcontractor is excess and not contributing insurance with the insurance required under this Agreement. The policy must contain a waiver by the insurance carrier of all subrogation rights against us. You must provide us with proof of insurance as discussed above prior to opening your Store, and you must provide proof that such insurance remains in force on or before each anniversary date of the opening of your Store.

## Computer Hardware and Software

As described in Item 11, we require you to purchase, lease and/or license, at your expense, such technology as we may periodically specify. We currently require you to use certain enterprise planning, security and multi-factor authentication software. Our affiliate, MSKS is owner and/or licensee of this proprietary software and provides the software to us. A copy of the Hosting Support and Software Agreement is attached to this Disclosure Document as Exhibit C-4.

### ITEM 9

#### FRANCHISEE'S OBLIGATIONS

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

OBLIGATION	SECTION IN AGREEMENT	ITEM IN DISCLOSURE DOCUMENT
a. Site selection and acquisition/lease	§§ 2.2, 4, Schedule A & B of FA	Items 8, 11 & 12
b. Pre-opening purchases/leases	§ 4.2 of FA	Items 7, 8 & 11
c. Site development and other pre-opening requirements	§§ 2.2, 4.2 of FA; §§ 2 and 8 of DA	Items 7, 8 & 11
d. Initial and ongoing training	§§ 5.1, 5.2, 5.3 of FA	Item 11
e. Opening	§ 4.2 of FA	Item 11
f. Fees	§§ 3, 7.8, 11.2 and 13.1 of FA; § 6.1 of HSS; § 2 of DPA; § 4 of DA	Items 5, 6 & 7
g. Compliance with standards and policies/Operations Manual	§§ 4.1(a)(iii), 4.3, 5.5, 7, Schedule C of FA; § 3 of HSS	Items 8 & 11
h. Trademarks and proprietary information	§§ 4.7, 5.5, 9, 10.1, 10.3 of FA; § 5 of HSS	Items 13 & 14
i. Restrictions on products/services offered	§§ 4.3, 7.1, 7.2, 7.4 of FA; § 3 of HSS; § 1 of DPA	Item 8 & 16
j. Warranty and customer service requirements	§ 7.1 of FA; § 7 of HSS; §§ 2 and 3 of DPA	Item 6 & 11
k. Territorial development and sales quotas	None in FA; §§ 1 and 2 of DA	Item 12

OBLIGATION	SECTION IN AGREEMENT	ITEM IN DISCLOSURE DOCUMENT
l. Ongoing product/service purchases	§§ 7.1, 7.2 of FA	Item 8
m. Maintenance, appearance, and remodeling requirements	§§ 4.2, 7.3 of FA; § 2 of HSS	Item 8
n. Insurance	§ 7.7 of FA; § 9.1 of DA	Items 6 & 8
o. Advertising	§§ 3.7, 7.8, 7.9, 7.10 of FA	Items 6, 8 & 11
p. Indemnification	§§ 15.3 of FA; § 7.1 of HSS; § 5 of DPA; § 9.7 of DA	Item 6
q. Owner's participation/ management/staffing	§§ 6, 7.6, Schedule C, Guaranty of FA; § 2.3 of DA	Item 15
r. Records/reports	§ 8 of FA; § 4 of DPA	Item 8, 11 & 16
s. Inspections/audits	§§ 5.4, 8.4, 8.5 of FA	Item 6
t. Transfer	§ 11 of FA; § 9.1 of HSS; § 9 of DPA; § 10 of DA	Items 6 & 17
u. Renewal	§ 13 of FA	Items 6 & 17
v. Post-termination obligations	§ 10.4, 14 of FA; § 8.5 of HSS; § 6.2 of DPA § 9.4 of DA	Item 17
w. Non-competition covenants	§§ 10.2, 10.4 of FA; § 8 of HSS; § 9.5 of DA	Item 17
x. Dispute resolution	§§ 16.1 and 16.2 of FA; § 9.11 of DA; § 15 of DPA	Item 17
y. Other (Personal Guarantee)	Schedule D to the Franchise Agreement	Not applicable

As used in this table, "FA" means Franchise Agreement, "HSS" means Hosting Support and Software Agreement, "DPA" means Digital Participation Agreement and "DA" means Development Agreement.

## ITEM 10

### FINANCING

Neither we nor any agent or affiliate of ours offers direct or indirect financing to you or guarantees any note, lease or other obligation of yours.

## ITEM 11

### FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING

**Except as listed below, we are not required to provide you with any assistance.**

#### **Pre-Opening Obligations**

We will provide the following pre-opening assistance:

1. We will approve or disapprove the site you select for your Store and determine the "Protected Area" (Franchise Agreement, Section 2.2).
2. We will provide you with prototype plans for layout and design for a Metal Supermarkets store and will approve the plans and specifications for your Store (Franchise Agreement, Section 4.2).
3. If you (or your Operating Principal) have not previously owned or operated a Metal Supermarkets store, we will provide you with the pre-opening assistance that we deem appropriate (Franchise Agreement, Section 4.5).
4. We will furnish you a database of potential customers located in your Protected Area (Franchise Agreement, Section 4.6).
5. If you (or your Operating Principal) have not previously owned or operated a Metal Supermarkets store, we will provide initial training to you (or, if applicable, your Operating Principal) and your Manager (defined below). (Franchise Agreement, Section 5.1).
6. We will provide you access to our Store Opening Manual and Store Operations Manual. The table of contents of the Store Operations Manual and Store Opening Manual are attached to this Disclosure Document as Exhibit D. (Franchise Agreement, Section 5.5). The total number of pages in the Store Opening Manual is 49. The total number of pages in the Store Operations Manual is 737 pages.
7. We may, but are not required to, provide you with sales and marketing assistance as we may deem appropriate, including updating the data base of potential customers in the Protected Area and assistance with sales and marketing programs we may develop. (Franchise Agreement, Section 5.4).
8. Currently, it is our practice to provide an initial supply of brochures (500) to assist you in the startup phase of your Store.
9. We will provide you with an online training program (Franchise Agreement, Section 5.1).

#### **Continuing Obligations**

We will provide the following assistance during the operation of your Store:

1. We will visit your Store as frequently as we deem appropriate to evaluate its operation and provide advice to you (Franchise Agreement, Section 5.4).

2. We will provide periodic guidance to you with regard to the System (Franchise Agreement, Section 5.2). We do not provide you with assistance in providing equipment, signs, fixtures, opening inventory or supplies.
3. We will conduct periodic or additional training programs as we deem appropriate (Franchise Agreement, Section 5.2).
4. We will periodically modify the Store Operations Manual to reflect changes in our standards, specifications and operating procedures (Franchise Agreement, Section 5.5).
5. We may, but are not required to, provide you with sales and marketing assistance as we may deem appropriate. (Franchise Agreement, Section 5.3).
6. Currently, we provide hosting services, either through ourselves or designated third party computer servers, and other related items so that you have access to the Information System, and email for your Store. (Franchise Agreement, Section 8.2).
7. We will provide you and your employees access to our On-line University which provides tracked courses available over the Internet on topics such as Brand meaning, customer service, equipment operation and safety.

### **Site Selection**

Within 60 days after the date of the Franchise Agreement, you must propose to us for our approval a location for your Store within the Protected Area and submit to us all information about the proposed location that we request. In approving or disapproving any proposed location, we will consider factors including general location, the number of potential customers in its immediate surroundings, and the distance to any other Metal Supermarkets store outside the Protected Area. Upon your and our agreement as to a proposed location, Schedule B to the Franchise Agreement will identify your Store location and will be signed by both you and us. Once Schedule B has been completed and signed, the location identified in Schedule B will be the “Premises” for purposes of the Franchise Agreement. If you and we are unable to agree on a site for the Store location, the Franchise Agreement will terminate. Under the Development Agreement, we will approve sites for each Store using our then-current site criteria.

We estimate the time from the date you sign the Franchise Agreement to the date you open your Store to be between three and nine months. This time estimate may, however, vary depending on numerous factors, including finding a location, construction schedules and your efforts in completing development. Your Store must be open and operating within nine months after the date of the Franchise Agreement.

### **Training**

If you (or your Operating Principal) have not previously owned or operated a Store, before you open your Store, you (or your Operating Principal) and the manager for your Store (“Manager”), if applicable, must attend a training program on the operation of a Metal Supermarkets store at the place and time we designate. You (or your Operating Principal, and your Manager, if applicable) must complete the training program to our satisfaction at least two weeks before opening the Store. If you hire or retain an outside sales representative, he or she may be required to complete the marketing and sales portion of our training program. You may send up to three individuals to the initial training program. If you ask to send more than three individuals to the initial training program, then you agree to pay us a training fee in the amount of \$1,285 for each additional individual that will attend the initial training program, with payment to be made in full before initial training starts.

Classroom, in-Store and webinar training is conducted by our officers, associates and outside companies or individuals. We reserve the right to periodically change trainers. We will select an appropriate Metal Supermarkets store for your on-the-job training. You will be responsible for your own compensation (or the compensation of your Operating Principal) and that of your Manager and sales representative (if applicable) and any travel, lodging and living expenses incurred in connection with attendance at the training program. You can include any other employees you think necessary in the initial training program.

We will not charge any additional fees for attending the initial training programs. Neither you nor your employees will receive any compensation from us for services performed during training. The initial training program is not scheduled on any set time table. Rather, it is scheduled on an as-needed basis. Before you open your Store and for a period of one year following the date that you open your Store, we will provide you with access, at our expense, to an online metal product knowledge training program provided by a third party.

Before opening your Store, you must complete to our satisfaction the on-line training program, which is approximately 45 hours (20 hours of metal-based learning and 25 hours on topics related to the operation of the business). In addition to completing the training, you must participate in weekly conference calls with our pre-opening team to make sure that you are progressing to our satisfaction toward the opening of your Store.

Instructional materials for the initial training program include the Store Operations Manual, videos, on-line training and customer service materials. The subjects covered and approximate hours of classroom and on-the-job training are described in the table below.

If you (or your Operating Principal) have not previously owned or operated a Store, you and your staff must be present for additional training that will occur at your Store the week prior to your opening and the week of your opening. This training will be facilitated by one or more of our field supervisors. We will be responsible for the compensation of the field supervisors as well as their travel and accommodation expenses during this time.

If your Operating Principal or Manager cease active management or employment at the Store, or if at any time we disapprove of the Operating Principal or Manager, then you must enroll a qualified replacement (who must be reasonably acceptable to us) in our next available initial training program. The replacement must attend and successfully complete the initial training program, to our reasonable satisfaction.

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### TRAINING PROGRAM

Subject	Hours Of Classroom Training	Hours Of On The Job Training	Location
Supplier Relations	2	4	A location we will select, which may include your store
Product Knowledge	2	4	A location we will select, which may include your store
Telephone Skills	2	10	A location we will select, which may include your store
Quoting	11	20	A location we will select, which may include your store
Customer Service	2	4	A location we will select, which may include your store
Value-Added Services	2	2	A location we will select, which may include your store
Safety	1	5	A location we will select, which may include your store
Marketing & Sales	6	6	A location we will select, which may include your store
Small Business Management	7	0	A location we will select, which may include your store
Purchasing	1	10	A location we will select, which may include your store
Software Training	1	30	A location we will select, which may include your store
Band Saw Training	0	2	A location we will select, which may include your store
Core Values	1	0	A location we will select, which may include your store
Inventory Management	2	8	A location we will select, which may include your store
<b>Total</b>	<b>40</b>	<b>105</b>	

The training program consists of approximately six working days of classroom training at our head office in Toronto, Ontario, Canada or online, five working days at a Toronto or Minneapolis area Metal Supermarkets stores, and up to fourteen working days in your store with a field supervisor. Our Training, New Store & Service Manager is Jason Jackson. He has over 27 years of experience with us and our predecessor companies, and more than 27 years of experience in the field, all relevant to the subjects he teaches. Our Director, Learning & Development is Paul O'Regan. He has over one year of experience with

us and our predecessor companies, and more than 25 years of experience in the field, all relevant to the subjects he teaches. Nick Redman is our Operations Specialist. He has over three years of experience with us and in the field relevant to the subjects he teaches. Other instructors may be involved in the training programs, each of whom will have at least one year of experience with us and at least five years of experience with the subject matter taught.

In addition to the initial training program, we may require you (or your Operating Principal) and your Manager, if applicable, to attend and successfully complete periodic or additional training programs for which we may charge reasonable fees (currently \$375 per day per instructor, plus the instructors' travel and accommodation expenses).

### **Advertising Programs**

Prior MSFA established a Brand Fund ("Fund") which we assumed responsibility for as of the amalgamation on October 1, 2023. The Fund is for the creation and development and delivery of marketing, advertising and related program materials. You currently must make a monthly contribution to the Fund (subject to adjustment) of 2% of Gross Sales. We have the right to periodically adjust the amount of the contribution, as we deem appropriate, up to 2.5% of Gross Sales.

Any Metal Supermarkets stores owned by us and our affiliates in the United States will contribute to the Fund on the same basis. The Fund will not spend any money on advertising that is principally a solicitation for the sale of new franchises. We will not be required to spend any set amount or percentage in your area (from the Fund or otherwise).

We will have sole control over all aspects of all programs financed by the Fund, including international, national and/or regional media, creative concepts, technologies, materials and endorsements. Although the Fund is intended to maximize general recognition and patronage of the Marks for the benefit of all Metal Supermarkets stores, we cannot assure you that any particular Metal Supermarkets store will benefit directly or pro rata from these programs or that expenditures from the Fund will be made in the United States or in the Protected Area. The Fund may be used to pay for the cost of preparing, producing, deploying, hosting, programming, attending, supporting, managing and placement of materials, programs, platforms, events and advertisements we select, including video, audio, tele-prospecting, public relations, direct solicitation and promotions, Internet (including Online Sites (defined below), Internet advertising, on-line stores and digital platforms), trade shows, conventions, exhibitions and other events, and other electronic or traditional media, and for the cost of engaging advertising, creative and technical agencies, consultants or talent as well as supporting market and customer research and surveys, measurement and analysis activities, and store presentation and service quality assessments. We may furnish you with marketing, advertising and promotional materials at cost, plus any related administrative, shipping, handling and storage charges.

During Prior MSFA's last fiscal year ending September 30, 2023, Prior MSFA spent 7.1% of the Brand Fund on production, 6.3% on wages and benefits, 67.1% on media placement, 1.1% on public relations, 3.9% on customer satisfaction and customer research, 3.7% on store sales assistance including tele-prospecting and 10.7% on website development and content management.

The Fund will be accounted for separately from our other funds, but may be deposited in any of our general accounts and commingled with our other funds and funds of our Affiliates. The Fund will not be audited. While our goal generally will be to balance the Fund on an annual basis, from time to time the Fund may run either a surplus or a deficit. All disbursements from the Fund shall be first from income and then from contributions. We may spend in any fiscal year an amount greater or less than the aggregate contributions of all Metal Supermarkets stores to the Fund in that year, and the Fund may borrow from us or other lenders to cover deficits in the Fund or cause the Fund to invest any surplus for future use by the Fund.

We will prepare annually an unaudited statement of monies collected and costs incurred by the Fund and furnish you a copy upon your written request. Except as otherwise provided in the Franchise Agreement, we assume no direct or indirect liability or obligation with respect to the management, maintenance, direction or administration of the Fund. We will not act as trustee or in any other fiduciary capacity with respect to the Fund. We and/or our Affiliates maintain other marketing and/or advertising funds in other regions or countries and certain costs and/or expenses relating thereto may be shared among the various funds, including the Fund. We and our Affiliates have the right to co-mingle or separate such funds or combine administrative functions of such funds, including the Fund, to create one or more funds for Canada and/or the United States and/or elsewhere, and/or to allocate all or a portion of such funds, including the Fund, to regional, national or international advertising and marketing administered by us, or to co-operatives administered by one or more groups of franchisees on a basis that we determine.

There is no advertising council composed of franchisees. However, we sponsor a franchisee advisory council (“FAC”) that may have a marketing subcommittee that we appoint. The subcommittee can provide input on marketing and advertising ideas, concepts, results and policies. We have the power to form, change and dissolve the FAC or the marketing subcommittee.

You are not required to participate in any advertising cooperative.

We may, but are not required to, provide you with sales and marketing assistance, including updating the database of potential customers in the Protected Area, telemarketing, and other sales and marketing programs that we may develop. You may use advertising and promotional materials not prepared or previously approved by us only with our prior approval as described in Item 8. Restrictions on your use of particular advertising media, including web sites and the Internet, are described in Item 8 and below.

### **Franchisee Advertising**

You must deposit \$15,000 with us upon signing the Franchise Agreement, which is the minimum amount you are required to spend on approved advertising during the first 12 months of the operation of your Store. No interest will be accrued or paid on this deposit. The funds must be spent on approved advertising, and we can periodically revise and specify the expenditures that constitute approved advertising. You must make these advertising expenditures in reasonable regular intervals during this 12-month period, and we have the right to make some of these advertising expenditures on your behalf. You and we will periodically reconcile our expenditures for these purposes, provide each other with appropriate verification (receipts, etc.) as we specify to substantiate these advertising expenditures. We will draw from your advertising deposit for advertising expenditures we make on your behalf and otherwise adjust the balance of that deposit accordingly. Funds from the advertising deposit will also be released to you to reimburse you for the approved advertising expenditures you make during the first 12 months of the operation of your Store. Expenditures for directory listings do not count toward the \$15,000 requirement for the first 12 months of your operations.

For each subsequent year co-terminus with our fiscal year, you must spend on approved advertising programs at least the greater of \$10,000 or 1.0% of Gross Sales accrued during such period (for the period of time between the end of your first 12 months of operations and the start of our then next fiscal year, the \$10,000 annual minimum requirement will be prorated). You must submit documentation of your advertising expenditures at such times and in such form as we designate. If you fail to make any required advertising expenditures, we have the right to require you to contribute the amount of any deficiency to the Fund to be used by us for general advertising and promotion.

We have the right to periodically designate in the Operations Manual the expenditures that will or will not be permitted to constitute approved advertising, but advertising programs that we may approve include: (a) any amounts spent for advertising media; and (b) the cost of producing approved materials

necessary to participate in these media, if not provided by us. Advertising expenditures will not be approved for items which we, in our reasonable judgment, deem inappropriate for meeting this minimum advertising requirement, including permanent on-premises signs, maintaining vehicles (even though such vehicles may display the Marks). You must use such advertising and media placement agencies as we periodically designate. For local or regional advertising whose scope includes more than one Metal Supermarkets store, the advertising must either promote the Marks or identify each applicable Metal Supermarkets store, and the cost of that advertising must be reasonably apportioned among all Metal Supermarkets stores listed in that advertisement.

Online Sites (as defined below) are considered as “marketing” under the Franchise Agreement, and are subject (among other things) to our review and prior written approval before they may be used (as described above).

### **Computer Hardware, Software, Communications and Technology Systems**

You will have to abide by our requirements concerning the computer, communications and technology system, including: (a) back office systems, specified software (including the Premium Desktop Software and Support Package), data, audio, video (including managed video security surveillance), VoIP telephone, handsets, headsets, voice messaging, retrieval, and transmission systems for use at Metal Supermarkets stores, between or among Metal Supermarkets stores, and between and among the Store, and you, and us; (b) physical, electronic, and other security systems and measures; (c) printers and other peripheral devices; (d) archival back-up systems; and (e) internet access mode (e.g., form of telecommunications connection) and speed (collectively, all of the above are referred to as the “Computer System”). Some of the hardware and software that you will use in connection with the Computer System is the proprietary property of third parties which may include our affiliates. We have not approved any hardware or software in place of these systems and programs, although we reserve the right to do so in the future. We have the right to specify the brands, types, makes, and models of your Computer System.

As of the date of this Disclosure Document, the estimated purchase price of the Computer System is \$4,000 to \$7,500. In addition, there may be additional expenses, including ongoing software licensing fees and other periodic changes as described in Item 6. Neither we nor our affiliates or any third party has any obligation to provide ongoing maintenance, repairs, upgrades or updates, except as provided in the Hosting Support and Software Agreement (see below and see Exhibit C- 4). You are required to periodically upgrade the Computer System (hardware and software) as we require. There is no contractual limit on the frequency or cost of upgrades. You must duly execute and deliver such technology agreements as we may periodically require. You must abide by the terms of such agreements, including payment of all fees owed under the agreements. You must not use any technology in the operation of your Store without our express prior approval. The current estimated annual cost of other optional or required maintenance, administration, updating, upgrading or support contracts is \$500 to \$1,000. It may be significantly greater if we impose material upgrade requirements in any given year.

At your expense, you will take such actions and measures as we may periodically require for you to access the internet connection to our hosted solution and to protect the security of networks we make available to you, including inserting “firewalls” and other security devices between such networks, interfaces or systems. We may make such inspections and tests as we deem necessary to verify compliance with these requirements.

All data you collect or provide on your Computer System, whether or not uploaded to our system from your system, and/or downloaded from your system to our system is and will be owned exclusively by us, and we will have the right to use such data in any manner that we deem appropriate without compensation to you. We will have independent access to the information generated and stored in your

system and there are no contractual limitations on our right to access this information. We have the right to retrieve and use such data and information from your Computer System as we deem desirable, with any cost of retrieval to be borne by you; provided, however, that we agree to comply with all applicable privacy laws in connection with the retrieval, use, storage and transmission of such data and information, provided that you must ensure that you obtain all necessary consents to ensure that we can collect, use and disclose customers' personal information in the manner set out in our privacy policy.

We directly or indirectly provide hosting services to you. You must enter into a Hosting Support and Software Agreement, a current copy of which is attached to this Disclosure Document as Exhibit C-4. We require you to purchase at least three computers and two printers to our specifications. You will receive support for the hosting services as part of the monthly hosting services fee.

You may be required to implement and use new or additional software. The required software provides all the basic functions of a standard point of sale system, including facilitating purchase transactions, receipt generation and sales tracking. In addition to these basic functions, it manages inventory, metal procurement, tracks cost of goods sold, generates invoices, provides in-depth business reports and analytics and performs all required accounting functions.

## **ITEM 12**

### **TERRITORY**

#### **Franchise Agreement**

The Franchise Agreement grants you the right to own and operate a Metal Supermarkets store at a specific location within a protected area (the "Premises"). We and you will mutually agree, and designate in Schedule A to the Franchise Agreement, a geographical area called the "Protected Area." The Protected Area will be a geographical area that includes in our reasonable estimate at least 750 manufacturing facilities, tool and die shops and other potential customers of your Metal Supermarkets store.

If you want to relocate your Store, we will approve of the relocation provided that: (1) the new location is in the Protected Area, and (2) the new location meets our then-current standards.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, from other channels of distribution or competitive brands that we control.

During the term of the Franchise Agreement, and so long as you are in compliance with the terms of the Franchise Agreement, we will not: (a) operate (directly or through an affiliate), nor grant to another person the right to operate, any Metal Supermarkets store with a physical location within your Protected Area; or (b) establish (directly or through an affiliate), nor grant to other persons the right to establish, a business within your Protected Area that offers or sells the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally.

We reserve all other rights, including the following things:

- operate, and grant others the right to operate, Metal Supermarkets stores at any location outside the Protected Area;
- operate, and license others to operate, any business of any kind inside or outside the Protected Area, so long as those businesses (i) are not Metal Supermarkets stores operated within the Protected Area, or

(ii) do not sell the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally;

- acquire (or be acquired) and then operate any business of any kind (including a business selling the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally), whether located inside or outside the Protected Area; and

- offer, advertise, sell and distribute, or license others to offer, advertise, sell and distribute, directly or indirectly, and without any compensation to you, any products or services using any marks (including the Marks), from any location or to any purchaser (which means we can, among other things, sell products and services at wholesale and to purchasers in the Protected Area through stores, mail order, and on the Internet, under our Marks or as private-labeled items).

You may not conduct the business of your Store or use the System at any other location, or relocate your Store, without our prior written consent. You may not solicit any customers (e.g. through telemarketing, emailing, faxing, Internet, catalog sales, telemarketing or other direct marketing and other sales and marketing efforts that we reasonably designate) who are located outside your Protected Area. You will operate your Store in a Protected Area as further described below. We do not pay any compensation for soliciting or accepting orders in your area. However, we manage the Metal Supermarkets E-Commerce site in the United States. You must sign the Digital Participation Agreement (see Exhibit H) and you may be referred work to be performed for E-Commerce customers in your geographic area and receive compensation for such work. You do not have the right to advertise on the Internet or otherwise conduct digital programs except through the Metal Supermarkets digital website.

We use or reserve the right to use other channels of distribution (such as the Internet, catalogues, telemarketing, direct marketing) to make sales within the Protected Area using any trademarks, including the Marks, and we are not required to compensate you for soliciting and/or conducting business within the Protected Area.

We may not alter or modify your Protected Area without your written agreement. We do not grant franchisees options, rights of first refusal or similar rights to acquire additional franchises within the Protected Area or in contiguous territories.

Neither we nor any affiliate operates, franchises, or has plans to operate or franchise a business which sells or will sell similar goods or services under a different trademark.

### **Development Agreement**

Under the Development Agreement, and as described in Item 1, if you sign a Development Agreement, you will receive a Development Area in which you must develop Metal Supermarkets Stores. During the term of the Development Agreement, and so long as you are in compliance with the terms of the Development Agreement, we will not: (a) operate (directly or through an affiliate), nor grant to another person the right to operate, any Metal Supermarkets store with a physical location within your Development Area; or (b) establish (directly or through an affiliate), nor grant to other persons the right to establish, a business within your Development Area that offers or sells the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally. Under the Development Agreement, we will determine or approve the location of future stores and any territories for those stores, and our then-current standards for sites and territories will apply.

We reserve all other rights under the Development Agreement, including the following things:

- operate, and grant others the right to operate, Metal Supermarkets stores at any location outside the Development Area;
- operate, and license others to operate, any business of any kind inside or outside the Development Area, so long as those businesses (i) are not Metal Supermarkets stores operated within the Development Area, or (ii) do not sell the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally;
- acquire (or be acquired) and then operate any business of any kind (including a business selling the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally), whether located inside or outside the Development Area; and
- offer, advertise, sell and distribute, or license others to offer, advertise, sell and distribute, directly or indirectly, any products or services using any marks (including the Marks), from any location or to any purchaser (which means we can, among other things, sell products and services at wholesale and to purchasers in the Development Area through stores, mail order, and on the Internet, under the Marks or as private-labeled items).

You will not have any options, rights of first refusal, or similar rights to acquire additional franchises, development rights, or other rights under the Development Agreement.

### ITEM 13

#### TRADEMARKS

##### Status of Principal Marks

The following is a list of the service marks which are registered on the Principal Register of the United States Patent and Trademark Office (“PTO”) and which are licensed to you under the Franchise Agreement:

MARK	REGISTRATION NUMBER	REGISTRATION DATE
	3,638,672	June 16, 2009
THE CONVENIENCE STORES FOR METAL	3,638,671	June 16, 2009
METAL SUPERMARKETS	4,275,469	January 15, 2013

All rights to the trademark registrations are owned by MSKS. MSKS has granted us the exclusive right to sublicense the Marks (under the License Agreement noted below) to use and sublicense the use of the Marks in the United States and Canada. All required affidavits of use and renewals have been filed.

There are no currently effective material determinations of the PTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, nor are there any pending infringement,

opposition or cancellation proceedings or material litigation, involving any of the above-identified marks. There are no infringing uses actually known to us that could materially affect your use of any of the above-identified marks.

Effective October 1, 2023, we entered a license agreement (the “License Agreement”) with MSKS under which we have an exclusive license to use and sublicense the Marks and the System in the United States. The License Agreement has an initial term of 30 years, with automatic renewal rights for subsequent 10-year terms. The License Agreement may be terminated in the event that we fail to cure a default (e.g., maintain quality standards, failure to pay royalty) under the License Agreement within 30 days after we receive a notice of default. If the License Agreement terminates, we will lose our right to use the Marks and may have to substitute alternate marks in connection with the operation and franchising of Metal Supermarkets stores, including your Store. In consideration for the right to use and sublicense the Marks and System, we pay a monthly royalty or dividend to MSKS. Otherwise, there are no agreements currently in effect which significantly limit our rights to use or license the Marks in any manner material to the franchise.

### **Franchise Agreement**

The Franchise Agreement grants you the right to use the trademarks and service marks that identify the services and/or products offered by Metal Supermarkets stores, including the mark Metal Supermarkets (the “Marks”). If we decide to modify or discontinue use of any Mark or to use one or more additional or substitute trademarks or service marks, you must comply with our directions within a reasonable time after notice. We will have no liability or obligation whatsoever with respect to any required modification or discontinuance of any Mark or promotion of a substitute trademark or service mark.

You must promptly notify us of any suspected infringement of the Marks, any known challenge to the validity of any Mark, or any known challenge to our ownership of, or your right to use, the Marks. We and MSKS have the right to direct and control any administrative proceeding or litigation, or other adjudicative proceeding involving the Marks, including any settlement. We have the sole right, but not the obligation, to take action against use by others that may constitute infringement of the Marks.

If you have used the Marks in accordance with the Franchise Agreement, then we will defend you at our expense against any third-party claim, suit, or demand involving the Marks arising out of your use, provided you have timely notified us of such claim and as long as you and your owners are in compliance with the Franchise Agreement and all other agreements with us. If you have used the Marks but not in accordance with the Franchise Agreement, then we or MSKS will have the right to defend you (but at your expense), or settle the matter at our discretion, against such third-party claims, suits, or demands. To the extent that such litigation is the result of your use of the Marks in a manner inconsistent with the terms of the Franchise Agreement, then you must reimburse us for the cost of such litigation (or, upon our written request, pay our legal fees directly), including reasonable attorneys’ fees, court costs, discovery costs, and all other related expenses, as well as the cost of any judgment or settlement. MSKS or we are entitled to prosecute, defend and/or settle any action arising out of your use of any Mark, and if MSKS or we undertake to prosecute, defend and/or settle any such matter, we will have no obligation to indemnify or reimburse you for any fees or disbursements of any legal counsel you retain.

If we undertake the defense or prosecution of any litigation or other similar proceeding relating to the Marks, you must sign any and all documents, and do those acts and things that may, in our counsel’s opinion, be necessary to carry out the defense or prosecution of that matter (including becoming a nominal party to any legal action).

## ITEM 14

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

There are no patents that are material to the franchise.

MSKS claims copyright protection for the Store Operations Manual and all printed and/or electronically transmitted advertising and promotional materials. MSKS has not registered any of the materials to which it claims copyright protection.

There currently are no effective determinations of the Copyright Office (Library of Congress) or any court regarding any of the copyrighted materials. Except for our License Agreement with MSKS described in Item 13, there are no agreements currently in effect which significantly limit our right to use or authorize you to use the copyrighted materials. Further, there are no infringing uses actually known to us which could materially affect your use of the copyrighted materials in any state. We are not required by any agreement to protect or defend copyrights or confidential information, although we will do so when this action is in the best interest of our franchise system.

MSKS also considers certain information, contained in the Store Operations Manual or otherwise, relating to the development and operation of Metal Supermarkets stores proprietary and confidential, including: (1) technical information and expertise relating to metals and the equipment used in connection therewith; (2) sourcing information for metals and metal related products; (3) site selection criteria for Metal Supermarkets stores; (4) data bases of potential customers for Metal Supermarkets stores; (5) sales and marketing programs and techniques for Metal Supermarkets stores; (6) Customer Information (defined below); (7) knowledge of operating results and financial performance of Metal Supermarkets stores, other than Metal Supermarkets stores that you own; (8) comprehensive methods of operating Metal Supermarkets stores including the unique part numbering system and methodology; and (9) computer systems, technology and software programs. You may not use the confidential information in an unauthorized manner and must take reasonable steps to prevent its disclosure to others. "Customer Information" means contact information (including name, address, phone and fax numbers, and e-mail addresses), sales and payment history, corporate background and ownership, and all other information about (i) any person or entity included on any marketing or customer list provided by us to you, (ii) any person or entity who has purchased or purchases products and/or services from you during the term of the Franchise Agreement (even if you have solicited the person and/or established a relationship independent of us and without our assistance) or who you have solicited to purchase any goods and/or services, (iii) any person or entity in your Protected Area who purchases products and/or services from us, (iv) any person or entity for whom you provide services on our behalf or at our direction; and (v) if customer is a corporation or limited liability company, all employees of such corporation or limited liability company.

All ideas, concepts, methods or techniques useful to Metal Supermarkets stores, whether or not constituting protectable intellectual property, and whether created by you or on your behalf, must be promptly disclosed to us. If we or MSKS adopt any of them as part of the System, they will be deemed MSKS's sole and exclusive property or, at MSKS' determination, our sole and exclusive property, as if they had been conceived or developed by you under a contract of service with MSKS, or us, as applicable and deemed to be works made-for-hire for MSKS. You must sign whatever documents we request to evidence our ownership or to assist us in securing intellectual property rights in such ideas, concepts, methods or techniques.

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

If you are, or at any time become, a business corporation, partnership, limited liability company or other legal entity, you must designate in Schedule C to the Franchise Agreement as the “Operating Principal” an individual approved by us who (unless we waive this requirement): (a) owns and controls at least 10% of your equity and voting rights; and (b) has completed our initial training program to our satisfaction.

You (or your Operating Principal): (a) must exert your full-time and best efforts to the operation of your Store and other Metal Supermarkets stores that you own; and (b) may not engage in any other business or activity, directly or indirectly, that requires substantial management responsibility or time commitments or otherwise may conflict with your obligations under the Franchise Agreement. Your Store must be managed at all times by you (or your Operating Principal) or by a manager who has completed our initial training program to our satisfaction. Your officers, directors and Operating Principal must sign nondisclosure agreements to prevent unauthorized disclosure of any of our confidential information.

If you are a partnership, corporation, limited liability company or other legal entity, each of your owners must undertake to be personally bound, jointly and severally, by your obligations under the Franchise Agreement. A copy of these guarantees is attached to the forms of Franchise Agreement attached as Exhibit C-2 to this Disclosure Document.

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

We require you to offer or sell only those metals and other products and services that we have approved. You must offer all metals and other products and services, including metal processing services, that we authorize and mandate for Metal Supermarkets stores. You may offer additional, non-mandated services, including metal processing services. We have the right to add, modify or delete metals and other products and services we authorize and mandate there are no limitations on our right to make these changes (see Item 8). We do not restrict the customers to whom you may sell products and services.

You agree not to advertise your Store nor to offer or sell any products or services of your Store through any medium we reasonably determine to be inappropriate, including the Internet or websites.

We may advertise and provide ordering and fulfillment services (or to authorize another person to fulfill any customer orders) for products and services authorized for Metal Supermarkets stores to customers located within the Protected Area, through the Internet or other form of electronic media, on such terms and conditions we deem appropriate, except to the extent we may agree otherwise by a separate agreement with you. In connection with that, you agree to abide by such reasonable requirements and restrictions as we may periodically impose. We may require you to participate in any such endeavors, including participation with pages on any of our Websites, and to execute such agreements and pay such fees as we deem reasonably appropriate.

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## ITEM 17

**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION****Franchise Agreement**

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreement attached to this Disclosure Document.

**THE FRANCHISE RELATIONSHIP**

Provision	Section in Agreement	Summary
a. Term of the franchise	§ 2.1	10 years
b. Renewal or extension of the term	§ 13	You may be granted a single successor franchise for one additional term of 10 years, under terms of then current franchise agreement.
c. Requirements for you to renew or extend	§ 13	If you are in compliance with all terms of all agreements, give 180-day prior notice, sign new agreement, pay fee, remodel, and sign release. A copy of our current form of general release is attached as Exhibit C-5 to this Disclosure Document. If you seek to renew your Franchise Agreement at the expiration of the initial term or any renewal term, you may be asked to sign a new Franchise Agreement that contains materially different terms and conditions than your original Franchise Agreement.
d. Termination by you	§ 2.2	You may terminate if we and you are unable to agree on a location for your Store. (Subject to state law)
e. Termination by us without cause	None	Not applicable
f. Termination by us with cause	§ 12	Default under the Franchise Agreement, bankruptcy, abandonment, and other grounds; see § 12 of the Franchise Agreement. (Under the U.S. Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing.) Termination of the Development Agreement is not a default under the developer's Franchise Agreements.
g. "Cause" defined - defaults which can be cured	§§ 12.3	All other defaults not specified in §§ 12.1 and 12.2 of the Franchise Agreement

Provision	Section in Agreement	Summary
h. "Cause" defined - defaults which cannot be cured	§§ 12.1, 12.2	Non-curable defaults include failure to open Store, insolvency, abandonment of franchise, material misrepresentation, felony conviction, unauthorized transfer, understating Gross Sales, unauthorized use of Marks or Confidential Information, and repeated defaults. Termination of the Development Agreement is not a default under the developer's Franchise Agreements.
i. Your obligations on termination/nonrenewal	§§ 4.4, 14	Pay all amounts due, discontinue use of Marks and any distinctive features of a Metal Supermarket store (such as blue stripe and blue coloring on racking system), computer software and Confidential Information, cancel all fictitious or assumed names registrations, discontinue use of telephone numbers, return the manuals, signs and marketing materials, furnish proof of compliance with termination/expiration obligations within 30 days after termination/expiration. All customer information belongs to us and you may not retain or use any customer information.
j. Assignment of contract by us	§ 11.9	We have the right to transfer or assign all or any part of our rights and obligations.
k. "Transfer" by you - definition	§ 11.1	Includes voluntary or involuntary, direct or indirect, sale assignment, transfer or other disposition of the Agreement, any right under this Agreement or any change in ownership
l. Our approval of your transfer	§§ 11.1, 11.2, 11.3, 11.4, 11.8	Any transfer or assignment is subject to our right of first refusal. We must approve all transfers, but will not unreasonably withhold approval.
m. Conditions for our approval of transfer	§ 11.2	You must be in compliance with agreement, transferee must qualify, complete training, agree to remodel and sign existing or new agreement, transfer fee (the amount of which may increase under certain circumstances if you received any discounted initial franchise fee) must be paid, you must subordinate debts and sign a release and non-compete, and we must approve price and payment terms. A copy of our current form of general release is attached as Exhibit C-5 to this Disclosure Document.

Provision	Section in Agreement	Summary
n. Our right of first refusal to buy your business	§ 11.6	We can match any offer for your business from a bona fide purchaser within 30 days of receipt of written notice.
o. Our option to buy your business	§ 14.4	Upon termination or expiration of the Franchise Agreement we may purchase some or all of your assets and may obtain an assignment of your lease for the Premises.
p. Your death or disability	§ 11.5	Upon death or disability, rights under Agreement to be transferred to an approved third party within 9 months
q. Non-competition covenant during term of franchise	§ 10.2	Without our consent, you may not own, directly or indirectly any legal or beneficial interest in, nor render services or give advice to, any Competitive Business (as defined in the Franchise Agreement) located anywhere that grants franchises, licenses or other interests to others to operate any Competitive Business, or divert or attempt to divert any business to any competitor.
r. Non-competition covenant after franchise is terminated or expires	§ 10.4	For a period of two years following termination or expiration, you may not directly or indirectly: (a) own a legal or beneficial interest in, or render services or give advice to any Competitive Business operating at the Premises, within the Protected Area, within 10 miles of the Premises, or within 5 miles of any other Metal Supermarkets Store; (b) solicit (e.g., through telemarketing, e-mailing, faxing, mailer program and other marketing efforts that we reasonably determine to constitute a solicitation) any former, current or prospective customer of your Store; or (c) hire or attempt to hire anyone who has been employed by another Metal Supermarkets store.
s. Modification of the Agreement	§ 16.7	No modification except by written agreement signed by you and us
t. Integration/merger clause	§ 16.7	Only the terms of the Franchise Agreement are binding (subject to state law). Notwithstanding the foregoing, nothing in the Franchise Agreement or any related agreement is intended to disclaim the express representations made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	§ 16.1	Mediation will take place in Washington, D.C. (Subject to state law.)

Provision	Section in Agreement	Summary
v. Choice of forum	§ 16.2	Litigation must be brought in the state or federal courts in Erie County (Buffalo), New York. (Subject to state law).
w. Choice of law	§ 16.3	New York law will apply. (Subject to state law).

### **Hosting Support and Software Agreement**

**This table lists certain important provisions of the Hosting Support and Software Agreement and related agreements. You should read these provisions in the agreement attached to this Disclosure Document.**

Provision	Section in Agreement	Summary
a. Term of the franchise	§ 8.2	Coterminous with the Franchise Agreement
b. Renewal or extension of the term	None	Not applicable
c. Requirements for you to renew or extend	None	Not applicable
d. Termination by you	None	Not applicable (Subject to state law)
e. Termination by us without cause	§ 8.2	We can terminate for any reason, effective 120 days after notice to you; or if replacement hosted software is offered under a new agreement with us or our affiliate, effective 15 days after notice to you; or immediately upon notice to you if we are no longer able to provide the software or reasonable access for any reason.
f. Termination by us with cause	§ 8.2	We can terminate with cause, effective immediately upon notice to you.
g. "Cause" defined - defaults which can be cured	None	Not applicable
h. "Cause" defined - defaults which cannot be cured	None	Not applicable

Provision	Section in Agreement	Summary
i. Your obligations on termination/nonrenewal	§ 8.4	Pay all amounts owed and cease all use of software and hosted solution.
j. Assignment of contract by us	§ 9.1	We have the right to assign any or all of our rights or obligations.
k. "Transfer" by you - definition	None	Not applicable
l. Our approval of your transfer	§ 9.1	The agreement or any rights granted may not be, directly or indirectly, assigned or otherwise transferred by you without our prior written consent.
m. Conditions for our approval of transfer	None	Not applicable
n. Our right of first refusal to buy your business	None	Not applicable
o. Our option to buy your business	None	Not applicable
p. Your death or disability	None	Not applicable
q. Non-competition covenant during term of franchise	§ 5.3	Same as "r" below during the term of the agreement.
r. Non-competition covenant after franchise is terminated or expires	§ 8.5	For a period of two years following termination for any reason or expiration, you may not directly or indirectly use, or engage or retain any party to use on its behalf or provide services to you, any software that relies upon, employs, or otherwise is based upon any software licensed by Openbravo S.L.U., any of its affiliates, or any third party licensed by Openbravo S.L.U. or its affiliates.
s. Modification of the Agreement	§ 9.9	The agreement may not be modified except by written agreement signed by both parties.
t. Integration/merger clause	§ 9.12	Only provisions of the agreement are binding (subject to state law). Notwithstanding the foregoing, nothing in the Hosting Support and Software Agreement or any related agreement is intended to disclaim the express representations made in this Disclosure Document.

Provision	Section in Agreement	Summary
u. Dispute resolution by arbitration or mediation	§ 9.4	Disputes are resolved as designated in franchise agreement and therefore are subject to mediation before litigation. (Subject to state law.)
v. Choice of forum	§ 9.4	Mediation to take place in Washington, D.C., and litigation must be brought in the state or federal courts in Erie County (Buffalo), New York (subject to state law).
w. Choice of law	§ 9.5	New York law will apply. (Subject to state law).

### **Digital Participation Agreement**

**This table lists important provisions of the Digital Participation Agreement. You should read these provisions in the agreements attached to this Disclosure Document.**

Provision	Section in Agreement	Summary
a. Term of the franchise	§ 6.1	Until Franchise Agreement expires or is terminated or upon termination by either party.
b. Renewal or extension of the term	None	Not applicable.
c. Requirements for you to renew or extend	None	Not applicable.
d. Termination by you	§ 6.1	With or without cause. (Subject to state law)
e. Termination by us without cause	§ 6.1	No cause required.
f. Termination by us with cause	None	Not applicable.
g. "Cause" defined – defaults that can be cured	None	Not applicable.

Provision	Section in Agreement	Summary
h. “Cause” defined – defaults that cannot be cured	None	Not applicable.
i. Your obligations on termination/non-renewal	§ 6.2	Return confidential information and cannot represent that you are part of digital network.
j. Assignment of contract by us	None	Not applicable.
k. “Transfer” by you – definition	None	Not applicable.
l. Our approval of transfer by franchisee	None	Not applicable.
m. Conditions for our approval of transfer	None	Not applicable.
n. Our right of first refusal to acquire your business	None	Not applicable.
o. Our option to purchase your business	None	Not applicable.
p. Your death or disability	None	Not applicable.
q. Non-competition covenants during the term of the franchise	§ 1.7	Cannot encourage digital customer to direct its business from digital platform.
r. Non-competition covenants during the term of the franchise	None	Not applicable.
s. Modification of the agreement	§ 16	Modifications must be in writing and signed by both parties.

Provision	Section in Agreement	Summary
t. Integration/merger clause	§ 16	Only the terms of the agreement are binding (subject to state law). Notwithstanding the foregoing, nothing in the Digital Participation Agreement or any related agreement is intended to disclaim the express representations made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	§ 15	Mediation in Washington, D.C. (Subject to state law.)
v. Choice of forum	§ 15	Litigation will take place in Erie County (Buffalo), New York. (Subject to state law).
w. Choice of law	§ 15	New York law applies. (Subject to state law).

### **Development Agreement**

**This table lists certain important provisions of the Development Agreement and related agreements. You should read these provisions in the agreement attached to this Disclosure Document.**

Provision	Section in Agreement	Summary
a. Term of the franchise	§ 3	Will be the same period of time as the Development Schedule, which you and we will negotiate.
b. Renewal or extension of the term	None	Not applicable
c. Requirements for you to renew or extend	None	Not applicable
d. Termination by you	None	Not applicable (Subject to state law)
e. Termination by us without cause	None	Not applicable

Provision	Section in Agreement	Summary
f. Termination by us with cause	§ 9.3 and § 11	Default under the Development Agreement, bankruptcy, abandonment, and other grounds; see § 12 of the Franchise Agreement. (Under the U.S. Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing.) Termination of the Development Agreement is not a default under the developer's Franchise Agreements.
g. "Cause" defined - defaults which can be cured	§ 9.3	All other defaults not specified in §§ 12.1 and 12.2 of the Franchise Agreement as set forth in § 12.3 of the Franchise Agreement.
h. "Cause" defined - defaults which cannot be cured	§ 9.3 and § 11	Failure to open your first Store within the required time period, failure to comply with the Development Schedule; or termination of any other agreement between you (or your affiliates) and us (and our affiliates). Termination of the Development Agreement is not a default under the developer's Franchise Agreements.
i. Your obligations on termination/nonrenewal	§ 9.5	Pay all amounts due, discontinue use of Marks and any distinctive features of a Metal Supermarket store, and others. See § 14 of the Franchise Agreement.
j. Assignment of contract by us	§ 10	We have the right to transfer or assign all or any part of our rights and obligations.
k. "Transfer" by you - definition	§ 10	Includes the sale, assignment, transfer, pledge, grant of a security interest in, and/or disposal in any other way, directly or indirectly of: (1) the Development Agreement; (2) any right or obligation under the Development Agreement; or (3) any ownership interest (direct or indirect) in you.
l. Our approval of your transfer	§ 10	The rights and obligations under the Agreement are personal to you, and you do not have the right to transfer the Development Agreement.
m. Conditions for our approval of transfer	Not Applicable	Not Applicable.
n. Our right of first refusal to buy your business	Not Applicable	Not Applicable

Provision	Section in Agreement	Summary
o. Our option to buy your business	§ 9.5	Upon termination or expiration of the Development Agreement we may purchase some or all of your assets and may obtain an assignment of applicable leases.
p. Your death or disability	Not Applicable	Not Applicable
q. Non-competition covenant during term of franchise	§ 9.2	Without our consent, you may not own, directly or indirectly any legal or beneficial interest in, nor render services or give advice to, any Competitive Business (as defined in the Franchise Agreement) located anywhere that grants franchises, licenses or other interests to others to operate any Competitive Business, or divert or attempt to divert any business to any competitor.
r. Non-competition covenant after franchise is terminated or expires	§ 9.2	For a period of two years following termination or expiration, you may not directly or indirectly: (a) own a legal or beneficial interest in, or render services or give advice to any Competitive Business operating at the Premises, within the Protected Area, within 15 miles of the Premises, or within 10 miles of any other Metal Supermarkets Store; (b) solicit (e.g., through telemarketing, e-mailing, faxing, mailer program and other marketing efforts that we reasonably determine to constitute a solicitation) any former, current or prospective customer of your Store; or (c) hire or attempt to hire anyone who has been employed by another Metal Supermarkets store.
s. Modification of the Agreement	§ 9.8	No modification except by written agreement signed by you and us
t. Integration/merger clause	§ 9.8	Only the terms of the Development Agreement are binding (subject to state law). Notwithstanding the foregoing, nothing in the Development Agreement or any related agreement is intended to disclaim the express representations made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	§ 9.7	Mediation will take place in Washington, D.C. (Subject to state law.)

Provision	Section in Agreement	Summary
v. Choice of forum	§ 9.7	Litigation must be brought in the state or federal courts in Erie County (Buffalo), New York. (Subject to state law).
w. Choice of law	§ 9.7	New York law will apply. (Subject to state law).

## ITEM 18

### PUBLIC FIGURES

We do not use any public figure to promote the sale of our franchises.

## ITEM 19

### FINANCIAL PERFORMANCE REPRESENTATION

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 or under particular circumstances.

Tables 1 and 2 below provide quarterly Gross Sales information for each new franchised Store that was first opened during Prior MSFA's 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 fiscal years (the period from October 1, 2012 to September 30, 2022) and that operated for at least 12 or 24 full months since then until Prior MSFA's fiscal year end on September 30, 2023.

Tables 3-5 below show the actual average invoice values, gross margins and sales per Store for Prior MSFA's 2020, 2021, 2022 and 2023 fiscal years (which run from October 1 to September 30 of each year). The figures are based on the 55 franchised stores that operated for the entire four-year period on our server-based platform. The figures do not include information on 30 currently operating franchised Stores that were not open for the entire four-year period, eight of which were opened in 2020, nine of which were opened in 2021, nine of which were opened in 2022 and four of which opened in 2023; and five franchised Stores that closed during the four-year period, two of which closed in 2020, one of which closed in 2021, none of which closed in 2022 and two of which closed in 2023.

Please read the following Tables in conjunction with the notes that follow.

**Table 1:**

First Year Quarterly Gross Sales For The 64 Stores Opened In Fiscal Years  
2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.  
And That Have Been Open For At Least 12 Full Months  
As Of September 30, 2023.  
(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				Annual (first 12 full months)
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	
1	FY13	\$30,298	\$60,545	\$77,107	\$94,004	\$261,954
2	FY13	\$40,091	\$76,222	\$106,342	\$140,258	\$362,913
3	FY14	\$35,371	\$59,616	\$50,994	\$66,218	\$212,199
4	FY14	\$22,403	\$17,746	\$15,983	\$21,720	\$77,852
5	FY14	\$40,933	\$76,306	\$54,980	\$121,485	\$293,705
6	FY14	\$37,620	\$69,092	\$139,825	\$126,540	\$373,077
7	FY14	\$49,260	\$65,052	\$87,714	\$150,629	\$352,654
8	FY14	\$31,975	\$76,684	\$87,932	\$137,787	\$334,379
9	FY14	\$12,794	\$33,680	\$43,291	\$92,013	\$181,778
10	FY14	\$28,758	\$60,565	\$84,968	\$116,859	\$291,150
11	FY14	\$24,605	\$74,012	\$175,192	\$158,477	\$432,286
12	FY15	\$43,340	\$50,373	\$87,946	\$109,268	\$290,927
13	FY15	\$30,557	\$80,712	\$77,161	\$111,973	\$300,402
14	FY15	\$42,404	\$90,328	\$135,107	\$149,511	\$417,350
15	FY15	\$39,226	\$65,615	\$92,421	\$126,105	\$323,367
16	FY15	\$54,415	\$91,504	\$116,572	\$191,957	\$454,448
17	FY15	\$42,717	\$66,306	\$85,839	\$105,026	\$298,888
18	FY16	\$19,074	\$46,347	\$72,252	\$119,719	\$257,392
19	FY16	\$53,779	\$102,546	\$139,569	\$181,296	\$477,190
20	FY16	\$12,696	\$34,219	\$72,345	\$76,774	\$196,034
21	FY16	\$109,329	\$105,616	\$205,181	\$170,445	\$590,571
22	FY16	\$35,857	\$45,136	\$54,852	\$100,322	\$236,167
24	FY16	\$45,261	\$98,776	\$112,315	\$208,868	\$465,220
23	FY16	\$27,363	\$40,049	\$59,450	\$94,370	\$221,232
25	FY16	\$59,070	\$101,721	\$117,393	\$129,332	\$407,516
26	FY17	\$83,823	\$140,298	\$133,193	\$237,271	\$594,585
27	FY17	\$38,275	\$31,555	\$71,522	\$89,828	\$231,180
28	FY18	\$35,517	\$120,656	\$135,664	\$122,665	\$414,502
29	FY18	\$137,115	\$188,497	\$244,568	\$265,954	\$836,134
30	FY18	\$110,232	\$177,962	\$103,723	\$91,510	\$483,427
31	FY18	\$69,494	\$97,275	\$132,828	\$123,274	\$422,871
32	FY18	\$106,853	\$140,333	\$228,581	\$221,308	\$697,075

**Table 1:**

First Year Quarterly Gross Sales For The 64 Stores Opened In Fiscal Years  
2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.

And That Have Been Open For At Least 12 Full Months

As Of September 30, 2023.

(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				Annual (first 12 full months)
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	
33	FY18	\$93,496	\$136,758	\$218,699	\$152,473	\$601,426
35	FY19	\$139,138	\$129,443	\$205,077	\$147,006	\$620,664
34	FY19	\$97,609	\$158,146	\$186,246	\$203,138	\$645,139
36	FY19	\$106,753	\$132,904	\$119,660	\$124,121	\$483,438
37	FY19	\$66,787	\$96,381	\$125,072	\$182,425	\$470,666
38	FY19	\$109,401	\$125,724	\$117,339	\$137,261	\$489,725
39	FY19	\$33,053	\$63,645	\$72,568	\$83,971	\$253,237
40	FY19	\$80,030	\$109,848	\$172,927	\$191,576	\$554,380
41	FY19	\$103,474	\$150,582	\$177,951	\$188,000	\$620,007
42	FY19	\$89,327	\$78,185	\$151,935	\$157,078	\$476,524
43	FY20	\$28,224	\$44,632	\$94,044	\$87,191	\$254,091
44	FY20	\$59,200	\$71,327	\$116,709	\$240,290	\$487,525
45	FY20	\$110,748	\$144,462	\$276,833	\$275,488	\$807,530
46	FY20	\$56,723	\$143,819	\$193,285	\$207,132	\$600,508
47	FY21	\$26,847	\$43,528	\$73,574	\$71,127	\$215,076
48	FY21	\$35,782	\$60,920	\$83,807	\$63,440	\$243,949
49	FY21	\$87,427	\$131,358	\$174,863	\$181,508	\$575,156
50	FY21	\$91,176	\$203,202	\$185,732	\$203,775	\$683,885
51	FY21	\$144,051	\$258,021	\$323,892	\$419,181	\$1,145,145
52	FY21	\$180,752	\$221,539	\$225,233	\$324,585	\$952,109
53	FY21	\$141,081	\$173,467	\$246,486	\$294,781	\$855,815
54	FY21	\$75,162	\$194,410	\$267,344	\$226,202	\$763,118
55	FY21	\$182,324	\$194,161	\$277,532	\$191,837	\$845,854
56	FY22	\$89,370	\$198,614	\$174,839	\$232,801	\$695,623
57	FY22	\$122,696	\$211,253	\$189,001	\$245,605	\$768,555
58	FY22	\$113,537	\$178,599	\$362,622	\$156,083	\$810,841
59	FY22	\$107,033	\$155,066	\$151,609	\$154,092	\$567,801
60	FY22	\$228,724	\$286,667	\$327,011	\$389,612	\$1,232,014
61	FY22	\$117,322	\$156,987	\$254,553	\$230,276	\$759,138
62	FY22	\$111,814	\$196,462	\$294,671	\$393,383	\$996,331
63	FY22	\$64,955	\$102,455	\$139,122	\$126,864	\$433,396
64	FY22	\$49,896	\$90,917	\$117,691	\$183,607	\$442,111

**Table 1:**

First Year Quarterly Gross Sales For The 64 Stores Opened In Fiscal Years  
2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.

And That Have Been Open For At Least 12 Full Months

As Of September 30, 2023.

(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				Annual (first 12 full months)
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	
Average 1 <sup>st</sup> year quarterly sales (all 64 Stores) (# and % that met or exceeded) [median]		\$73,343 (28(44%)) [\$59,135]	\$112,950 (27(42%)) [\$100,248]	\$148,449 (26(41%)) [\$133,010]	\$167,479 (28(44%)) [\$151,551]	\$502,222 (26(41%)) [\$467,943]
Average 2013 first year quarterly sales (2 Stores) (# and % met or exceeded) [median]		\$35,195 (1 (50%)) [\$35,195]	\$68,384 (1 (50%)) [\$68,374]	\$91,725 (1 (50%)) [\$91,725]	\$117,131 (1 (50%)) [\$117,131]	\$312,434 (1 (50%)) [\$312,434]
Average 2014 first year quarterly sales (9 Stores) (# and % met or exceeded) [median]		\$31,524 (5 (56%)) [\$31,975]	\$59,195 (7 (78%)) [\$65,052]	\$82,320 (5 (56%)) [\$84,968]	\$110,192 (6 (67%)) [\$121,485]	\$283,231 (6 (67%)) [\$293,705]
Average 2015 first year quarterly sales (6 Stores) (# and % met or exceeded) [median]		\$42,110 (4 (67%)) [\$42,560]	\$74,140 (3 (50%)) [\$73,509]	\$99,174 (2 (33%)) [\$90,183]	\$132,307 (2 (33%)) [\$119,039]	\$347,730 (2 (33%)) [\$311,884]
Average 2016 first year quarterly sales (8 Stores) (# and % met or exceeded) [median]		\$45,303 (3 (38%)) [\$40,559]	\$71,801 (4 (50%)) [\$72,561]	\$104,170 (4 (50%)) [\$92,330]	\$135,141 (3 (38%)) [\$124,526]	\$356,415 (4 (50%)) [\$332,454]
Average 2017 first year quarterly sales (2 Stores) (# and % met or exceeded) [median]		\$61,049 (1 (50%)) [\$61,049]	\$85,927 (1 (50%)) [\$85,927]	\$102,358 (1 (50%)) [\$102,358]	\$163,550 (1 (50%)) [\$163,550]	\$412,883 (1 (50%)) [\$412,883]
Average 2018 first year quarterly sales (6 stores) (# and % met or exceeded) [median]		\$92,118 (4 (67%)) [\$100,175]	\$143,580 (2 (33%)) [\$138,546]	\$177,344 (3 (50%)) [\$177,181]	\$162,864 (2 (33%)) [\$137,873]	\$575,906 (3 (50%)) [\$542,426]
Average 2019 first year quarterly sales (9 stores) (# and % met or exceeded) [median]		\$103,938(3(60%)) [\$106,753]	\$128,519 (3 (60%)) [\$129,443]	\$150,679 (2 (40%)) [\$125,072]	\$158,790 (2 (40%)) [\$147,006]	\$541,926 (2 (40%)) [\$489,725]
Average 2020 first year quarterly sales (4 stores) (# and % met or exceeded) [median]		\$70,041 (4 (50%)) [\$69,615]	\$100,812 (4 (50%)) [\$94,016]	\$157,031 (4 (50%)) [\$162,431]	\$178,840 (5 (63%)) [\$189,788]	\$506,725 (4 (50%)) [\$520,952]
Average 2021 first year quarterly sales (9 stores) (# and % met or exceeded) [median]		\$107,178 (4 (44%)) [\$91,177]	\$164,512 (6 (67%)) [\$194,161]	\$206,495 (5 (56%)) [\$225,233]	\$219,604 (4 (44%)) [\$203,775]	\$697,790 (5 (56%)) [\$763,119]

**Table 1:**

First Year Quarterly Gross Sales For The 64 Stores Opened In Fiscal Years  
2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.

And That Have Been Open For At Least 12 Full Months  
As Of September 30, 2023.

(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				Annual (first 12 full months)
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	
Average 2022 first year quarterly sales (9 stores) (# and % met or exceeded) [median]		\$111,705 (5(56%)) [\$111,814]	\$175,224 (5(56%)) [\$178,599]	\$223,458 (4 (44%)) [\$189,001]	\$234,703 (3(33%)) [\$230,276]	\$745,090 (5(56%)) [\$759,138]

**Table 2:**

Second Year Quarterly Gross Sales For The 55 Stores Opened In Fiscal Years, 2013, 2014, 2015, 2016, 2017,  
2018, 2019, 2020, 2021 and 2022

And That Have Been Open For At Least 24 Full Months  
As Of September 30, 2023

(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				Annual (second 12 full months)
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	
1	FY13	\$110,813	\$205,388	\$218,042	\$156,088	\$690,331
2	FY13	\$174,504	\$164,617	\$181,555	\$250,445	\$771,121
3	FY14	\$136,599	\$148,298	\$132,843	\$155,519	\$573,259
4	FY14	\$23,939	\$34,666	\$28,727	\$30,545	\$117,877
5	FY14	\$172,255	\$144,146	\$168,282	\$125,902	\$610,585
6	FY14	\$99,354	\$137,771	\$133,451	\$118,252	\$488,828
7	FY14	\$162,306	\$154,531	\$159,248	\$203,745	\$679,830
8	FY14	\$169,134	\$160,695	\$205,332	\$268,626	\$803,787
9	FY14	\$85,282	\$109,820	\$110,665	\$165,034	\$470,801
10	FY14	\$95,526	\$87,876	\$160,304	\$107,022	\$450,728
11	FY14	\$211,260	\$90,887	\$158,509	\$241,314	\$701,970
12	FY15	\$105,071	\$151,310	\$135,100	\$139,557	\$531,038
13	FY15	\$107,583	\$126,638	\$137,965	\$167,597	\$539,783
14	FY15	\$189,375	\$204,456	\$258,655	\$324,008	\$976,494
15	FY15	\$168,362	\$141,834	\$160,386	\$174,908	\$645,490
16	FY15	\$142,901	\$177,789	\$178,989	\$230,879	\$730,558
17	FY15	\$165,254	\$205,403	\$145,516	\$175,669	\$691,842

**Table 2:**

Second Year Quarterly Gross Sales For The 55 Stores Opened In Fiscal Years, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022  
And That Have Been Open For At Least 24 Full Months  
As Of September 30, 2023  
(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Annual (second 12 full months)
18	FY16	\$135,519	\$184,683	\$236,157	\$185,116	\$741,475
19	FY16	\$210,801	\$248,688	\$246,179	\$225,437	\$931,105
20	FY16	\$84,467	\$86,129	\$130,532	\$181,490	\$482,618
21	FY16	\$127,685	\$171,187	\$219,162	\$182,605	\$700,639
22	FY16	\$135,438	\$143,709	\$134,563	\$156,152	\$569,862
23	FY16	\$172,875	\$192,831	\$270,976	\$253,429	\$890,111
24	FY16	\$77,085	\$99,247	\$98,270	\$126,835	\$401,437
25	FY16	\$147,416	\$157,381	\$146,643	\$175,862	\$627,302
26	FY17	\$191,203	\$145,954	\$166,340	\$179,667	\$683,164
27	FY17	\$114,307	\$84,695	\$97,023	\$121,142	\$417,127
28	FY18	\$139,605	\$175,223	\$214,238	\$248,016	\$777,082
29	FY18	\$229,171	\$229,180	\$305,635	\$369,372	\$1,133,358
30	FY18	\$215,358	\$190,320	\$126,725	\$180,949	\$713,352
31	FY18	\$155,083	\$135,380	\$219,689	186,255	\$696,406
32	FY18	\$197,935	\$212,081	\$181,522	210,502	\$802,040
33	FY18	\$134,261	\$352,349	\$207,997	207,778	\$902,386
34	FY19	\$241,974	\$259,864	\$265,897	\$333,262	\$1,100,997
35	FY19	\$210,965	\$263,235	\$224,058	\$233,845	\$932,103
36	FY19	\$274,652	\$281,616	\$221,874	\$433,774	\$1,211,916
37	FY19	\$189,461	\$218,973	\$212,252	\$255,759	\$876,446
38	FY19	\$146,606	\$181,696	\$202,162	\$229,439	\$759,903
39	FY20	\$140,274	\$163,393	\$206,806	\$122,721	\$633,194
40	FY20	\$275,909	\$368,920	\$484,672	\$287,823	\$1,417,324
41	FY20	\$298,643	\$282,993	\$323,407	\$304,632	\$1,209,675
42	FY20	\$309,217	\$238,680	\$278,347	\$310,509	\$1,136,753
43	FY20	\$139,169	\$154,288	\$149,324	\$149,158	\$531,939
44	FY20	\$148,398	\$169,416	\$204,550	\$213,957	\$736,321
45	FY20	\$282,830	\$470,601	\$575,669	\$432,042	\$1,761,142
46	FY20	\$204,878	\$193,442	\$285,429	\$311,870	\$995,619
47	FY21	\$73,755	\$146,226	\$174,333	\$181,955	\$576,269
48	FY21	\$126,496	\$82,903	\$56,035	\$56,403	\$321,837

**Table 2:**

Second Year Quarterly Gross Sales For The 55 Stores Opened In Fiscal Years, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022  
And That Have Been Open For At Least 24 Full Months  
As Of September 30, 2023  
(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Annual (second 12 full months)
49	FY21	\$289,572	\$297,673	\$353,861	\$292,098	\$1,233,204
50	FY21	\$271,075	\$239,005	\$402,991	\$311,631	\$1,224,702
51	FY21	\$597,826	\$472,516	\$480,238	\$413,153	\$1,963,733
52	FY21	\$349,391	\$305,737	\$345,934	\$228,681	\$1,229,743
53	FY21	\$370,261	\$278,712	\$334,707	\$352,474	\$1,336,154
54	FY21	\$280,908	\$291,749	\$375,781	\$283,040	\$1,231,478
55	FY21	\$272,929	\$272,485	\$226,110	\$250,819	\$1,022,343
Average second year quarterly sales 55 Stores) (# and % that met or exceeded the Average) [median]		\$186,321 (23 (42%)) [\$168,362]	\$197,431 (22 (40%)) [\$177,789]	\$218,667 (22 (40%)) [\$205,723]	\$222,107 (26 (47%)) [\$210,502]	\$824,527 (21 (38%)) [\$736,322]
Average 2013 second year quarterly sales (2 Stores) (# and % met or exceeded) [median]		\$142,484 (1 (50%)) [\$142,484]	\$184,876 (1 (50%)) [\$184,876]	\$199,374 (1 (50%)) [\$199,374]	\$207,966 (1 (50%)) [\$207,966]	\$734,700 (1 (50%)) [\$734,700]
Average 2014 second year quarterly sales (9 Stores) (# and % met or exceeded) [median]		\$124,849 (4 (44%)) [\$106,358]	\$116,505 (5 (56%)) [\$136,838]	\$138,772 (5 (56%)) [\$158,509]	\$157,123 (4 (44%)) [\$156,218]	\$537,199 (5 (56%)) [\$537,666]
Average 2015 second year quarterly sales (6 Stores) (# and % met or exceeded) [median]		\$146,444 (3 (50%)) [\$154,064]	\$167,901 (3 (50%)) [\$164,537]	\$169,219 (2 (33%)) [\$152,978]	\$201,045 (2 (33%)) [\$175,289]	\$684,609 (3 (50%)) [\$668,693]
Average 2016 second year quarterly sales (8 Stores) (# and % met or exceeded) [median]		\$136,033 (3 (38%)) [\$135,479]	\$159,215 (4 (50%)) [\$164,237]	\$182,567 (4 (50%)) [\$182,795]	\$185,856 (2 (25%)) [\$182,039]	\$663,670 (4 (50%)) [\$663,808]
Average 2017 second year quarterly sales (2 Stores) (# and % met or exceeded) [median]		\$152,755 (1 (50%)) [\$152,755]	\$115,324 (1 (50%)) [\$115,324]	\$131,681 (1 (50%)) [\$131,681]	\$150,405 (1 (50%)) [\$150,405]	\$550,166 (1 (50%)) [\$550,166]

**Table 2:**

Second Year Quarterly Gross Sales For The 55 Stores Opened In Fiscal Years, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022  
And That Have Been Open For At Least 24 Full Months  
As Of September 30, 2023  
(See Note 4)

Unit #	Fiscal Year first opened	Gross Sales during this period:				
		1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Annual (second 12 full months)
Average 2018 second Year quarterly sales (6 stores) (# and % met or exceeded) [median]		\$178,569 (3 (50%)) [\$176,509]	\$215,755 (2 (33%)) [\$201,200]	\$209,301 (3 (50%)) [\$211,118]	\$233,812 (2 (33%)) [\$209,140]	\$837,437 (2 (33%)) [\$789,561]
Average 2019 Second Year Quarterly Sales (5 stores) (# and % met or exceeded) [median]		\$212,732 (2 (40%)) [\$210,965]	\$241,077 (3 (60%)) [\$259,864]	\$225,248 (1 (20%)) [\$221,874]	\$297,216 (2 (40%)) [\$255,759]	\$976,273 (2 (40%)) [\$932,103]
Average 2020 Second Year Quarterly Sales (8 stores) (# and % met or exceeded) [median]		\$224,915 (4 (50%)) [\$240,394]	\$255,217 (3 (38%)) [\$216,061]	\$313,526 (3 (38%)) [\$281,888]	\$266,589 (5 (63%)) [\$296,228]	\$1,060,246 (4 (50%)) [\$1,066,186]
Average 2021 Second Year Quarterly Sales (9 Stores) (# and % met or exceeded) [median]		\$186,321 (23(42%)) [\$168,362]	\$197,431 (22(40%)) [\$177,789]	\$218,667 (22(40%)) [205,723]	\$222,107 (26(47%)) [\$210,502]	\$824,257 (21(38%)) [\$736,322]

**Table 3:**  
Average Invoice Value  
(Franchised Stores)

Fiscal Year	Average Invoice Value	# and % of Stores that met or exceeded the Average Invoice Value	Median Invoice Value	Average # Invoices/ Per Month Per Store	Median # Invoices/ Per Month Per Store	# and % of Stores that met or exceeded the Average Invoices/Per Month Per Store	High Average Invoice Value	Low Average Invoice Value
2020	\$205.17	27 (50%)	\$202.85	560	494	22 (41%)	\$660.71	\$121.06
2021	\$271.41	26 (48%)	\$267.72	563	490	18 (33%)	\$1,113.74	\$158.12
2022	\$366.55	26 (48%)	\$356.68	512	463	18 (33%)	\$1,859.07	\$204.96

2023	\$334.13	25 (43%)	\$509.21	538	509	19 (35%)	\$1,289.22	\$168.65
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**Table 4:**  
Average Gross Margin and Gross Profit  
(Franchised Stores)

Fiscal Year	Average Store Gross Margin	# and % of Stores that met or exceeded the Average Gross Margin	Average Gross Profit Per Store	# and % of Stores that met or exceeded the Average Gross Profit Per Store	Median Annual Gross Profit Per Store	High Annual Gross Profit Per Store	Low Annual Gross Profit Per Store
2020	50.92%	29 (55%)	\$702,234	20 (37%)	\$562,331	\$1,826,187	\$179,356
2021	52.52%	30 (56%)	\$963,936	21(39%)	\$839,277	\$2,586,995	\$314,672
2022	49.52%	33(61%)	\$1,117,005	17 (31%)	\$964,729	\$3,178,205	\$287,865
2023	48.58%	33 (61%)	\$1,049,672	20 (37%)	\$905,411	\$3,237,466	\$225,789

**Table 5:**  
Average Gross Sales  
(Franchised Stores)

Fiscal Year	Average Gross Sales Per Store	# and % of Stores that met or exceeded the Average Gross Sales Per Store	Median Annual Gross Sales	High Annual Gross Sales	Low Annual Gross Sales
2020	\$1,379,148	21 (39%)	\$1,138,734	\$3,333,593	\$284,230
2021	\$1,835,345	18 (33%)	\$1,599,936	\$4,676,423	\$487,633
2022	\$2,255,562	17 (31%)	\$1,955,191	\$6,092,476	\$563,419

<b>Table 5:</b> Average Gross Sales  (Franchised Stores)					
Fiscal Year	Average Gross Sales Per Store	# and % of Stores that met or exceeded the Average Gross Sales Per Store	Median Annual Gross Sales	High Annual Gross Sales	Low Annual Gross Sales
2023	\$2,160,901	17 (31%)	\$1,815,184	\$6,191,887	\$519,004

Notes:

1. Written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

2. Tables 1 and 2 above provide quarterly Gross Sales information for each new franchised Store that was first opened during Prior MSFA's fiscal years, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 (the period from October 1, 2012 to September 30, 2022) and that operated for at least 12 or 24 full months since then until Prior MSFA's fiscal year end on September 30, 2023. A total of 64 newly-opened franchised Stores operated for 12 full months during that period, and 55 newly-opened franchised Stores were operational for 24 full months during that period. Each month of operation is a full calendar month, which means if a Store was not open and in operation for the first and last days of each of the relevant quarters of Prior MSFA's fiscal year noted in the Table, that Store was not included in the results.

3. Table 4 presents Gross Margin results. Gross Margin is Gross Sales of a Store less cost of goods sold, expressed as a percentage of total Gross Sales.

- a. Except for the cost of goods sold incorporated into the calculation of Gross Margin, Table 4 does not reflect other operating expenses or other costs that must be deducted from the Gross Sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs you will incur in operating your Store. Prior MSFA's and our current and former franchisees, who are listed in this disclosure document, may be one source of this information.
- b. Gross Sales means all revenue from the sale of all services and products and all other income of every kind and nature related to, derived from, or originating from a Store and the business operated under the Franchise Agreement, including barter and the proceeds of any business interruption insurance policies, whether for cash or credit, and regardless of theft, or of collection. Gross Sales does not include (i) sales taxes or other taxes that you collect from customers and actually pay to the appropriate taxing authorities, or (ii) revenue from the sale of products to other Metal Supermarkets stores.

4. Table 4 presents Gross Profit results. Gross Profit is Gross Sales of a Store less cost of goods sold, expressed as a dollar amount. This does not include the cost of outside processing, employee costs, royalties or other fees.

5. The information included in the financial performance representation was accumulated from internally generated Store financial information from these franchised businesses.

6. We recommend that you make your own independent investigation to determine whether or not the franchise may be profitable, and consult with professional advisors before signing the Franchise Agreement.

7. **Some Stores have sold this amount. Your individual results may differ. There is no assurance that you'll sell as much.**

Other than the preceding financial performance representation, we do not make any financial performance representations about a franchisee's future financial performance or the past financial performance of franchised outlets or units owned by our predecessor. We also do not authorize our employees or representatives to make any such representations either orally or in writing. 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 Stephen Schober, our President, c/o Metal Supermarkets Franchising America Inc., 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario, Canada M9C 5K6 (905-362-8226), the Federal Trade Commission, and the appropriate state regulatory agencies.

## ITEM 20

### OUTLETS AND FRANCHISEE INFORMATION

**Table No. 1**  
**Systemwide Outlet Summary**  
**For Years 2021 to-2023\***

<b>Column 1 Outlet Type</b>	<b>Column 2 Year</b>	<b>Column 3 Outlets at the Start of the Year</b>	<b>Column 4 Outlets at the End of the Year</b>	<b>Column 5 Net Change</b>
Franchised	2021	64	72	+8
	2022	72	81	+9
	2023	81	83	+2
Corporate	2021	4	3	-1
	2022	3	3	0
	2023	3	2	-1
Total	2021	68	75	+7
	2022	75	84	+9
	2023	84	85	+1

\*Information is for fiscal years ended September 30, 2021, 2022 and 2023.

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners**  
**(Other than the Franchisor)**  
**For Years 2021 to 2023\***

<b>Column 1 State</b>	<b>Column 2 Year</b>	<b>Column 3 Number of Transfers</b>
Florida	2021	0
	2022	1
	2023	0

Illinois	2021	1
	2022	0
	2023	1
Indiana	2021	1
	2022	0
	2023	0
Massachusetts	2021	1
	2022	0
	2023	0
New Jersey	2021	0
	2022	0
	2023	1
Oregon	2021	0
	2022	1
	2023	0
Texas	2021	0
	2022	0
	2023	1
Washington	2021	0
	2022	0
	2023	1
<b>State Total</b>	<b>2021</b>	<b>3</b>
	<b>2022</b>	<b>2</b>
	<b>2023</b>	<b>4</b>

\*Information is for fiscal years ended September 30, 2021, 2022, and 2023.

**Table No. 3  
Status of Franchised  
Outlets for Years 2021-2023\***

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Terminations	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations Other Reasons	Col 9 Outlets at the End of the Year
Alabama	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Alaska	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Arizona	2021	1	0	0	0	0	0	1
	2022	1	1	0	0	0	0	2
	2023	2	1	0	0	0	0	3
California	2021	1	3	0	0	0	0	4
	2022	4	0	0	0	0	0	4
	2023	4	0	0	0	0	1	3
Colorado	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Connecticut	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Terminations	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations Other Reasons	Col 9 Outlets at the End of the Year
	2023	1	0	0	0	0	0	1
Florida	2021	8	0	0	0	0	0	8
	2022	8	2	0	0	0	0	10
	2023	10	0	0	0	0	0	10
Georgia	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Illinois	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
	2023	5	0	0	0	0	0	5
Indiana	2021	2	1	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	1	0	0	0	0	4
Iowa	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Kansas	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Kentucky	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Louisiana	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Maryland	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Massachusetts	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Missouri	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Nebraska	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Nevada	2021	1	0	1	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
New Jersey	2021	3	1	0	0	0	0	4
	2022	4	0	0	0	0	1	3
	2023	3	1	0	0	0	0	4

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Terminations	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations Other Reasons	Col 9 Outlets at the End of the Year
New York	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
North Carolina	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Ohio	2021	4	0	0	0	0	0	4
	2022	4	0	0	0	0	0	4
	2023	4	0	0	0	0	0	4
Oklahoma	2021	1	0	0	0	0	0	1
	2022	1	1	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Oregon	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Pennsylvania	2021	2	0	0	0	0	1	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Rhode Island	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
South Carolina	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Tennessee	2021	2	0	0	0	0	0	2
	2022	2	1	0	0	0	0	3
	2023	3	1	0	0	0	0	4
Texas	2021	6	2	0	0	0	0	8
	2022	8	0	0	0	0	0	8
	2023	8	0	0	0	0	0	8
Utah	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Virginia	2021	2	0	0	0	0	0	2
	2022	2	2	0	0	0	0	4
	2023	4	0	0	0	0	0	4
Washington	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Wisconsin	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	1	0	0	1
<b>TOTAL</b>	<b>2021</b>	<b>64</b>	<b>10</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>72</b>
	<b>2022</b>	<b>72</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>81</b>
	<b>2023</b>	<b>81</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>83</b>

\*Information is for fiscal years ended September 30, 2021, 2022, 2023.

**Table No. 4**  
**Status of Company-Owned\***  
**Outlets for Years 2021-2023\*\***

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Re- acquired from Fran- chisees	Col 6 Outlets Closed	Col 7 Outlets Sold to Franchisees	Col 8 Outlets at End of the Year
Massachusetts	2021	1	0	0	0	1	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0
Minnesota	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
	2023	2	0	0	1	0	1
Wisconsin	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
<b>Total</b>	<b>2021</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>
	<b>2022</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
	<b>2023</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>

\*As noted in Item 1, these outlets are owned and operated by our affiliate, MSEI.

\*\*Information is for fiscal years ended September 30, 2021, 2022 and 2023.

**Table No. 5**  
**Projected Openings for Upcoming Fiscal Year**  
**(As of October 1, 2023)**

Col 1 State	Col 2 Franchised Agreements Signed But Not Opened	Col 3 Projected New Franchised Outlets in the next Fiscal Year	Col 4 Projected New Company-Owned Outlets in Current Fiscal Year
Alabama	1	0	0
Arizona	0	1	0
California	1	1	0
Colorado	0	1	0
Connecticut	0	1	0
Florida	1	0	0
Georgia	0	1	0
Illinois	1	0	0
Louisiana	0	1	0
Massachusetts	1	0	0
Michigan	0	1	0
Nevada	1	0	0
Pennsylvania	1	0	0
Texas	1	1	0
Utah	1	0	0
<b>Totals</b>	<b>9</b>	<b>8</b>	<b>0</b>

The name, addresses and telephone numbers of our franchisees are listed in Exhibit E-1.

The names, state and last known business telephone numbers of every franchisee who has had a franchise terminated, canceled, or not renewed by Prior MSFA in fiscal year 2023 or who otherwise voluntarily or involuntarily ceased to do business under their franchise agreement in fiscal year 2023, or who have not communicated with us within 10 weeks before the date of this Disclosure Document, are listed in Exhibit E-2. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. The name, addresses and telephone numbers of our franchisees are listed in Exhibit E-1.

We sponsor a Metal Supermarkets Franchise Advisory Council. It does not have its own address, telephone number or e-mail address.

No franchisees have signed confidentiality clauses in last three fiscal years which restrict their ability to speak openly about their experience with the Metal Supermarkets system.

## **ITEM 21**

### **FINANCIAL STATEMENTS**

The following financial statements are attached to this Disclosure Document as Exhibit B:

Our opening audited Balance Sheet as of our formation on October 1 2023. Our fiscal year end is September 30.

## **ITEM 22**

### **CONTRACTS**

Attached as exhibits to this Disclosure Document are the following contracts and their schedules:

1. Applicant Agreement (Exhibit C-1).
2. Franchise Agreement (Exhibit C-2).
3. Addendum to Lease (Exhibit C-3).
4. Hosting Support and Software Agreement (Exhibit C-4)
5. General Release (Exhibit C-5)
6. Development Agreement (Exhibit C-6)
7. Digital Participation Agreement (Exhibit H)

**ITEM 23**

**RECEIPTS**

The last two pages of this Disclosure Document are copies of a detachable acknowledgment of receipt. One copy is for your records and one copy must be signed, dated and returned to us.

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The Convenience Stores For Metal®

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT A**

**LIST OF STATE ADMINISTRATORS AND AGENTS  
FOR SERVICE OF PROCESS**

**EXHIBIT A**

**LIST OF STATE ADMINISTRATORS AND AGENTS  
FOR SERVICE OF PROCESS**

**LIST OF STATE ADMINISTRATORS**

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

<p><b>CALIFORNIA</b>  Commissioner of Financial Protection and Innovation  Department of Financial Protection and Innovation  320 West Fourth Street, Suite 750  Los Angeles, California 90013-2344  (213) 576-7500  Toll Free: (866) 275-2677</p>	<p><b>NEW YORK</b>  New York State Department of Law  Investor Protection Bureau  28 Liberty Street, 21<sup>st</sup> Floor  New York, New York 10005  (212) 416-8285</p>
<p><b>HAWAII</b>  Commissioner of Securities of the State of Hawaii  Department of Commerce &amp; Consumer Affairs  Business Registration Division  Securities Compliance Branch  335 Merchant Street, Room 205  Honolulu, Hawaii 96813  (808) 586-2722</p>	<p><b>NORTH DAKOTA</b>  North Dakota Securities Department  State Capitol  Department 414  600 East Boulevard Avenue, Fifth Floor  Bismarck, North Dakota 58505-0510  (701) 328-4712</p>
<p><b>ILLINOIS</b>  Illinois Office of the Attorney General  Franchise Bureau  500 South Second Street  Springfield, Illinois 62706  (217) 782-4465</p>	<p><b>RHODE ISLAND</b>  Department of Business Regulation  Securities Division, Building 69, First Floor  John O. Pastore Center  1511 Pontiac Avenue  Cranston, Rhode Island 02920  (401) 462-9527</p>
<p><b>INDIANA</b>  Secretary of State  Franchise Section  302 West Washington, Room E-111  Indianapolis, Indiana 46204  (317) 232-6681</p>	<p><b>SOUTH DAKOTA</b>  Division of Insurance  Securities Regulation  124 South Euclid Avenue, 2<sup>nd</sup> Floor  Pierre, South Dakota 57501  (605) 773-3563</p>
<p><b>MARYLAND</b>  Office of the Attorney General  Securities Division  200 St. Paul Place  Baltimore, Maryland 21202-2020  (410) 576-6360</p>	<p><b>VIRGINIA</b>  State Corporation Commission  Division of Securities and Retail Franchising  1300 East Main Street, 9th Floor  Richmond, Virginia 23219  (804) 371-9051</p>
<p><b>MICHIGAN</b>  Michigan Attorney General’s Office  Corporate Oversight Division, Franchise Section  525 West Ottawa Street  G. Mennen Williams Building, 1<sup>st</sup> Floor  Lansing, Michigan 48913  (517) 335-7567</p>	<p><b>WASHINGTON</b>  Department of Financial Institutions  Securities Division – 3<sup>rd</sup> Floor  150 Israel Road, Southwest  Tumwater, Washington 98501  (360) 902-8760</p>
<p><b>MINNESOTA</b>  Minnesota Department of Commerce  85 7<sup>th</sup> Place East, Suite 280  St. Paul, Minnesota 55101  (651) 539-1600</p>	<p><b>WISCONSIN</b>  Division of Securities  4822 Madison Yards Way, North Tower  Madison, Wisconsin 53705  (608) 266-2139</p>

**AGENTS FOR SERVICE OF PROCESS**

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states. There may be states in addition to those listed below in which we have appointed an agent for service of process. There may also be additional agents in some of the states listed.

<b>CALIFORNIA</b> Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free: (866) 275-2677	<b>NEW YORK</b> New York Secretary of State New York Department of State One Commerce Plaza, 99 Washington Avenue, 6 <sup>th</sup> Floor Albany, New York 12231-0001 (518) 473-2492
<b>HAWAII</b> Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 205 Honolulu, Hawaii 96813 (808) 586-2722	<b>NORTH DAKOTA</b> North Dakota Securities Commissioner State Capitol 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
<b>ILLINOIS</b> Illinois Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	<b>RHODE ISLAND</b> Director of Department of Business Regulation Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
<b>INDIANA</b> Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	<b>SOUTH DAKOTA</b> Division of Insurance Director of the Securities Regulation 124 South Euclid Avenue, 2 <sup>nd</sup> Floor Pierre, South Dakota 57501 (605) 773-3563
<b>MARYLAND</b> Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	<b>VIRGINIA</b> Clerk of the State Corporation Commission 1300 East Main Street, 1 <sup>st</sup> Floor Richmond, Virginia 23219 (804) 371-9733
<b>MICHIGAN</b> Michigan Attorney General’s Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 <sup>st</sup> Floor Lansing, Michigan 48913 (517) 335-7567	<b>WASHINGTON</b> Director of Department of Financial Institutions Securities Division – 3 <sup>rd</sup> Floor 150 Israel Road, Southwest Tumwater, Washington 98501 (360) 902-8760
<b>MINNESOTA</b> Commissioner of Commerce Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1600	<b>WISCONSIN</b> Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT B**

**FINANCIAL STATEMENTS**

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Financial statement of  
Metal Supermarkets Franchising  
America Inc.

October 1, 2023

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Independent Auditor's Report	1-2
Balance sheet	3
Notes to the financial statement	4-14

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## Independent Auditor's Report

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To the Shareholder of Metal Supermarkets Franchising America Inc.:

### Opinion

We have audited the financial statement of Metal Supermarkets Franchising America Inc. (the "Company"), which comprises the balance sheet as at October 1, 2023 and notes to the financial statement, including a summary of significant accounting policies.

In our opinion, the accompanying financial statement presents fairly, in all material respects, the financial position of the Company as at October 1, 2023 in accordance with generally accepted accounting principles 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. 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 independent of the Company in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### Responsibilities of Management and Those Charged with Governance for the Financial Statement

Management is responsible for the preparation and fair presentation of the financial statement in accordance with generally accepted accounting principles in the United States of America, and for such internal control as management determines is necessary to enable the preparation of a financial statement that is free from material misstatement, whether due to fraud or error.

In preparing the financial statement, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

### 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 a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial statement.

As part of an audit in accordance with auditing standards generally accepted in the United States of America, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statement, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. 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.
- 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.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statement, including the disclosures, and whether the financial statement represents the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Burlington, Ontario

January 26, 2024

*MNP LLP*

Chartered Professional Accountants

Licensed Public Accountants

**Metal Supermarkets Franchising America Inc.****Balance sheet**

As at October 1, 2023

(Expressed in US dollars)

	Notes	\$
<b>Assets</b>		
Current assets		
Cash		2,431,644
Accounts receivable		1,324,862
Prepaid expenses		282,939
Current portion of prepaid software contract		50,183
Current portion of promissory notes	6	17,632
		<b>4,107,260</b>
Operating Lease Assets		
Prepaid software contract		364,649
Investments	4	25,092
Property and equipment	5	3,020,710
Goodwill		41,507
		286,990
		<b>7,846,208</b>
<b>Liabilities</b>		
Current liabilities		
Accounts payable and accrued liabilities		1,965,643
Income taxes payable		29,217
Current portion of deferred revenue		831,135
Current operating lease liabilities	9	47,576
		<b>2,873,571</b>
Deferred revenue		
Non-current operating lease liabilities	9	725,756
Due to related company	3	376,890
Future income taxes	10	2,725,450
		213,833
		<b>6,915,500</b>
<b>Shareholders' equity</b>		
Share capital		
Common shares	7	235,281
Contributed surplus		98,373
Retained earnings	4	597,054
		<b>930,708</b>
		<b>7,846,208</b>

The accompanying notes are an integral part of the financial statement.

On behalf of the Board

\_\_\_\_\_, Director

\_\_\_\_\_, Director

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**1. Organizational Nature of Business**

Metal Supermarkets Franchising America Inc. (the "Company") franchises wholesale metal stores in the United States ("U.S.") and Canada. The Company was incorporated under the Business Corporations Act (Ontario) on October 1, 2023, as a result of an amalgamation transaction under which three affiliated entities under common control: Metal Supermarkets Franchising America Inc., Metal Supermarkets Franchising Corporation and Metal Supermarkets Service Company Inc. were combined. Under the transaction, the Company acquired all assets, rights and contracts, and became liable for all debts, liabilities and other obligations, of each of the combined affiliates. Also on October 1, 2023, the amalgamated company sold its full investment in Metal Supermarkets Franchising UK Limited and MSKS Holdings Inc. to a newly formed affiliate, Metal Supermarkets International Inc. in exchange for 4,084,000 Class G special shares of Metal Supermarkets International Inc.

As of October 1, 2023, the Company had 110 franchised stores in the U.S and Canada. The Company enters into franchise agreements that have initial terms of 10 years and may be renewed for an additional 10 year period for a renewal fee.

**2. Significant accounting policies**

The financial statement has been prepared by the Company in accordance with the accounting principles generally accepted in the United States of America ("U.S. GAAP"). The Company has not applied the continuity of interests method associated with the amalgamation described in Note 1. Accordingly, no comparative figures have been provided. As the above amalgamation was with companies under common control, the amalgamation was recorded at carrying values other than the newly created Class G shares for which the accounting is described in Note 4. The significant accounting policies are as follows:

*Cash*

Cash and cash equivalents consist of cash and cash equivalents on hand and bank balances and investments in money market instruments with original maturities of three months or less.

The carrying amount approximates fair value because of the short-term nature of these instruments.

*Accounts receivable*

Accounts receivable is recorded at the invoiced amount. Balances are determined to be past due based on the due date.

The allowance for doubtful accounts is the Company's best estimate of the amount of probable credit losses in the Company's existing accounts receivable. The Company determines the allowance based on historical write-off experience, customer payment history and current economic data.

*Property and equipment*

Property and equipment are recorded at cost less accumulated amortization.

Amortization is provided on a straight-line basis for the assets listed below and is based on the estimated useful life of the asset as follows:

Office equipment	Straight-line over 5 years
Computer equipment	Straight-line over 3 years
Leasehold improvements	Straight-line over lease term plus first option period

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**2. Significant accounting policies (continued)***Prepaid software contract*

Prepaid software contract is recorded at cost and is amortized on a straight-line basis over the term of the contract. Contract charges relating to the next twelve months are classified as current portion of prepaid software contract.

*Prepaid expenses*

Prepaid expenses are recorded at cost and recognized as an expense over the term of the contract or when the benefit of the prepayment is otherwise realized.

*Investments*

The Company accounts for its investment in Metal Supermarkets International Inc. at the redemption value. When there is an indication of impairment, the Company determines whether a significant adverse change has occurred during the period in the expected timing or amount of future cash flows from the investment. If the Company identifies a significant adverse change, the carrying amount of the investment is reduced directly to the higher of the present value of the cash flows expected to be generated by holding the investment, and the amount that could be realized by selling the asset at the balance sheet date. The amount of the reduction is recognized as an impairment loss in net income.

*Revenue recognition*

The Company follows ASC 606 *Revenue from Contracts with Customers* and applies the following five step framework to recognize revenue:

- Step 1: Identify the contract with a customer
- Step 2: Identify the performance obligations in the contract
- Step 3: Determine the transaction price
- Step 4: Allocate the transaction price to the performance obligations in the contract
- Step 5: Recognize revenue when (or as) the entity satisfies a performance obligation

Many of the Company's contracts contain multiple performance obligations, such as when franchisee licenses are sold with on-site support activities. The Company recognizes revenue when control of the services or products are transferred to a customer, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services or products. The Company is principally responsible for the satisfaction of its distinct performance obligations, which are satisfied either at a point in time or over a period of time.

*Performance obligations satisfied at a point in time**Royalties*

The Company recognizes royalty revenue when it is earned under the terms of the franchise agreement, which is when the franchisee generates the associated revenue by transferring control over ordered items, which is the point at which the customer obtains physical possession of the goods, legal title is transferred, the customer has all the risks and rewards of ownership and an obligation to pay for the goods is created and collection is reasonably assured.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

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**2. Significant accounting policies (continued)***Performance obligations satisfied at a point in time (continued)**E-commerce*

The Company earns e-commerce revenue from online sales which are outsourced to franchisees. The Company recognizes revenue on e-commerce sales once control is transferred to customers over ordered items, which is the point at which the customer obtains physical possession of the goods, legal title is transferred, the customer has all the risks and rewards of ownership and an obligation to pay for the goods is created and collection is reasonably assured.

*Hosting fees*

The Company's franchisees are required to pay hosting fees for services provided by the Company. The Company recognizes hosting revenue when it is earned under the terms of the agreement, which is when the hosting services are provided, which is the point at which the customer receives the services, material obligations of the Company have been substantially performed and an obligation to pay for the services is created and collection is reasonably assured.

*Initial franchise fees*

The Company's franchisees are required to pay non-refundable initial franchise fees upon signing a franchise agreement. This initial fee includes the price for initial franchise license and on-site support services offered to the franchisee upon opening of a new franchise. The Company accounts for pre-opening services as distinct from the franchise license and treats all pre-opening services as a single performance obligation.

The Company applies the practical expedient under the Accounting Standard Update ("ASU") 2021-02, *Franchisors – Revenue from Contracts with Customers* (Sub-Topic 952-606). In applying the practical expedient, the Company accounts for pre-opening services as distinct from the franchise license. Pre-opening services for the Company include site selection, initial training of the franchisee and on-site opening support. The Company has elected to use the practical expedient and to account for all pre-opening services as a single performance obligation as the services are consistent with the list in 952-606-25-2.

*Performance obligations satisfied over a period of time**Initial franchise/license fees*

The Company enters into franchise contracts that include the right to use the franchise licenses throughout the term of the contract, typically for a period of 10 years or less.

Revenue from franchise licenses is recognized ratably over the contractual period using a time-based measure of progress as franchisees receive the benefits from their contractually agreed-upon term. Initial franchise fees and deposits received in advance are deferred until such time as all material obligations of the Company have been substantially performed.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**2. Significant accounting policies (continued)***Brand fund*

The Company receives monthly advertising fees from franchisees as a percentage of their gross revenue, at primarily 2.0% for U.S. based franchisees and 2.5% for Canadian based franchisees. These funds are set aside and used for marketing, advertising and related programs and materials for the benefit of the Company's franchisees.

In accordance with the agreements with the franchisees, when the amount of fees that the Company has received from franchisees exceeds the amount spent to date, the amount is recognized as a liability at year end. Conversely, if the amount spent by the Company exceeds the amount collected from the franchisees the excess amount is recognized within prepaid expenses at year end.

*Goodwill*

Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. Goodwill is not amortized, but reviewed for impairment at least annually in accordance with the provisions of ASC 350, Intangibles – Goodwill and Other.

Management evaluates goodwill, at a minimum, on an annual basis and whenever events and changes in circumstances suggest that the carrying amount may not be recoverable. In accordance with ASC 350, impairment of goodwill is tested at the reporting unit level by comparing the reporting unit's carrying amount, including goodwill, to the fair value of the reporting unit. If the carrying amount of the reporting unit exceeds its fair value, goodwill is considered impaired and a second step is performed to measure the amount of impairment loss, if any.

Management concluded that the fair value did exceed the carrying amount and no impairment loss was recorded on October 1, 2023.

*Impairment of long-lived assets*

Long-lived assets and definite life intangibles are reviewed for possible impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. An estimate of undiscounted future net cash flows of the assets over the remaining useful lives is used in determining whether the carrying value of the assets is recoverable. If the carrying values of the assets exceed the anticipated future cash flows of the assets, an impairment loss equal to the difference between the carrying values of the assets and their estimated fair values is recognized.

Impairment of long-lived assets is assessed at the lowest levels for which there are identifiable cash flows that are independent from other groups of assets. The evaluation of long-lived assets requires the use of estimates of future cash flows. Management believes that there has been no impairment of the Company's long-lived assets on October 1, 2023.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

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**2. Significant accounting policies (continued)***Foreign currency translation*

The Company's functional currency is the Canadian dollar. Foreign denominated assets, liabilities and operating items of the Company are initially measured in Canadian dollars at the exchange rate prevailing at the respective transaction dates. At the end of each reporting period foreign currency denominated monetary assets and liabilities, which are outstanding at period end, are measured at exchange rates prevailing on the balance sheet date. Gains and losses arising from these foreign currency translations are recognized in the statement of operations.

The Company's presentation currency is the U.S. dollar. The financial statements are translated into U.S. dollars using the current rate method, whereby assets and liabilities are translated at period-end exchange rates while revenues and expenses are converted using average rates for the period.

*Income taxes*

The Company's income tax provision has been determined using the asset and liability approach of accounting for income taxes. Under this approach, deferred income taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. The income tax provision represents income taxes paid or payable for the current period plus the change in deferred taxes during the period. Deferred income taxes result from differences between the financial and tax bases of assets and liabilities and are adjusted for tax rates and tax laws when changes are enacted. A valuation allowance is provided against deferred income tax assets when it is more likely than not that all or some portion of the deferred income tax assets will not be realized. Interest and penalties related to uncertain tax positions are recognized as components of income tax benefit or expense in the statement of operations.

The Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement. Unrecognized tax benefits are tax benefits claimed in tax returns that do not meet these recognition and measurement standards.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**2. Significant accounting policies (continued)***Financial instruments*

The Company follows ASC 820-10, Fair Value Measurements and Disclosures, as amended by ASU 2016-01, Financial Instruments – Overall: Recognition and Measurement of Financial Assets and Financial Liabilities, for fair value measurements of financial and nonfinancial assets and liabilities and for fair value measurements of nonfinancial items that are recognized or disclosed at fair value in the financial statements on a recurring or nonrecurring basis.

ASC 820-10 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

Level 1 – Quoted prices in active markets for identical assets or liabilities.

Level 2 – Inputs, other than quoted prices in active markets, that are observable either directly or indirectly.

Level 3 – Unobservable inputs based on the Company's assumptions.

Financial instruments are recorded at fair value when acquired or issued and subsequently measured at cost or amortized cost less impairment, if applicable. Financial assets are tested for impairment when changes in circumstances indicate the asset could be impaired. Transaction costs on the acquisition, sale or issue of financial instruments are charged to the financial instrument for those measured at amortized cost.

The Company's financial assets and financial liabilities consist of those amounts referred to in Note 8.

*Leases*

The Company follows ASC 842, Leases, as amended by ASU 2016-02, which states that a lessee should recognize the assets and liabilities that arise from leases. The standard aligns many of the underlying principles of the lessor model with those in ASC606, Revenue Recognition. The standard also requires lessors to increase the transparency of their exposure to changes in value of their residual assets and how the exposure is managed.

For operating leases, ASC 842 requires recognition of a right-of-use asset and a corresponding lease liability upon lease commencement. The Company's leases consist of those amounts referred to in Note 9.

*Use of estimates*

Preparing the Company's financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the period. Key components of the financial statements requiring management to make estimates include allowances for uncollectible accounts receivable and amounts due from related companies, accounts payable and accrued liabilities, the useful lives and potential impairment of long-lived assets, asset valuations, the calculation of income taxes and valuation of deferred income taxes and related valuation allowance and liabilities under legal contingencies.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**2. Significant accounting policies (continued)***Use of estimates (continued)*

Actual results could differ from these estimates. By their nature, these estimates are subject to measurement uncertainty and the effect on the financial statements of changes in such estimates in future periods could be significant.

*Standards, Amendments and Interpretations effective in the current year**ASC 326 financial instruments – "Credit Losses"*

On June 16, 2016, the FASB issued ASU No. 2016-13, *Financial Instruments–Credit Losses* (Topic 326): Measurement of credit losses on financial instruments. The amendments in this ASU affect entities holding financial assets and net investments in leases that are not accounted for at fair value through net income. The amendments affect loans, debt securities, trade receivables, net investments in leases, off-balance-sheet credit exposures, reinsurance receivables, and any other financial assets not excluded from the scope that have the contractual right to receive cash. The amendments in this update affect an entity to varying degrees depending on the credit quality of the assets held by the entity, their duration, and how the entity applies current U.S. GAAP. This guidance is effective for years beginning after December 15, 2022. The adoption of this standard had no impact on the amounts recognized in the Company's financial statement or disclosures.

*Standards, Amendments and Interpretations not yet effective**Income taxes*

During December 2023, the FASB issued ASU No. 2023-09, *Income Taxes* (Topic 740). The amendments in this update affect entities within the scope of Topic 740 by enhancing the transparency about income tax information through improvements to income tax disclosures primarily related to the rate reconciliation and income taxes paid information. This guidance is effective for years beginning after December 15, 2025. The Company has not yet analyzed the impact of this standard, if any, on its financial statement.

**3. Related party balances and transactions**

As of October 1, 2023, the balance due to parent under common control is as follows:

	<b>2023</b>
	<b>\$</b>
MSKS IP Inc.	<b><u>2,725,450</u></b>

The amount due to parent as of October 1, 2023 is unsecured, non-interest bearing and due on demand. As of October 1, 2023, the related company has waived their right to demand repayment for the fiscal year ended September 30, 2024 and as a result the amounts have been classified as non-current on the balance sheet.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**4. Investments**

		<b>2023</b>
		<b>\$</b>
4,084,000	Class G special shares of Metal Supermarkets International Inc.	<b>3,020,710</b>

As discussed in Note 1, on October 1, 2023, the amalgamated company sold its full investment in Metal Supermarkets Franchising UK Limited and MSKS Holdings Inc. to a newly formed affiliate, Metal Supermarkets International Inc. in exchange for 4,084,000 Class G special shares of Metal Supermarkets International Inc. This investment has been recorded at the redemption value of \$3,020,710. The incremental gain of \$2,864,207 less corresponding future income tax expense of \$716,052 as a result of reporting the Class G special shares at their redemption value has been recognized within retained earnings in the balance sheet. Accordingly, retained earnings is comprised of \$2,148,155 relating to the above common control transaction less \$1,551,101 representing the accumulated deficit of the Company.

**5. Property and equipment**

	<b>Cost</b>	<b>Accumulated amortization</b>	<b>2023 Net book value</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Office equipment	<b>182,962</b>	<b>174,618</b>	<b>8,343</b>
Computer equipment	<b>258,107</b>	<b>226,774</b>	<b>31,334</b>
Leasehold improvements	<b>16,325</b>	<b>14,495</b>	<b>1,831</b>
	<b>457,394</b>	<b>415,887</b>	<b>41,507</b>

**6. Promissory notes**

	<b>2023</b>
	<b>\$</b>
Notes receivable assigned	<b>17,632</b>
Less: Current portion	<b>17,632</b>
	<b>—</b>

The promissory notes assigned are secured and interest bearing from prime plus 4% to prime plus 11% payable monthly. The US prime rate on October 1, 2023 was 8.50%.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**7. Share capital***Authorized, unlimited number*

The Company is authorized to issue the following:

Class A common shares

- No par value, voting, entitled to dividends subject to prior rights of special shares

Class B common shares

- No par value, voting, entitled to dividends equal to those paid on Class A common shares subject to prior rights of special shares, redeemable by the Company at the issuance cost plus any declared and unpaid dividends

Class A, B and C special shares

- No par value, non-voting, entitled to non-cumulative dividends subject to prior rights of Class D, E and F special shares, redeemable by the Company at \$0.74 per share plus any declared and unpaid dividends

Class D, E and F special shares

- No par value, non-voting, entitled to non-cumulative dividends, redeemable by the Company at \$0.74 per share plus any declared and unpaid dividends

Class X preferred shares

- Non-voting, non-cumulative, redeemable and retractable at \$740 per share

*Issued*

100 Class A common shares

**2023****\$****235,281****8. Financial instruments risks**

The fair values of cash, accounts receivable, due from related companies, accounts payable and accrued liabilities and due to related companies approximate their carrying values due to the short term nature of these financial instruments.

*Credit risk*

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. The Company is exposed to credit risk resulting from the possibility that a customer or counterparty to a financial instrument defaults on their financial obligations; if there is a concentration of transactions carried out with the same counterparty; or of financial obligations, which have similar economic characteristics such that they could be similarly affected by changes in economic conditions. The Company's financial instruments that are exposed to concentrations of credit risk relate primarily to accounts receivable which are due from franchisees included in accounts receivable.

The Company continues to monitor the net cash flows generated by its related parties in evaluating any potential loss on related party receivables.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**8. Financial instruments risks (continued)***Liquidity risk*

Liquidity risk is the risk that the Company encounters difficulty in meeting its obligations associated with financial liabilities. Liquidity risk includes the risk that, as a result of operational liquidity requirements, the Company will not have sufficient funds to settle a transaction on the due date; will be forced to sell financial assets at a value, which is less than what they are worth; or may be unable to settle or recover a financial asset. Liquidity risk arises primarily from accounts payable and accrued liabilities and due to related companies.

**9. Leases**

Operating lease assets consist of office space for two locations. For leases that include renewal options, the Company is not reasonably certain that these options will be exercised. The Company's leases are fixed rental payments with a variable component based on the lessor's property and casualty insurance costs and the property taxes assessed on the property, as well as a portion of the common area maintenance associated with the property.

Operating lease liability maturities as of October 1, 2023, are as follows:

	<b>Operating Leases \$</b>
2024 lease payments	84,001
Less: Interest	36,425
<b>Current operating lease liabilities</b>	<b>47,576</b>
2025 lease payments	77,318
2026 lease payments	64,870
2027 lease payments	66,122
2028 lease payments	67,875
Lease payments after 2028	240,193
Total non-current lease payments	516,378
Less: Interest	139,488
<b>Non-current operating lease liabilities</b>	<b>376,890</b>

The weighted-average remaining lease term for all operating leases is 5 years with the incremental borrowing rate applied of 9.20%.

**Metal Supermarkets Franchising America Inc.****Notes to the financial statement**

October 1, 2023

(Expressed in US dollars)

**10. Income taxes**

The tax effect of significant components of the Company's future income tax liability are as follows:

	<b>2023</b>
	<b>\$</b>
Investment in Metal Supermarkets International Inc.	<b>716,052</b>
Property and equipment	<b>(9,616)</b>
Tax losses carried forward	<b>(492,603)</b>
	<b>213,833</b>

**11. Contingencies**

The Company is party to legal claims and litigation matters that have arisen in the ordinary course of business. Management will continue to vigorously defend each of these actions. At this time the outcome of these actions is not determinable and adjustment for losses or gains will be accounted for in the period of settlement.

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT C-1**

**APPLICANT AGREEMENT**

**METAL SUPERMARKETS**  
**APPLICANT AGREEMENT**

The undersigned (“Applicant”) does hereby apply for a franchise for the operation of a Metal Supermarkets Store to be located in the following general area:  
\_\_\_\_\_ (the “Local Market Area”).

Applicant acknowledges and agrees that Metal Supermarkets Franchising America Inc. ("the Company") has granted no rights whatsoever to the applicant with respect to the Local Market Area and that the Company now or in the future may open and operate, and grant to others the right to own and operate, Metal Supermarkets stores within the Local Market Area, subject to any contrary provisions contained in any now existing or future franchise agreements entered into with Applicant.

Concurrently herewith, Applicant shall pay the Company an application fee of \$5,000. The application fee is fully refundable, without interest, unless and until the Company enters a Franchise Agreement with Applicant.

Applicant represents and warrants that the information contained in the attached Franchise Application Form is true and correct and fairly reflects Applicant’s financial position as of the date hereof.

Applicant may withdraw this application at any time upon notice to the Company. Applicant understands that the Company has the absolute right to deny this application for any or no reason.

The Company has the right to decide whether or not to award a franchise to Applicant. Applicant agrees the Company will have no liability for any denial of the application, other than the obligation to refund the application fee.

If Applicant withdraws his application or the Company denies Applicant’s application, the Company agrees to promptly refund the application fee, without interest.

If and when the Company approves the Applicant, the Company will offer Applicant a franchise to operate a Metal Supermarkets Store by delivering its then-current form of standard franchise agreement, together with all standard ancillary documents (including exhibits, riders, guarantees and other related documents) that it then customarily uses in granting franchises for the operation of Metal Supermarkets Stores in the state in which the Local Market Area is located. The franchise agreement and ancillary documents must be duly executed and returned not earlier than 5 business days and not later than 15 business days after they are delivered, with payment of the initial fees required thereunder. If the Company does not timely receive the fully executed franchise agreement and ancillary documents and payment of the required initial fees, the Company may revoke its offer to grant a franchise to operate a Metal Supermarkets Store.

This application does not confer any rights relating to the Company’s trademarks or service marks. Any proprietary or confidential information provided by the Company to the Applicant is solely for the purpose of Applicant’s evaluating a Metal Supermarkets Store franchise. Applicant acknowledges that any rights to use such property or confidential information may be derived only pursuant to an executed

Franchise Agreement, and that unauthorized disclosure, transfer of use, either direct or indirect, of such information by the Applicant would constitute an infringement of the Company's rights thereto and result in irreparable injury to the Company for which there is no adequate remedy at law.

The effective date of this Application is the date it is acknowledged by the Company.

APPLICANT(S) NAME & SIGNATURES:

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Applicant's Name

\_\_\_\_\_  
Date

ACKNOWLEDGED by Metal Supermarkets Franchising America Inc.,  
this \_\_\_\_\_ day of \_\_\_\_\_.

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

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

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

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT C-2**

**FRANCHISE AGREEMENT**



The Convenience Stores For Metal®

# METAL SUPERMARKETS FRANCHISE AGREEMENT

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FRANCHISEE

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DATE OF AGREEMENT

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## METAL SUPERMARKETS FRANCHISE AGREEMENT

**THIS AGREEMENT** (including all Schedules, the “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and between:

- **METAL SUPERMARKETS FRANCHISING AMERICA INC.** (“Franchisor” or “we”), an Ontario corporation, with its principal business offices located at 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario, Canada M9C 5KC; and
- \_\_\_\_\_ (“Franchisee” or “you”), a(n) \_\_\_\_\_, whose principal address is \_\_\_\_\_; e-mail: \_\_\_\_\_ [PERSONAL EMAIL ADDRESS]. Tel: \_\_\_\_\_;

### 1. INTRODUCTION AND DEFINITIONS.

#### 1.1 Metal Supermarkets Stores

We franchise Metal Supermarkets stores in the United States and Canada. Our Affiliate, MSKS IP Inc. (“MSKS”), owns a system for developing and operating Metal Supermarkets stores (collectively, the “System” as more fully defined below). MSKS has granted us an exclusive license to use, and to sublicense others to use, the System. We or MSKS may periodically improve or otherwise change the System.

#### 1.2 Acknowledgments

You acknowledge and agree that: (a) you have carefully read this Agreement and our franchise disclosure document (including all exhibits); (b) you understand the terms of this Agreement and the Ancillary Agreements and accept them as being reasonable and necessary for us to maintain brand standards, the uniformity of our high quality standards at all Metal Supermarkets stores, and to protect the goodwill of the Marks and the integrity of the System for our benefit as well as the benefit of our franchisees generally; (c) you have conducted an independent investigation of the business contemplated by this Agreement and recognize that an investment in a Metal Supermarkets store involves business risks, that its success is largely dependent on your own abilities, efforts and financial resources and that the nature of the business of Metal Supermarkets stores may change over time; (d) you have had the opportunity to seek advice of legal counsel of your choosing regarding the terms of this Agreement and the Ancillary Agreements; (e) you have not received or relied on any representation, warranty, guarantee or assurance, express, implied or collateral, as to the revenues, profits or success of the business contemplated by this Agreement; (f) MSKS owns, and has granted to us, an exclusive license to use, and to sublicense others to use, all of the rights and title to the Metal Supermarkets business and System as it is currently operated and as it may change over time due to changes and enhancements to the System, business offering, or methods of conducting business; and (g) you do not have any rights or title to any of the business methods or technologies that are used in connection with the System other than those that are expressly granted by this Agreement or the Ancillary Agreements.

#### 1.3 Your Representations

You represent and warrant to us, and agree, that: (a) neither you nor any of your Owners has made any untrue statement of any material fact or has omitted to state any material fact in obtaining the rights

granted hereunder; (b) neither you nor any of your Owners has any direct or indirect legal or beneficial interest in a Competitive Business (as defined below), except as completely and accurately disclosed in your original franchise application; and (c) the execution and performance of this Agreement or any Ancillary Agreements will not violate any other agreement to which you or any of your Owners may be bound. You recognize that we have approved your franchise application or renewal in reliance on all of the statements you and your Owners have made in connection therewith.

#### 1.4 Definitions

The terms listed below have the meanings which follow them and include the plural as well as the singular. Other terms are defined elsewhere in this Agreement in the context in which they arise.

(a) “Affiliate” means any person or entity that directly or indirectly holds an ownership interest in or controls the referenced party, that is directly or indirectly owned or controlled by the referenced party, or that is under common control with the referenced party.

(b) “Ancillary Agreements” means any agreements that you are required to enter into under the terms of this Agreement.

(c) “Competitive Business” means any business enterprise that offers or sells metals, and/or metal processing services (which include but are not limited to the fabricating, painting, welding, polishing, notching, galvanizing, bending, drilling, punching or cutting of metal), or any products or services that are the same as or similar to the products and/or services authorized to be offered by Metal Supermarkets stores or through the Internet.

(d) “Confidential Information” means proprietary and confidential information owned by us or our Affiliates relating to the development or operation of Metal Supermarkets stores whether expressly identified as confidential or not, and whether contained in the Operations Manual or otherwise, including, but not limited to: (1) technical information and expertise relating to metals and the equipment used in connection therewith (including, but not limited to, as posted on the “Metal Library”); (2) sourcing information for metals and metal related products; (3) site selection criteria for Metal Supermarkets stores; (4) data bases of potential customers for Metal Supermarkets stores; (5) sales and marketing programs and techniques for Metal Supermarkets stores; (6) Customer Information; (7) knowledge of operating systems, results, statistical and financial performance of Metal Supermarkets stores, other than Metal Supermarkets stores that you own; (8) comprehensive methods of operating Metal Supermarkets stores including the distinctive part numbering system and methodology; (9) computer systems, technology and software programs; and (10) any and all information, knowledge, know-how and techniques that we otherwise designate as confidential.

(d) “Consumer Price Index” (“CPI”) means the index number in the table relating to “Consumer Price Index for All items in U.S. city average, urban wage earners and clerical workers, not seasonally adjusted” as presently published by the Bureau of Labor Statistics for the United States Department of Labor (the “Bureau”). In the event the Bureau ceases publishing the Consumer Price Index or materially changes the methods of its computation or other features of it, we may substitute comparable statistics on the purchasing power of the consumer dollar published by the Bureau, another governmental agency or a responsible financial periodical or recognized authority to be chosen by us.

(e) “Customer Information” means contact information (including name, address, phone and fax numbers, social media addresses and e-mail addresses), sales and payment history, corporate background and ownership, and all other information about (i) any person or entity included on any marketing or customer list provided by us to you, (ii) any person or entity who has purchased or purchases

products and/or services from you during the Term (even if you have solicited the person and/or established a relationship independent of us and without our assistance) or who you have solicited to purchase any goods and/or services, (iii) any person or entity in your Protected Area who purchases products and/or services from us, (iv) any person or entity for whom you provide services on our behalf or at our direction; and (v) if customer is a corporation, partnership or limited liability company, all employees of such corporation, partnership or limited liability company.

(f) "Digital Program" means any current or future Internet-based program for the sale of products and services to customers of Metal Supermarkets stores.

(g) "Dollars" or "(\$)" means U.S. Dollars (US\$).

(h) "Existing Franchise Agreements" means agreements that you or your Owners have entered into with us or our Affiliates or predecessors before today for the operation of other Metal Supermarkets stores.

(i) "Extranet" means the proprietary on-line password protected World Wide Web interface that we use to communicate information, host the Operations Manual and other System-related information, and link to preferred vendors and suppliers. The current Extranet (or any substitute technology) system is also referred to as the "Metal Library."

(j) "Gross Sales" means all revenue from the sale of all services and products and all other revenue of every kind and nature related to, derived from, or originating from the Store and the business operated under this Agreement, including barter and the proceeds of any business interruption insurance policies, whether for cash or credit, and regardless of theft, fraud or of collection. Gross Sales does not include (i) sales taxes or other taxes that you collect from customers and actually pay to the appropriate taxing authorities, or (ii) revenue from the sale of products to other Metal Supermarkets stores.

(k) "Initial Training Program" means the training associated with basic Store operations and proper use of the System, including on-line, in-store, in-class or otherwise, at such time(s) and location(s) as we may periodically designate, as provided in Section 5.1 below.

(l) "Internet" means any and all digital means of communications, sales, and provision of services, including but not limited to through computers, television, telephone, facsimile, electronic data interchange, and any other communication or communication capable device, the World Wide Web, proprietary online services, social media platforms, social networking platforms, blogs, e-mail, SMS (text) messaging, news groups and electronic bulletin boards and forums, mobile applications, and the like, whether those means are currently in use or invented or developed in the future.

(m) "Manager" (or "Store Manager") means the person you designate to be responsible for the day-to-day management of the Store, if applicable.

(n) "Marks" means certain trade names (for example, the "METAL SUPERMARKETS" mark and logo), service marks, trademarks, logos, emblems, and indicia of origin that we may periodically specify in writing for use in connection with the System.

(o) "Metal Supermarkets stores" means warehouse and distribution centers, offering a wide variety of metals and related materials and services to machine shops, tool and die makers, fabricators, manufacturing companies, maintenance, and engineering departments and to a variety of other customers and individuals that are identified by the Marks and use the System.

(p) “Official Senders” means any of our employees, vendors, and affiliates who need to send you correspondence on matters pertaining to the Store or this Agreement.

(q) “Online Site” means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including, but not limited to, the Internet, World Wide Web, webpages, microsites, social networking sites (e.g., Facebook, Twitter, LinkedIn, YouTube, Google Plus, Pinterest, Instagram, etc.), blogs, vlogs, applications to be installed on mobile devices (e.g., iOS or Android apps), and other applications, etc.

(r) “Operating Principal” means an Owner who has completed, to our satisfaction, any initial and on-going training assigned by Franchisor, who has been appointed by you to devote their full time and attention to the operation of the Store, and who has agreed to fulfill and accept this obligation. Notwithstanding this obligation to dedicate their full time and attention to the operation of the Store, we acknowledge that this Owner may serve as the Operating Principal for other Metal Supermarkets stores that you own in addition to the Store.

(s) “Operations Manual” means our confidential operations manual, as we may periodically amend and supplement, which may consist of one or more manuals, containing our mandatory and suggested standards, specifications and operating policies and procedures relating to the development and operation of Metal Supermarkets stores and other information relating to your obligations under this Agreement. We will have the right to provide the Operations Manual in any format we determine is appropriate (including but not limited to paper format and/or by making some or all of the Operations Manual available to you in electronic form, such as through an internet website or the Extranet).

(t) “Owner” means each person or entity that holds a direct or indirect legal or beneficial ownership interest in you, if you are a business corporation, partnership, limited liability company or other legal entity.

(u) “Premises” means the location you select, pursuant to Section 2.2 below, to operate the Store.

(v) “Property Contract” means a lease, sublease or purchase or similar contract (or any modification thereof) for the Premises.

(w) “Protected Area” means the geographical area described as the Protected Area in Schedule A.

(x) “Qualified Affiliate” means an Affiliate of yours: (1) in which you directly or indirectly control or own 50% or more of the equity interest or voting power; (2) which directly or indirectly controls or owns 50% or more of the equity interest or voting power in you; or (3) the principal individual owner (i.e., the person who directly controls or owns 50% or more of the equity interest or voting power) is also the principal individual owner of you (i.e., the person who directly controls you or owns 50% or more of your equity interest or voting power).

(y) “Store” means the Metal Supermarkets store operated in the physical location specified in Section 2.2 below that you will establish and operate pursuant to this Agreement.

(z) “System” means the business methods, systems, hardware and software (including the Computer System and Required Software, as those terms are defined below), designs and arrangements for developing and operating Metal Supermarkets stores, including the Marks; the Confidential Information; building design and layout; equipment standards; standards and specifications for metal

products and other authorized products and services; training and assistance; inventory ordering and control systems; marketing programs; Digital Platforms; and certain operations and business standards and policies.

(aa) “Trade Dress” means the distinctive characteristics of a Metal Supermarkets store, including racks, lighting, counter, distinctive paint colors and features, window dressings, posters, signage, décor items, inventory storage methods, and other features for a Metal Supermarkets store we periodically specify in the Operations Manual.

## 2. GRANT OF RIGHTS.

### 2.1 Grant of Franchise

Subject to the terms of this Agreement, we grant you the right, and you assume the obligation, to operate the Store at the Premises, and to use the System solely in connection therewith, for a term of ten (10) years, starting on the date of this Agreement (the “Term”). You may not conduct the business of your Store or use the System anywhere other than the Premises, or relocate your Store, without our consent.

### 2.2 Selection of Location

(a) Within a reasonable period of time, not to exceed one hundred and twenty (120) days after the date of this Agreement, you agree to propose to us a location for your Store within your Protected Area, which location is subject to our approval.

(b) You agree to submit to us all information about the proposed location that we request, and we have no obligation to consider a proposed location until we receive from you a complete site analysis report for such proposed location. You agree not to execute any Property Contract for, nor commit to any other binding obligation to purchase or occupy, any proposed location until we have approved the location and the form of lease (and/or sublease) in accordance with the terms of Section 4.1. In determining whether to approve or disapprove any proposed location, we will consider such factors as we deem relevant, including general location, the number of potential customers in its immediate surroundings, and the distance to any other Metal Supermarkets store located outside the Protected Area. We have no liability whatsoever to you or anyone else for approving or disapproving a proposed location. Upon approval of a proposed location, we will identify the location in Schedule B. Upon completion of Schedule B, both parties agree to sign and attach it to this Agreement, and Schedule B shall then be part of this Agreement.

(c) Neither our site selection requirements, our approval of the Premises, nor any information we may impart to you about the Premises or the Protected Area constitutes a representation, warranty, guarantee or assurance of any kind, express, implied or collateral, that your Store will be profitable or successful. Our approval of the Premises merely signifies that we will permit you to operate your Store at that site. Your decision to develop and operate your Store at the Premises is based solely on your own independent investigation and judgment and not in reliance on any approvals or information from us.

(d) You agree not to relocate the Store without our prior written consent. Any proposed relocation will be subject to our review of the proposed new site in accordance with 2.2(b) under our then-current standards for site selection, except that we will also have the right to take into consideration any matters that we may determine to consider. If we approve a relocation of the Store, you agree to pay us a fee of One Thousand Two Hundred Fifty-Eight Dollars (\$1,258) (subject to an annual CPI adjustment effective as of our fiscal year end, the base year being our fiscal year end of September 30, 2023), and also reimburse us for the out-of-pocket costs that we incur in connection with reviewing and approving your

proposed relocation (including travel and related costs, and our attorneys' fees, if any). For any relocated Store, you must develop and open such Store in compliance with this Agreement, including the terms of Section 4.2 below, and any such relocated Store may not be opened for business until we notify you that all our requirements for opening have been met.

### **2.3 Your Territorial Protection**

During the Term, except as otherwise provided in Section 2.4 below, we will not, so long as you are in compliance with the terms of this Agreement:

(a) operate (directly or through an Affiliate), nor grant to another person the right to operate, any Metal Supermarkets store with a physical location within the Protected Area; or

(b) establish (directly or through an Affiliate), nor grant to other persons the right to establish, a business within the Protected Area that offers or sells the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally.

### **2.4 Our Reservation of Rights**

Other than the territorial protections we grant to you in Section 2.3 above, we reserve all other rights, and can do anything, anywhere, on any basis we choose, including, without limitation, the following things:

(a) operate, and grant others the right to operate, Metal Supermarkets stores at any location outside the Protected Area;

(b) operate, and license others to operate, any business of any kind inside or outside the Protected Area, so long as those businesses (i) are not Metal Supermarkets stores operated within the Protected Area, or (ii) do not sell the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally;

(c) acquire (or be acquired) and then operate any business of any kind (including a business selling the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally), whether located inside or outside the Protected Area; and

(d) offer, advertise, sell and distribute, or license others to offer, advertise, sell and distribute, directly or indirectly, any products or services using any marks (including the Marks), from any location or to any purchaser (which means we can, among other things, sell products and services at wholesale and to purchasers in the Protected Area through stores, mail order, Digital Platforms including on the Internet, under our Marks or as private-labeled items).

### **2.5 Limits on Where You May Sell**

You may only offer and sell products and services from the Store, only in accordance with this Agreement, the Ancillary Agreements and the procedures set forth in the Operations Manuals. You agree not to advertise your Store and not to solicit, offer or sell any products or services through any third parties, or any means other than as permitted in this Agreement; and therefore, for example, you agree not to offer or sell products or services from satellite locations, temporary locations, by use of catalogs, through third party aggregators or representatives, the Internet, or through any other electronic or other media. You agree to exert your best efforts to fully exploit the commercial potential for your Store within the Protected Area and you will not directly or indirectly solicit any customer or prospect (including, for example, through

telemarketing, e-mailing, Internet, SMS (or text) messaging, faxing and other electronic methods, as well as mailer programs and other sales or marketing efforts that we reasonably determine constitutes a solicitation) whose business address (or the location to which you deliver your products or services) is located outside of the Protected Area. We will, in our discretion, exert efforts seeking to restrict Metal Supermarkets stores owned and operated by independent third parties under franchise, license or other arrangements from directly soliciting customers whose principal business address (or the location where products and services are delivered) is located within the Protected Area. You acknowledge and agree that we have no liability for the conduct of a franchisee who does not comply with our requirements or restrictions.

### **3. FEES.**

#### **3.1 Initial Franchise Fee**

You agree to pay us an initial franchise fee in the amount of Forty-Four Thousand Five Hundred Dollars (\$44,500). The initial franchise fee is fully earned by us and payable by you upon signing this Agreement and, except as otherwise provided herein, is non-refundable in whole or in part for any reason whatsoever. Any application fee you have paid to us in connection with your application for the rights conferred by this Agreement shall be credited against the initial franchise fee.

#### **3.2 Monthly Royalty Fees**

(a) For each of the first twelve months of operation of a newly opened Store, you agree to pay us, on or before the twentieth (20<sup>th</sup>) day of the next month, a reduced royalty fee based upon your Gross Sales during the immediately preceding full or partial month, as follows:

- i. For the first twelve months of operation, the royalty fee will be equal to 60% of the royalty fee calculated under Section 3.2(b); and
- ii. For the purpose of calculating the first 12 months of operation of the Store in this Section 3.2(a) and in Section 3.2(c) below:
  - a. if the Store opens on the 1<sup>st</sup> through 10<sup>th</sup> day of a month, then the month in which the Store opens and begins operation shall be deemed the first month of operation; and
  - b. if the Store opens on the 11<sup>th</sup> day or later of a month, then the next calendar month shall be considered the first month of operation of the Store (even though the royalty fee amount as provided in Section 3.2(a)(i) above is due for the partial month in which the Store opens).

(b) Except as otherwise provided in Section 3.2(a), you agree to pay us each month, on or before the twentieth (20<sup>th</sup>) day of that month, a royalty fee based on your Gross Sales during the immediately preceding full or partial month as follows (subject to an annual CPI adjustment effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023):

- i. On Gross Sales up to \$140,402, a royalty fee of six percent (6%) of such Gross Sales;
- ii. On Gross Sales from \$140,403 to \$207,794, a royalty fee of five percent (5%) of such Gross Sales; and

- iii. On Gross Sales from \$207,797 or more, a royalty fee of three percent (3%) of such Gross Sales.

(c) Notwithstanding the terms of Section 3.2(b) above, you must pay to us a minimum royalty fee beginning at the start of the first (1<sup>st</sup>) fiscal year of the Franchisor (i.e. October 1 through September 30) that immediately follows the first (1<sup>st</sup>) full twelve (12) months of the Store's operations, calculated from the first day the Store opened (regardless of any previous transfers of ownership of the Store or temporary closures). The minimum royalty fee is calculated as the greater of a monthly minimum royalty as set forth below (subject to an annual CPI adjustment effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023) or the royalty fee as set out under Section 3.2(b):

- i. For the second (2nd) year, a monthly minimum royalty of \$1,928;
- ii. For the third (3rd) year, a monthly minimum royalty of \$2,504;
- iii. For the fourth (4th) year, a monthly minimum royalty of \$2,751;
- iv. For the fifth (5th) year, a monthly minimum royalty of \$2,914;
- v. For the sixth (6th) year, a monthly minimum royalty of \$3,160;
- vi. For the seventh (7th) year, a monthly minimum royalty of \$3,406;
- vii. For the eighth (8th) year, a monthly minimum royalty of \$3,696; and
- viii. For the ninth (9th) year or any year thereafter, a monthly minimum royalty of \$4,021.

### **3.3 Interest on Late Payments; Late Fees**

All amounts which you owe us or any of our Affiliates will bear interest after their due date at the rate of sixteen percent (16%) per annum, not to exceed the highest rate permitted by law. In addition, we have the right to assess service charges for any checks or other payment methods that are returned or otherwise refused for insufficient funds. You agree to pay us a \$100 late fee for each payment owed to us under this Agreement which we receive after its due date or for which there are insufficient funds. The late fee is not interest or a penalty. It is used to compensate us for increased administrative and management costs due to late payment. Notwithstanding the foregoing, your failure to pay all amounts when due constitutes grounds for termination of this Agreement as provided in Section 12.

### **3.4 Electronic Transfer of Funds**

You agree to sign an electronic transfer of funds authorization in the form attached as Schedule F and/or such other documents as we periodically designate, to authorize and direct your bank or financial institution to transfer either electronically or through some other method of payment designated by us, directly to our account or our Affiliates' account and to charge your account all amounts due to us and our Affiliates from you. Your authorizations must permit us and our Affiliates to designate the amount to be sufficient to allow us and our affiliates to collect the amounts owed to us or our Affiliates when due. You are responsible for any penalties, fines or other similar expenses associated with the transfer of funds. You acknowledge and agree that we have the right to require you to pay either by electronic transfer of funds or through some other method of payment designated by us, regardless of whether we impose the same requirement on other Metal Supermarkets franchisees.

### 3.5 Application of Payments; Offsets

We intend to apply payments made by you first to interest and to the oldest outstanding amounts due to us or our Affiliates regardless of any contrary designation by you. However, we have the right to apply any payments by you to any of your past due indebtedness for the initial franchise fee, royalties, purchases or any other past due indebtedness to us or any of our Affiliates. If we or our Affiliates owe you any money, we have the right to offset amounts owed to us and our Affiliates against what is owed to you. However, you agree that all payments owed by you will be made as and when due without any setoff, deduction or prior demand.

### 3.6 Brand Fund Contribution

(a) We have established a Brand Fund (the “Fund”) in accordance with the provisions of Section 7.10, and, subject to any maximum annual contribution levels we establish, you agree to pay us a monthly fee equal to a percent, as determined by us (not to exceed 2.5%), of your Gross Sales to fund the Fund (the “Brand Fund Contribution”). The Brand Fund Contribution is payable on or before the twentieth (20th) day of each month based on your Gross Sales accrued during the immediately preceding month.

(b) Within thirty (30) days of our fiscal year end, we will notify you of any change in the amount of the Brand Fund Contribution for that year. There will be a cap on the maximum amount you are required to contribute as set forth below:

<u>Brand Fund Contribution</u>	<u>Maximum Annual Contribution</u>
0.5% of Gross Sales	\$10,143
1.0% of Gross Sales	\$16,928
1.5% of Gross Sales	\$23,022
2.0% of Gross Sales	\$33,781
2.5% of Gross Sales	\$43,336

The Maximum Annual Contribution is subject to annual CPI adjustments effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023. Effective October 1, 2024, the Maximum Annual Contribution shall no longer be a cap or maximum contribution. As of October 1, 2024, once your Brand Fund Contribution equals the Maximum Annual Contribution, you shall continue to provide a Brand Fund Contribution at fifty percent (50%) of the declared Brand Fund Contribution rate.

(c) If you or a Qualified Affiliate operate other Metal Supermarkets stores pursuant to other franchise agreements with us and such other Metal Supermarkets stores are in contiguous Protected Territories to your Store operated under this Agreement, then your Store under this Agreement, together with your other Metal Supermarkets stores under separate agreements in contiguous Protected Areas, are considered to be “Adjoining Stores.”

(d) If you are not in default under this Agreement, any Ancillary Agreements, or any other agreements that you or a Qualified Affiliate has entered into with us, then, with respect only to the Adjoining Stores, the Maximum Annual Contribution described above will be the maximum contribution payable in each year by such Metal Supermarkets store operated by you which generated the greatest Gross Sales in the preceding fiscal year (the “Maximum Contribution Store”), and all other such Metal Supermarkets

stores (which are not the Maximum Contribution Store) shall be required to contribute, as a Brand Fund Contribution, a maximum amount equal to (i) fifty percent (50%) of the Maximum Annual Contribution until September 30, 2024, and (ii) seventy five percent (75%) of the Maximum Annual Contribution beginning October 1, 2024 and thereafter.

### **3.7 Advertising Expenditures**

Upon signing this Agreement, you agree to deposit with us Fifteen Thousand Dollars (\$15,000) which is the minimum amount you are required to spend on approved advertising during the first twelve (12) months of the operation of your Store. No interest will be accrued or paid on this deposit. During the first twelve (12) months of the operation of your Store, you are required to spend these funds on approved advertising. We have the right, as described in Section 7.8(b) below, to periodically specify expenditures that are permitted to constitute approved advertising. You must make these advertising expenditures in reasonable regular intervals during this 12-month period, and we have the right to make these advertising expenditures on your behalf. You and we will periodically reconcile our expenditures for these purposes, and provide each other with appropriate verification (receipts, etc.) as we specify to substantiate these advertising expenditures. You authorize us to draw from your advertising deposit for advertising expenditures we make on your behalf and otherwise adjust the balance of that deposit accordingly. Funds from the advertising deposit will also be released to you to reimburse you for the approved advertising expenditures you make during the first twelve (12) months of the operation of your Store.

### **3.8 Conference Fee**

(a) You agree that you (or your Operating Principal) will travel to and attend our annual conference. You agree to pay us a monthly fee as a deposit to cover a portion of your share of the cost of our annual conference. This fee applies whether or not you attend the annual conference and is not refundable except as set forth in this Section. The initial monthly fee will be \$112.00 and, within thirty (30) days after our fiscal year end, we will notify you of the monthly fee for our new fiscal year (that is, our fiscal year just started). We have the right to increase the fee by the greater of the change in CPI or five percent (5%) of the previous year's annual conference fee. This fee is due and payable by the twentieth (20<sup>th</sup>) day of each month and is payable in the same manner as the royalty fee. This fee is a deposit and not your total cost for the annual conference. The final cost of the annual conference may be higher than the aggregate you have contributed and you will pay any additional cost on our request. The payment noted in this Section 3.8(a) is for one individual to attend the annual conference. If you choose to send any other individuals there will be an additional fee, in an amount that we will determine, due to us for each additional individual attending. A Store Manager, or any other employee of yours, may only attend the annual conference when your Operating Principal is also in attendance. If we choose not to have an annual conference in any given year, then no fee will be due. If you have already paid the annual conference fee for such given year, we will refund it to you without interest.

(b) The annual conference is a vital element in the development and operation of the Metal Supermarkets System and your failure to attend will result in additional costs being incurred by us in communicating relevant information regarding updates to and training on the System. Without prejudice to our other rights under the Agreement, in the event you (or your Operating Principal) fail to attend and participate in the entire annual conference, you agree to pay us a fee in the amount of Three Thousand Four Hundred Fifty-Five Dollars (\$3,455) (subject to an annual CPI adjustment effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023), which must be paid within thirty (30) days after the end of the annual conference. If you or a Qualified Affiliate operate other Metal Supermarkets stores pursuant to other franchise agreements with us, you are required to only pay the conference fee in Section 3.8(a) for one (1) Store (and, if applicable, the fee for failure to attend the conference in this Section 3.8(b) for one (1) Store).

### 3.9 Tax Payments

You will pay all state and local franchise, use and similar taxes that may be imposed on us as the result of our receipt or accrual of the Initial Franchise Fee, the Royalty Fee, the Marketing Fees, or other fees that are referenced in this Agreement, whether assessed against you through withholding or other means or whether paid by us directly. In either case, you shall pay us (and to the appropriate governmental authority) such additional amounts as are necessary to provide us, after taking such taxes into account (including any additional taxes imposed on such additional amounts), with the same amounts that we would have received or accrued had such withholding or other payment, whether by you or by us, not been required.

## 4. DEVELOPMENT OF YOUR STORE.

### 4.1 Purchase or Lease of Premises

(a) You agree to lease, sublease or purchase the Premises within thirty (30) days after we approve the Premises as set forth in Section 2.2. You agree not to execute a Property Contract without our prior written approval during the term of this Agreement (or after the term of this Agreement as restricted under Section 10.4 below). We must approve in writing the terms of any Property Contract, and you agree to deliver a copy to us for our approval no less than seven (7) days before you sign it. You acknowledge and agree that our approval of the Property Contract for the Premises shall be conditioned upon the execution by you and the landlord of the “Addendum to Lease” (if the Premises is leased or subleased). We will provide the form of Addendum to Lease to you. Notwithstanding the terms of the Property Contract or Addendum to Lease, you acknowledge and agree that we will have the following rights:

- i. The right to allow us to elect to take an assignment of a leasehold interest upon termination or expiration of your rights under this Agreement, or upon the termination or expiration of your rights under a Property Contract, without the landlord’s additional consent, and with an acknowledgment by the landlord that we have no liability or obligation whatsoever under the Property Contract until and unless we assume the Property Contract upon termination or expiration of this Agreement;
- ii. The right and requirement that the landlord for the Premises provide us with a copy of any notice of default under the Property Contract at the same time as such notice is given to you (as the lessee or sublessee under the Property Contract), and this notice will grant us the right (but not the obligation) to cure any defaults under the Property Contract within the period in which you had to cure any such default should you fail to do so;
- iii. The right to display and use the Marks in accordance with the specifications required by the Operations Manual, subject only to the provisions of applicable law;
- iv. The right that the Premises be used solely for the operation of a Metal Supermarkets store;
- v. The obligation, upon our request, to de-identify the Premises as a Metal Supermarkets store and to promptly remove all Marks, signs, décor, Trade Dress, and other items which we reasonably request be removed as being distinctive and indicative of a Metal Supermarkets store and the System, and the right under the Property Contract to permit us to have sufficient access to the interior and exterior of the Premises so that we may de-identify the Premises, as provided above, at your cost;

- vi. That any default under a Property Contract shall also constitute a default under this Agreement, and any default under this Agreement shall also constitute a default under a Property Contract; and
- vii. The right to remain in possession of the Premises for at least the Term of this Agreement.

(b) Our approval of the Property Contract does not constitute a representation, warranty, guarantee or assurance of any kind, express, implied or collateral, as to its fairness or suitability or as to your ability to comply with its terms. We do not, by virtue of approving the Property Contract, assume any liability or responsibility to you or to any third parties. You agree to deliver a copy of the fully signed Property Contract to us within five (5) days after its execution.

(c) Pursuant to Section 11.3 herein, if you are a corporation, partnership or limited liability corporation or company, you may not own the Premises. Also, neither you nor any Affiliate may own the Premises without our prior written consent. We may condition our consent of the ownership of the Premises on you and/or the Affiliate entering into one or more written agreements with us that may include provisions that: (i) require that the Premises be used only for the operation of your Store, (ii) give us a right to lease the Premises (including parking entitlement) upon commercially reasonable terms upon termination or expiration of this Agreement for a period that is the greater of the balance of the Term or two (2) years, and (iii) grant other rights to us necessary to protect our interests.

(d) Should we deliver written notice to you that we wish to lease the Premises in accordance with 4.1(c)(ii) and we and you or your Affiliate cannot agree on the rental rate for the Premises (the "Rent Rate"), then within fifteen (15) days following our delivery of that written notice to you:

- i. each party shall provide the other with written notice of its proposed Rent Rate. If one party does not do so within such fifteen (15) day period, the proposed Rent Rate of the other shall be the Rent Rate;

- ii. the parties shall agree upon a neutral commercial real estate broker ("Broker") to determine the Rent Rate. The Broker shall be a duly licensed real estate broker or salesperson in good standing in the state and jurisdiction in which the Premises is located, shall have been active in that capacity over the five (5) year period before their appointment in the leasing of properties similar to the Premises within the general real estate market of the Premises. The Broker shall additionally not be related to or affiliated with either party, and shall not have previously represented in a real estate transaction either party or anyone related to or affiliated with either party. If the parties cannot agree upon a Broker within the fifteen (15) day period noted in Section 4.1(d), then each party shall no later than three (3) days following the expiration of that 15-day period appoint a Broker with the qualifications required in this Section, and those two (2) Brokers shall, within five (5) days following their mutual selection, appoint a third individual with at least the qualifications required in this Section to serve as Broker for purposes of this Section 4.1(d); and

- iii. The Broker may, as the Broker determines, consider such information submitted by the parties or independently gathered by the Broker in determining the Rent Rate. Within thirty (30) days after selection of the Broker, the Broker shall issue a decision as to their own independent opinion of the Rent Rate established by taking into account the terms, assumptions and conditions set forth herein and their market knowledge and research (the "Broker's Market Rent Rate"). The Broker's Market Rent Rate shall then be the Rent Rate in the lease for the Premises. The Broker's Market Rent Rate shall be binding upon the Parties.

iv. The Parties are responsible for their own costs and expenses in the process set out in this Section 4.1(d), with the exception that they will each pay fifty percent (50%) of the fees and costs of the Broker.

#### **4.2 Development and Opening of Your Store**

You agree to open your Store within nine (9) months after the date of this Agreement. You are solely responsible for developing your Store and for all expenses associated with it. We will furnish you prototype plans for a Metal Supermarkets store after the Property Contract is signed. You may modify the prototype plans only with our prior written consent, and only to the extent necessary to comply with all applicable laws, regulations, ordinances, building codes and permit requirements and any lease requirements and restrictions. All development must be in accordance with the prototype plans and specifications we have approved and must comply with our Operational Manuals and all applicable laws, regulations, ordinances, building codes and local rules and regulations. We may periodically inspect the Premises during its development. Your Store may not be opened for business until we notify you that all our requirements for opening have been met. You must reimburse us for any costs and expenses we incur prior to the opening of your Store as a result of what we deem to be your lack of organization or planning (for example, if our representative(s) travel(s) to the Store to provide pre-opening assistance and a condition that is within your control or responsibility occurs such that we must return to the Store at a later date, or extend our original visit, following the correction of that condition).

#### **4.3 Equipment, Furniture and Signs**

(a) You agree to purchase or lease and use all equipment, communication and computer systems, furnishings, fixtures and signs for your Store of the types, brands and models that we approve for Metal Supermarkets stores as meeting our standards and specifications. You agree to purchase or lease and use approved types, brands or models of equipment, fixtures, furnishings, signs and systems from suppliers specified by us. You agree that we may designate ourselves, an Affiliate or another third party as an exclusive supplier to provide you with particular equipment (including communication systems, computer hardware and software), furnishings, fixtures and signs. We may modify the list of approved types, brands, models, and/or suppliers and you may not, after receipt of notice of such modification, reorder any type, brand or model from any supplier that is no longer approved.

(b) If you propose to purchase or lease and use any equipment, fixtures, furnishings or signs of a type, brand or model that we have not previously approved or from a supplier that is not our exclusive supplier, you agree to notify us and submit to us such information as we may request. We have the right to charge reasonable fees to cover our costs for this service.

#### **4.4 Telephone, E-Mail and Other Telecommunications Services**

(a) We will obtain, in MSKS's name, the telephone numbers and e-mail addresses for your Store, which you will have the right to use during the Term. We will permit you to use one or more e-mail addresses that we designate (presently, using the "metalsupermarkets.com" domain) during the term of this Agreement for an annual fee that we periodically determine for each e-mail address and its associated security protection, and you agree that you will not use (nor permit the use of) any other e-mail addresses in the operation of the Store. You agree to bear all costs associated with your Store's phone system, phone service, telecommunications service, and e-mail service, and other technology, and to reimburse us or our Affiliates for any expenses that we (or they) incur on your behalf (notwithstanding any other agreement with us or with any of our Affiliates). If there are third party vendors that provide some or all of these services, you agree to pay the vendor or us (upon our request) if we have directly paid (or will pay) the provider.

(b) You acknowledge and agree that all telephone numbers, e-mail addresses, URLs, domain names, social media platforms, and other communication numbers and contact information and directory listings for your Store are MSKS's property, and that MSKS and we have the right to transfer, terminate or amend such properties as either MSKS or we deem appropriate. You agree to execute and deliver to us the Assignment of Telephone Numbers attached to this Agreement as Appendix H-1 and the Assignment of Domain Names, URLs and Email Addresses attached to this Agreement as Appendix H-2. If MSKS or we take any action pursuant to this Section, the third-party provider and all listing agencies may accept this Agreement as conclusive evidence of MSKS or our exclusive rights in such properties, and MSKS's or our authority to direct their amendment, termination or transfer without any liability to you.

#### **4.5 Pre-Opening Assistance**

If you (or your Operating Principal) have not previously owned or operated a Metal Supermarkets store, we will provide or cause to be provided to you with such pre-opening assistance as we deem appropriate, including on-site opening assistance (not to exceed fourteen (14) days).

#### **4.6 Initial Customer List**

We will furnish you a database of potential customers located in your Protected Area in order to facilitate initial solicitation of customer orders. You acknowledge and agree that this database and all updates thereto are part of the Customer Information and are MSKS's property. You agree to update, maintain and communicate to us this database and related information on an ongoing basis as we may periodically require.

#### **4.7 Customer Information**

MSKS owns all Customer Information, including updates and additions made by you, and has granted to us, indirectly, an exclusive license to use and to sublicense the use of such Customer Information. Nothing in this Agreement grants you any ownership interest in or to the Customer Information. You hereby assign and transfer to us all rights, including intellectual property rights, you may have in and to the Customer Information, and you waive any rights you may have or develop in and to the Customer Information.

### **5. TRAINING AND GUIDANCE.**

#### **5.1 Initial Training Program**

Prior to our approval of the opening of the Store, you, the Operating Principal, and if applicable, the Manager, must complete or have completed the Initial Training Program to our satisfaction. If your Operating Principal or Manager cease active management or employment at the Store, or if at any time we disapprove of the Operating Principal or Manager (each who may have been previously approved) then a qualified replacement (who must be acceptable to us) must attend and successfully complete our next available Initial Training Program.

We will not charge any fees for attendance of up to three (3) individuals at the Initial Training Program provided in conjunction with the Store opening. Otherwise, you agree to pay us a training fee in the amount of One Thousand Two Hundred Eighty-Five Dollars (\$1,285) (subject to an annual CPI adjustment effective as of our fiscal year end, the base year being our fiscal year ended September 30, 2023) for each individual that will attend the Initial Training Program, with payment to be made in full before

training starts. You will be responsible for all expenses (including compensation, travel, meals and lodging) incurred by all individuals you send to the Initial Training Program.

## **5.2 On-Going Guidance**

We will furnish you periodic guidance with respect to the System, including improvements and changes to it. Such guidance will be furnished in the form of the Operations Manual, bulletins and other written materials, webinars, consultations by telephone or in person at our offices or at your Store, or by any other means of communication including postings, e-mail and other means, including through our Extranet. We may require you (or your Operating Principal) and or your Manager, to attend and successfully complete periodic or additional training programs (which includes the annual conference) for which we may charge reasonable fees, such as the annual conference as outlined in Section 3.8. If you hire or retain an outside sales representative, he or she may be required to complete the marketing and sales portion of our training program. You acknowledge that: (a) we have the right to charge you fees for any mandatory training programs, regardless of whether you attend or not; and (b) your failure to attend any mandatory training program for any reason whatsoever constitutes an admission that you have received all necessary training, advice and assistance under this Agreement and otherwise to successfully operate your Store. Your, or your Operating Principal's or Manager's, failure to attend or successfully complete any mandatory training program constitutes a breach of this Agreement. The foregoing acknowledgements are not in lieu of any other remedy we may have for your failure to attend any mandatory training programs.

If requested by you, we may provide special assistance for which you will be required to pay the per diem fees and charges we may periodically establish.

## **5.3 Sales and Marketing Assistance**

We, including in conjunction with the Fund, may, but are not required to, provide you with sales and marketing assistance as we may deem appropriate, including updating the database of potential customers in the Protected Area and assistance with other sales and marketing programs we or the Fund may periodically develop. You are responsible for ensuring that you comply with all applicable telemarketing, Internet or e-mail, consumer protection, privacy and similar laws or regulations.

## **5.4 Periodic Visits**

We will visit your Store, when and as frequently as we deem appropriate, to evaluate and provide advice on your Store's operations and compliance with the System.

## **5.5 Operations Manual**

We will provide you access to the Operations Manual. We reserve the right to provide the Operations Manual in hard copy, electronic form or any other form as we may select. At your expense, you will acquire any necessary equipment and technology to receive and use the Operations Manual in its various forms and execute such agreements as may be necessary in connection therewith. You agree to comply with all mandatory standards, specifications and operating procedures and other obligations contained in the Operations Manual. We may modify the Operations Manual to document or reflect changes in standards, specifications and operating procedures and other obligations imposed on you, provided no addition or modification may alter your fundamental status and rights under this Agreement. Mandatory specifications, standards and operating procedures and other obligations we periodically prescribe in the Operations Manual, or otherwise communicate to you in writing, constitute provisions of this Agreement as if fully set forth herein. All references to this Agreement include all such mandatory specifications, standards and operating procedures and other obligations imposed on you. Any required or

mandatory standards, specifications, operating procedures and other obligations exist to protect our interests in the System, and not for the purpose of establishing any control or duty or take control over these matters that are reserved to you. You agree that if there is any dispute as to the contents of the Operations Manual, the terms of the master copy of the Operations Manual that we maintain in our home office will be controlling. You agree, that at all times, you will treat the Operations Manual, any other manuals that we create (or approve) for use in the operation of the Store, and the information contained in those materials, as Confidential Information, and you also agree to use your best efforts to maintain such information as secret and confidential. You agree that you will never copy, duplicate, record, or otherwise reproduce those materials, in whole or in part, nor will you otherwise make those materials available to any unauthorized person.

## **6. YOUR ORGANIZATION AND MANAGEMENT**

### **6.1 Disclosure of Ownership Interests**

You and each of your Owners represents, warrants and agrees that Schedule C is current, complete and accurate. You agree that any changes to the information set out in Schedule C requires our prior written consent. Without limiting the foregoing, to the extent any such update would be as a result of a Transfer of the Franchise, you acknowledge that such event must be completed, and our consent would be provided, in accordance with Section 11 below. Subject to you first obtaining our written consent, you agree that an updated Schedule C will be furnished promptly to us, so that Schedule C (as so revised and signed by you) is at all times current, complete and accurate. Each Owner at the time this Agreement is entered into, or who later becomes an Owner as approved pursuant to Section 11 below, must execute an Owner's Personal Guaranty, in the form attached to this Agreement as Schedule D or as we may otherwise designate. Each Owner must be an individual acting in his personal capacity, unless we waive this requirement in writing.

### **6.2 Management of Store**

If you are, or at any time become, a business corporation, partnership, limited liability company or other legal entity, you agree to designate in writing an Operating Principal to operate your Store. You (or your Operating Principal): (a) agree to exert your full-time and best efforts to the operation of your Store and other Metal Supermarkets stores you operate; and (b) may not engage in any other business or activity, directly or indirectly, that requires substantial management responsibility or time commitments or that otherwise may conflict with your obligations hereunder. We may require you to appoint an employee as Manager of the Store. If an individual serves as Operating Principal for other Metal Supermarkets stores that you own (or your affiliate owns) in addition to the Store, you agree to appoint a Manager (who is not the Operating Principal) for each such additional Metal Supermarkets store. You agree that your Store shall at all times be managed by you (or your Operating Principal) or a Manager. None of your Owners, the Operating Principal, or Manager may have any direct or indirect ownership interest in a Competitive Business.

## **7. OPERATING STANDARDS.**

### **7.1 Authorized Metals and Other Products and Services**

(a) You agree that your Store will offer for sale the full range of metals and metal services, and such other products and services, that we periodically authorize or require for Metal Supermarkets stores. You agree to exert your best efforts to market and sell all such products and services and to capitalize on the full potential of your Store in the Protected Area. We have the right to periodically add, modify or delete products and services offered by Metal Supermarkets stores. You acknowledge and agree that

additional authorized products and services may require you to incur additional costs for equipment, warehouse space, inventory, additional personnel, personnel training and leasehold improvements.

(b) If you fail to obtain and sell, or maintain, the range of metals and other products in stock that we periodically require, we may notify you in writing, in which case you agree to obtain and sell, or obtain, sell and maintain in stock, such metals and other products that we periodically require. If you do not do so, we may, at our election, obtain the metals and other products on your behalf. Immediately upon written request by us, you agree to pay all costs of obtaining the full range of inventory for your Store.

(c) You agree that your Store will not, without our approval, offer any products or services that we have not authorized for Metal Supermarkets stores. Your Store may not be used for any purpose other than the operation of a Metal Supermarkets store in compliance with this Agreement. You agree that your Store will offer courteous, efficient and high-quality services in accordance with our standards.

## **7.2 Purchase of Metals and Other Products**

(a) You acknowledge that the reputation and goodwill of Metal Supermarkets stores is based on the sale of high-quality metals and other products and services. Therefore, you agree that your Store will only sell metals and other products of the type and quality that conform to our specifications and standards and are purchased from suppliers (which may include us and any of our Affiliates) which we approve.

(b) We may periodically modify our specifications, standards and approved suppliers. After notice of such modification, you may not reorder any metal products or other products that do not meet our then current specifications and standards or reorder any such items from any supplier which is no longer approved.

(c) If you propose to order any metals or other products of a type or from a supplier, which is not then approved by us, you agree to first submit to us sufficient information, specifications and samples concerning such type of metal or other product or such supplier so that we can decide whether such product or supplier meets our criteria. We have the right to charge reasonable fees to cover our costs. We may prescribe procedures for the submission of requests for approval and impose obligations on suppliers, which we may require to be incorporated in written agreements. We may impose limits on the number of suppliers for any items.

(d) We have the right to solicit and accept rebates, fees, commissions, discounts or other similar allowances (collectively, “rebates”) from any third-party supplier as a result of sales to you or business conducted with you, and may use such rebates as we deem appropriate. Further, we and our Affiliates reserve the right to be an approved supplier, and in some circumstances, the sole approved supplier of various products and services. Anything that you purchase from us or from an Affiliate of ours will be at the then-current price in effect. You acknowledge and agree that we and/or our Affiliates have the right realize a profit on any products, services or other items that we or our Affiliates supply to you.

(e) We also have the right to establish preferred vendor and designated supplier programs. You agree to comply with all requirements of any such programs. If we designate suppliers, you will be required to purchase products and / or services from them and enter into such contracts or agreements with them or us as we may require.

### 7.3 Condition of Store

(a) You agree to maintain the condition and appearance of your Store and any of its motor vehicles so that it is clean and attractive. You agree to repair and maintain your Store's equipment, fixtures, motor vehicles, furnishings, signage, layout and decor as we may reasonably require, including replacing worn-out or obsolete equipment, fixtures, furnishings and signs. If at any time the general state of repair, appearance or cleanliness of your Store or its fixtures, equipment, furnishings, motor vehicles, or signs does not meet our standards, we may notify you and specify the action you must take to correct such deficiency. If, within ten (10) days after receiving such notice, you fail or refuse to initiate and thereafter continue in good faith and with due diligence a bona fide program to complete such required repair or maintenance, we, or our agents, have the right (in addition to our rights under Section 12), but not the obligation, to enter the Premises and perform such repair or maintenance on your behalf and at your expense. You agree to promptly reimburse us for the costs and expenses we and our representative(s) incur in connection with performing such repairs or maintenance.

(b) You agree to periodically upgrade, remodel, and/or make such modifications, refurbishments, and additions to your Store and motor vehicles as we may reasonably require. You may not make any alterations to your Store, or make any replacements, relocations or alterations of fixtures, equipment, furnishings or signs, without our approval.

### 7.4 Specifications and Standards

(a) The Operations Manual contains both requirements and recommendations for the operation of a Metal Supermarkets Store. Any mandatory standards exist to protect our interest in the System and the Marks and not for the purpose of establishing any control, or the duty to take control, over those matters that clearly are reserved to you. You agree to comply with all mandatory specifications, standards and operating procedures, as those may be periodically modified (whether contained in the Operations Manual or any other written or electronic communication) relating to the operation of a Metal Supermarkets Store, including (i) authorized products and services offered by your Store and manner in which they are promoted and sold; (ii) sales procedures and services; (iii) sales, marketing and advertising programs (including use of websites and e-mail addresses); (iv) appearance, cleanliness, uniforms and standards of service and operation of your Store; (v) days and hours of operation; (vi) training of your Operating Principal and Manager; and (vii) computer software and record keeping systems including accounting and forms. If you request, and we agree to provide, computer software and record keeping systems support and we determine that such support is necessary because you did not comply with our specifications, standards or procedures, then you agree to pay our then-current computer support fee for those services.

(b) We may periodically suggest prices at which authorized products and services offered by your Metal Supermarkets Store may be sold or offered for sale. Although you generally have the right to establish prices for the products and services you sell, we reserve the right to establish and enforce prices, both minimum and maximum, that your Metal Supermarkets Store will sell products and services for, to the extent permitted by applicable law. ) If we have established a maximum price for a particular product or service, then you may charge any price for that product or service up to and including the maximum price we have established; and if we have established a minimum price for a particular product or service, then you may charge any price for that product or service that is equal to or above the minimum price we have established. You acknowledge and agree that a recommended retail price, or maximum and minimum prices that we set, for products and services that you and other franchisees sell may vary from region to region to the extent necessary in order to reflect differences in costs and other factors applicable to such regions, and may also vary from customer to customer in connection with government and national and regional business accounts. We may communicate such prices by means of the Manual, or otherwise through written or electronic means.

## 7.5 Compliance with Laws

You agree to comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business franchised under this Agreement (including, without limitation, licenses to do business and laws relating to handling and storage of products, fictitious name registrations, sales tax permits, and fire clearances). You agree to notify us in writing within five (5) days after: (i) the commencement of any legal or administrative action, or the issuance of any order of any court, agency or other governmental instrumentality that may adversely affect the operation of your Store or your financial condition; or (ii) the delivery of any notice of violation or alleged violation of any law, ordinance or regulation. You acknowledge and agree that you alone are responsible for complying with all applicable laws, ordinances and regulations and that we have no obligation to you or any other person for such compliance, or failure to comply, by you. Without limiting the foregoing, you specifically agree: (i) to comply with all applicable health and safety laws, ordinances and regulations, (ii) that you are solely responsible for the safety and well-being of your employees, independent contractors and representatives and customers and attendees at your Store, and (iii) that we shall have no obligation to you or any other person for such compliance, or failure to comply, by you. You agree to adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct in all dealings with us, as well as your customers, suppliers, landlords, lessors and the public.

## 7.6 Personnel

(a) You agree that your Store will at all times be staffed by a sufficient number of competent and trained employees who are periodically trained to meet our brand standards. You will always be solely responsible for (and exclusive control over) all employment decisions for your Store, including those related to hiring, firing, remuneration, personnel policies, benefits, safety, record keeping, supervision and discipline, and regardless of whether you received advice from us on these subjects.

(b) You and your staff (including the Operating Principal) agree that you will, at all times, work cooperatively and professionally with us and with our representatives, and will develop, cultivate, and at all times maintain a cooperative, cordial, respectful, and professional work environment for your staff and among all of the Owners of the Store.

## 7.7 Insurance

(a) You agree to purchase and maintain in force at your sole expense and from a company we approve insurance that insures both you and us and our Affiliates and any other persons or entities we designate by name. The insurance policies must include, at a minimum:

(i) commercial general liability insurance covering claims for personal injuries and property damage with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, and \$1,000,000 for Errors and Omissions;

(ii) employer's liability insurance with minimum limits of \$1,000,000 for bodily injury caused by accident or disease, or the minimum required by state law (whichever is greater);

(iii) vehicle liability for owner, leased, hired and non-owned vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage per occurrence;

(iv) umbrella liability insurance with minimum limits of \$1,000,000;

(v) worker's compensation insurance;

(vi) any other such insurance coverages or amounts as required by law or agreement related to your Store; and

(vii) any other insurance or increases in limits to the foregoing as we may periodically require, or provide in the Operations Manual.

(b) All liability insurance policies must name us and our Affiliates, and each of our and their officers, directors and employees as additional insureds, must provide that such insurance is primary insurance with respect to the interests of all additionally named insureds, and must provide that any other insurance maintained by us or by you or any subcontractor is excess and not contributing insurance with the insurance required under this Agreement. The policy must contain a waiver by the insurance carrier of all subrogation rights against us.

(c) You agree to deliver to us at commencement and annually or at our request a proper certificate evidencing the existence of such insurance coverage and your compliance with the provisions of this subparagraph. The insurance certificate must show our status as an additional insured (as noted above) and provide that we will be given thirty (30) days' prior written notice of material change in or termination or cancellation of the policy. We also may request copies of all policies. We may periodically modify, upon written notice to you, the required minimum limits and by written notice to you, as conditions require, to reflect changes in relevant circumstances, industry standards, experiences in the Metal Supermarkets System, standards of liability and higher damage awards. In the event of such notification, you agree to immediately cause the modification of the policy, and evidence thereof, in accordance with our request. If at any time you do not procure or maintain the insurance coverage required by this Agreement, we have the right, but not the obligation, to procure insurance coverage and to charge the same to you, together with a reasonable fee for the expenses we incur in doing so, payable by you immediately upon notice. We also have the right to terminate this Agreement for cause should you fail to comply with this provision.

## **7.8 Advertising**

(a) After the first twelve (12) months of operation of your Store, during each year co-terminus with our fiscal year, you agree to spend on approved advertising programs (as noted in Section 7.8(b)), at a minimum, the greater of \$10,000 or 1.0% of Gross Sales accrued during such period (and for the period between the end of your first twelve (12) months of operations and the start of our then next fiscal year, the \$10,000 annual minimum requirement will be pro-rated). You must deliver to us documentation of your advertising expenditures at such times and in such form as we periodically designate. If you fail to make any required advertising expenditures, we have the right to require you to contribute the amount of any deficiency to the Fund to be used in accordance with Section 7.10.

(b) We have the right to periodically designate in our Operations Manual the expenditures that will or will not be permitted to constitute approved advertising, but advertising programs that we may approve include: (a) any amounts spent for advertising media; and (b) the cost of producing approved materials necessary to participate in these media, if not provided by us. Advertising expenditures will not be approved for items which we, in our reasonable judgment, deem inappropriate for meeting this minimum advertising requirement, including permanent on-premises signs, maintaining vehicles (even though such vehicles may display the Marks). You agree to use such advertising, media placement and public relations agencies as we may periodically designate. For local or regional advertising whose scope includes more than one Metal Supermarkets store, the advertising must identify each applicable Metal Supermarkets store, and the cost of such advertising shall be reasonably apportioned among all Metal Supermarkets stores listed in that advertisement.

(c) All of your advertising must be in such media and of such type and format as we may approve, must be conducted in a dignified manner and must conform to our social media policy and such standards and requirements as we periodically specify. You agree to submit to us for our prior approval, samples of all advertising and promotional materials not prepared or currently approved by us and which vary from our standard advertising and promotional materials. You must reimburse us for the costs and expenses we incur in connection with the review and approval of any unapproved advertising materials, including any changes or revisions we make in connection with such materials. All of your advertising and promotion must comply with all applicable laws, be completely factual and conform to the highest standards of ethical advertising. In addition to any other provision of this Agreement, you will be solely responsible for compliance with any laws pertaining to sending e-mails and other electronic messages, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the “**CAN-SPAM Act of 2003**”), the California Consumer Privacy Act, and the Canada Anti-Spam Law that came into force as of July 1, 2014 (“**CASL**”). You agree to refrain from any business or advertising practice that may, in our opinion, be injurious to our business, to the business of other Metal Supermarkets stores or to the goodwill associated with the Marks or System.

## 7.9 Online Sites

(a) You agree not to advertise your Store or to offer or sell any products or services of your Store through Online Sites, social media platforms or any other medium we periodically determine to be inappropriate.

(b) Unless we have otherwise approved in writing, you agree to neither establish nor permit any other party to establish an Online Site relating in any manner whatsoever to the Store or referring to the Marks. We will have the right, but not the obligation, to provide one or more references or webpage(s), as we may periodically designate, within our Online Sites. However, if we give you our prior written consent to have a separate Online Site (which we are not obligated to approve), then each of the following provisions shall apply:

(i) You agree to not establish or use any Online Site without our prior approval.

(ii) Any Online site owned or maintained by or for your benefit will be deemed “advertising” under this Agreement, and will be subject to (among other things) our approval under Section 7.8 above.

(iii) Before establishing any Online Site, you agree to submit to us, for our prior approval, a sample of the proposed Online Site domain name, format, visible content (including, without limitation, proposed screen shots, links, and other content), and non-visible content (including, without limitation, meta tags, cookies, and other electronic tags) in the form and manner we may reasonably require.

(iv) You may not use or modify such Online Site without our prior approval as to such proposed use or modification.

(v) In addition to any other applicable requirements, you agree to comply with the standards and specifications for Online Sites that we may periodically prescribe in the Operations Manual or otherwise in writing (including, but not limited to, requirements pertaining to designating us as the sole administrator or co administrator of the Online Site).

(vi) If we require, you agree to establish such hyperlinks to our Online Site and others as we may request in writing.

(vii) If we require you to do so, you agree to make weekly or other periodic updates to our Online Site to reflect information regarding specials and other promotions at your Store.

(viii) We may require you to make us the sole administrator (or co-administrator) of any social networking pages that you maintain or that are maintained on your behalf, and we will have the right (but not the obligation) to exercise all of the rights and privileges that an administrator may exercise.

## **7.10 Brand Fund**

(a) We have established and administer the Fund for the creation, development, placement, support, delivery, maintenance, management and measurement of marketing, sales, advertising and related programs and materials. We have sole determination over all aspects of all programs financed by the Fund, including international, national and/or regional media, creative concepts, technologies, materials and endorsements. Although the Fund is intended to maximize general recognition and patronage of the Marks for the benefit of all Metal Supermarkets stores, we cannot assure you that any particular Metal Supermarkets store will benefit directly or pro rata from these programs or that expenditures from the Fund will be made in the United States or in the Protected Area. The Fund may be used to pay for the cost of preparing, producing, deploying, hosting, programming, attending, supporting, managing and placement of materials, programs, platforms and advertisements we select, including video, audio, tele-prospecting, public relations, direct solicitation and promotions, Internet (including Online Sites, Internet advertising, on-line stores and Digital Platforms ), trade shows, conventions, exhibitions and other events, and other electronic or traditional media, and for the cost of engaging advertising, creative and technical agencies, consultants or talent as well as supporting market and customer research and surveys, measurement and analysis activities, and store presentation and service quality assessments. We may furnish you with marketing, advertising and promotional materials at cost, plus any related administrative, shipping, handling and storage charges.

(b) Brand Fund Contributions payable pursuant to Section 3.6 will be deposited in the Fund. We agree that all Metal Supermarkets stores located in the United States that we own will contribute to the Fund on the same basis as you are required to under this Agreement. The Fund will be accounted for separately from our other funds, but may be deposited in any of our general accounts and commingled with our other funds and funds of our Affiliates. The Fund may be used to pay for reasonable salaries, benefits, administrative costs and overhead which we or our Affiliates may incur or which are allocated to activities related to the administration or management of the Fund and its programs. All disbursements from the Fund will be made first from income and then from contributions. We have the right to spend an amount greater or lesser than the amount of the Fund Contributions in any year. The Fund may borrow from us or others to cover deficits in the Fund or cause the Fund to apply any surplus for future use by the Fund. We will internally prepare annually a statement of monies collected and costs incurred by the Fund and furnish you with a copy upon your written request. Except as otherwise expressly provided in this Section 7.10, we assume no direct or indirect liability or obligation with respect to the management, maintenance, direction or administration of the Fund. The Fund is not a trust fund, an escrow fund or a separate bank account and we do not act as trustee or in any other fiduciary capacity with respect to the Fund.

(c) You acknowledge and agree that we and/or our Affiliates maintain other marketing and/or advertising funds in other regions or countries and that certain costs and/or expenses relating thereto may be shared among the various funds, including the Fund. We and our Affiliates have the right to co-mingle or separate such funds or combine administrative functions of such funds, including the Fund, to create one or more funds for Canada and/or the United States or elsewhere, and/or to allocate all or a portion of such funds, including the Fund, to regional, national or international advertising and marketing administered by us, or to co-operatives administered by one or more groups of franchisees on a basis that we determine.

### **7.11 Payment of Taxes**

You agree to promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind that you incur in the conduct of the business franchised under this Agreement.

### **7.12 Payment of Trade Creditors**

You agree to promptly pay when due all trade creditors and vendors (including but not limited to any that are affiliated with us) that supply goods or services to you or the business you operate pursuant to this Agreement. You also agree to promptly pay us for any expenditures or payments we choose (or are required) to make to trade creditors or vendors on your behalf to pay for obligations that you incurred in connection with the operation of your Store (for example, products and/or services that you ordered but did not pay for). We may share credit information with our Affiliates, and each of our Affiliates have the right to use this information in order to determine how much, if any, credit to provide to you.

### **7.13 Your Right to Contest Liabilities**

If there is a bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event will you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Franchised Business, or any improvements thereon.

### **7.14 Digital Platforms**

You agree to participate in our Digital Platforms as they exist from time to time and you will execute a Metal Supermarkets Participation Agreement in the form and manner that we periodically designate. You acknowledge and agree that we or our Affiliate will own and control the Metal Supermarkets Digital Platforms. You agree to meet our standards and abide by such reasonable requirements and restrictions, including the payment of fees, relating to the Digital Platforms as we may periodically impose.

### **7.15 Association with Causes**

You acknowledge and agree that certain associations between you or the Store or the Proprietary Marks or the System, on the one hand, and certain charitable, political, religious, cultural, special interest, or other types of groups, organizations, causes, or activities, on the other, however well-intentioned and legal, may create an unwelcome, unfair, or unpopular association with, or an adverse effect on, our reputation or the goodwill associated with the Proprietary Marks. Accordingly, you agree that you will not, without our prior written consent, take any actions that are, or which may be perceived by the public to be, taken in the name of, in connection or association with you, the Proprietary Marks, the Store, us, or the System involving either promotion or the donation of any money, products, services, goods, or other items

to, any charitable, political, religious, cultural, special interest, or other type of organization, group, or activity.

## 8. REPORTS AND INSPECTIONS.

### 8.1 Records

You agree to prepare and to maintain for eight (8) years, not including your last filed state and federal income tax return, complete and accurate books, records (including invoices and records relating to your Gross Sales) and accounts (using our standard chart of accounts, the Computer System and the Required Software (as those terms are defined below)) for your Store, copies of your sales tax returns and such portions of your state and federal income tax returns as relate to your Store. All such books and records must be kept at the Premises, unless we otherwise approve. We will maintain and provide to you a list of our approved third-party accounting services providers, and you must engage and use such an approved accounting services provider to provide the Store with the bookkeeping, tax and records services that we periodically specify.

### 8.2 Computer System

(a) We have the right to specify or require certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among Metal Supermarkets stores, and in accordance with our standards, including without limitation: (a) back office systems, data, audio, video (including managed video security surveillance), telephone, VoIP, power lines and systems, voice messaging, retrieval, and transmission systems for use at Metal Supermarkets stores, between or among Metal Supermarkets stores, and between and among the Store, and you, and us; (b) physical, electronic, and other security systems and measures including firewalls; (c) printers and other peripheral devices; (d) archival back-up systems; and (e) internet access mode (e.g., form of telecommunications connection) and speed (collectively, all of the above are referred to as the “Computer System”).

(b) We will have the right, but not the obligation, to develop or have developed for us, or to designate: (a) computer software programs and accounting system software that you must use in connection with the Computer System (“Required Software”), which you must install; (b) updates, supplements, modifications, or enhancements to the Required Software, which you must install; (c) the tangible media upon which you must record data; and (d) the database file structure of your Computer System. If we require you to use any of the above items, then you agree that you will do so. You agree to enter into such agreements as we may periodically require in connection with your implementation and use of the Computer System and Required Software (currently, this includes the Hosting Support and Software License Agreement).

(c) You agree to implement, install and periodically make upgrades, additions, modifications, substitutions or replacements and other changes at your expense to the Computer System and Required Software as we may direct (collectively, “Computer Upgrades”). You agree to comply with all specifications and changes that we issue with respect to the Computer System, the Required Software and Computer Upgrades, at your expense. We may make such inspections and tests as we deem necessary to verify compliance with these requirements. You agree to also afford us unimpeded access to your Computer System and Required Software, including all information and data maintained thereon, in the manner, form, and at the times that we request.

(d) You agree that all data that you collect, create, provide, or otherwise develop on your Computer System (whether or not uploaded to our system from your system and/or downloaded from your system to our system) is also Confidential Information and will be owned exclusively by us or our Affiliate

(except for customer's payment details), and that we will have the right to access, download, and use that data in any manner that we deem appropriate without compensation to you. You agree that all other data that you create or collect in connection with the System, and in connection with your operation of the Store (including customer and transaction data, but excluding customer's payment details), is and will be owned exclusively by us or our Affiliates during the term of, and after termination or expiration of, this Agreement.

(e) In order to operate your Store under this Agreement, we license use of such data back to you, at no additional cost, solely for the term of this Agreement and for your use in connection with operating the Store. You acknowledge and agree that except for the right to use the data under this clause, you will not develop or have any ownership rights in or to the data. You agree to transfer to us all data (in the digital machine-readable format that we specify, and/or printed copies, and/or originals) promptly upon our request when made, whether periodically during the term of this Agreement, upon termination and/or expiration of this Agreement, any transfer of an interest in you, and/or a transfer of the Store.

### **8.3 Periodic Reports**

You agree that for purposes of determination of your Store's Gross Sales we can utilize the information located on the Required Software used in connection with your Computer System. You will inform us of any errors related to Gross Sales for a given month by the fifth (5th) day of the following month. You agree to report your Store's Gross Sales by the fifth (5th) day of the following month if the Required Software fails to do so for any reason whatsoever. You agree to furnish us: (a) no later than the twentieth (20th) day of each month, an income statement for your Store for the preceding month (subject to your compliance with all relevant privacy laws relating to the retrieval, use, storage and transmission of personal information of customers) and for the year-to-date and the identity and contact information of each customer of your Store during the preceding month; (b) within ninety (90) days after the end of each fiscal year, a year-end balance sheet and income statement and statement of cash flow of your Store for such year, reflecting all year-end adjustments and accruals; and (c) such other information as we may periodically require, including reports on sales and marketing activities, inventory purchase reports, sales and income tax statements and personal financial statements of your Owners. You agree to verify that the information in each such report and financial statement is complete and accurate and, in the case of financial statements, that they are prepared consistently and in compliance with applicable generally accepted accounting principles, and to acknowledge in writing that such information is complete and accurate. We have the right to use or disclose information from such reports and statements as we deem appropriate. We reserve the right to require that your annual financial statements be audited, at your expense, by an independent certified public accountant.

### **8.4 Inspections; Other Store Visits**

We and our agents have the right at any time during business hours and without notice to: (a) inspect your Store and make purchases; (b) observe, record, photograph, audio-tape and/or video tape the operations of your Store; and (c) interview personnel and customers of your Store. You agree to cooperate fully with such activities.

You will permit us or our authorized representative to enter your Store during normal business hours, and extend reasonable cooperation to us or them, for the purpose of ensuring compliance relative to this Agreement, the Operations Manual, and otherwise, touring potential or existing franchisees or their employees, or conducting on-site training or testing of new policies, customer service performance, procedures, technologies, products or services.

## 8.5 Audits

(a) We have the right at any time during business hours, and without notice to you, to inspect, copy and audit the books, records, tax returns and documents relating to the development, ownership, lease, occupancy or operation of your Store. You agree to cooperate fully with our representatives and independent accountants conducting such audits. If any audit discloses an understatement of Gross Sales, we agree to provide you with a copy of the audit report, and you will pay us, within seven (7) days after receipt of such audit report, the royalties due on the amount of such understatement, plus interest and fees (as provided in Section 3.3) from the date originally due until the date of payment.

(b) In addition, you agree to pay us the costs of any audits performed (plus an administrative fee of \$3,500 to cover our administrative expenses) as a result of: (a) your failure to submit any reports or materials required by Section 8.3; (b) your failure to maintain and provide us access to books and records (whether in hard copy or electronic form) as required by Sections 8.1 and 8.2; (c) your reporting of Gross Sales for any month that are more than two percent (2%) below your actual Gross Sales for such month, as determined by any such audit; and/or (d) your failure to produce all of your books and records as required by us or our authorized agents within ten (10) days after we request any such items. Such audit costs include the fees and costs of any independent accountants, travel and related expenses incurred by our employees and a reasonable allocation of compensation and related costs for time expended by our employees in connection with such audit as we determine.

(c) You hereby authorize us to contact customers of your Store, and your vendors, suppliers, lenders, financial institutions and landlord to obtain information related to the operation of your Store and your compliance with the terms of this Agreement, and you waive any expectations of confidentiality or privacy with respect to us obtaining such information.

## 8.6 Privacy

We may periodically specify in the Manual or otherwise in writing the information that you agree to collect and maintain on the Computer System installed at the Store, and you agree to provide to us such reports as we may reasonably request from the data so collected and maintained. All data pertaining to or derived from the Store (including, without limitation, data pertaining to or otherwise about Store customers, but excluding customer payment card information) is also Confidential Information and shall be our exclusive property, and we grant a royalty-free non-exclusive license to you to use such data during the term of this Agreement.

a) You agree to abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information ("Privacy Laws").

b) You agree to comply with our standards and policies pertaining to the privacy of consumer, employee, and transactional information. If there is a conflict between our standards and policies and Privacy Laws, you agree to: (a) comply with the requirements of Privacy Laws; (b) immediately give us written notice of such conflict; and (c) promptly and fully cooperate with us and our counsel in determining the most effective way, if any, to meet our standards and policies pertaining to privacy within the bounds of Privacy Laws.

c) You agree to not publish, disseminate, implement, revise, or rescind a data privacy policy without our prior written consent as to such policy.

## 8.7 Credit Cards and PCI Compliance

With respect to your acceptance and processing of customer payments by credit and debit cards, you agree to do all of the following:

(a) You agree to maintain, at all times, credit-card relationships with the credit- and debit-card issuers or sponsors, associated equipment providers, check or credit verification services, financial-center services, merchant service providers, and electronic-fund-transfer systems (together, “Credit Card Vendors”) that we may periodically designate as mandatory.

(b) You agree not to use any Credit Card Vendor for which we have not given you our prior approval or as to which we have revoked our earlier approval.

(c) We have the right to modify our requirements and designate additional approved or required methods of payment and vendors for processing such payments, and to revoke our approval of any service provider.

(d) You agree to comply with all of our policies and requirements regarding acceptance and use of payment by credit and/or debit cards and data collection and protection.

(e) You agree to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)), or any successor organization or standards that we may reasonably specify. Among other things, you agree to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.

## **8.8 Extranet**

We may establish an Extranet (but are not required to do so or to maintain an Extranet). If we establish an Extranet, then you agree to comply with our requirements (as set forth in the Operations Manual or otherwise in writing) with respect to connecting to the Extranet, and utilizing the Extranet in connection with the operation of your Store. The Extranet may include, without limitation, the Operations Manual, training and other assistance materials, and management reporting solutions (both upstream and downstream, as we may direct). You agree to purchase and maintain such computer software and hardware (including but not limited to telecommunications capacity) as may be required to connect to and utilize the Extranet. You agree to execute and deliver to us such documents as we may deem reasonably necessary to permit you to access the Extranet.

## **9. TRADEMARKS**

### **9.1 Ownership of the Marks**

You acknowledge that the Marks are valid and that MSKS owns the Marks as of the date of this Agreement. Your right to use the Marks is derived solely from this Agreement and is limited to conducting business pursuant to and in compliance with this Agreement. Your unauthorized use of any of the Marks constitutes a breach of this Agreement and an infringement of MSKS’s and our rights to the Marks. This Agreement does not confer on you any goodwill or other interests in the Marks and/or our other intellectual property. Your use of the Marks and our other intellectual property, and any goodwill established thereby, inures to the exclusive benefit of us, MSKS and our other Affiliates. All provisions of this Agreement applicable to the Marks include any additional and/or substitute trademarks and service marks (as well as other intellectual property) that we may authorize you to use. You may not at any time during or after the Term contest, or assist any other person in contesting, the validity or ownership of any of the Marks.

## 9.2 Use of the Marks

(a) You agree to use the Marks as the sole identification of your Store. You agree to identify yourself as the independent owner in the following manner or in any other manner we prescribe in writing:

“This store is operated by an independent franchisee of Metal Supermarkets Franchising America Inc. The METAL SUPERMARKETS trademarks used by the franchisee are owned and licensed to the franchisee by MSKS IP Inc.”

We have the right to require different or additional such notices in your Store (both in the customer-facing areas as well as in the back areas).

(b) You agree to use the Marks as we prescribe in connection with the sale of authorized products and services and in a manner which conforms in nature and quality to the specifications, standards, and procedures that we periodically prescribe and communicate to you. You may not use any Mark (or any abbreviation, modification, confusingly similar variation, or colorable imitation) as part of any corporate or legal business name or in any other manner not expressly authorized by us in writing. You agree to hold yourself out to the public as an independent contractor operating the Store pursuant to a license from us. You agree to display a sign in a prominent place on your Store premises indicating that your Store is independently owned by you. You agree to clearly indicate on your business checks, stationery, purchase orders, receipts, and other written materials that you are the owner of your Store and that you are a Metal Supermarkets franchisee. You may use the Marks on various materials, such as business cards, stationery, purchase orders and checks, provided you: (i) accurately depict the Marks on the materials; (ii) include a statement on the materials indicating that you independently own and operate your Store; and (iii) do not use the Marks in connection with any other trademarks, trade names or service marks unless we specifically approve it in writing prior to the use.

(c) You agree to permit us, our Affiliates and our authorized representatives, at all reasonable times, to enter the Premises for the purpose of inspecting your products and services and the sale, advertisement or performance of your products and services, and any relevant documents, materials and records, in order to determine that you are complying with this Section 9.2.

(d) You agree that you will not, either during or after the term of this Agreement, use any of the Marks or any similar word, phrase or symbol: (i) as part of any domain name or electronic address you maintain on the internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system; or (ii) in any user name, screen name or profile in connection with any Online Site, except in accordance with our guidelines periodically set forth in the Operations Manual or otherwise in writing. We reserve the right to require our approval of any message you compose for an Online Site or commentary for any other website before you post such message or commentary.

(e) You agree that you will not, under any circumstances, use the Marks in connection with (and/or on) any HR-related document (including but not limited to employment applications, employment agreements, paychecks, pay stubs, employee handbooks, and/or otherwise in connection with labor or other employee-relations matters).

(f) You agree that: (i) your use of the Marks does not give you any ownership interest or other interest in or to the Marks, except the license granted under this Agreement; and (ii) the license that we have granted to you under this Agreement to use our Marks is not exclusive.

### **9.3 Discontinuance of Use of Marks**

If we determine it is advisable at any time for us and/or you to modify or discontinue use of any Mark and/or use one or more additional or substitute trademarks or service marks, you agree to comply with our directions within a reasonable time after notice. We will have no liability or obligation whatsoever with respect to any such required modification or discontinuance of any Mark or the promotion of a substitute trademark or service mark.

### **9.4 Infringements and Claims**

(a) You agree to promptly notify us of any suspected infringement of the Marks, any known challenge to the validity of any Mark, or any known challenge to our ownership of, or your right to use, the Marks licensed under this Agreement. You acknowledge that we and MSKS have the right to direct and control any administrative proceeding or litigation, or other adjudicative proceeding involving the Marks, including any settlement thereof. We have the right, but not the obligation, to take action against use by others that may constitute infringement of the Marks.

(b) If you have used the Marks in accordance with this Agreement, then we will defend you at our expense against any third-party claim, suit, or demand involving the Marks arising out of your use thereof, provided you have timely notified us of such claim and provided further that you and your Owners are in compliance with this Agreement and all other agreements entered into with us or any of our Affiliates. If you have used the Marks but not in accordance with this Agreement, then we or MSKS will have the right to defend you (but at your expense), or settle the matter at our discretion, against such third-party claims, suits, or demands. To the extent that such dispute (whether in litigation or otherwise) is the result of your use of the Marks in a manner inconsistent with the terms of this Agreement, then you agree to reimburse us for the cost of such litigation or dispute (or, upon our written request, pay our legal fees directly), including without limitation reasonable attorneys' fees, court costs, discovery costs, and all other related expenses, as well as the cost of any judgment or settlement. MSKS or we are entitled to prosecute, defend and/or settle any action arising out of your use of any Mark, and if MSKS or we undertake to prosecute, defend and/or settle any such matter, we will have no obligation to indemnify or reimburse you for any fees or disbursements of any legal counsel retained by you.

(c) If we undertake the defense or prosecution of any litigation or other similar proceeding relating to the Marks, you agree to sign any and all documents, and do those acts and things that may, in our counsel's opinion, be necessary to carry out the defense or prosecution of that matter (including but not limited to becoming a nominal party to any legal action).

## **10. RESTRICTIVE COVENANTS.**

### **10.1 Confidential Information**

(a) You shall not, during the term of this Agreement or at any time thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any Confidential Information that may be communicated to you, of which you may be apprised, and/or that you may have learned by virtue of your operation of the Store. You may divulge our Confidential Information only to those of your employees as must have access to it in order to operate the Store.

(b) Any and all information, knowledge, know how, and techniques that we designate as confidential shall be deemed Confidential Information, except information that you can demonstrate came to your attention before disclosure of that information by us; or which, at or after the time of our disclosure

to you, had become or later becomes a part of the public domain, through publication or communication by others.

(c) You acknowledge that any failure to comply with the requirements of this Section 10.1 will cause us irreparable injury, and you agree to pay all costs (including, without limitation, reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) that we incur in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 10.1.

## **10.2 In-Term Covenants**

During the Term, you shall not:

(a) directly or indirectly own any legal or beneficial interest in, or render services or give advice to: (1) any Competitive Business located anywhere; or (2) any entity located anywhere which grants franchises, licenses or otherwise grants similar rights to others to operate any Competitive Business;

(b) directly or indirectly divert or attempt to divert or assist or cooperate in the diversion of any customer, potential customer or prospect of any Metal Supermarkets store or Digital Platform to any competitor or do anything injurious or prejudicial to the goodwill associated with the Marks or the System; or

(c) directly or indirectly divert or attempt to divert or assist or cooperate in the diversion of any business or customer from your Store or Digital Platform to any Competitive Business.

## **10.3 Information Exchange**

You acknowledge and agree that the value of the System is maximized by our evaluating and, if we deem appropriate, incorporating into the System innovations suggested, developed or employed by franchisees of Metal Supermarkets stores. If such innovations from other Metal Supermarkets store franchisees are incorporated in the System, you will be entitled to use them as part of the System licensed hereunder. You acknowledge and agree that you have a reciprocal obligation to us hereunder and therefore agree to disclose to us, and that we will subsequently own, all ideas, concepts, methods, techniques and products relating to the development, marketing and/or operation of a Metal Supermarkets store that you conceive, employ or develop. If we or MSKS adopt any of them as part of the System, they will be deemed MSKS's sole and exclusive property, or, at MSKS's determination, our sole and exclusive property, as if they had been conceived or developed by you under a Contract of Service with MSKS, or us, as applicable and deemed to be works made-for-hire for MSKS. You agree to execute assignments and other documents we require to evidence our or MSKS's ownership, as applicable, and to assist MSKS and us in securing intellectual property rights in such ideas, concepts, methods, techniques or products. You agree to ensure that any person who wholly or partially assisted in the creation and development of such ideas, concepts, methods, techniques or products executes a waiver of his or her rights.

## **10.4 Post-Term Covenants**

(a) For a period of two (2) years, starting on the effective date of termination or expiration (without grant of a successor franchise) of this Agreement, and/or a Transfer as contemplated in Section 11 below, you shall not:

i. directly or indirectly own a legal or beneficial interest in, or render services or give advice to, any Competitive Business operating through the Internet or at: (A) the Premises; (B) within the

Protected Area; (C) which operates within a fifteen (15) mile radius from the Premises; and/or (D) within a ten (10) mile radius of any other Metal Supermarkets store;

ii. take any action that could reasonably be considered to directly or indirectly solicit (e.g., through telemarketing, e-mailing, faxing, mailer program, Internet or mobile application and/or any other marketing efforts that we reasonably determine to constitute a solicitation) any former, current or prospective customer of your Store; and/or

iii. directly or indirectly own a legal or beneficial interest in, or render services or give advice to any entity which grants franchises, licenses or other interests to others to operate any Competitive Business.

(b) You acknowledge that your Store will benefit materially from the use of the System, that we have a legally protectable interest in the System and that the foregoing covenants are reasonable and necessary elements to the protection of the System and therefore are an integral part of this Agreement. You also acknowledge that you possess skills and abilities of a general nature and have the opportunity for exploiting such skills in other ways, so that enforcement of the covenants made in this Section will not deprive any of you of your personal goodwill or ability to earn a living.

(c) If, at any time during the two-year period following expiration or termination of this Agreement, and/or a transfer as contemplated in Section 11 below, you do not comply with your obligations under this Section 10.4 or 10.5 below, then you agree that the time during which you are not complying with these obligations will be added to the end of the two-year period to ensure a full two years of compliance with these obligations in every circumstance.

(d) The restrictions in Section 10.2 and this Section 10.4 shall not apply to: (A) the ownership or operation of other Metal Supermarkets stores that are licensed or franchised by us or any of our Affiliates; or (B) the ownership of shares of a class of securities that are listed on a stock exchange or traded on the over-the-counter market and that represent less than five percent (5%) of that class of securities.

### **10.5 Non-Solicitation**

For a period of two (2) years, starting on the effective date of termination or expiration (without grant of a successor franchise) of this Agreement (as well as any termination pursuant to a transfer as contemplated under this Agreement), you agree that you will not, directly or indirectly, solicit any former, current, and/or prospective customers or vendors of your Store.

### **10.6 Personal Covenants**

You agree to require and obtain execution of covenants similar to those set forth in this Section 10 (as modified to apply to an individual), from your Operating Principal and Manager. The covenants required by this section shall be in the form that we prescribe and must, among other things, designate us as a third-party beneficiary of such covenants with the independent right to enforce them.

## **11. TRANSFER OF AGREEMENT.**

### **11.1 Transfer by You Subject to Our Approval**

(a) You and/or your Owners may effect a Transfer of the Franchise (as defined below) subject to our approval and subject to you complying with all the applicable provisions of this Section 11. You agree to submit to us all information we require in order to determine whether to approve a proposed

Transfer of the Franchise, and we agree to notify you of our approval or disapproval within a reasonable period of time, not to exceed thirty (30) days, after we have received all requested information relating to the proposed Transfer of the Franchise.

(b) As used in this Agreement and as always subject to the approval of the Franchisor, “Transfer of the Franchise” means the voluntary or involuntary, direct or indirect, sale, assignment, transfer, pledge, grant of a security interest in, and/or any other disposition of: (1) this Agreement; (2) any right or obligation under this Agreement; (3) any ownership interest in Franchisee; and/or (4) the assets, revenues, and/or income of your Store. The term Transfer of the Franchise includes: (1) any issuance or redemption of a legal or beneficial ownership interest in the capital stock of Franchisee; (2) any merger or consolidation of Franchisee, whether or not Franchisee is the surviving corporation; (3) any transfer as a result of a divorce, insolvency or dissolution proceeding or otherwise by operation of law; (4) any transfer on the death of Franchisee or any Owner of Franchisee by will, declaration of trust or under the laws of intestate succession; and (5) any foreclosure of your Store or your transfer, surrender or loss of possession, control or management of your Store.

(c) You or your Owners may not sell, transfer or assign, or purport to sell, transfer or assign, any ownership interest in or to any Confidential Information, Customer Information, or goodwill associated with the System, either as part of a Transfer of the Franchise or otherwise. In the event of a proposed Transfer of the Franchise, you agree to advise any prospective transferee of MSKS’s ownership of such information and our license to use and sublicense the use of such information. You also agree to advise any prospective transferee that such information does not form part of the purchased assets. Should we approve the Transfer of the Franchise, you may, subject to compliance by you and the transferee with all relevant privacy laws relating to the retrieval, use, storage and transmission of personal information of such customers, provide such Customer Information to the transferee. You may also at that time deliver any supplier lists to the transferee. You may not retain or use any Customer Information or supplier information, in any format or media, in whole or in part, for any purpose, after the Transfer of the Franchise.

(d) Our approval of a Transfer of the Franchise does not constitute: (a) a representation as to the fairness of the terms of any agreement or arrangement between you or your Owners and the transferee, the completeness or accuracy of any of the information you have provided to the transferee or as to the prospects of success of your Store by the transferee; or (b) a release of you and your Owners, a waiver of any claims against you or your Owners or a waiver of our right to demand the transferee’s exact compliance with this Agreement. Any approval shall apply only to the specific Transfer of the Franchise being proposed and shall not constitute an approval of, nor shall be deemed to have any effect on, any other transfer of the Franchise.

## **11.2 Conditions for Approval**

If we have not exercised our rights under Section 11.6, then we will not unreasonably withhold our approval of a Transfer of the Franchise that meets all of our internal restrictions, requirements, factors, considerations and conditions that we may periodically require, but you acknowledge and agree that our consent to and approval of a Transfer of the Franchise is subject to, among other things, all of the following:

(a) you and your Owners and Affiliates must be in compliance with the provisions of this Agreement and all other agreements with us or any of our Affiliates, whether relating to your Store or any other Metal Supermarkets store;

(b) the transferee (and its owners) must meet our then-applicable, standards, for Metal Supermarkets store franchisees;

(c) the transferee (or its Operating Principal) and its Manager, if applicable, must complete our Initial Training Program to our satisfaction;

(d) the transferee (and its owners) must execute our then current standard form of franchise agreement and related documents used in the state in which your Store is located (which may contain provisions materially different from those contained in this Agreement including different royalties, different minimum royalties, different Protected Area (provided such new Protected Area includes, in our reasonable estimate, at least the then-current minimum number of manufacturing facilities, tool and die shops and other potential customers as we are granting to new franchisees under the System at that time, as set forth in our franchise disclosure document (“FDD”) or otherwise), a different term and other rights and obligations);

(e) to defray our expenses incurred in connection with the transfer process, including the training of the transferee, and to compensate us for waiving the Initial Franchise Fee for the approved transferee under their franchise agreement, you must pay us a transfer fee that is segmented into the following three (3) components:

- i. A transfer approval request fee of Two Thousand Five Hundred Dollars (\$2,500), required in each instance of your request for our approval of each prospective transferee, due at and as a condition of the request for approval;
- ii. A training fee of Five Thousand Dollars (\$10,000), required for training the approved transferee and due prior to and as condition of the commencement of such transferee’s training; and
- iii. A transfer closing fee of Ten Thousand Five Hundred Dollars (\$10,500), required for processing the Transfer and due prior to and as a condition of closing or effecting the Transfer.

(f) all of the parties to the transaction (including you, your Owners and Affiliates, and the transferee, and its Owners and Affiliates) must sign our consent to transfer agreement, in the form that we provide (which will include, among other things, a general release of all claims against us and our Affiliates, stockholders, officers, directors, members, managers, employees, agents, successors and assigns);

(g) the terms of the proposed Transfer of the Franchise must not in our sole judgment place an unreasonable financial or operational burden on the transferee;

(h) any financing you or any of your Owners or Affiliates offer the transferee must be subordinate to any current or future obligations of the transferee to us;

(i) you, your Owners and your Operating Principal must execute a non-competition covenant, in form and substance satisfactory to us, in favor of us and the transferee, agreeing that, for a period of two (2) years, starting on the effective date of the Transfer, you, your Owners and Operating Principal will not: (1) directly or indirectly own a legal or beneficial interest in, or render services or give advice to: i) any Competitive Business operating on the Internet or at the Premises, ii) any Competitive Business operating within the Protected Area, iii) any Competitive Business operating within a fifteen (15) mile radius from the Premises, iv) any Competitive Business operating within a ten (10) mile radius of any other Metal Supermarkets store in existence, or v) any entity which grants franchises, licenses or other interests to others to operate any Competitive Business; or (2) directly or indirectly solicit (e.g., through telemarketing, e-mailing, faxing, mailer program, social media, Internet, Online Sites, and mobile

applications, and other marketing efforts that we reasonably determine to constitute a solicitation) any former, current or prospective customer of your Store. The foregoing restrictions on competitive activities do not apply to: (i) the ownership or operation of other Metal Supermarkets stores that are licensed or franchised by us or any of our Affiliates; or (ii) the ownership of shares of a class of securities that are listed on a stock exchange or traded on the over-the-counter market and that represent less than five percent (5%) of that class of securities;

(j) each of the transferee's owners must execute an Owner's Personal Guaranty, in the form attached to this Agreement as Schedule D or as we may otherwise designate, undertaking to personally guarantee, and to be personally bound jointly and severally by, the terms of this Agreement;

(k) you shall be responsible for and must pay any broker or sales commission fees charged by any third party that is engaged in connection with introducing the transferee and/or facilitating the Transfer, and shall indemnify us from having to pay any such fees;

(l) we will have the right to communicate with the proposed buyer (and its counsel) and to: truthfully answer their questions about our System, our company, and your operations; exchange information; and seek information from the buyer about their qualifications and characteristics (and the proposed transferor(s) and the proposed buyer(s) must cooperate with us in this regard);

(m) the transferor must acknowledge and agree that the transferor shall remain bound by all of the covenants contained in Section 10 of this Agreement;

(n) the transferee and landlord must sign and deliver to us a new Lease Addendum if the lease or sublease for the Premises is to be transferred as part of the Transfer; and

(o) you, your Owners, your Operating Principal and Affiliates must execute such other documents and do such other things as we may reasonably require to protect our rights under this Agreement and any other agreements between you, your owners and your Affiliates and us and our Affiliates.

### **11.3 Transfer to An Entity**

We will not withhold our consent to the assignment of this Agreement to a corporation, partnership or limited liability corporation that you form for the convenience of ownership, provided that: (a) the entity has and will have no other business besides operating the Store, and the Parties acknowledge and agree that ownership of property, even if it is the Premises, is "another business" that is not permitted; (b) you satisfy the conditions in Section 11.2 above; and (c) the Owners hold equity interests in the new entity in the same proportion shown in Schedule C of this Agreement. We will not impose a transfer fee as required under Section 11.2(e) for such a transfer, provided that you reimburse us for any out-of-pocket expenses that we incur in reviewing and/or documenting a Transfer under this Section 11.3. No such assignment will relieve you or your Owners of your obligations hereunder, and you and your Owners remain jointly and severally liable for all obligations hereunder.

### **11.4 Special Transfers**

In the case of any transfer of interests held in the Franchisee among any of your then-current Owners (whom we have previously approved), we will not apply our right of first refusal under Section 11.6 to any Transfer of the Franchise to any member of the immediate family of Franchisee (if an individual) or any member of the immediate family of a then-current Owners (whom we have previously approved in writing) of Franchisee (if Franchisee is a corporation, limited liability company, or partnership). For any such Transfer, you must pay to us a transfer fee in the amount set out in Section 11.2(e)(iii) above. Except

as noted above, all other conditions of Section 11 shall apply to a Transfer of the Franchise as contemplated under this Section 11.4.

### **11.5 Death or Disability of Franchisee**

Upon your death or permanent disability, or the death or permanent disability of an Owner who has a controlling interest in the Franchisee entity, the executor, administrator or other personal representative of such person must transfer his or her interest in this Agreement or in Franchisee to a third party approved by us in accordance with all of the applicable provisions of this Section 11 within a reasonable period of time, not to exceed nine (9) months from the date of death or permanent disability. For clarity, any transfer of an ownership interest of an Owner who is deceased or permanently disabled, including an Owner who has less than a controlling interest in the Franchisee, must comply with all applicable provisions of this Section 11, including without limitation Sections 11.1 and 11.2.

### **11.6 Franchisor's Right of First Refusal**

(a) If you or any of your Owners desires to transfer the Franchise, you or such Owner must obtain a bona fide, executed written offer and earnest money deposit in the amount of at least ten percent (10%) of the offering price from a responsible and fully disclosed potential purchaser and must deliver immediately to us a complete and accurate copy of such offer, together with copies of all other agreements, documents and other information (written or oral) you or your agents have delivered to the potential purchaser. If the potential purchaser proposes to buy any other property or rights from you or any of your Owners or Affiliates as part of the bona fide offer, the proposal for such property or rights must be set forth in a separate, contemporaneous offer that is disclosed to us, and the price and terms of purchase offered to you or your Owners for the Transfer of the Franchise must reflect the bona fide price offered therefor and may not reflect any value for any other property or rights.

(b) We have the option, exercisable by notice delivered to you or your Owners within thirty (30) days from the date of delivery of a complete and accurate copy of such offer to us, to purchase such interest for the price and on the terms and conditions contained in such offer, provided that: (a) we may substitute cash for any form of payment proposed in such offer; (b) our credit shall be deemed equal to the credit of any proposed purchaser; and (c) we will have not less than ninety (90) days from the option exercise date to consummate the transaction. We have the right to investigate and analyze the business, assets and liabilities and all other matters we deem necessary or desirable in order to make an informed investment decision with respect to the fairness of the terms of our right of first refusal. We may conduct such investigation and analysis in any manner we deem reasonably appropriate and you and your Owners agree to cooperate fully with us in connection therewith.

(c) If we exercise our option to purchase, we are entitled to purchase such interest subject to all representations and warranties, closing documents and indemnities as we reasonably may require. If we do not exercise our option to purchase, you or your Owners may complete the sale to such potential purchaser pursuant to and on the exact terms of such offer, subject to our approval of the transfer as provided in Sections 11.1 and 11.2, provided that if the sale to such potential purchaser is not completed within ninety (90) days after delivery of such offer to us, or if there is a change that we deem to be material in the terms of the offer, you agree to promptly notify us and we will have an additional option to purchase (on the terms of the revised offer, if any, and otherwise as set forth herein) during the thirty (30) day period following your notification of the expiration of the ninety (90) day period or the material change to the terms of the offer.

## 11.7 Securities Offerings By Franchisee

All materials for an offering of stock, ownership, and/or partnership interests in you or any of your affiliates that are required by law must be submitted to us for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering must be submitted to us for such review before their use.

(a) You agree that: (i) no offering by you or any of your affiliates may imply (by use of the Proprietary Marks or otherwise) that we are participating in an underwriting, issuance, or offering of your securities or your affiliates; (ii) our review of any offering will be limited solely to the relationship between you and us (and, if applicable, any of your affiliates and us); and (iii) we will have the right, but not obligation, to require that the offering materials contain such written statements as we may require concerning the limitations stated above.

(b) You (and the offeror if you are not the offering party), your Principals, and all other participants in the offering must fully indemnify us and all of the Franchisor Parties (as defined in Section 15.3 below) in connection with the offering.

(c) For each proposed offering, you agree to pay us a non-refundable fee of Ten Thousand Dollars (\$10,000) or such greater amount as is necessary to reimburse us for our reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering.

(d) You agree to give us written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 11.7 starts. Any such offering will be subject to all of the other provisions of this Section 11; and further, without limiting the foregoing, it is agreed that any such offering will be subject to our approval as to the structure and voting control of the offeror (and you, if you are not the offeror) after the financing is completed.

(e) You must also, for the remainder of the term of the Agreement, submit to us for our review and prior written approval all additional securities documents you are required to prepare and file (or use) in connection with any offering of stock, ownership, and/or partnership interests. You must reimburse us for our reasonable costs and expenses we incur in connection with our review of those materials.

## 11.8 Franchisee Bankruptcy

(a) If you or any of your Owners file or become the subject of a petition for relief under Title 11 of the United States Code or under any successor or similar federal or state bankruptcy, insolvency or receivership statute (hereafter referred to as “Franchisee’s Bankruptcy”), and, for any reason, this Agreement is not terminated pursuant to Section 12, then you shall immediately inform us of Franchisee’s Bankruptcy and disclose the specific court in which such action is pending.

(b) You acknowledge that this Agreement is an executory contract. In the event of Franchisee’s Bankruptcy, promptly upon written demand by us, but in no event more than thirty (30) days following such demand, you shall determine whether to assume or reject this Agreement as an executory contract, shall advise us of your decision, shall advise us of the manner in which you propose to provide us with adequate assurances of future performance, and shall diligently pursue any required approvals.

(c) In the event of Franchisee’s Bankruptcy, if you wish to assign to any person or entity who has made a *bona fide* offer to accept an assignment of this Agreement, then notice of such proposed assignment, setting forth the name and address of the proposed assignee and all of the terms and conditions of the proposed assignment, shall be given to us within twenty (20) days after receipt of such proposed

assignee's offer to accept the assignment of this Agreement, and, in any event, within ten (10) days prior to the date that the application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and we shall thereupon have a right of first refusal on the terms and conditions set forth in Section 11.6, except that we may deliver notice of our exercise of our right of first refusal at any time prior to the effective date of the proposed assignment.

### **11.9 Transfer by Franchisor**

We have the right to transfer or assign all or any part of our rights or obligations under this Agreement to any person or legal entity. If the assignee shall expressly assume and agree to perform all of our obligations under this Agreement accruing after the date of assignment, then the assignee shall become solely responsible for such obligations and we, as the assignor shall have no liability therefore. In addition, and without limiting the foregoing, we may sell our assets; may sell our securities in a public offering or in a private placement; may merge, amalgamate or reorganize with or acquire other corporations, or be acquired by another corporation; and may undertake any refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring.

## **12. TERMINATION OF AGREEMENT.**

### **12.1 Immediate Termination**

You will be in material breach of this Agreement, and this Agreement will automatically terminate without notice, if we so determine, if you become insolvent or are unable to pay your debts as they mature; or if a receiver or other custodian, permanent or temporary, is appointed for your business, assets or property; or if you request the appointment of a receiver or make a general assignment for the benefit of creditors; or if final judgment against you in the amount of Twenty-Five Thousand Dollars (\$25,000) or more remains unsatisfied for thirty (30) days or longer; or if your bank accounts, property or accounts receivable are attached; or if execution is levied against your business or property; or if suit is filed to foreclose any lien or mortgage against any of your assets and such suit is not dismissed within thirty (30) days; if you are adjudicated bankrupt or insolvent; or if you voluntarily dissolve or liquidate; or if a petition is filed against you for dissolution or liquidation and such petition is not dismissed within thirty (30) days.

### **12.2 Termination Upon Notice**

In addition to our right to terminate pursuant to other provisions of this Agreement and under applicable law, you will be in breach of this Agreement and we will have the right to terminate this Agreement, effective upon delivery of notice of termination to you, if you or any of your Owners, Operating Principal or Affiliates:

- (a) fail to open your Store and start business, as provided in Section 4.2;
- (b) maintain false books or records, submit any false reports, or make any material misstatement or omission to us (including, but not limited to, information provided as part of your application for this franchise);
- (c) suffer cancellation or termination of the lease or sublease for your Store;
- (d) are convicted of, or plead no contest to, a felony, a crime involving moral turpitude, or any other crime or offense that we believe is reasonably likely to have an adverse effect on the System, the Marks, the goodwill associated therewith, or our interest therein;

- (e) make an unauthorized Transfer of the Franchise or any of the assets utilized in the operation of the Franchise;
- (f) breach Section 10.1 or 10.2 or make any other unauthorized use or disclosure of any Confidential Information or use, duplicate or disclose any portion of the Operations Manual in violation of this Agreement;
- (g) are in breach of or in default under any other agreement with us or any of our Affiliates relating to this or any other Metal Supermarkets store;
- (h) after opening your Store, you fail for any reason to have it open for business for any four (4) consecutive days or clearly demonstrate or announce that you have ceased operations;
- (i) are past due in the payment of rent under the lease for the Premises of your Store for fifteen (15) days or more;
- (j) engage in any conduct which could, in our opinion, impair the goodwill associated with the trademarks and/or the System;
- (k) understate your Gross Sales, in any report to us or in the Required System, by four percent (4%) or more; or
- (l) fail on three (3) or more separate occasions within any period of twenty-four (24) consecutive months to pay when due royalties or other payments due us or any of our Affiliates, or otherwise fail to comply with this Agreement or any mandatory specification, standard or operating procedure, whether or not such failures are corrected after notice of default is delivered to you and whether or not such failures relate to the same or different matters.

### **12.3 Termination Upon Notice and Opportunity to Cure**

Except as otherwise provided in Sections 12.1 and 12.2 of this Agreement, upon any other default by you, we may terminate this Agreement only by giving written notice of termination (in the manner set forth under Section 16.13 below) stating the nature of such default to you at least thirty (30) days prior to the effective date of termination (or in the case of your non-payment of any amounts due to us under this Agreement, at least ten (10) days prior to the effective date of termination); provided, however, that you may avoid termination by immediately initiating a remedy to cure such default, curing it to our satisfaction, and by promptly providing proof thereof to us within the 30-day (or 10-day) period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to you, effective immediately upon the expiration of the 30-day period (10-day period for non-payment defaults) or such longer period as applicable law may require.

## **13. RIGHTS TO A SUCCESSOR FRANCHISE.**

### **13.1 Your Right to Acquire A Successor Franchise**

You have the right, subject to the conditions contained in this Section 13; to acquire a successor franchise for your Store for one (1) additional term, if upon expiration of the Term: (a) you, your Owners, Operating Principal and any Affiliates are in compliance with this Agreement and all other agreements with us or any of our Affiliates, whether relating to your Store or any other Metal Supermarkets store, and you and your Owners have been, in our opinion, in substantial compliance with this Agreement and all other agreements with us or any of our Affiliates throughout the Term where material periods of a failure to

comply with the obligations, covenants, standards or requirements of any agreement or our System during the Term may substantiate a lack of compliance (which would include, among other things, a default of this Agreement pursuant to Section 12.2(l) above whether or not we took action in response to such default); (b) you pay us a successor franchise fee as further described below; (c) you maintain the right to possession of the Premises for the term of the successor franchise agreement; (d) you attend refresher training, not to exceed ten (10) business days, if requested to do so by us at our sole discretion; and (e) you enter into an agreement with us whereby you agree within a specified time period, starting on the signing of a successor franchise agreement, to remodel your Store, add or replace fixtures, furnishings, equipment and signs and otherwise modify your Store to upgrade your Store to the specifications and standards then applicable for new Metal Supermarkets stores. The successor franchise fee (which is the fee you must pay as consideration for renewing the right to operate the Store and use the System solely in connection therewith for a successor term, including the services that we will provide at the time of renewal) is Ten Thousand Dollars (\$10,000). The successor franchise fee is payable to us in full at the time you provide us with notice under Section 13.2 below that you intend to acquire a successor term, and is non-refundable unless we determine not to grant you a successor franchise. The length of the successor term will be equal to the initial term of our then-current Franchise Agreement.

### **13.2 Notices**

You agree to give us notice of your desire to acquire a successor franchise at least one hundred and eighty (180) days prior to the expiration of this Agreement. We will give you notice, not later than sixty (60) days after receipt of your notice, of our decision whether you have the right to acquire a successor franchise pursuant to Section 13.1. Notwithstanding that our notice may state that you have the right to acquire a successor franchise for your Store, such acquisition right will be subject to your continued compliance with all the provisions of this Agreement up to the date of its expiration. If we determine you do not have the right to a successor franchise, as above provided, then this Agreement shall expire at the end of the Term and you, all of your Owners and Operating Principal shall be subject to all of the provisions applicable on expiration, including those contained in Sections 10.4 and 14.

### **13.3 New Agreements**

(a) If you have the right to acquire a successor franchise in accordance with Section 13.1 and state your desire to exercise that right in accordance with Section 13.2, we and you (and your Owners) will execute our then-current standard form franchise agreement and all Ancillary Agreements (including personal guarantees by your Owners and an agreement to remodel the Store to comply with Section 13.1(d) on such terms as we deem appropriate). All of these agreements may contain provisions materially different from those contained in this Agreement and the Ancillary Agreements, including different royalties, minimum royalties, different Brand Fund Contributions, a different term, a different Protected Area (provided such new Protected Area includes, in our reasonable estimate, at least the then-current minimum number of manufacturing facilities, tool and die shops and other potential customers as we are granting to new franchisees under the System at that time, as set forth in our FDD or otherwise), and other rights and obligations. You and your Owners agree to also execute general releases, in form and substance satisfactory to us, releasing us, and our Affiliates, officers, directors, employees, agents, successors and assigns, from any and all claims. Failure by you (and your Owners) to sign such agreements and releases within thirty (30) days after delivery to you will be deemed an election by you not to acquire a successor franchise for your Store.

(b) In the event that you do not provide us with the 180 days' notice, we determine that you do not qualify for a successor franchise pursuant to the terms of Section 13.1 above, or you do not sign the new agreements and general releases within thirty (30) days of delivery to you, we have the right to market

the franchise for the Protected Area in any manner we deem appropriate, including through brokers or other agents.

#### **13.4 Holdover Situation**

If, for any reason, you continue to operate your Store after the expiration of the Term without having been granted a successor franchise, you shall be deemed to be operating on a month-to-month basis under the terms and conditions of this Agreement, provided, however, that there will be a 50% increase in the amount of royalties payable by you during any such holdover period. In such circumstances, and notwithstanding the foregoing, we may, on ten (10) days written notice, terminate this Agreement.

### **14. EFFECT OF TERMINATION OR EXPIRATION.**

#### **14.1 Payment of Outstanding Amounts**

You agree to pay us and our Affiliates, within thirty (30) days after the effective date of termination or expiration (without grant of a successor franchise) of this Agreement, all royalties, amounts owed for purchases from us or our Affiliates, interest due on any of the foregoing and all other amounts owed to us or our Affiliates which are then unpaid. You also agree to pay all of your suppliers any outstanding amounts that are not subject to bona fide dispute.

#### **14.2 Discontinue Use of Marks and Confidential Information**

Upon any termination or expiration (without the grant of a successor franchise) of this Agreement, you agree to immediately do all of the following:

(a) Immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the Mark “Metal Supermarkets,” and all other Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System (including all signs, advertising materials, displays, stationery, forms, e-mail addresses, and any other articles which display the Marks), and you shall not thereafter, directly or indirectly, represent to the public or hold yourself out as our present or former franchisee (except to the extent that you are authorized to do so under another valid franchise agreement with us for a different Metal Supermarkets store).

(b) Take such action as may be required to cancel all fictitious or assumed name registrations relating to your use of any Mark.

(c) Notify, and take such other action as necessary, but only as directed by us, the telecommunications companies and all telephone and online directory publishers of the termination or expiration of any rights you may have to use any numbers, designations, addresses or listings associated with your Store and to authorize transfer of such listings to us or at our direction (unless you know that we already own such listings). You acknowledge that, as between you and us, we have the rights to and interest in all telephone, telecopy and other telecommunications numbers and listings associated with your Store. You authorize us, and hereby appoint us and any of our officers as your attorney in fact, to direct the appropriate third parties to transfer any numbers, identities and listings relating to your Store to us or at our direction, should you fail or refuse to do so, and the appropriate parties may accept such direction or this Agreement as conclusive evidence of our exclusive rights in such numbers, identities and listings and our authority to direct their transfer.

(d) If we do not exercise our right to purchase the assets of your Store pursuant to Section 14.4, and subject at all times to your obligations under Section 10.4 above, promptly remove from

the Premises, and discontinue using for any purpose, all signs, fixtures, equipment, Trade Dress, advertising materials, forms and other materials and supplies which display any of the Marks or any distinctive features, images, or designs associated with Metal Supermarkets stores and, at your expense, make such alterations as may be necessary to distinguish the Premises so clearly from its former appearance as a Metal Supermarkets store as to prevent any possibility of confusion by the public;

(e) Immediately cease to use all Confidential Information and return to us all such Confidential Information and any extracts, copies of derivative works therefrom, including the Operations Manual and any other confidential materials which we have loaned to you.

(f) Immediately discontinue any mode of communications on the Internet or other communications system directly or indirectly relating to your Store, including any Web sites, social media platforms, links, or pages and e-mail addresses associated with your Store, and immediately take all steps required by us to transfer any domain name associated with your Store to us. You irrevocably appoint the person who is then our president as your duly authorized agent and attorney-in-fact to execute all instruments and take all steps to transfer such domain names to us.

(g) Immediately cease to use (and return to us all copies of) all technology licensed by us or any of our Affiliates and comply with your obligations under any technology license agreements.

(h) Provide us with a complete list, in a format satisfactory to us, of all Customer Information and destroy any remaining copies of such Customer Lists.

(i) Within thirty (30) days after the effective date of termination or expiration, you will furnish us evidence satisfactory to us of your compliance with the foregoing obligations.

(j) Upon expiration or termination of this Agreement, you shall not, directly or indirectly, sell, assign, transfer, lease or otherwise dispose of any inventory or assets used in the operation of your Store, including the lease for the premises, to any family member, to any Competitive Business, or to any person whose use of such inventory or assets would be a violation of the terms of Section 10 above. For the purposes of this section, a “family member” means spouses (including common-law), parents (including grandparents), siblings, children (including grandchildren), cousins, aunts, uncles, nieces, nephews and in-laws of any of the foregoing.

### **14.3 Customer Lists**

For absolute clarity, upon any termination or expiration (without the grant of a successor franchise) of this Agreement, we and our Affiliates will have the unrestricted right, without paying you any consideration, to offer and sell, and to permit other franchisees of ours to offer and sell, any products and/or services, to any and all former, current, and prospective customers of your former Store. You acknowledge and agree that all Customer Information is Confidential Information, and belongs exclusively to MSKS. You further acknowledge and agree that MSKS has granted to us, indirectly, an exclusive license to use, and to grant sublicenses to others to use Confidential Information, you shall not retain or use any Confidential Information, including but not limited to, Customer Information, in any format or media, in whole or in part, for any purpose, after any termination or expiration of this Agreement. You acknowledge and agree that breach of this provision, including direct or indirect solicitation by you, your Owners or by your Operating Principal, shall entitle us to seek and obtain injunctive relief.

#### 14.4 Our Option to Purchase Your Store

(a) Upon termination or expiration of this Agreement (without grant of a successor franchise in accordance with Section 13), we will have the option to be exercised within thirty (30) days after termination or expiration, or thirty (30) days prior to expiration (if you have failed to provide us with notice to elect a successor franchise within 180 days before expiration of this Agreement, or after providing us with such notice you fail to execute the successor franchise agreement more than thirty (30) days prior to expiration), to purchase from you any or all of the equipment, signs, fixtures, supplies, and inventory related to the operation of the Store (those assets that we choose to purchase are referred to as the “Purchased Assets”). You agree to enter into with us a purchase agreement for the Purchased Assets within twenty (20) days after our delivery of such document to you, which document shall be in such form and containing such provisions as we may specify and will include, among other things, instruments transferring good and merchantable title to the Purchased Assets, free and clear of all mortgages, liens, encumbrances and liabilities, to us or our designee, with all sales, goods and services and other transfer taxes paid by you. You agree to cooperate and facilitate our acquisition of Purchased Assets, and shall sign such documents and do such things for such purpose. If we elect to exercise our option to purchase the Purchased Assets as provided for in this Section 14.4, we will have the right to set off against and reduce the purchase price by any and all amounts owed by you to us or our affiliates.

(b) The purchase price for the Purchased Assets will be the net book value (as defined below). “net book value” shall mean the net book value of your Store’s tangible assets we choose to purchase as of the time of termination or expiration, determined by reference to the financial statements, using our standard chart of accounts and conforming to generally accepted accounting principles (consistently applied) that you are required to submit to us pursuant to Section 8. However: (1) each depreciable asset will be valued at the lesser of the net value of the asset as depreciated: (a) on a “straight line” basis from the date of its acquisition over its useful life without provision for salvage value; or (b) according to the method you use for federal income tax purposes; and (2) we may exclude from the assets purchased any fixtures, equipment, furniture, signs, products, materials or supplies of your Store that have not been acquired in compliance with this Agreement. If we are not satisfied for any reason with the accuracy of any financial information you have submitted to us or that reside on our system and which is used to determine the purchase price, or if none have been submitted or made available, net book value will be determined by an audit conducted by certified public accountants we select, the cost of which will be borne by you. The results of such audit will be final and binding on both parties.

(c) The purchase price, as determined above, for the Purchased Assets shall be paid 50% in cash at the closing, which shall take place no later than thirty (30) days after the delivery of our purchase agreement to you. The remainder of the purchase price (plus accrued and unpaid interest on the unpaid balance, at the Prime Rate, as defined below, from and after the closing date) shall be payable on the first anniversary of the closing date. If you disagree with the purchase price for the Purchased Assets set out in the purchase agreement, whether or not an audit is conducted as permitted under Section 14.4(b) above, you nevertheless agree to enter into the purchase agreement we require, however, we agree to reasonably discuss the purchase price with you following the closing and, if applicable, conduct an audit by certified public accountants we select (the cost of which will be borne by you). Any revisions to the purchase price that we and you agree upon during these discussions (and, if applicable, following an audit) will be adjusted at the time we pay the remainder of the purchase price on the first anniversary of the closing date. The “Prime Rate” shall be the prime rate as of the date of closing (or the next business day, if closing is not on a business day) as published in The Wall Street Journal, Eastern edition, or such other publication that we may select.

(d) If you cannot deliver clear title to all of the Purchased Assets, or if there are other unresolved issues, the closing may, at our option, be accomplished through an escrow on such terms and

conditions as we deem appropriate, including the making of payments (to be deducted from the purchase price) directly to third parties in order to obtain clear title to any of the Purchased Assets. Further, you agree to comply with any applicable bulk sales legislation as enacted in the state where the Premises are located and all applicable state and local sales and income tax notification and/or escrow procedures. We have the right to set off against and reduce the purchase price by any and all amounts owed by you or any of your Owners or Affiliates to us or any of our Affiliates.

(e) You agree that, at our option, you will assign to us any interest which you have in the lease or sublease for the Premises upon which the Store is operated and/or for the building from which the Store is operated. If an assignment is prohibited, you must grant us a sublease for the full remaining term of this Agreement and on the same terms and conditions as your lease, including renewal and/or purchase options. If any of your Owners or Affiliates directly or indirectly owns the land, building and/or equipment of your Store, you shall, at our option, cause such Owner or Affiliate to grant to us a lease for the above-referenced term, at reasonable and customary rental rates and other terms prevailing in the community where your Store is located.

#### **14.5 Continuing Obligations**

All obligations under this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement will continue in full force and effect until they are satisfied in full or by their nature expire.

### **15. RELATIONSHIP OF THE PARTIES.**

#### **15.1 Independent Contractors**

(a) You and we, as between ourselves, are and will be independent contractors. Neither this Agreement nor the dealings of the parties pursuant to this Agreement will create any fiduciary relationship or any other relationship of trust or confidence between the parties hereto.

(b) Nothing contained in this Agreement, or arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. You agree to conspicuously identify yourself in all dealings with customers, lessors, contractors, suppliers, public officials, employees and others as the owner of your Store and agree to place such other notices of independent ownership at the Store and on forms, business cards, stationery, advertising and other materials as we may periodically require.

(c) You may not make any express or implied agreements, warranties, guarantees or representations or incur any debt in our name or on our behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. We will not be obligated by or have any liability under any agreements made by you with any third party or for any representations made by you to any third party. We will not be obligated for any damages to any person or property arising directly or indirectly out of the operation of your business hereunder.

#### **15.2 Your Independence.** You acknowledge and agree that:

(i) we are not the employer or co-employer of any of your employees (even though we may provide you with advice, guidance, and training that may be applicable or available to your employees), and we will not play any role in decisions regarding their employment (including but not

limited to matters such as recruitment, hiring, scheduling, compensation, employee relations, labor matters, review, and/or dismissal);

(ii) the guidance that we provide and requirements under which you will operate are intended to promote and protect the value of the brand and the Marks;

(iii) when forming and in operating your business, you had to adopt standards to operate that business, and that instead of developing and implementing your own standards (or those of another party), you chose to adopt and implement our standards for your business (including but not limited to our System and the requirements under this Agreement);

(iv) when forming and in operating your business, you agree to adopt standards to operate that business, and that instead of developing and implementing your own standards (or those of another party), you chose to adopt and implement our standards for your business (including our System and the requirements under this Agreement); and

(v) you have made and (will remain responsible at all times) all of the organizational and basic decisions about establishing and forming your entity, operating your business (including but not limited to adopting our standards as your standards), hiring, scheduling and disciplining employees, engaging professional advisors, and all other facets of your operation.

### 15.3 Indemnification

(a) You agree to indemnify, defend, and hold harmless each of the Franchisor Parties against any and all Damages that arise directly or indirectly from any Asserted Claim and/or from your breach of this Agreement. Your indemnity obligations will survive the expiration or termination of this Agreement, and will not be affected by the presence of any applicable insurance policies and coverages that you or we may maintain.

(b) As used in Section 15.3(a) above, the parties agree that the following terms will have the following meanings:

(i) “Asserted Claim” means any allegation, claim or complaint that is the result of, or in connection with, your exercise of your rights and/or carrying out of your obligations under this Agreement (including, but not limited to, any claim associated with your operation of the Store, data breaches and similar incidents, and otherwise), and/or any default by you under this Agreement, notwithstanding any claim that any Franchisor Party was or may have been negligent.

(ii) “Damages” means all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses (including, without limitation, all expenses, costs and lawyers’ fees incurred for any indemnified party’s primary defense or for enforcement of its indemnification rights).

(iii) “Franchisor Parties” means us, our shareholders, parents, subsidiaries, and Affiliates, and their and our respective officers, directors, members, managers, employees, and agents.

### 15.4 Taxes

You agree to promptly pay to us an amount equal to all taxes levied or assessed, including unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipt taxes, taxes on royalties, any similar taxes or levies, imposed upon

or required to be collected or paid by us by reason of the furnishing of products, intangible property (including trademarks) or services to you. In the event of a *bona fide* dispute as to your liability for taxes, you may contest your liability in accordance with applicable law.

## **16. MISCELLANEOUS**

### **16.1 Mediation**

Except as otherwise provided in Section 16.4 below or in the instance where the Store has been closed or this Agreement has been terminated, the parties agree that no civil action, lawsuit, or other dispute will be commenced in a court of law until the matter has been submitted to non-binding mediation conducted by the JAMS Alternative Dispute Resolution Center in Washington, D.C. in accordance with JAMS' then-current rules for mediation of international commercial disputes. Both parties agree to cooperate in connection with any such mediation, and understand that they will be required to sign a confidentiality agreement before participating in any mediation proceeding. The parties further agree to equally share all mediation service provider fees and charges and pay these fees or retainers in advance of commencement of mediation. Further, each party otherwise acknowledges that they are responsible for their own fees and expenses relative to their participation in mediation. If a party fails to provide timely payment of their allocation of shared mediation service provider fees, this failure shall be considered and acknowledged by all parties as a waiver of any obligation to apply this or any mediation obligation to the contemplated dispute. The mediation will take place in Washington, D.C. (unless the parties mutually agree to mediate in another city). Once either party has submitted a dispute to mediation, the obligation to attend will be binding on both parties. Each party will bear its own costs with respect to the mediation.

### **16.2 Venue**

If a dispute is not settled through mediation conducted under Section 16.1 above within thirty (30) days after a dispute has been submitted to mediation in accordance with Section 16.1, or such additional period as the parties may agree upon in writing, then, subject to Section 16.4 below, you agree that any action that you bring against us, in any court, whether federal or state, must be brought only within the federal or state courts having jurisdiction over Erie County, New York. Any action that we bring against you in any court, whether federal or state, may be brought within the federal or state courts having jurisdiction over Erie County, New York. The parties agree that this Section 16.2 shall not be construed as preventing either party from removing an action from state to federal court; provided, however, that venue shall be as set forth above. The parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

### **16.3 Governing Law**

The parties agree that the State of New York has a deep and well-developed history of business decisional law. For this reason, the parties agree that all relations between us and you, and any and all disputes between us and you, whether sounding in contract, tort, or otherwise, are to be exclusively construed in accordance with and/or governed by the laws of the State of New York (without reference to and without applying New York (or any other) choice of law or conflicts of law principles) (except to the extent governed by the US Trademark Act of 1946 (the Lanham Act; 15 U.S.C. § 1050, et seq.), as amended). If, however, any provision of this Agreement would not be enforceable under the laws of New York, and if the Store is located outside of New York and the provision would be enforceable under the laws of the state in which the Store is located, then the provision in question (and only that provision) will be interpreted and construed under the laws of that state. Nothing in this Section 16.3 is intended to invoke the application of any franchise, business opportunity, antitrust, "implied covenant," unfair competition,

fiduciary or any other doctrine of law of the State of New York or any other state which would not otherwise apply absent this Section 16.3.

#### **16.4 Injunctive Relief**

Nothing contained in this Agreement shall bar our right to obtain injunctive relief against actual or threatened conduct that will cause us loss or damages for which no adequate remedy at law may be available or which may cause us irreparable harm, under the applicable equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions. We are entitled to such injunctive relief without the need to post a bond, and you agree to waive any requirement that we post an injunction bond. The entry of such injunctive relief does not preclude us from obtaining any other relief that we may be entitled to in equity or at law.

#### **16.5 Costs and Attorneys' Fees**

You agree to pay us all damages, costs and expenses (including without limitation reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) that we incur at any time in: (a) obtaining injunctive or other relief including the successful initiation and proof of claim for the enforcement of any provisions of this Agreement (including without limitation Sections 9 and 12 above); or (b) successfully defending a claim from you that we misrepresented the terms of this Agreement, fraudulently induced you to sign this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement (as it may be amended by its terms) do not exclusively govern the parties' relationship.

#### **16.6 Limitations on Legal Claims**

(a) Waiver of Jury Trials. Each party to this Agreement irrevocably waives trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.

(b) Must Bring Claims Within Two Years. Each party to this Agreement agrees that any and all claims and actions arising out of or relating to this Agreement, the parties' relationship, and/or your operation of the franchised business, brought by any party hereto against the other (except for claims seeking indemnification hereunder), must be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or, it is expressly acknowledged and agreed by all parties, such claim or action will be irrevocably barred.

(c) Waiver of Punitive Damages. Each party to this Agreement hereby waives to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each will be limited to the recovery of any actual damages it has sustained.

(d) No Class Actions. Any action arising from a dispute in connection with this Agreement shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

#### **16.7 Entire Agreement; Severability and Substitution of Provisions**

(a) This Agreement and the exhibits referred to herein constitute the entire, full, and complete contract between the parties concerning the subject matter hereof, supersede all prior agreements, and no other representations other than those in this Agreement have induced either party to execute this Agreement. Notwithstanding the foregoing, nothing in this Agreement or any related agreement is intended

to disclaim the express representations made in the Franchise Disclosure Document, its attachments and amendments.

(b) Except for those changes that we are permitted to make unilaterally under this Agreement, no amendment, change, or variance from this Agreement will be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

(c) Except as expressly provided to the contrary herein, each portion, section, part, term, and/or provision of this Agreement will be considered severable; and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such will not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible; and the latter will continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions will be deemed not to be a part of this Agreement.

(d) If there is a conflict between any applicable law and the terms of this Agreement, then on our request you agree to cooperate with us and our counsel and to execute an amending letter that we require to replace the original term with a new term that is reasonably consistent and in compliance with law.

(e) Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor will be deemed, to confer upon any person or legal entity other than you, we, and such of our respective successors and assigns as may be contemplated (and, as to you, permitted) by Section 11 above, any rights or remedies under or by reason of this Agreement.

(f) All captions in this Agreement are intended solely for the convenience of the parties, and no caption will be deemed to affect the meaning or construction of any provision hereof.

(g) All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, will so survive the expiration and/or termination of this Agreement.

(h) All consents that you are required to obtain pursuant to this Agreement must be in writing, and if we have not given consent in writing, our consent will be deemed to not have been given.

(i) Although we may exercise any of our rights, carry out any of our obligations, or otherwise discharge any of our duties under this Agreement directly, through the use of employees, independent contractors, professional advisors (for example, a CPA), or otherwise, we will still remain responsible for the proper performance of our obligations to you under this Agreement.

(j) Each party will bear all of the costs of exercising its rights and carrying out its responsibilities under this Agreement, except as otherwise provided.

(k) This Agreement may be signed in counterparts, and signature pages may be exchanged by e-mail, mail, or other transmission method the parties may agree upon, and each such counterpart, when taken together with all other identical copies of this Agreement also signed in counterpart, will be considered as one complete Agreement.

## 16.8 Waiver of Obligations

We and you may by written instrument unilaterally waive or reduce any obligation of the other under this Agreement. Any waiver granted by us will be without prejudice to any other rights we may have and may be revoked at any time and for any reason, effective upon delivery to you of ten (10) days' prior notice. You and we may not be deemed to have waived any right reserved by this Agreement by virtue of any custom or practice of the parties at variance with it; any failure, refusal or neglect by you or us to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure or omission by us to exercise any right, whether of the same, similar or different nature, with respect to other Metal Supermarkets stores or franchises; or the acceptance by us of any payments due from you after any breach of this Agreement.

## 16.9 Exercise of Rights

The rights of Franchisor and Franchisee hereunder are cumulative and no exercise or enforcement by Franchisor or Franchisee of any right or remedy hereunder will preclude the exercise or enforcement by Franchisor or Franchisee of any other right or remedy hereunder which Franchisor or Franchisee is entitled to enforce by law.

## 16.10 Construction

(a) The language of this Agreement will be construed according to its fair meaning and not strictly against any party, regardless who drafted this Agreement.

(b) The introduction, personal guarantees, schedules and addenda (if any) to this Agreement, as well as the Operations Manual, are a part of this Agreement and constitute the entire agreement of the parties.

(c) Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations, or statements relating to the subject matter of this Agreement that either party may or does rely on or that will have any force or effect. Nothing in this Agreement will be deemed to confer any rights or remedies on any person or legal entity not a party hereto, other than successors and assigns of any party to this Agreement whose interests is assigned in accordance with its terms.

(d) This Agreement may not be modified except by written agreement signed by both parties.

(e) The headings of sections are for convenience only and do not limit or construe their contents.

(f) The words "includes" or "including" will be construed to mean "including but not limited to." References to section numbers are to section numbers in this Agreement, unless otherwise indicated.

(g) The term "Franchisee" or "you" is applicable to one or more persons, a corporation, limited liability company, or a partnership and its owners individually, as the case may be.

(h) If two or more persons are at any time Franchisee hereunder, or Franchisee is owned by two or more Owners, whether as partners, joint venturers or otherwise, then their obligations and liabilities to us will be joint and several.

(i) Whenever this Agreement requires the approval or consent of either party, the other party must make written request therefor, and such approval or consent must be obtained in writing prior to the action or item for which approval is sought.

(j) This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest.

(k) This Agreement may be signed in counterparts, and signature pages may be exchanged by electronic means, each such counterpart, when taken together with all other identical copies of this Agreement also signed in counterpart, will be considered as one complete Agreement.

### **16.11 Anti-Terrorism Laws**

You and the Owners agree to comply with and/or to assist us to the fullest extent possible in our efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, you and the Owners certify, represent, and warrant that none of their respective property or interests are “blocked” under any of the Anti-Terrorism Laws and that neither you nor any of the Owners are in violation of any of the Anti-Terrorism Laws. You also agree not to knowingly hire or do business with (or continue to employ or do business with) any party who is blocked under any of the Anti-Terrorism Laws. The term “Anti-Terrorism Laws” means Executive Order 13224 issued by the President of the United States, as supplemented, the USA PATRIOT Act, and all other laws and regulations addressing or in any way relating to terrorist acts and/or acts of war.

### **16.12 Our Reasonable Business Judgment**

We and you acknowledge and agree that this Agreement (and the relationship of the parties which arises from this Agreement) grants us the right to make decisions, take actions and/or refrain from taking actions consistent with your explicit rights and obligations hereunder that may affect favorably or adversely your interests. You understand and agree that we may operate and change the System and our business in any manner that is not expressly and specifically prohibited by this Agreement. Whenever we have reserved in this Agreement a right and/or discretion to take or withhold an action, or to grant or decline to grant you a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, we may make our decision or exercise our right and/or discretion on the basis of our judgment of what is in our best interests, including without limitation, our judgment of what is in the best interests of our franchise network, at the time our decision is made (our “reasonable business judgment”), without regard to: (1) whether other reasonable or even arguably preferable alternative decisions or actions could have been made by us; (2) whether our decision or the action we take promotes our financial or other individual interest; (3) whether our decision or the action we take applies differently to you and one (1) or more other franchisees; or (4) whether our decision or the exercise of our rights is adverse to your individual interests or the individual interests of any other particular franchisees. We will have no liability to you for any such decision or exercise of our rights.

### **16.13 Notices and Communications**

(a) Notices. Any and all notices, consents or approvals required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified mail, or by e-mail from us to you (to your e-mail address shown in the introductory paragraph of this Agreement) which affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses, unless and until a different physical address has been designated by written notice to the other party of that party’s physical new address. Any notice by a means that affords the sender evidence of delivery, rejected delivery, or delivery not possible because the recipient has moved or changed and left no

forwarding address shall be deemed to have been given at the date and time of receipt, rejected, and/or attempted delivery. The Operations Manual, any changes that we make to the Operations Manual, any other written instructions that we provide relating to operational matters, and/or annual CPI adjustments or notifications of other network-wide or service fee changes in accordance with this Agreement, are not considered to be “notices” for the purpose of the delivery requirements in this Section 16.13.

(b) Electronic Communications. You agree to use such communication devices and methods for communication between us and you (or your Store personnel) as we may require from time to time, including by e-mail and the Internet. In connection with any electronic communications, you agree that (i) electronic reports and other communications shall be deemed to be in “writing” and shall be deemed for all purposes to have been signed and to constitute an original when printing from electronic files or records established and maintained by us in the normal course of business, and (ii) you will not contest the validity, enforceability or admissibility of any such reports or other communications, if introduced as evidence in any judicial proceedings. To facilitate the use of e-mail to exchange information, each of us authorizes transmission of e-mail and transmission of e-mail by Official Senders (on matters pertaining to the business described under this Agreement) to the other during the term of this Agreement. In order to implement the terms of this Section, each of us agrees that: (i) the other’s Official Senders are authorized to send e-mails to those of its employees as it may occasionally designate for the purpose of communicating with it; (ii) it will cause its parents, officers, directors, and employees to give their consent (in an e-mail, electronically, or in a pen-and-paper writing, as each of us may reasonably require, including as may be necessary to satisfy the CAN-SPAM Act of 2003 and CASL consent requirements) to Official Senders’ transmission of e-mails to those persons, and that such persons must not opt-out, or otherwise ask to no longer receive e-mails, from Official Senders during the time that such person works for or is affiliated with it; and (iii) it will not opt-out, or otherwise ask to no longer receive e-mails, from Official Senders during the term of this Agreement.

#### **16.14 Receipt of Disclosure Document and Agreement**

You acknowledge having received our FDD at least fourteen (14) calendar days before signing a binding agreement or making any payment to us relating to this Agreement. You acknowledge, agree, and confirm that except for the information disclosed in Item 19 of our FDD, we did not provide you (or your representatives) with data on the historic performance of Metal Supermarkets stores nor did we give you (or your representatives) data to predict the potential performance of your Store.

#### **16.15 General Release**

If this Agreement is not the first contract between you (and/or your affiliates) and us, then you agree to the following:

You (on behalf of yourself and your parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, members, managers, agents and employees, in their corporate and individual capacities) and all guarantors of your obligations under this Agreement (collectively, “*Releasors*”) freely and without any influence forever release and covenant not to sue Metal Supermarkets Franchising America Inc., our parent, subsidiaries and affiliates, and their respective past and present officers, directors, members, managers, shareholders, agents and employees, in their corporate and individual capacities (collectively “*Releasees*”), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, “*claims*”), which any Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to this Agreement and all other agreements between any Releasor and any

Releasee, the sale of any franchise to any Releasor, the development and operation of the Franchised Store and the development and operation of all other stores operated by any Releasor that are franchised by any Releasee. (Each party represents and warrants to the others, and agrees, that it may later learn of new or different facts, but that still, it is that party’s intention to fully, finally, and forever release all of the claims that are released above. This includes the parties’ waiver of state laws that might apply to limit a release (such as Calif. Civil Code Section 1542, which states that “[a] general release does not extend to claims which the creditor does not know or suspect exist in his [or her] favor at the time of executing the release, which if known by him [or her] must have materially affected his [or her] settlement with the debtor”).) You expressly agree that fair consideration has been given by us for this General Release and you fully understand that this is a negotiated, complete and final release of all claims. This General Release does not release any claims arising from representations made in our Franchise Disclosure Document and its exhibits or otherwise impair or affect any claims that arise after the date of this Agreement.

**IN WITNESS WHEREOF**, intending to be legally bound by this Agreement, the parties have executed and delivered this Agreement on the day and year first above written.

**METAL SUPERMARKETS  
FRANCHISING AMERICA INC.**  
an Ontario corporation

**FRANCHISEE**  
If a corporation, limited liability company or  
partnership:

By: \_\_\_\_\_  
Stephen Schober  
President & Chief Executive Officer

By: \_\_\_\_\_  
Print Name  
Title: \_\_\_\_\_

If an individual:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**SCHEDULE A**

**PROTECTED AREA**

The Protected Area as defined in this Agreement consists of the area within the following zip codes (as defined by the U.S. Postal Service as of the date of this Agreement): \_\_\_\_\_.


For the sake of convenient reference, attached is a map showing these zip codes. Any changes to the boundaries of these zip codes after the parties have signed this Agreement will not change the Protected Area under this Agreement. The map is to be given priority relative to any discrepancy between the map and the zip codes as a means to define the Protected Area.

**METAL SUPERMARKETS  
FRANCHISING AMERICA INC.**

**FRANCHISEE**

By: \_\_\_\_\_  
Stephen Schober  
President & Chief Executive Officer

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

**SCHEDULE B**

**STORE PREMISES**

You agree that your Store will be operated at the following Premises (and only at that site):

\_\_\_\_\_

\_\_\_\_\_

**METAL SUPERMARKETS  
FRANCHISING AMERICA INC.**

**FRANCHISEE**

By: \_\_\_\_\_  
Stephen Schober  
President & Chief Executive Officer

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

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

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

**SCHEDULE C**

**OPERATING PRINCIPAL AND FRANCHISEE ENTITY INFORMATION**

You represent and warrant to us that the following is complete, accurate, and true:

1. Operating Principal. The full name and residential address of the Operating Principal is as follows:

\_\_\_\_\_.

2. Form of Entity of Franchisee.

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

Please initial the applicable description of the franchisee entity and provide the requested information:

i. **Sole Proprietorship:** [INITIAL]

ii. **Corporation** – [INITIAL]

Franchisee was incorporated on \_\_\_\_\_ under the laws of the State of \_\_\_\_\_ . It has not conducted business under any name other than its corporate name. The following is a list of all of Franchisee's directors and officers as of \_\_\_\_\_.

Full Name of Each Member of Board of Directors

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

Full Name of Each Officer of Corporation Position(s) Held

_____	President
_____	Secretary
_____	Treasurer
_____	Other - _____

iii. **Limited Liability Company** - [INITIAL]

Franchisee was formed and filed Articles of Organization as of \_\_\_\_\_, 202\_\_\_\_ under the laws of the State of \_\_\_\_\_. It has not conducted business under any name other than its company. The following is a list of all of Franchisee's Members as of \_\_\_\_\_.

<u>Full Name of Each Member of LLC</u>	<u>Position(s) Held</u>
_____	Managing Member
_____	Member
_____	Member
_____	Member

iv. **Partnership**. [INITIAL]

Franchisee is a General [INITIAL] Limited [INITIAL] partnership formed on \_\_\_\_\_, 202\_\_\_\_ under the laws of the State of \_\_\_\_\_. The Franchisee has not conducted business under any name other than its partnership name. The following is a list of all of Franchisee's partners as of \_\_\_\_\_, \_\_\_\_\_. [NOTE, if Limited Partnership structure, indicate if each partner is a limited or a general partner.]

Name of Partners

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

3. Owners. Franchisee and each of its Owners represents and warrants that the following is a complete and accurate list of all actual and beneficial Owners of Franchisee, including the full name and mailing address of each Owner, and that this fully describes the nature and extent of each Owner's interest in Franchisee. If any Owner, or owner(s) of an Owner is an entity, Franchisee shall provide us with such additional information below as necessary to identify each individual(s) who ultimately owns the actual and beneficial interests of each Owner. Franchisee, and each Owner as to his ownership interest, represents and warrants that each Owner is the sole and exclusive legal and beneficial owner of his ownership interest in Franchisee, free and clear of all liens, restrictions, agreements and encumbrances of any kind or nature, other than those required or permitted by this agreement.

Owners

Full Name: \_\_\_\_\_  
 Residential Address: \_\_\_\_\_  
 Interest (equity) in Franchisee as a percentage: \_\_\_\_\_

Full Name: \_\_\_\_\_  
 Residential Address: \_\_\_\_\_  
 Interest (equity) in Franchisee as a percentage: \_\_\_\_\_

Full Name: \_\_\_\_\_  
 Residential Address: \_\_\_\_\_  
 Interest (equity) in Franchisee as a percentage: \_\_\_\_\_

Submitted by Franchisee

On \_\_\_\_\_.

\_\_\_\_\_

(FRANCHISEE)

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

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

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

Owners:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

## SCHEDULE D

### OWNERS' PERSONAL GUARANTY OF FRANCHISEE'S OBLIGATIONS

In order to induce Metal Supermarkets Franchising America Inc., (“**Franchisor**”) to execute the “Metal Supermarkets” Franchise Agreement between Franchisor and \_\_\_\_\_ (“**Franchisee**”), dated \_\_\_\_\_, 202\_\_\_\_ (the “**Agreement**”), each of the undersigned parties, jointly and severally, hereby unconditionally guarantee to Franchisor and its successors and assigns that all of Franchisee’s obligations (monetary (as applicable) and otherwise) under the Agreement (and all other contracts that Franchisee has entered into with Franchisor (the “**Contracts**”)) will be punctually paid and performed.

Upon demand by Franchisor, each of the undersigned holding a ten percent (10%) or greater direct or indirect legal or beneficial ownership interest in Franchisee (each, a “**Principal Owner**”) hereby jointly and severally agree to immediately make each payment required of Franchisee under the Agreement and any Contract and waive any right to require Franchisor to: (a) proceed against Franchisee for any payment required under the Agreement or any Contract; (b) proceed against or exhaust any security from Franchisee; (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee; and/or (d) give notice of demand for payment by Franchisee. Without affecting the obligations of the Principal Owners under this Guaranty, Franchisor may, without notice to the Principal Owners, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee, and the Principal Owners each hereby jointly and severally waive notice of same and agree to be and remain bound by any and all such amendments and changes to the Agreement.

Each Principal Owner hereby jointly and severally agrees to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including without limitation reasonable attorneys’ fees, court costs, discovery costs, expert witness costs, and all other related expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement or any Contract, any amendment thereto, or any other agreement executed by Franchisee referred to therein.

Each of the undersigned persons hereby acknowledge and agree to be individually bound by all of the Franchisee’s covenants, obligations and undertakings in the Agreement and Contracts. This includes, but is not limited to, the covenants in Section 9 (generally regarding Trademarks), Section 10 (generally regarding confidentiality and covenants against competition), Section 11 (generally regarding transfers), and Section 14 (generally regarding post-termination provisions of the Agreement) of the Agreement.

The undersigned acknowledge and agree that:

(a) this Guaranty does not grant them any rights under the Agreement or any Contract, and does not grant the right to use any of Franchisor’s marks (including but not limited to the “Metal Supermarkets” marks) or the system licensed to Franchisee under the Agreement;

(b) that they have read, in full, and understand, all of the provisions of the Agreement and each Contract that are referred to above in this paragraph, as well as Franchisor’s franchise disclosure document, and that they intend to fully comply with those provisions as if they were printed here; and

(c) that they have conducted an independent investigation of the business contemplated by the Agreement, and have had the opportunity to consult with a lawyer of their own choosing in deciding whether to sign this Guaranty.

This Guaranty will terminate upon the termination or expiration of all obligations of Franchisee under the Agreement and any Contract, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination will remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement or any Contract will remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor will be bound by this Guaranty, but only for defaults and obligations under this Agreement or any Contract existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guaranty will have the same meaning as in the Agreement, and will be interpreted and construed in accordance with Section 16 of the Agreement (including but not limited to the waiver of jury trials, the agreement to bring claims within one year after the occurrence of the facts giving rise to such claim or action, the waiver (to the fullest extent permitted by law) of any right to or claim of any punitive or exemplary damages, and the exclusive application of New York law, without application of New York choice of law principles).

IN WITNESS WHEREOF, intending to be legally bound by this Guaranty, each of the undersigned has signed this Guaranty as of the date of the Agreement.

_____	_____	_____
(in his/her personal capacity)	(in his/her personal capacity)	(in his/her personal capacity)
Printed Name: _____	Printed Name: _____	Printed Name: _____
Date: _____	Date: _____	Date: _____
Home Address: _____ _____	Home Address: _____ _____	Home Address: _____ _____

**SCHEDULE E****ACKNOWLEDGMENT ADDENDUM TO  
METAL SUPERMARKETS FRANCHISE AGREEMENT****[Not applicable in California]**

You and we are entering into a Franchise Agreement for the operation of a Metal Supermarkets franchise.

The purpose of this Acknowledgment is to determine whether any statements or promises were made to you that we have not authorized or that may be untrue, inaccurate or misleading, and to be certain that you understand the limitations on claims that may be made by you by reason of the offer and award of the franchise and operation of your business. Please review each of the following questions carefully and provide honest responses to each question.

**Acknowledgments and Representations\***

1. Did you receive a copy of our Franchise Disclosure Document (and all exhibits and attachments) (together, our "**FDD**") at least 14 calendar days before signing the Franchise Agreement? Check one:  Yes  No. If no, please explain: \_\_\_\_\_

\_\_\_\_\_

2. Did you sign and return to us an FDD receipt indicating the date on which you received the FDD? Check one:  Yes  No.

3. Please list any questions you have regarding the franchise opportunity that you would like to discuss prior to signing the Franchise Agreement. (Attach additional pages, if necessary.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Please list any information provided to you by any employee or other person speaking on our behalf concerning the sales, revenue, profits, or operating costs of one or more Metal Supermarkets stores operated by us, our affiliates, or our franchisees or that you may earn or experience that is in addition to the information contained in the Franchise Disclosure Document:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This addendum does not waive any liability the franchisor may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

Note: If the franchisee is or will be a corporation, partnership, limited liability company, or other entity, then each of its principal owners must complete and sign a copy of this acknowledgment.

**OWNERS OF FRANCHISEE:**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

**FRANCHISEE:**

Signed: \_\_\_\_\_

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

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

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

\*All representations requiring prospective franchisees to assent to a release, estoppels or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Illinois Franchise Disclosure Act or under the Maryland Franchise Registration and Disclosure Law. Nothing contained in this Addendum is intended to disclaim any of the disclosures contained in our Franchise Disclosure Document.

NEW	CHANGE

**SCHEDULE F**  
**Electronic Transfer of Funds Authorization**

Franchisee \_\_\_\_\_  
Territory: \_\_\_\_\_  
Date: \_\_\_\_\_

Attention: Bookkeeping Department

The undersigned hereby authorizes METAL SUPERMARKETS FRANCHISING AMERICA INC. and any affiliated entity (collectively, “METAL SUPERMARKETS”), to initiate monthly ACH debit entries against the account of the undersigned with you in payment of amounts for Royalty Fees, Brand Fund Contributions, Hosting and other information technology or related fees, conference fees, communication fees, Computer System and other amounts that become payable by the undersigned to METAL SUPERMARKETS. The dollar amount to be debited per payment will vary.

Subject to the provisions of this letter of authorization, you are hereby directed to honor any such ACH debit entry initiated by METAL SUPERMARKETS.

This authorization is binding and will remain in full force and effect until 90 days prior written notice has been given to you by the undersigned. The undersigned is responsible for, and must pay on demand, all costs or charges relating to the handling of ACH debit entries pursuant to this letter of authorization.

Please honor ACH debit entries initiated in accordance with the terms of this letter of authorization, subject to there being sufficient funds in the undersigned’s account to cover such ACH debit entries.

\*\*\* Please include a VOIDED Check \*\*\*

<b>BANK INFORMATION</b>	
Bank Name:	
Branch:	
Street Address:	
City, State, Zip Code:	
Bank Telephone No.:	
Customer Account No:	
<b>ACCOUNT INFORMATION</b>	
Account Name:	
Street Address:	
City, State, Zip Code:	
Telephone No.:	
Franchisee:	
By: (Signature)	
Print Name:	
Title:	
Date:	

**SCHEDULE G**  
**SUCCESSOR FRANCHISE ADDENDUM**

THIS SUCCESSOR ADDENDUM dated \_\_\_\_\_, 20\_\_ (the "Addendum") to the Franchise Agreement, as defined below, by and between METAL SUPERMARKETS FRANCHISING AMERICA INC., an Ontario corporation ("Franchisor" or "we") and \_\_\_\_\_, a \_\_\_\_\_ whose principal address is \_\_\_\_\_ ("Franchisee" or "you").

**RECITALS**

A. WHEREAS, you and Metal Supermarkets Franchising America Inc. as predecessor to the Franchisor, entered into a franchise agreement pursuant to which you were granted the right to operate a Metal Supermarkets Store at \_\_\_\_\_ ("Original Franchise Agreement").

B. WHEREAS, the Original Franchise Agreement is expiring and you desire to enter into a successor Franchise Agreement with Franchisor.

C. WHEREAS, the parties are on this date entering into a successor Franchise Agreement ("Franchise Agreement").

D. WHEREAS \_\_\_\_\_ has/have personally guaranteed the Franchisee's obligations under the Franchise Agreement and has/have executed the Owners' Personal Guaranty of Franchisee's Obligations.

E. WHEREAS, the parties desire to amend the Franchise Agreement on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true in substance and in fact.
2. Section 2.1 of the Franchise Agreement is deleted and replaced with the following:

"This grant of franchise is provided as a successor to an expired franchise grant for the Store. Under the expired franchise agreement and herein, you have agreed, within a specified time period commencing as of execution of this successor Franchise Agreement, to remodel your Store, add or replace fixtures, furnishings, equipment and signs and otherwise modify your Store to upgrade your Store to the specifications and standards now applicable for a Metal Supermarkets store. In compliance with these obligations, and thereby conditional upon the completion of certain works under enumerated timelines as further described under attachment (i.e. Attachment G-Paragraph 2) and subject to the terms of this Agreement, we grant you the right, and you assume the obligation, to operate the Store at the location selected by you pursuant to Section 2.2 (the "Premises"), and to use the System solely in connection therewith, for a term of ten (10) years, starting on the date of this Agreement (the "Term"). You may not conduct the business of your Store or use the System anywhere other than the Premises, or relocate your Store, without our consent."

3. Section 2.2(a) and (b) of the Franchise Agreement are deleted in their entirety and replaced with the following:
  - (a) The parties acknowledge that the Store is currently being operated at the Premises identified in Schedule B to the Franchise Agreement. The Protected Area is identified in Schedule A to the Franchise Agreement.
  - (b) Neither our continued approval of the Premises, nor any information we may impart to you about the Premises or the Protected Area constitutes a representation, warranty, guarantee or assurance of any kind, express, implied or collateral, that your Store will be profitable or successful. Your decision to continue to operate your Store at the Premises is based solely on your own independent investigation and judgment and not in reliance on any approvals or information from us.
4. The first sentence of Section 3.1 of the Franchise Agreement is deleted and replaced with the following:
 

“You have agreed to pay us a non-refundable successor franchise fee as determined under the franchise agreement that governed you immediately prior to this Term.”
5. Section 3.2(a) is deleted in its entirety and is replaced with “Reserved.”
6. Section 3.2(c) of the Franchise Agreement is deleted in its entirety and replaced with the following:
 

“Notwithstanding the terms of Section 3.2(b) above, (subject to an annual CPI adjustment effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023), you agree to pay us each month, on or before the twentieth (20<sup>th</sup>) day of that month, the greater of a monthly minimum royalty of \$4,021.00 or the royalty fee as set out under Section 3.2(b).”
7. Section 3.7 of the Franchise Agreement is deleted in its entirety and is replaced with “Reserved.”
8. The first sentence of the first paragraph of Section 4.1(a) of the Franchise Agreement is deleted in its entirety.
9. The first two sentences of Section 4.2 of the Franchise Agreement are deleted in their entirety and replaced with the following:
 

“You are solely responsible for the continued development and operation of your Store and for all expenses associated with it.”
10. The following language is added at the end of Section 4.2 of the Franchise Agreement:
 

“If you choose to relocate your Store (with our approval) we will furnish you prototype plans for a then-current Metal Supermarkets store. Your Store may not be relocated or opened for business in a relocated location until we notify you that all our requirements for opening have been met.

The current location, as identified in Schedule B, is approved for use as a Store.”

11. Section 4.5 of the Franchise Agreement is deleted in its entirety and is replaced with “Reserved.”
12. The first two sentences of Section 4.6 of the Franchise Agreement are deleted in their entirety and are replaced with the following:
 

“You acknowledge and agree that the database of potential customers and customers in your Protected Area that has been provided to you or that you have generated, and all updates thereto, are part of the Customer Information and are MSKS’s property.”
13. Section 5.1 of the Franchise Agreement is deleted in its entirety and replaced with the following:
 

“You acknowledge that you are not required to attend (and we are not obligated to provide to you) and complete the Initial Training Program and that you already received adequate initial training. If your Operating Principal or Manager cease active management or employment at the Store, or if at any time we disapprove of the Operating Principal or Manager (who may have been previously approved), then you agree to enroll a qualified replacement (who must be reasonably acceptable to us) in our next available Initial Training Program and to pay us a training fee in the amount that we will set for each individual that will attend the this training program, with payment to be made in full before training starts. The replacement must attend and successfully complete the Initial Training Program, to our reasonable satisfaction.”
14. The first sentence of Section 5.5 of the Franchise Agreement is deleted and replaced with the following:
 

“You acknowledge receiving access to the Operations Manual.”
15. Section 13.1 of the Franchise Agreement is deleted in its entirety and is replaced with “Reserved,” as there are no additional renewal or successor terms. All references to Section 13.1 throughout the Franchise Agreement are deleted.
16. You agree to sign the Assignments attached hereto as Appendices H-1 and H-2.
17. All capitalized terms used but not defined herein shall have the same meaning as ascribed to them in the Franchise Agreement.
18. In consideration of our agreement to enter into a successor Franchise Agreement with you and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you, for yourself and for each of your owners, heirs, executors, administrators, insurers, attorneys, agents, representatives, successors and assigns, affiliates, directors, officers and shareholders, and on behalf of any other party claiming an interest through them (collectively and individually referred to as the “Franchisee Parties” for purposes of this Section), hereby releases and forever discharges us and each of our respective affiliates, subsidiaries, divisions, insurers, indemnitors, attorneys, successors and assigns, together with all of their past and present directors, officers, employees, attorneys, agents, assigns and representatives in their capacities as such (collectively

and individually referred to as the “Franchisor Parties” for purposes of this Section), of and from any and all actions, suits, proceedings, claims, complaints, charges, judgments, executions, whether liquidated or unliquidated, known or unknown, asserted or unasserted, absolute or contingent, accrued or not accrued, which the Franchisee Parties may now or in the future own or hold against the Franchisor Parties (collectively referred to as the “Claims”), for known or unknown damages or other losses.

Except as may be prohibited by applicable law, the release of Claims is intended by the Franchisee Parties to be a full and unconditional general release, as that phrase is used and commonly interpreted, extending to all claims of any nature, whether or not known, expected or anticipated. The Franchisee Parties acknowledge that the consideration for this release constitutes full and complete satisfaction of any damages to them and that claims or facts in addition to or different from those which are now known or believed to exist with respect to the matters mentioned herein may later be discovered and that it is the Franchisee Parties’ intention to fully and forever release any and all matters, regardless of the possibility of later discovered claims or facts. The Franchisee Parties further acknowledge that they have had adequate opportunity to gather all information necessary to enter into this Section and to grant the releases contained herein, and need no further information or knowledge of any kind that would otherwise influence the decision to enter into this release. This release is and shall be and remain a full, complete and unconditional general release.

The Franchisee Parties represent and warrant, and agree, that each may later learn of new or different facts, but that still, it is that party’s intention to fully, finally, and forever release all of the Claims that are released above. This includes the parties’ waiver of state laws that might apply to limit a release (such as Calif. Civil Code Section 1542, which states that “[a] general release does not extend to claims which the creditor does not know or suspect exist in his [or her] favor at the time of executing the release, which if known by him [or her] must have materially affected his [or her] settlement with the debtor”).

The release does not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

19. In all other respects, the Franchise Agreement will remain enforceable according to its terms.

*[Signature page follows]*

IN WITNESS WHEREOF, intending to be legally bound by this Amendment, the parties have executed and delivered this Amendment on the day and year first above written.

**METAL SUPERMARKETS FRANCHISING  
AMERICA INC.**, an Ontario corporation

**FRANCHISEE**

\_\_\_\_\_ a \_\_\_\_\_ formed under the laws of  
the State of \_\_\_\_\_

By: \_\_\_\_\_  
**Stephen Schober**  
President

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

**ACKNOWLEDGED AND AGREED BY THE OWNER(S) OF FRANCHISEE (INCLUDING  
THEIR AGREEMENT THAT THEY ARE PROVIDING, IN THEIR PERSONAL CAPACITIES,  
THE RELEASE THAT IS SET OUT IN SECTION 15 ABOVE):**

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

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

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

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

**Attachment G-Paragraph 2**

**SCHEDULE G**  
**TRANSFEEE FRANCHISE ADDENDUM**

THIS TRANSFEEE FRANCHISE ADDENDUM dated \_\_\_\_\_, 20\_\_ (the "Addendum") to the Franchise Agreement, as defined below, by and between METAL SUPERMARKETS FRANCHISING AMERICA INC., an Ontario corporation ("Franchisor" or "we") and \_\_\_\_\_, a \_\_\_\_\_ whose principal address is \_\_\_\_\_ ("Franchisee" or "you").

**RECITALS**

A. WHEREAS, you and Metal Supermarkets Franchising America Inc, entered into a franchise agreement pursuant to which you were granted the right to operate a Metal Supermarkets Store at \_\_\_\_\_ ("Original Franchise Agreement").

B. WHEREAS, you purchased assets associated with the operations of the Metal Supermarkets Store from a party that was previously a franchisee of the Metal Supermarkets system.

C. WHEREAS, the Store shall continue to operate, but with you as Franchisee.

D. WHEREAS, the parties desire to amend the Franchise Agreement on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true in substance and in fact.
2. Section 2.2(a) and (b) of the Franchise Agreement are deleted in their entirety and replaced with the following:
  - (a) The parties acknowledge that the Store is currently being operated at the Premises identified in Schedule B to the Franchise Agreement. The Protected Area is identified in Schedule A to the Franchise Agreement.
  - (b) Neither our continued approval of the Premises, nor any information we may impart to you about the Premises or the Protected Area constitutes a representation, warranty, guarantee or assurance of any kind, express, implied or collateral, that your Store will be profitable or successful. Your decision to continue to operate your Store at the Premises is based solely on your own independent investigation and judgment and not in reliance on any approvals or information from us.

3. The first sentence of Section 3.1 of the Franchise Agreement is deleted and replaced with the following:

“You have agreed to pay us an Initial Franchise Fee of \_\_\_\_\_.”

4. Section 3.2(a) is deleted in its entirety and is replaced with “Reserved.”
5. Section 3.2(c) of the Franchise Agreement is deleted in its entirety and replaced with the following:

3.2(c) Notwithstanding the terms of Section 3.2(b) above, you must pay to us a minimum royalty fee. The obligation to pay the minimum royalty fee begins at the start of the first (1st) fiscal year of the Franchisor (i.e., October 1 through September 30) that immediately follows the first (1st) full twelve (12) months of the Store’s operations, calculated from the first day the Store opened (regardless of any transfer of ownership of the Store or temporary closures). The minimum royalty fee is calculated as the greater of a monthly minimum royalty as set forth below (subject to an annual CPI adjustment effective as of our fiscal year end and the base year being our fiscal year ended September 30, 2023) or the royalty fee as set out under Section 3.2(b):

- i. For the second (2nd) year, a monthly minimum royalty of \$1,928;
- ii. For the third (3rd) year, a monthly minimum royalty of \$2,504;
- iii. For the fourth (4th) year, a monthly minimum royalty of \$2,751;
- iv. For the fifth (5th) year, a monthly minimum royalty of \$2,914;
- v. For the sixth (6th) year, a monthly minimum royalty of \$3,160;
- vi. For the seventh (7th) year, a monthly minimum royalty of \$3,406;
- vii. For the eighth (8th) year, a monthly minimum royalty of \$3,696; and
- viii. For the ninth (9th) year or thereafter, a monthly minimum royalty of \$4,021.

6. The first sentence of the first paragraph of Section 4.1(a) of the Franchise Agreement is deleted in its entirety and replaced with the following:

The Agreement is void and not effective unless the Franchisee provides a fully executed Assignment of Lease and Addendum of Lease (in format as provided by the Franchisor) within thirty (30) days of the date of this Agreement.

7. The first two sentences of Section 4.2 of the Franchise Agreement are deleted in their entirety and replaced with the following:

“You are solely responsible for the continued development and operation of your Store and for all expenses associated with it.”

8. The following language is added at the end of Section 4.2 of the Franchise Agreement:
- “If you choose to relocate your Store (with our approval) we will furnish you prototype plans for a then-current Metal Supermarkets store. Your Store may not be relocated or opened for business in a relocated location until we notify you that all our requirements for opening have been met. The current location, as identified in Schedule B, is approved for use as a Store.”
9. The first sentence of Section 5.1 of the Franchise Agreement is deleted and replaced with the following:
- “Prior to our approval of the Transfer of the Franchise and the opening of the Store with you as Franchisee, the Operating Principal, and if applicable, the Manager, must complete or have completed the Initial Training Program to our satisfaction.”
10. You agree to sign the Assignments attached hereto as Appendices H-1 and H-2.
11. All capitalized terms used but not defined herein shall have the same meaning as ascribed to them in the Franchise Agreement.
12. In consideration of our agreement to enter into a successor Franchise Agreement with you and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you, for yourself and for each of your owners, heirs, executors, administrators, insurers, attorneys, agents, representatives, successors and assigns, affiliates, directors, officers and shareholders, and on behalf of any other party claiming an interest through them (collectively and individually referred to as the “Franchisee Parties” for purposes of this Section), hereby releases and forever discharges us and each of our respective affiliates, subsidiaries, divisions, insurers, indemnitors, attorneys, successors and assigns, together with all of their past and present directors, officers, employees, attorneys, agents, assigns and representatives in their capacities as such (collectively and individually referred to as the “Franchisor Parties” for purposes of this Section), of and from any and all actions, suits, proceedings, claims, complaints, charges, judgments, executions, whether liquidated or unliquidated, known or unknown, asserted or unasserted, absolute or contingent, accrued or not accrued, which the Franchisee Parties may now or in the future own or hold against the Franchisor Parties (collectively referred to as the “Claims”), for known or unknown damages or other losses.

Except as may be prohibited by applicable law, the release of Claims is intended by the Franchisee Parties to be a full and unconditional general release, as that phrase is used and commonly interpreted, extending to all claims of any nature, whether or not known, expected or anticipated. The Franchisee Parties acknowledge that the consideration for this release constitutes full and complete satisfaction of any damages to them and that claims or facts in addition to or different from those which are now known or believed to exist with respect to the matters mentioned herein may later be discovered and that it is the Franchisee Parties’ intention to fully and forever release any and all matters, regardless of the possibility of later discovered claims or facts. The Franchisee Parties further acknowledge that they have had adequate opportunity to gather all information necessary to enter into this Section and to grant the releases contained herein, and need no further

information or knowledge of any kind that would otherwise influence the decision to enter into this release. This release is and shall be and remain a full, complete and unconditional general release.

The Franchisee Parties represent and warrant, and agree, that each may later learn of new or different facts, but that still, it is that party’s intention to fully, finally, and forever release all of the Claims that are released above. This includes the parties’ waiver of state laws that might apply to limit a release (such as Calif. Civil Code Section 1542, which states that “[a] general release does not extend to claims which the creditor does not know or suspect exist in his [or her] favor at the time of executing the release, which if known by him [or her] must have materially affected his [or her] settlement with the debtor”).

13. In all other respects, the Franchise Agreement will remain enforceable according to its terms.

IN WITNESS WHEREOF, intending to be legally bound by this Amendment, the parties have executed and delivered this Amendment on the day and year first above written.

**METAL SUPERMARKETS FRANCHISING  
AMERICA INC.,** an Ontario corporation

**FRANCHISEE**

\_\_\_\_\_ a \_\_\_\_\_ formed under the laws of the State of \_\_\_\_\_

By: \_\_\_\_\_  
**Stephen Schober**  
President

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

**ACKNOWLEDGED AND AGREED BY THE OWNER(S) OF FRANCHISEE (INCLUDING THEIR AGREEMENT THAT THEY ARE PROVIDING, IN THEIR PERSONAL CAPACITIES, THE RELEASE THAT IS SET OUT IN SECTION 15 ABOVE):**

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

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

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

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

**SCHEDULE H-1**

**Assignment of Telephone Numbers**

This assignment between MSKS IP Inc. (“we” or “us”) and \_\_\_\_\_ (“you”) is effective as of \_\_\_\_\_, 20\_\_\_. You hereby irrevocably assign to us or our designee the telephone number or numbers and listings issued to you now or in the future with respect to your Metal Supermarkets business including, but not limited to, the following numbers (“telephone numbers”): \_\_\_\_\_

We hereby are authorized and empowered without any further notice to you to notify the telephone company, as well as any other company that publishes telephone directories (“telephone companies”), to transfer the telephone numbers to us or such other person or entity as we designate. You hereby grant to us an irrevocable power of attorney and appoint us as your attorney-in-fact to take any necessary actions to assign the telephone numbers, including but not limited to, executing any forms that the telephone companies may require to effectuate the assignment. This assignment is also for the benefit of the telephone companies, and the telephone companies may accept this assignment and our instructions as conclusive evidence of our rights in the telephone numbers and our authority to direct the amendment, termination or transfer of the telephone numbers, as if they had originally been issued to us. In addition, you agree to hold the telephone companies harmless from any and all claims against them arising out of any actions or instructions by us regarding the telephone numbers.

FRANCHISEE:

MSKS IP INC.

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

By: \_\_\_\_\_  
Stephen Schober  
President & Chief Executive Officer  
Date: \_\_\_\_\_

**SCHEDULE H-2****Assignment of Domain Names, URLs and E-Mail Addresses**

This assignment between MSKS IP Inc. (“we” or “us”) and \_\_\_\_\_ (“you”) is effective as of \_\_\_\_\_, 20\_\_\_. You hereby irrevocably assign to us or our designee the domain names, URLs and e-mail addresses issued to you with respect to your Metal Supermarkets business including, but not limited to, the following: \_\_\_\_\_.

\_\_\_\_\_ You agree to pay or reimburse us all amounts, whether due and payable or not, that any domain name registry (“Registry”) or Internet Service Provider (“ISP”) may require in connection with such transfer.

We are hereby authorized and empowered without any further notice to you to notify the Registry and the ISP to transfer the domain names, URLs and e-mail addresses to us or such other person or firm as is designated by us. In furtherance thereof, you hereby grant an irrevocable power of attorney to us and appoint us as your attorney-in-fact to take any necessary actions to assign the domain names and e-mail addresses, including but not limited to, executing any forms that the Registry and the ISP may require to effectuate the assignment. This assignment is also for the benefit of the Registry and the ISP, and the Registry and the ISP may accept this assignment and our instructions as conclusive evidence of our rights in the domain names and e-mail addresses and our authority to direct the amendment, termination or transfer of the domain names and e-mail addresses, as if they had originally been issued to us. In addition, you agree to hold the Registry and the ISP harmless from any and all claims against them arising out of any actions or instructions by us regarding the domain names and e-mail addresses.

FRANCHISEE:

MSKS IP INC.

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

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

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

Stephen Schober

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

President &amp; Chief Executive Officer

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

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

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT C-3**

**ADDENDUM TO LEASE**

## ADDENDUM TO LEASE

This addendum is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (“Franchisee”) and \_\_\_\_\_ (“Landlord”) as an addendum to the lease (as amended, renewed and/or extended from time to time, "the Lease") for the premises located at \_\_\_\_\_), state of \_\_\_\_\_ (the “Premises”) dated as of \_\_\_\_\_, \_\_\_\_\_.

WHEREAS, Franchisee has executed or intends to execute a Franchise Agreement with Metal Supermarkets Franchising America Inc. (“Franchisor”) for the operation of a Metal Supermarkets store at the Premises, and as a requirement thereof, the lease for the premises must contain the provisions contained in this Addendum; and

WHEREAS, Landlord and Franchisee agree that the terms contained herein shall supersede any terms to the contrary set forth in the Lease;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the execution and delivery of the Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Franchisee hereby agree as follows:

1. Franchisee hereby assigns to Franchisor, with Landlord's irrevocable and unconditional consent, all of Franchisee's rights, title and interest to and under the Lease upon any termination or non-renewal of the Franchise Agreement, but no such assignment shall be effective unless: (a) the Franchise Agreement is terminated or expires without renewal; and (b) Franchisor notifies the Franchisee and Landlord in writing that Franchisor assumes Franchisee's obligations under the Lease.
2. Franchisor shall have the right, but not the obligation, upon giving written notice of its election to Franchisee and Landlord, to cure any breach of the Lease and, if so stated in the notice, to also succeed to Franchisee's rights, title and interests thereunder.
3. The Lease may not be modified, amended, renewed, extended or assigned by Franchisee without Franchisor's prior written consent.
4. Franchisee and Landlord acknowledge and agree that Franchisor shall have no liability or obligation whatsoever under the Lease unless and until Franchisor assumes the Lease in writing pursuant to Section 2 or 3, above.
5. If Franchisor assumes the Lease, as above provided, Franchisor may further assign the Lease to another person or entity to operate a Metal Supermarkets store at the Premises, subject to Landlord's consent, which consent will not be unreasonably withheld or delayed. Landlord agrees to execute such further documentation to confirm its consent to the assignments permitted under this Addendum as Franchisor may reasonably request.

6. Landlord and Franchisee hereby acknowledge that Franchisee has agreed under the Franchise Agreement that Franchisor and its employees or agents shall have the right to enter the Premises for certain purposes. Landlord hereby agrees not to interfere with or prevent such entry by Franchisor, its employees or agents. Landlord and Franchisee hereby further acknowledge that in the event the Franchise Agreement expires (without renewal) or is terminated, Franchisee is obligated to take certain steps under the Franchise Agreement to de-identify the location as a Metal Supermarkets store. To the extent Franchisor believes that the Franchisee is not in compliance with this de-identification requirement, Landlord agrees to permit Franchisor, its employees or agents, to enter the Premises and remove signs, decor and materials displaying any marks, designs or logos owned by Franchisor, provided Franchisor shall bear the expense of repairing any damage to the Premises as a result thereof.

7. Landlord and Franchisee agree that if Landlord is an Owner or an Affiliate of the Franchisee, as defined in the Franchise Agreement, and Landlord proposes to sell the Premises, prior to the sale of the Premises, the Lease shall be amended to reflect a rental rate and other terms that are the reasonable and customary rental rates and terms prevailing in the community where the Metal Supermarkets store is located.

8. Landlord shall deliver to Franchisor a copy of any notice of default or termination of the Lease at the same time such notice is delivered to Franchisee. Copies of any and all notices required or permitted hereby or by the Lease shall also be sent to Franchisor at 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario Canada M9C 5K6, or such other address as Franchisor shall specify by written notice to Landlord.

9. Under the Franchise Agreement, any lease for the location of a Metal Supermarkets store is subject to Franchisor's approval. Accordingly, the Lease is contingent upon such approval.

*\*[Remainder of the page left intentionally blank]\**

WITNESS the execution hereof under seal.

LANDLORD: \_\_\_\_\_

DATE: \_\_\_\_\_, \_\_\_\_\_

FRANCHISEE: \_\_\_\_\_

DATE: \_\_\_\_\_, \_\_\_\_\_

FRANCHISOR: \_\_\_\_\_

DATE: \_\_\_\_\_, \_\_\_\_\_

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT C-4**

**HOSTING SUPPORT AND SOFTWARE AGREEMENT**

# **HOSTING SUPPORT AND SOFTWARE LICENSE AGREEMENT**

(U.S. VERSION)

This agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), between METAL SUPERMARKETS FRANCHISING AMERICA INC., a company incorporated under the laws of Ontario, Canada ("Franchisor"), and \_\_\_\_\_, a \_\_\_\_\_ ("User"), who, intending to be legally bound, hereby agrees as follows:

## 1. INTRODUCTION

1.1 Franchise Agreement. Franchisor and User are parties to that certain Metal Supermarkets franchise agreement dated \_\_\_\_\_ (the "Franchise Agreement") pursuant to which User has been granted the right to operate a Metal Supermarkets outlet (the "Store") at the Premises to service the geographic area referred to in the Franchise Agreement as the "Protected Area."

1.2 Software. User wishes to obtain from Franchisor, under and subject to the terms and conditions of this Agreement, the right to access and use the software product(s) currently named "MetalTech" (together with all updates, modifications, new versions, new releases and replacements thereof, security software and all related documentation provided by Franchisor to User pursuant to this Agreement, hereinafter referred to as the "MetalTech Software") solely in User's Metal Supermarkets business as a franchisee of Franchisor at the Premises under the terms and conditions of the Franchise Agreement as described in Section 1.1 above (the "Franchise Business").

1.3 Definitions. Capitalized terms not defined elsewhere in this Agreement are defined as follows:

"Affiliate" means any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with a party. For the purposes of this definition, "control" of a person or entity means the power, directly or indirectly (including via a nominee arrangement), either to (i) vote 50% or more of the securities having ordinary voting power; (ii) determine the majority of the board of directors, management committee or similar governing body of such person or entity; or (iii) direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

"Authorized User" shall have the meaning set out in Section 2.3 hereof.

"Confidential Information" shall have the meaning set out in the Franchise Agreement.

"Customer Information" shall have the meaning set out in the Franchise Agreement.

"Franchise Agreement" shall have the meaning set out in Section 1.1 above.

"Franchise Business" shall have the meaning set out in Section 1.2 above.

"Hosting Environment" means all software, hardware, and connectivity used by Franchisor to host the MetalTech Software.

"Hosted Solution" means the MetalTech Software operating in the Hosting Environment.

"Internet" means those communication systems between computers commonly known as the World Wide Web.

"MetalTech Software" shall have the meaning set out in Section 1.2 above.

"Premises" shall have the meaning set out in the Franchise Agreement.

"Processing" (and all other forms of the verb "process") means any operation or set of operations that is performed with respect to information, whether or not by automatic means, including, without limitation, collecting, storing, using, disclosing, erasing or destroying information.

"Proprietary Information" shall have the meaning set out in Section 5.3 hereof.

"Services" means the services provided by Franchisor to User pursuant to the terms and conditions set out in this Agreement, including without limitation, the use of the Hosted Solution, backing up all User Information and providing support to the User and its Authorized Users all in accordance with this Agreement.

"User Information" means data and other information owned by User (which does not include any Confidential Information, Proprietary Information or Customer Information), together with all data, reports, and other information generated by the Hosted Solution based solely on such User Information

## 2. HOSTED SOLUTION

2.1 Franchisor's Obligations. Franchisor is licensed and authorized by one or more of its Affiliates and/or third parties to operate and provide the Hosted Solution and any Services under this Agreement to User. During the Term, Franchisor (whether on its own behalf or through an Affiliate and/or a designated third party) will operate, provide and maintain the MetalTech Software in the Hosting Environment and will make the Hosted Solution available to User via the Internet for its permitted use solely in connection with the operation of the Franchise Business at the Premises and in accordance with the terms and conditions of this Agreement.

2.2 Right to Use Hosted Solution. Franchisor hereby grants to User the non-exclusive, non-transferable right to access the Hosted Solution via the Internet, and to use the Hosted Solution in object code form only, during the Term subject to the terms and conditions of this Agreement. In accordance with the Franchise Agreement, User is solely responsible for obtaining and maintaining all technology as specified by Franchisor. User is solely responsible for: (i) the selection, implementation and maintenance of an Internet connection to User's satisfaction that will at all times be sufficient to permit User (and its Authorized Users) to use the Hosted Solution and any other technology selected by the User from time to time; and (ii) the security and integrity of its own computers, systems and Internet connection, and is required to have current licensed copies of commercially reasonable security and anti-virus software as specified by Franchisor installed in such computers and systems.

2.3 Authorized Users. User may select any of its directors, officers, employees, agents or professional advisors (each an "Authorized User") to access and use the Hosted Solution solely on User's behalf during the Term subject to the terms and conditions of this Agreement. User shall notify Franchisor in writing of all such Authorized Users and provide any information as Franchisor may reasonably request. Franchisor shall take such actions as necessary to permit each Authorized User to access and use the Hosted Solution solely on User's behalf. User may add any additional Authorized User, or remove any existing Authorized User, from time to time by notifying Franchisor in writing, provided that User shall not remove any individual Authorized User more than once per calendar month. User shall take such actions as necessary to ensure its Authorized Users comply with the terms and conditions of this Agreement. Notwithstanding any action or lack of action by Franchisor, User shall at all times be solely responsible for all actions, or lack of action, by any or all of its Authorized Users.

2.4 Support: Upgrades and Enhancements. Franchisor is not obligated to, but may (at its sole discretion), provide or make available to User support and remedial maintenance (collectively, "Assistance") and/or periodic updates and enhancements to the MetalTech Software or the Hosting Environment (collectively "Upgrades"). Assistance shall be subject to the provisions of this Agreement. Upgrades will be deemed part of the MetalTech Software or Hosting Environment (as applicable) and subject to the provisions of this Agreement. Franchisor shall have the option to charge User (and User shall pay) at Franchisor's hourly rate set for Assistance that the Franchisor determines is: (a) repetitive of

support already provided; or (b) already available in manuals or other documentation (printed, electronic, or otherwise) provided to User by Franchisor; or (c) with respect to other software or equipment that is not related to the MetalTech Software; or (d) related to, or as a result of, any other event that Franchisor determines is unreasonable. Notwithstanding any payments by User, all such Upgrades to the MetalTech Software or the Hosting Environment will be the sole property of Franchisor and will be deemed part of the MetalTech Software or Hosting Environment (as applicable).

2.5 Implementation Services. User shall purchase from Franchisor, or Franchisor's designated contractor, such implementation, data conversion, and/or other services related to the Hosted Solution ("Implementation Services") as required by Franchisor. User may also purchase any additional Implementation Services offered by Franchisor or its designated contractor. Such Implementation Services will generally be the subject of a separately executed agreement either between Franchisor and User, or between User and the designated contractor of Franchisor. If and to the extent that no other agreement is entered into with respect to such Implementation Services, then such Implementation Services will be identified and agreed upon in writing in a Franchisor service order (each, a "Service Order") and will be subject to this Agreement. User shall pay all amounts at Franchisor's hourly rate set for such Service Order. Franchisor will use its commercially reasonable efforts to provide such agreed upon Implementation Services in accordance with this Agreement and the applicable Service Order. A Service Order will be effective only upon mutual execution by Franchisor and User, and upon such execution will be deemed to be subject to this Agreement. User will cooperate fully with Franchisor and its contractor(s) in the performance of any such Implementation Services. In the event of a conflict between the provisions of this Agreement and any Service Order, the provisions of this Agreement shall prevail to the extent of any such conflict.

2.6 Right to Modify Hosted Solution. Franchisor and its Affiliates retain the absolute right to modify, alter or enhance the operation and functionality of the MetalTech Software or the Hosting Environment without prior notice to User. User covenants and agrees to modify its use of, and its procedures related to, the Hosted Solution as may be required as a result of any such modifications, alterations or enhancements implemented by Franchisor or its Affiliates.

2.7 Data Backup. Franchisor and its Affiliates shall use commercially reasonable efforts to backup all User Information in accordance with Franchisor's backup policy set out in Exhibit 2.7 attached hereto. User acknowledges and agrees that Franchisor and its Affiliates may amend such policy from time to time by delivering to User a replacement policy in writing thirty (30) days prior to implementing any such amendments.

### 3. RESTRICTIONS ON USE OF SOFTWARE

3.1 Business Use. User (and its Authorized Users) may use the Hosted Solution only in connection with the operation of the Franchise Business at the Premises. The parties agree that User's right to use the Hosted Solution in connection with the operation of the Franchise Business includes the right to Process the User Information.

3.2 Other Restrictions on Use of Hosted Solution. User will not and will not authorize or suffer any Authorized User or third party to (i) access, view, use, copy, modify or prepare derivative works of any part of the Hosted Solution, except as expressly authorized in this Agreement; (ii) resell, distribute, rent, lease, sublicense, lend, give, market, commercialize, assign, or otherwise transfer rights or usage of all or any part of the Hosted Solution to any third party, except as expressly authorized in this Agreement; (iii) reverse engineer, translate, disassemble, decompile, or cause or allow discovery of the source code, underlying ideas or algorithms for any part of the Hosted Solution or attempt to do so; (iv) remove, obscure or alter the copyright, trademark or other proprietary notices affixed to or contained in the Hosted Solution; (v) use any part of the Hosted Solution in any manner or in connection with any data that (A) infringes upon or violates any patent, copyright, trade secret, trademark, publicity, privacy or other right of any third party, (B) violates any applicable international, federal, state, or local law, rule, regulation or ordinance; or (C) violates any applicable privacy policy or other privacy promise; or (vi) engage in conduct intended to or likely to damage the Hosted Solution, for example, by knowingly introducing any viruses, worms other malicious code to any part of the Hosted Solution.

3.3 Acceptable Use. User covenants and agrees to use the Hosted Solution, and to cause all of its Authorized Users to use the Hosted Solution, only in strict compliance with Franchisor's acceptable use policy set out in Exhibit 3.3 attached hereto. User acknowledges and agrees that Franchisor and its Affiliates may amend such policy from time to time by delivering to User a replacement policy in writing ten (10) days prior to implementing any such amendments.

## 4. ACCESS CONTROLS

4.1 Password Security. Franchisor will assign each of User's Authorized Users a unique user name and password (each a "User Identity") and appropriate access rights. User agrees that it is solely responsible for ensuring that (i) its Authorized Users do not share their User Identities with other individuals, including other Authorized Users; and (ii) its Authorized Users understand the need and take appropriate measures to keep all User Identities secret and confidential. Franchisor will have the right to assume that any individual accessing or using the Hosted Solution under a given User Identity is the individual associated with such User Identity in its records and will grant access to User's User Information and other capabilities accordingly. User will be entirely responsible for the acts and omissions of anyone using a User Identity associated with User's name in Franchisor's records as though such acts and omissions were the acts and omissions of User, whether or not such acts or omissions or the use of the User Identity were authorized by User. If User wishes to terminate or modify the access rights of any of its Authorized Users, User will be entirely responsible for notifying Franchisor to change such Authorized User's access settings or disable such Authorized User's User Identity. User will notify Franchisor immediately of any known or suspected unauthorized use of a User Identity registered to User or any other known or suspected breach of security.

4.2 Security Risks; Availability. User acknowledges that Internet-based and software solutions cannot be made perfectly secure or reliable and that data Processing entails the likelihood of some human and machine errors, omissions, downtime, delays, and losses, including inadvertent loss or corruption of data, which may give rise to losses or damage. User accepts responsibility for adopting reasonable measures to limit its exposure with respect to such potential losses and damage. While Franchisor will use its good faith and reasonable efforts to provide a high level of availability for the Hosted Solution, availability may be impacted adversely by a number of factors over which Franchisor has limited or no control, and for which Franchisor will not be liable. The availability of the Hosted Solution is also subject to scheduled downtime for maintenance purposes, unscheduled maintenance, and general system outages. While Franchisor will work in good faith to resolve problems in a reasonable manner, taking into account the scope and effect of the problems, Franchisor does not commit to specific service levels with respect to the Hosted Solution. Without limiting the generality of the foregoing, under no circumstances shall Franchisor be liable for any damages or claims related to the lack of availability of Hosted Solution for any reason whatsoever, including without limitation, any inability by either Franchisor or User to establish or maintain a connection to the Internet at any time.

4.3 Right to Deny Access. For the protection of User and its Authorized Users, Franchisor reserves the right, at its sole discretion (i) to deactivate any User Identity; (ii) to require Authorized User(s) to change User Identities or to use multi-factor authentication and other security protocols; or (iii) to deny, limit or terminate access to the Hosted Solution or any portion thereof, at any time, as necessary or advisable to protect the security and integrity of the MetalTech Software or the Hosting Environment. Whenever Franchisor is able to do so without compromising the security or integrity of the Hosted Solution, Franchisor will give User reasonable notice before taking such action. If Franchisor determines, in its sole discretion, that it is advisable to take immediate action, without prior notice to User, Franchisor will notify User as soon as reasonably practicable of its action and, if it can do so without compromising the security of the Hosted Solution or any investigation, the reason for the action.

## 5. INTELLECTUAL PROPERTY

5.1 MetalTech Software, Hosting Environment and Hosted Solution. User acknowledges and agrees that Franchisor has obtained the necessary rights to use, and to sublicense others to use, the MetalTech Software and the Hosting Environment throughout the United States. User further acknowledges and agrees that the MetalTech Software and the Hosting Environment contain the valuable trade secrets of Franchisor, its Affiliates and third-party licensors. User will not acquire any right, title or interest in the MetalTech Software or the Hosting Environment or any portion or component thereof pursuant to this Agreement, other than the right to access and use the Hosted Solution as expressly granted in this Agreement, subject to the terms and conditions of this Agreement.

5.2 Feedback. By providing, comments, suggestions and other feedback relating to the MetalTech Software or the Hosting Environment to Franchisor (collectively, the "Feedback"), User grants to Franchisor and/or its Affiliates a perpetual, non-revocable, worldwide, fully-paid up, royalty free license to use, reduce to practice, make, exploit, reproduce, display and perform publicly, sublicense, distribute, and prepare derivative works based on such Feedback

(and all know-how related thereto) for any purpose whatsoever, including but not limited to designing, developing, marketing and operating web-enabled services. Upon Franchisor's request, User will execute such further instruments and take such further actions as Franchisor may reasonably request, at Franchisor's expense, to evidence or protect Franchisor's rights in such Feedback.

5.3 Proprietary Information and User Information. User acknowledges and agrees that the Hosted Solution and other materials provided by Franchisor and its Affiliates are and will be deemed to be confidential information and/or trade secrets of Franchisor, its Affiliates and third parties ("Proprietary Information"), including without limitation, the product codes established by Franchisor and their use in the MetalTech Software. Proprietary Information shall also be deemed to be "Confidential Information" (as the term is defined in the Franchise Agreement) subject to protection under and subject to the Franchise Agreement. User acknowledges and agrees that Franchisor and its Affiliates are obligated to protect the Proprietary Information related to the Hosted Solution and that Franchisor or its Affiliates may be liable to third parties for any breach by User of its obligations pursuant to this Agreement. User agrees to use the Proprietary Information only during the Term (as defined below) and to take all steps reasonably necessary to maintain and protect the Proprietary Information in the strictest confidence for the benefit of Franchisor. User agrees that it will not, at any time, including after this Agreement expires or terminates, without the express written permission of Franchisor, disclose any of the Proprietary Information directly or indirectly to any third party. User acknowledges and agrees that it has no right, title or interest in or to the Proprietary Information or the Customer Information and acquires no right, title or interest in or to the Proprietary Information or Customer Information, except the limited right to use the Proprietary Information and Customer Information to perform its obligations and exercise its rights under this Agreement subject to the terms and conditions herein.

5.4 Consents. User shall obtain all necessary consents to ensure that Franchisor and its Affiliates can: (a) collect, use and disclose all Customer Information and User Information as contemplated in this Agreement; and (b) collect, use and disclose customers' personal information in the manner set out in the privacy policy of Franchisor and its Affiliates, and User covenants to obtain and comply with such privacy policy as amended from time to time in accordance with this Section 5.4. Franchisor shall have the right to retrieve and use any or all User Information provided however that it complies with all relevant privacy laws in connection with such data and information.

5.5 Information Exchange. User acknowledges and agrees that the value of the Hosted Solution is maximized by Franchisor evaluating and, if Franchisor deems appropriate, including into the Hosted Solution any or all User Information for its own purposes and for the benefit of franchisees including, but not restricted to, volume, pricing, cost and expense analysis, inventory and benchmarking. Data collected from User and other franchisees may be used in pricing, purchasing, inventory and other analysis functionalities that may be available to User through the Hosted Solution. User acknowledges and agrees to having a reciprocal obligation to Franchisor hereunder and therefore grants Franchisor an unlimited, royalty-free, perpetual license to include and use the User Information in the Hosted Solution.

5.6 User Information. Except as permitted in this Agreement and the Franchise Agreement, Franchisor will not disclose User Information unless authorized by User or unless Franchisor is required to do so by law or in the good faith belief that such action is necessary to: (a) conform to applicable laws or comply with legal process served on Franchisor; (b) protect and defend the rights or property of Franchisor; or (c) enforce this Agreement.

5.7 Statistical Information. Franchisor may provide user statistical information such as usage or traffic patterns in aggregate form to third parties, but such information will not include personally identifying information unless required by law or regulation, Franchisor may access User Information to respond to service or technical problems with the Hosted Solution. User is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all User Information and Customer Information. Franchisor assumes no responsibility for the deletion, correction, destruction, loss, infringement or failure of the Hosted Solution to store any User Information or Customer Information, whether caused by Franchisor, any of its Affiliates or licensors.

5.8 Maximum Storage. Franchisor reserves the right to establish a maximum amount of memory or other computer storage and a maximum amount of User Information and Customer Information that User may store, post or transmit on or through the Hosted Solution.

5.9 Compliance with Privacy Legislation. User shall be responsible for compliance with all obligations imposed by any applicable privacy legislation, and any implementing or amending legislation as may be enacted from time to time.

5.10 Retention of User Information. Franchisor shall retain User Information for a period of thirty (30) days after expiration or termination of this Agreement. User may deliver, within twenty (20) days of expiration or termination of this Agreement, to Franchisor a Service Order in accordance with Section 2.5 above to request that Franchisor conduct a mass export of User Information. After thirty (30) days, Franchisor may delete and destroy all User Information without notice or further liability to User.

## 6. COMPENSATION

6.1 Fees. User will pay by means of electronic fund transfer by the 20<sup>th</sup> day of each month the amounts that are due and incurred by User under or in connection with this Agreement, including any late payment fees, as are specified in this Agreement or in an invoice.

User's monthly fee for access and use of (and Franchisor's provision of) the Hosted Solution for the Store located in the Premises will be the aggregate of the Monthly Fee and the Surplus Storage Fee (as defined below) per month for such Store. For the purposes of this Section:

- (a) The "Monthly Fee" shall be (i) \$583.00 (US) per month if Annual Gross Sales are less than \$1,000,000.00 (US); (ii) \$670.00 (US) per month if Annual Gross Sales are \$1,000,000.00 (US) or higher but less than \$2,000,000.00 (US); or (iii) \$773.00 (US) per month if Annual Gross Sales are \$2,000,000.00 (US) or higher. "Annual Gross Sales" shall mean the Gross Sales for the Store for the twelve months ending September 30<sup>th</sup> prior to the subject month. Franchisor shall determine the Annual Gross Sales for the Store in accordance with the Franchise Agreement. (The term "Gross Sales" shall be as defined in the Franchise Agreement);
- (b) Notwithstanding the foregoing, the minimum Monthly Fee shall be as per 6.1 (a) (i). If an existing Store is acquired, the Monthly Fee will remain at the prior owner's Monthly Fee until the next period ending on September 30<sup>th</sup> occurs; and
- (b) The "Surplus Storage Fee" shall be a fee of \$3.00 (US) per month for each gigabyte (or part of a gigabyte) of data storage on the Hosted Solution used by User for the Store at any time during the subject month in excess of three gigabytes. Franchisor shall determine the Surplus Storage Fee based on the maximum data storage used by User during the subject month.

User shall pay the Monthly Fee in the subject month to which such fee relates. User shall pay the Surplus Storage Fee in the calendar month next following the subject month to which such fee relates. In addition, Franchisor reserves the right to amend all such foregoing fees by the greater of 5% or CPI (Consumer Price Index as further defined, and if applicable, in the Franchise Agreement) on an annual basis (which will be measured by Franchisor's fiscal year and the base year being Franchisor's fiscal year ended September 30, 2023), by providing User notice of such change within 30 days after the completion of each of Franchisor's fiscal year ends. Except for Franchisor's provision of the Hosted Solution, all costs and expenses associated with User's access and use of the Hosted Solution will be the sole responsibility of User.

6.2 Taxes. Any and all amounts described herein are exclusive of all federal, state, and local sales, use, personal property and other taxes now in force or enacted in the future and, accordingly, any payments hereunder are subject to an increase equal to the amount of any tax Franchisor may be required to collect or pay in connection with the Hosted Solution, other than any tax on the net income of Franchisor.

## 7. INDEMNIFICATION, DISCLAIMER OF WARRANTIES AND LIABILITIES

7.1 Indemnification. User will indemnify, hold harmless and defend Franchisor and Franchisor's Affiliates, third party licensors and service providers and their respective officers, directors, employees and agents against any third party claims arising from or related to: (i) User's (or any of its Authorized User's) breach of any of the terms and conditions

of this Agreement, including without limitation any breach by User of its obligations relating to the Hosted Solution; or (ii) any applicable privacy legislation or User's obligation to obtain and maintain consents from third parties relating to any use or disclosure by Franchisor of User Information or Customer Information or customer's personal information; or (iii) User Information or other materials Processed using the Hosted Solution. User will pay all costs, losses, damages and attorneys' fees that are finally awarded, and all associated settlements. User will not compromise or settle any claim or controversy in a manner that does not result in the unconditional release of the indemnified party without first obtaining the indemnified party's consent.

7.2 Disclaimer of Warranties. FRANCHISOR, ITS AFFILIATES, ITS LICENSORS AND ITS SERVICE PROVIDERS MAKE NO AND HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND GUARANTEES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, TITLE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE. USER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, FRANCHISOR CANNOT AND DOES NOT WARRANT THAT THE OPERATION OF THE HOSTED SOLUTION WILL BE WITHOUT INTERRUPTION, COMPLETELY SECURE OR ERROR-FREE. USER UNDERSTANDS THAT IT ASSUMES ALL RISKS AS TO THE USE, QUALITY, AND PERFORMANCE OF THE HOSTED SOLUTION.

7.3 No Warranty regarding Results. FRANCHISOR, ITS AFFILIATES, ITS LICENSORS AND ITS SERVICE PROVIDERS WILL HAVE NO LIABILITY ARISING FROM OR IN ANY WAY RELATED TO ANY RESULTS, REPORTS, PRICING, COST OR BENCHMARKING ANALYSIS, INVENTORY ANALYSIS OR ANY OTHER OUTPUT OR DETERMINATION GENERATED BY THE METALTECH SOFTWARE. All pricing analyses and inventory analyses are suggestions only and may be based on settings and other User Information entered into the MetalTech Software by or on behalf of User. User is solely responsible for the proper set up, use and maintenance of all information entered into the MetalTech Software by User and for monitoring all results produced therefrom. User shall use its own best efforts to review and understand all results from the MetalTech Software (including pricing suggestions and inventory purchases) prior to relying thereon. ALL RESULTS AND OUTPUT OF THE METALTECH SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS AND USER ASSUMES ALL LIABILITY FOR RELYING THEREON. Franchisor and its Affiliates will use commercially reasonable efforts to maintain the availability of the Hosted Solution BUT IN NO EVENT SHALL FRANCHISOR, ITS AFFILIATES OR LICENSORS BE LIABLE FOR ANY SUCH RELIANCE BY USER.

7.4 No Liability regarding User Information. Franchisor and its Affiliates shall use commercially reasonable efforts to backup all User Information in accordance with Section 2.7 hereof. FRANCHISOR, ITS AFFILIATES, ITS LICENSORS AND ITS SERVICE PROVIDERS WILL HAVE NO LIABILITY ARISING FROM OR IN ANY WAY RELATED TO ANY BACKUP OF USER INFORMATION OR ANY LOSS RELATED THERETO.

7.5 Limitations and Exclusions of Liability. FRANCHISOR, ITS AFFILIATES, ITS LICENSORS AND ITS SERVICE PROVIDERS WILL HAVE NO LIABILITY ARISING FROM OR IN ANY WAY RELATED TO THE HOSTED SOLUTION, THIS AGREEMENT, OR ANY SERVICES OR DELIVERABLES THAT MAY BE PROVIDED, FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.6 Communications. User (and its Authorized Users) may use the Hosted Solution to send or receive communications from other third parties ("Communications"). User hereby acknowledges and agrees that any such Communications are solely between User (or its Authorized Users) and such third parties. FRANCHISOR SHALL HAVE NO LIABILITY, OBLIGATION OR RESPONSIBILITY WHATSOEVER ARISING OUT OF, OR IN CONNECTION WITH, ANY SUCH COMMUNICATIONS. In addition, the Hosted Solution may provide links to other websites or resources. User acknowledges and agrees that Franchisor shall not be responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, services or other materials on or available from such sites or resources. FRANCHISOR SHALL NOT BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY, OR IN CONNECTION WITH, USE OF OR RELIANCE UPON ANY SUCH CONTENT, GOODS OR SERVICES AVAILABLE ON SUCH EXTERNAL SITES OR RESOURCES.

7.7 Maximum Aggregate Liability. THE AGGREGATE MAXIMUM LIABILITY OF ALL OF FRANCHISOR, ITS AFFILIATES, ITS LICENSORS OR ITS SERVICE PROVIDERS ARISING FROM OR IN ANY WAY RELATED TO THE HOSTED SOLUTION, THIS AGREEMENT, AND ANY SERVICES OR DELIVERABLES THAT MAY BE PROVIDED, WILL BE LIMITED TO USER'S ACTUAL DIRECT DAMAGES UP TO A MAXIMUM AGGREGATE OF THE AMOUNTS PAID TO FRANCHISOR UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE EVENT(S) GIVING RISE TO THE LIABILITY, OR \$100, WHICHEVER IS GREATER. IN NO EVENT WILL FRANCHISOR, ITS AFFILIATES, ITS LICENSORS OR ITS SERVICE PROVIDERS BE LIABLE FOR LOSS OF PROFITS, DATA, OR BUSINESS OPPORTUNITY, ARISING FROM OR RELATED TO THE HOSTED SOLUTION, THIS AGREEMENT, OR ANY SERVICES OR DELIVERABLES THAT MAY BE PROVIDED.

7.8 Acknowledgement. THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF AN AUTHORIZED REPRESENTATIVE OF FRANCHISOR OR ITS AFFILIATES, LICENSORS OR SERVICE PROVIDERS HAD BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. USER ACKNOWLEDGES THAT FRANCHISOR COULD NOT MAKE THE HOSTED SOLUTION AVAILABLE TO USER ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT IF THE LIABILITY OF FRANCHISOR, ITS AFFILIATES, LICENSORS AND SERVICE PROVIDERS WERE NOT LIMITED AS SET FORTH IN THIS AGREEMENT.

## 8. RELATIONSHIP TO OTHER AGREEMENTS; TERM AND TERMINATION

8.1 Franchise Agreement Provisions. In addition to the terms and conditions set forth herein, this Agreement and the rights granted herein will be subject to all of the terms and conditions of the Franchise Agreement. In the event of any conflict between this Agreement and the terms or conditions of the Franchise Agreement, the terms and conditions of the Franchise Agreement shall prevail to the extent of any such conflict.

8.2 Term; Termination. The term ("Term") of this Agreement will be co-extensive with the Franchise Agreement and will expire or terminate automatically, save and except as noted below, and without the requirement of further action by Franchisor upon expiration or termination of the Franchise Agreement for any reason. Franchisor also may terminate this Agreement in any of the following events: (i) for any reason whatsoever, provided Franchisor delivers not less than 120 days' notice to User; or (ii) if replacement hosted software is offered under a new agreement with Franchisor or an Affiliate of Franchisor, provided Franchisor delivers not less than 15 days' notice to User; or (iii) immediately upon notice to User if Franchisor is no longer able to provide the MetalTech Software or reasonable access (as determined by Franchisor) to the Hosted Solution for any reason whatsoever (including without limitation legal, licensing or third party performance reasons). User's breach or failure to comply with the terms or conditions of this Agreement or any other agreement with Franchisor, including the Franchise Agreement, will be considered a material breach of this Agreement, conferring on Franchisor the right to terminate this Agreement, effective upon notice thereof. In addition, User's failure to comply with the terms or conditions of this Agreement will also be considered a material breach of the Franchise Agreement.

8.3 In-Term Termination and Access Suspension. In addition to Franchisor's rights to terminate this Agreement as provided in Section 8.2, with respect to non-payment of fees owed Franchisor under this Agreement, Franchisor reserves the right to deny access or terminate this Agreement if User does not pay, when due, amounts due to Franchisor under this Agreement. If User defaults in its payment obligations, Franchisor reserves the right at its sole discretion to alter Monthly Fees (not to exceed an increase of 125% of the then current Monthly Fee) and/or require annual prepayment of such fees.

8.4 Obligations Upon Expiration or Termination. If this Agreement expires or is terminated for any reason:

- (a) User will pay all amounts owed to Franchisor; and
- (b) User's (and all Authorized Users') access to the Hosted Solution will immediately terminate; and

- (c) User will immediately cease all use of the Hosted Solution; and
- (d) User will immediately return to Franchisor all copies of any Proprietary Information or proprietary materials of Franchisor in User's possession.

8.5 Post-Termination Restriction. User hereby acknowledges and agrees that: (i) the Hosted Solution includes Proprietary Information (including without limitation trade secrets) that is unique and valuable to Franchisor and its Affiliates; and (ii) Franchisor and its Affiliates and Third Party Providers have invested considerable human resources and financial resources to customize the Hosted Solution to support all franchisees of Franchisor; and (iii) all fees paid by User to Franchisor pursuant to this Agreement, the Franchise Agreement or any other agreement will not fully compensate Franchisor for developing the Proprietary Information or permitting User to access the Hosted Solution in accordance with this Agreement; and (iv) Franchisor would not grant the rights to User as contemplated in this Agreement without the User covenanting and agreeing to the restriction set out in the paragraph below.

## 9. GENERAL TERMS

9.1 Assignment. Neither this Agreement nor any rights granted hereby, nor any ownership interest in User, may be, directly or indirectly, assigned or otherwise transferred by User without the prior written consent of Franchisor. Any attempt by User to assign this Agreement, any rights, duties or obligations under this Agreement, or an ownership interest in User, without such consent will be void and without force or effect. Franchisor may condition its consent to any such assignment on, among other things, the simultaneous assignment of the Franchise Agreement to the same assignee. This Agreement will be binding upon and inure to the benefit of the parties' permitted successors and assigns. Franchisor may transfer and either directly or indirectly assign this Agreement (in whole or in part) and any rights granted hereby to any person or legal entity at its sole discretion.

9.2 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby. Any such provision will be deemed modified to the least degree necessary to remedy such invalidity while retaining, to the maximum extent possible, the intent of the parties and the economic effect of the invalid provision.

9.3 Relationship of Parties. Franchisor and User will be and will act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint-venturer with, the other party for any purpose. Neither party by virtue of this Agreement will have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party. This Agreement is not a franchise agreement, and does not grant to User any right to use in any manner Franchisor's Marks (as defined in the Franchise Agreement) or any other rights not granted to User under this Agreement.

9.4 Dispute Resolution. Any and all controversies, disputes or claims arising from or relating to this Agreement, the Hosted Solution, and any Services or deliverables that may be provided will be resolved in the same manner provided in the Franchise Agreement.

9.5 Governing Law. This Agreement and all issues arising from or relating to this Agreement, the Hosted Solution, and any services or deliverables that may be provided will be governed by and construed under the laws of the State of New York.

9.6 Force Majeure. Franchisor, its Affiliates and its Third Party Service Providers will not be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder or for failure to give the other party prior notice thereof when such delay or failure is due to a force majeure, including the elements, acts of God, delays in transportation, delays in delivery by vendors, war, terrorism, unavailability of the Internet, delays or failures caused by third parties (including without limitations any matter related to the Hosting Environment) or any other causes beyond Franchisor's reasonable control. If and to the extent that User fails to cooperate with Franchisor, its Affiliates or licensors fully in the performance of any Services, or User's delay or failure to perform causes a delay or failure by Franchisor, its Affiliates or licensors, then Franchisor will be relieved from its obligation to perform in accordance with this Agreement to the extent due to User's delay or failure.

9.7 Non-Waivers. No express or implied waiver by either party of any event of default hereunder will in any way be, or be construed as, a waiver of any future or subsequent event of default.

9.8 Costs and Attorneys' Fees. If Franchisor claims in any judicial or arbitration proceeding that User owes Franchisor or any of its Affiliates money or that User has otherwise breached this Agreement and Franchisor prevails on such claim(s), then Franchisor will be awarded its costs and expenses incurred in connection with such proceedings, including reasonable attorneys' fees.

9.8 Exercise of Rights. The rights of Franchisor and User hereunder are cumulative and no exercise or enforcement by Franchisor or User of any right or remedy hereunder will preclude the exercise or enforcement by Franchisor or User of any other right or remedy hereunder which Franchisor or User is entitled to enforce by law.

9.9 Construction. The language of this Agreement will be construed according to its fair meaning and not strictly against any party, regardless who drafted this Agreement. The exhibits and addenda (if any) to this Agreement are a part of this Agreement and constitute the entire agreement of the parties. Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations or statements relating to the subject matter of this Agreement, other than the franchise disclosure document delivered by Franchisor, that either party may or does rely on or that will have any force or effect. Nothing in this Agreement will be deemed to confer any rights or remedies on any person or legal entity not a party hereto, other than successors and assigns of any party to this Agreement whose interests is assigned in accordance with its terms. This Agreement may not be modified except by written agreement signed by both parties.

The headings of sections are for convenience only and do not limit or construe their contents. The word "including" will be construed to include the words "without limitation." The term "User" is applicable to one or more persons, a corporation, limited liability company or a partnership and its owners individually, as the case may be. If two or more persons are at any time User hereunder, or User is owned by two or more people, whether as partners, joint venturers or otherwise, then their obligations and liabilities to Franchisor will be joint and several.

Whenever this Agreement requires the approval or consent of either party, the other party must make written request therefor, and such approval or consent must be obtained in writing. This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. This Agreement may be executed in multiple copies, each of which will be deemed an original. Time is of the essence in this Agreement.

9.10 Reasonable Business Judgment. Franchisor and User acknowledge and agree that this Agreement (and the relationship of the parties which arises from this Agreement) grants Franchisor the right to make decisions, take actions and/or refrain from taking actions not inconsistent with User's explicit rights and obligations hereunder that may affect favourably or adversely User's interests. User understands and agrees that Franchisor may operate and change the Hosted Solution in any manner that is not expressly and specifically prohibited by this Agreement. Whenever Franchisor has reserved in this Agreement a right and/or discretion to take or withhold an action, or to grant or decline to grant User a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its right and/or discretion on the basis of its judgment of what is in its best interests, including without limitation our judgment of what is in the best interests of its franchise network, at the time its decision is made (its "reasonable business judgment"), without regard to: (1) whether other reasonable or even arguably preferable alternative decisions or actions could have been made by Franchisor; (2) whether its decision or the action it takes promotes its financial or other individual interest; (3) whether its decision or the action it takes applies differently to User and one (1) or more other franchisees; or (4) whether its decision or the exercise of its rights is adverse to User's individual interests or the individual interests of any other particular franchisees. Franchisor will have no liability to User for any such decision or exercise of its rights

9.11 Notices and Payments. Any and all notices and consents required or permitted under this Agreement shall be delivered to the other party in the same manner, and at the same address, provided in the Franchise Agreement. No restrictive endorsement accompanying any payment will bind Franchisor, and Franchisor's acceptance of any such payment may not constitute an accord and satisfaction.

9.12 Entire Agreement. The parties acknowledge that this Agreement and the mutually agreed upon Service Orders, if any, sets forth the complete, exclusive and integrated understanding of the parties which supersedes all proposals or prior agreements, oral or written, and all other prior communications, statements or representations between

the parties relating to the subject matter of this Agreement except as expressly set out herein. In the event of a conflict between the terms of this Agreement and any Service Order, the terms of this Agreement will prevail. If User uses a non-Franchisor form to order any services, the parties agree that such form is for User's convenience only, and that any terms in addition to, or conflicting with, those in this Agreement will be null and void. Nothing in this Section is intended to negate any representation made in the applicable Franchise Disclosure Document delivered by Franchisor to User prior to the execution of the Franchise Agreement.

9.13 Survival. Any terms of this Agreement that by their nature should survive termination or expiration of this Agreement, will survive, including without limitation, terms governing ownership, confidentiality, disclaimers of warranty, limitations of liability, and this Section 9.

9.14 Further Assurances. User agrees, at Franchisor's request and reasonable expense, to provide reasonable assistance and cooperation to Franchisor, its Affiliates, its licensors and their designees, and to give testimony and execute documents and to take such further acts reasonably requested by the other to acquire, transfer, maintain, perfect, and enforce Franchisor's, its Affiliates and licensor's intellectual property rights in and to the Hosted Solution and every part thereof.

9.15 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**METAL SUPERMARKETS FRANCHISING  
AMERICA INC.**

**USER:** \_\_\_\_\_

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

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

Stephen Schober, President

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

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

## Exhibit 2.7

### Franchisor Data Backup Policy

#### Backup

Franchisor shall use commercially reasonable efforts to maintain the following backup procedure:

- (1) A complete backup of all User Information and Customer Information will be completed each Friday;
- (2) Incremental backups will be made on each Monday, Tuesday, Wednesday and Thursday of all changes to User Information and Customer Information from the previous Friday;
- (3) Each Friday backup will be retained by Franchisor for four weeks from the date of the backup;
- (4) A complete backup of all User Information and Customer Information will be completed on the last business day of each calendar month and shall be retained for twelve (12) months thereafter.

#### Restore

Subject to the foregoing, User may request, and Franchisor shall use commercially reasonable efforts to provide within a reasonable time period, recovery of any User Information and/or Customer Information used by User, or its Authorized Users, in accordance with the following procedure:

- (1) User must submit a restore request via email to: [support@metalsupermarkets.com](mailto:support@metalsupermarkets.com);
- (2) User must provide such information as Franchisor may request, including without limitation:
  - a. The reason for the restore;
  - b. Date, day or time of deletion/corruption or nearest approximation;
  - c. The date of the backup that User wishes to be restored.

User acknowledges and agrees that Franchisor does not represent or warrant, and cannot guarantee, anything regarding the details, completeness, or format of the User Information and Customer Information that is the subject of any request to restore as noted in this Policy.

### Exhibit 3.3

#### Franchisor Acceptable Use Policy

This Acceptable Use Policy is incorporated into, and forms part of, the Hosting Support and Software Licensing Agreement. You must comply with this policy when using the Hosted Solution and you must cause your Authorized Users to comply with this policy when they use the Hosted Solution.

#### 1. Basic Definitions

In this agreement:

- a) "we", "us", and "our" mean Franchisor and its Affiliates.
- b) "you" and "your" mean a User.
- c) "License Agreement" means the Hosting Support and Software License Agreement between you and Franchisor.

#### 2. Changes

Franchisor may revise this policy from time to time without notice by posting a new version in the section of Franchisor's intranet called "The Metal Library". Accordingly, you should consult this document regularly to ensure your activities conform to the most recent version. Please direct any questions or comments regarding this policy and complaints of violations of this policy by subscribers to [contracts@metalsupermarkets.com](mailto:contracts@metalsupermarkets.com).

#### 3. Prohibited Activities

Neither you, nor any of your Authorized Users, shall at any time:

- a) use the Hosted Solution to:
  - i. use, possess, post, upload, transmit, disseminate or otherwise make available content that is unlawful, that violates the copyright or other intellectual property rights of others, and/or that contains pornography;
  - ii. participate in any illegal activity, including activities involving illegal drugs, weapons or gambling;
  - iii. invade another person's privacy or collect, use, disclose or store personal data about other users without their consent;
  - iv. stalk or harass another person or entity;
  - v. post, upload, transmit or otherwise make available information or software containing a virus, worm, Trojan horse or other harmful, limiting, destructive or debilitating feature;
  - vi. distribute mass or unsolicited emails ("spam");
  - vii. generate levels of traffic sufficient to impede others' ability to send or retrieve communication or information;
  - viii. disrupt any backbone network nodes or network service, or otherwise restrict, inhibit, disrupt or impede Franchisor's ability to monitor or deliver the Hosted Solution, our transmissions or data; or
  - ix. impersonate any person or entity, including a Franchisor official, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- b) restrict, inhibit or interfere with the ability of any person to access, use or enjoy the Hosted Solution or any equipment used to connect to the Hosted Solution, or create an unusually large burden on Franchisor's network or the Hosted Solution;
- c) use any of the Hosted Solution in an abusive manner as determined by Franchisor;

- d) copy, distribute, sub-license or otherwise make available any software Franchisor provides or makes available to you, except as authorized by Franchisor;
- e) reverse engineer, de-compile, hack, disable, disrupt, interfere with, disassemble, copy, decrypt, reassemble, supplement, translate, adapt or enhance any of the equipment or software used to provide the Hosted Solution;
- f) attempt to use any of the Hosted Solution in such a manner so as to avoid incurring charges for usage;
- g) use, reproduce, sell, resell or otherwise exploit the Hosted Solution for any commercial purposes other than as permitted pursuant to the License Agreement;
- h) avoid, circumvent, or disable any access control technology, security device, procedure, protocol, or technological protection mechanism that may be included or established in or as part of any the Hosted Solution or any hardware/software used to provide the Hosted Solution; or
- i) use the Hosted Solution for anything other than as permitted pursuant to the Hosting Support and Software Licensing Agreement.

#### **4. Violation of this Acceptable Use Policy**

Franchisor prefers to advise customers of inappropriate behaviour and any necessary corrective action. However, if you or any of your Authorized Users violates this policy, Franchisor may suspend some or all of your Authorized Users from use of the Hosted Solution and/or terminate the Hosting Support and Software Licensing Agreement. Franchisor will have no liability for any such responsive actions. The above actions are not exclusive remedies and Franchisor may take any other legal or technical action deemed appropriate. The failure to enforce this policy, for whatever reason, will not be construed as a waiver of any right to do so at any time. If you learn that this policy conflicts with any applicable laws or regulations, you must comply with the laws or regulations and immediately notify us in writing of the conflict.

Exhibit 5.4  
Privacy Policy

## Privacy Policy

This Privacy Policy describes the purposes for which and the manner in which MSKS IP Inc. and affiliates (collectively “Metal Supermarkets”) collect, use, maintain and disclose personal data or information collected from users of its website or any online software provided or utilized by Metal Supermarkets (collectively the “Online Services”). It also describes procedures available for users who have questions, complaints or disputes relating to Metal Supermarket’s handling of their personal data. Metal Supermarkets adheres to the Safe Harbor requirements published by the United States Department of Commerce, including the Safe Harbor Privacy Principles. Accordingly, Metal Supermarket’s Privacy Policy and procedures for handling personal data are adequate for purposes of receiving personal data transfers from the European Union in compliance with Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the EU Directive). However, users should understand that adherence to the Safe Harbor Privacy Principles may be limited to the extent necessary to meet national security, public interest, law enforcement requirements, judicial process or if the effect of the EU Directive or of Member State law is to allow exceptions or derogations, provided such exceptions or derogations are applied in comparable contexts.

### The Information Metal Supermarkets Collects

Metal Supermarkets gathers personal data from users of its Online Services (each a “User”) to improve the content of the Online Services, to facilitate sales and order inquiries, to enhance the User’s online experience, and for other business purposes. The personal data collected may be about the User or customers of the User (“Customers”) that have given their consent to their private data being provided to Metal Supermarkets. Metal Supermarkets takes reasonable precautions to secure all such personal data. Metal Supermarkets uses reasonable technical solutions to make each User’s visit to the Online Services as safe as it can reasonably be, but Users and Customers should understand that no information system can ever be made 100% secure. Metal Supermarkets may collect various types of personal data voluntarily provided by Users, including name, company name, address, telephone number, credit card number or other billing information, e-mail address, and other information such as survey responses. Metal Supermarkets may also collect information about how Users use the Online Services, for example, by tracking the number of unique views received by the pages of the Online Services or the domains from which Users originate. Metal Supermarkets may use “cookies” to track how Users use the Online Services. A cookie is a small piece of data stored on a computer and delivered through a Web browser. Most, if not all, commercial websites now use cookies. By using this technology, Metal Supermarkets can provide a User with an enhanced online experience. It is possible for a User to turn off cookies in a Web browser. If a User does this, the User can still browse Metal Supermarket’s website, but Metal Supermarkets will not be able to provide the User with a more personalized experience.

Metal Supermarkets collects from Users only personal data that is relevant to the purposes outlined above. Metal Supermarkets takes reasonable steps to ensure that the personal data that it collects is reliable, accurate, and complete.

Metal Supermarkets does not knowingly solicit data from or market to children under the age of 13. You must be at least 18 years of age to be a User. If Metal Supermarkets learns that a Customer or other individual under 13 has provided personally identifiable information, Metal Supermarkets will use reasonable efforts to remove that information from its databases.

Personal information may be transferred to and maintained on servers or databases located outside a User’s state, province, or country. If a User or Customer is located outside of the United States, Metal Supermarkets may process and store information in the US. US law may not be as protective of privacy as the laws that apply in the User or

Customer's home country. By using the Online Services, User agrees that the collection, use, transfer, and disclosure of personal information may be governed by applicable US laws.

### **How Metal Supermarkets Uses Information**

Metal Supermarkets may use personal data collected through the Online Services to contact Users or Customers regarding products and services offered by Metal Supermarkets and its affiliates, independent contractors and business partners, and otherwise to enhance a User's experience with Metal Supermarkets and such affiliates, independent contractors and business partners. Metal Supermarkets may also use information collected through its Online Services for research regarding the effectiveness of the Online Services and the marketing, advertising and sales efforts of Metal Supermarkets, its affiliates, independent contractors and business partners.

### **Opt Out Procedure**

Users and Customers have the choice to opt out of having their personal information used by Metal Supermarkets for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual. When a User is first asked to provide personal data or information to Metal Supermarkets, or as soon thereafter as is practical, but in any event before Metal Supermarkets uses such information for a purpose other than that for which it was originally collected or processed by Metal Supermarkets, Metal Supermarkets will provide a User with clear and conspicuous, readily available, and affordable mechanisms to exercise this choice.

### **Retargeting**

Metal Supermarkets collects data about a User's activities that does not personally or directly identify the User when visiting the Online Services, or the websites and online services where are displayed as advertisements ("Publishers"). This information may include the content the User views, the date and time that the User viewed this content, the products the User purchased, or the User's location information associated with its IP address. Metal Supermarkets uses the information collected to serve the User more relevant advertisements (referred to as "Retargeting"). Metal Supermarkets collects information about where the User saw the ads and which ads were clicked on.

Metal Supermarkets does not target ads to Users or Customers based on sensitive personal data, such as information related to race or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, trade union membership, physical or mental health or condition or sexual life. Any data used to serve targeted advertisements is de-identified and is not used to personally or directly identify a User or a Customer.

### **Disclosure of Information**

Metal Supermarkets may disclose personal data or information collected from Users to third parties acting as Metal Supermarket's agents to perform tasks on behalf of and under the instructions of Metal Supermarkets. Metal Supermarkets will not disclose personal data or information collected from Users to any other third party aside from its agents. The third-party agents include affiliates, franchisees, independent contractors and business partners who will use the information for the purposes outlined above. Metal Supermarkets may also disclose aggregated data based on information collected from Users to investors in Metal Supermarkets and potential partners. Finally, Metal Supermarkets may transfer information collected from Users in connection with a sale of Metal Supermarket's business. Before Metal Supermarkets discloses personal data of a User to a third party agent, Metal Supermarkets will either: (a) ascertain that the agent subscribes to the Privacy Principles, (b) determine that the agent is subject to the EU Directive, (c) determine that the agent is subject to another adequacy finding, or (d) enter into a written agreement with the agent requiring that the agent provide at least the same level of privacy protection as is required by the relevant Safe Harbor Privacy Principles.

### **Enforcement**

To enforce the requirements of the Safe Harbor and to provide an independent means of resolving disputes, Metal Supermarkets has voluntarily elected to subject itself to the European Data Protection Authorities. In addition, Metal

Supermarkets performs periodic self-assessments to verify that it is adhering to the Safe Harbor Privacy Principles and that the provisions of this Privacy Policy are true and accurate, fully implemented and followed by Metal Supermarkets.

### **Questions, Complaints and Disputes**

If a User has any questions, complaints, or disputes with Metal Supermarkets with respect to the organization's handling of personal data, a User may notify Metal Supermarkets by sending an email to [Support@metalsupermarkets.com](mailto:Support@metalsupermarkets.com). The identity of Metal Supermarkets' compliance officer will be made known upon request. Metal Supermarkets may modify this Privacy Policy at any time without prior notice to Metal Supermarket's users or the public.

**Metal Supermarkets Franchising America Inc.**

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT C-5**

**SAMPLE GENERAL RELEASE**

SAMPLE GENERAL RELEASE

You (on behalf of yourself and your parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, members, managers, agents and employees, in their corporate and individual capacities) and all guarantors of your obligations under this Agreement (collectively, "Releasors") freely and without any influence forever release and covenant not to sue Metal Supermarkets Franchising America Inc., our parent, predecessors, subsidiaries and affiliates, and their respective past and present officers, directors, members, managers, shareholders, agents and employees, in their corporate and individual capacities (collectively "Releasees"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "claims"), which any Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to the Franchise Agreement and all other agreements between any Releasor and any Releasee, the sale of any franchise to any Releasor, the development and operation of the Franchised Store and the development and operation of all other stores operated by any Releasor that are franchised by any Releasee. (Each party represents and warrants to the others, and agrees, that it may later learn of new or different facts, but that still, it is that party's intention to fully, finally, and forever release all of the claims that are released above. This includes the parties' waiver of state laws that might apply to limit a release (such as Calif. Civil Code Section 1542, which states that "[a] general release does not extend to claims which the creditor does not know or suspect exist in his [or her] favor at the time of executing the release, which if known by him [or her] must have materially affected his [or her] settlement with the debtor".) You expressly agree that fair consideration has been given by us for this General Release and you fully understand that this is a negotiated, complete and final release of all claims.

The release does not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

**IN WITNESS WHEREOF**, the undersigned have executed and delivered this General Release on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FRANCHISEE'S OWNERS**

[name of individual]

By: \_\_\_\_\_  
an Individual

[name of individual]

By: \_\_\_\_\_  
an Individual**FRANCHISEE**

[name of company]

a \_\_\_\_\_ corporation

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

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT C-6**

**DEVELOPMENT AGREEMENT**



The Convenience Stores For Metal®

**METAL SUPERMARKETS  
FRANCHISING AMERICA INC.**

5399 Eglinton Avenue West, Suite 210  
Toronto, ON M9C 5K6  
Tel: (905) 362-8226  
Fax: (905) 362-0925

XXXX, 202\_\_

ADDRESS

Attention:

Re: Area Development Agreement

Dear Gentlemen:

We are pleased to be entering into this Area Development Agreement (the “**Agreement**”) with you today. As used in this Agreement, the term “**you**” means \_\_\_\_\_, and includes any affiliate where an “Affiliate” is an entity other than you that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, you. Therefore, all rights that are granted to you under the terms of this Agreement include rights that are granted to Affiliates as well as to you, without the further need to refer to the Affiliates under this Agreement. Further, the terms “**we**” and “**MSFA**” mean Metal Supermarkets Franchising America Inc.

We are pleased to be entering into (or to have entered into) a franchise and related agreements with you for your first Metal Supermarkets store (collectively the “**First Store Agreement**”). That store is referred to in this Agreement as the “**First Store**.”

In addition to the rights that we have granted under the First Store Agreement with respect to the First Store (where the territory and other granted rights are as further described under the franchise agreement found under attached exhibit), you have asked that we provide you with the right to develop two (2) additional Metal Supermarkets stores, which we are willing to do, subject to the terms and conditions that are set out in this Agreement.

**1. DEVELOPMENT**

This Agreement relates to the terms under which you agree to develop “Metal Supermarkets” stores (“MS Stores”) within the Development Area that is specified on the Data Sheet (Exhibit A) attached to this Agreement. Each MS Store will be established under the terms of separate franchise and related agreements (each, a “Franchise Agreement”) that will specify, among other things, the approved location of each such MS Store. Each MS Store will also, under the terms of a Franchise Agreement, operate using our proprietary system (“System”) and using certain trade names (for example, the “METAL SUPERMARKETS” mark and logo), service marks, trademarks, logos, emblems, and indicia of origin, as well as other trade names, service marks, and trademarks that we may periodically designate in writing for use in connection with the System (all of these are referred to as our “Proprietary Marks”).

**2. DEVELOPMENT SCHEDULE**

You agree to establish each of the MS Stores required under this Agreement according to the development schedule that is specified on the Data Sheet (Exhibit A) attached to this Agreement (referred to as the “Development Schedule”).

**3. TERM**

The term of this Agreement starts only when both parties have signed below, and ends on the last date specified in the Development Schedule, unless this Agreement is terminated earlier (the “Term”).

#### 4. FEES

In consideration of the development rights granted under this Agreement, you agree to pay MSFA a development fee of Sixty-Five Thousand Dollars (\$65,000) (the “Development Fee”), which shall be paid to us upon signing this Agreement. The Development Fee is calculated in the following manner:

- a) The portion of the Development Fee for the first MS Store you are obligated to develop pursuant to this Agreement (which is the first MS Store after the First Store), will be Thirty-Four Thousand Dollars (\$34,000).
- b) The portion of the Development Fee for the second MS Store, and each additional MS Store that you are obligated to develop pursuant to this Agreement will be Thirty One Thousand Dollars (\$31,000).
- c) The Development Fee shall be fully earned when we receive it from you and it shall be non-refundable in consideration of administrative and other expenses we incur and for the development opportunities lost or deferred as a result of the rights we have granted to you under this Agreement.
- d) If you are in full compliance with this Agreement, each Franchise Agreement you have entered into with us, and all other contracts with us (and our affiliates), then the Development Fee that is paid under this Agreement will be in lieu of any initial franchise fees due under the Franchise Agreements entered into in connection with franchises (stores) granted pursuant to the terms of this Agreement. By way of example, if you are to develop and establish two (2) MS Stores under a Development Schedule, the amount of the Development Fee will be \$65,000 (which is the sum of \$34,000 for the first store granted under the Development Schedule and \$31,000 for the second store granted under the Development Schedule, thereby reflecting that (so long as you are in compliance with all agreements as noted above), that you will not be required to pay the “initial franchise fee” that is otherwise due to us at the time you enter into Franchise Agreements for the 2 stores referenced under the Development Schedule. You agree, however, that you must pay all other fees associated with opening and operating each MS Store under the Franchise Agreements and other applicable contracts pertaining to each MS Store. Further, you agree that the Development Fee is separate and distinct from fees, including the initial franchise fee, payable pursuant to the terms of the First Store Agreement.

#### 5. DEVELOPMENT RIGHTS

During the Term, except as otherwise provided in paragraph 6 below, we will not, so long as you are in compliance with the terms of this Agreement:

- a) operate (directly or through an affiliate), nor grant to another person the right to operate, any Metal Supermarkets store with a physical location within the Development Area; or
- b) establish (directly or through an affiliate), nor grant to other persons the right to establish, a business within the Development Area that offers or sells the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally.

#### 6. RESERVATION OF RIGHTS

Other than the territorial protections we grant to you in paragraph 5 above, we reserve all other rights, and can do anything, anywhere, on any basis we choose, including, without limitation, the following things:

- a) operate, and grant others the right to operate, Metal Supermarkets stores at any location outside the Development Area;
- b) operate, and license others to operate, any business of any kind inside or outside the Development Area, so long as those businesses are not Metal Supermarkets stores operated

- within the Development Area, or do not sell the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally;
- c) acquire (or be acquired) and then operate any business of any kind (including a business selling the same range of metal products and metal processing services as are offered by Metal Supermarkets stores generally), whether located inside or outside the Development Area; and
  - d) offer, advertise, sell and distribute, or license others to offer, advertise, sell and distribute, directly or indirectly, any products or services using any marks (including the Proprietary Marks), from any location or to any purchaser (which means we can, among other things, sell products and services at wholesale and to purchasers in the Development Area through stores, mail order, and on the Internet, under our Proprietary Marks or as private-labeled items).

## **7. NO LICENSE TO USE THE MARKS OR SYSTEM**

This Agreement does not confer upon you any license to use, in any manner whatsoever, the Proprietary Marks or System, or any other trademarks, trade names, or system. To the extent that we are licensing those rights to you, that license is set out only under the Franchise Agreements.

## **8. SIGNING A NEW FRANCHISE AGREEMENT**

You must sign a Franchise Agreement for each new MS Store. Each of those Franchise Agreements will specify the site at which each of the new MS Stores will be operated. The Franchise Agreement for each MS Store that you develop under this Agreement will be the form of franchise and related agreements that we are then generally offering at the time each such Franchise Agreement is signed, except that the "Protected Area" as defined in each of the Franchise Agreements to be entered into under the Development Schedule will be as specified on the Data Sheet (Exhibit A) attached to this Agreement.

You must sign the Franchise Agreement for each MS Store and send that Franchise Agreement back to MSFA for countersignature at the time that we require, sufficiently in advance of the date by which your MS Store must be opened under the Development Schedule.

## **9. PROVISIONS OF THE FIRST STORE AGREEMENT INCORPORATED BY REFERENCE**

The parties agree that the provisions of the following sections of the First Store Agreement (attached as Exhibit B) are incorporated by reference into this Agreement as if they were printed in this Agreement, and that the provisions noted above and below also apply to all of your actions (and/or your failure to act) under this Agreement:

- 9.1 Section 7.7 - Insurance
- 9.2 Section 10 – Restrictive Covenants
- 9.3 Section 12 - Termination of Agreement (but also see paragraph 11 below)
- 9.4 Section 14 - Effect of Termination or Expiration
- 9.5 Section 15 - Relationship of the Parties
- 9.6 Section 16 - Miscellaneous (You specifically acknowledge and agree that the provisions in Section 16.1 through 16.6 of the First Store Agreement apply to this Agreement as well. Among other things, the provisions of Section 16.1 through 16.6 provide (in the detail spelled out in the First Store Agreement) that you are waiving trial by jury, that you are waiving the right to seek or collect punitive damages, that you are waiving participation in a common or class action against MSFA, that New York law applies, and that you are agreeing to venue for legal action in Erie County, New York, all as specified in Sections 16.1 through 16.6 of the First Store Agreement.)

## **10. TRANSFERS**

We have the right to transfer or assign all or any part of our rights or obligations under this Agreement to any person or legal entity. You understand that the rights we have granted to you under this Agreement are personal to you and are based on our assessment of your abilities, promises and commitments to develop and operate MS Stores. Accordingly, you acknowledge and agree that you do not have the right under this Agreement or otherwise

to sell, assign, transfer, pledge, grant a security interest in, and/or dispose in any other way, directly or indirectly: (1) this Agreement; (2) any right or obligation under this Agreement; or (3) any ownership interest (direct or indirect) in you.

#### **11. DEFAULTS**

In addition to the provisions of paragraph 9.3 of this Agreement, above, you will be in default under this Agreement if:

- a) You do not have the First Store open and in operation by the time required under the First Store Agreement; or
- b) You do not meet your obligations under the Development Schedule, or
- c) if any agreement between you (and/or your affiliates) and MSFA (and our affiliates) is terminated (including but not limited to any Franchise Agreements).

If you are in default of this paragraph 11, then all of your rights under this Agreement will automatically terminate at that time, without the need for any notice to you of such default, and also without the need to provide you with a cure period within which to cure those defaults (except to the extent otherwise required under applicable law).

#### **12. ENTIRE AGREEMENT AND AMENDMENT**

This Agreement, together with the provisions of the First Store Agreement that are incorporated by reference pursuant to paragraph 9 above and the Data Sheet that is attached to this Agreement, together constitute the entire, full, and complete contract between the parties concerning the subject matter hereof, and supersede all prior agreements (and with no other representations having induced you to sign this Agreement). The parties acknowledge and agree that they relied only on the words printed in this Agreement (and the Data Sheet, and the provisions of the First Store Agreement that are incorporated by reference) in deciding whether to enter into this Agreement. Except for those permitted to be made unilaterally by MSFA under this Agreement, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing. Notwithstanding the foregoing, nothing in this Agreement or any related agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its attachments and amendments.

#### **13. CONFIRMATION THAT YOU READ THE ENTIRE CONTRACT**

You acknowledge that you have read the entire First Store Agreement attached to this Agreement as Exhibit B (including but not limited to the provisions of the First Store Agreement that are referenced (and/or incorporated by reference as if printed here in full) into this Agreement.

#### **14. CAPTIONS**

The headings and captions in this Agreement are merely for the sake of convenience and are not meant (and shall not be deemed) to change or have any affect upon the meaning of this Agreement and/or the First Store Agreement.

#### **15. EFFECT**

This Agreement takes effect only if and when both you and we have signed below where indicated.

*[signature page to follow]*

To confirm that you are in agreement with, and will abide by, this Agreement, kindly sign below where indicated and return a signed copy of this Agreement and a check for the Development Fee due under paragraph 4 above (based on Exhibit A) to us.

Sincerely,

**Metal Supermarkets Franchising America Inc.**

By: \_\_\_\_\_  
Stephen Schober  
President & CEO

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

Address for Notices:

5399 Eglinton Avenue West, Suite 210  
Toronto, Ontario, Canada M9C 5K6  
Fax: 905.362.0925  
Attn: Mr. Stephen Schober, President

**Acknowledged and Agreed:**

\_\_\_\_\_  
[Developer]

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

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

Address for Notices:

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

Exhibits (2):  
A – Data Sheet  
B – First Store Agreement

**Exhibit A - Data Sheet**

*The Development Area under this Agreement shall be the entire area described as following:*

[name and description of Protected Area for 1<sup>st</sup> Store under the DLA (i.e., not the initial store under the F/A)]

**NAME OF DLA STORE #1's PROTECTED AREA**

[zip codes of Store #1's Protected Area]


[map of Store #1's Protected Area]

[name and description of Protected Area for 2nd Store under the DLA]

**NAME OF DLA STORE #2's PROTECTED AREA**

[zip codes of Store #2's Protected Area]


Initialed

\_\_\_\_\_ MSFA

\_\_\_\_\_ ABC, LLC

- i. The Development Area consists of and is defined by the geographic area represented by the map and zip codes provided. The Development Area may consist of more than one (1) "Protected Area", a defined term under a Metal Supermarkets' franchise agreement that generally provides that only one MS Store is to be opened in each Protected Area.
- ii. Even though the map of the Development Area may not be able to be read with great specificity, as the boundaries of the zip codes may change from time to time, the parties acknowledge that in the event of a discrepancy between the map and the zip codes, the map, as reasonably interpreted and read solely by MSFA, shall prevail.

***The Development Schedule under this Agreement shall be:***

By this date:	Cumulative Total Number of MS Stores That You Agree to Have Open and in Operation in the Development Area:
Date #1	One
Date #2	Two

Initialed

\_\_\_\_\_  
MSFA

\_\_\_\_\_  
ABC, LLC

***The Protected Areas under each Franchise Agreement shall be:***

Franchise Agreement to be signed under the Development Schedule by Date #1	The "Protected Area" under that Franchise Agreement shall be:

Map of Protected Area

Initialed

\_\_\_\_\_  
MSFA

\_\_\_\_\_  
ABC, LLC



**Exhibit B - The First Store Agreement**

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT D**

**TABLE OF CONTENTS  
OF  
OPERATIONS MANUAL**



The Convenience Stores For Metal®

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**Metal Supermarkets Franchising America Inc.**

**EXHIBIT E-1**

**LIST OF CURRENT FRANCHISEES**

**METAL SUPERMARKETS**  
**LIST OF CURRENT FRANCHISEES**  
**(As of September 30, 2023)**

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Birmingham Store #021802</b> Patrick Limbaugh	4550 5 <sup>th</sup> Avenue South, Bldg M3	Birmingham	AL	35222	Tel: (205) 282-0360 Tel 2: (205) 377-0470 birmingham@metalsupermarkets.com
<b>Huntsville Store * #021803</b> <b>Hiren Patel</b>					
<b>Anchorage Store #025001</b> Terry Fisher	8535 Dimond D Circle, Unit B	Anchorage	AK	99515	Tel: (907)313-3990 Fax:(907)313-3991 anchorage@metalsupermarkets.com
<b>Phoenix (Southwest) Store #024401</b> Chad Sitcler	4625 W McDowell Road, Ste. 140	Phoenix	AZ	85035	Tel: (480) 360-3680 Fax: (480) 360-3675 phoenixsw@metalsupermarkets.com
<b>Phoenix (North) Store #024402</b> <b>Victor Modic</b>	21609 N12th Avenue, Suite 400	Phoenix	AZ	85027	Tel: (623) 258.4787 phoenixnorth@metalsupermarkets.com
<b>Phoenix (Southeast) Store #022403</b> <b>Hans Martens</b>	7910 S. Kyrene Rd, Suite 101	Tempe	AZ	85035	Tel: (480) 360-3680 phoenixsoutheast@metalsupermarkets.com
<b>Anaheim Store #024501</b> Troy Metcalf	1273 North Blue Gum Street	Anaheim	CA	92806	Tel: (714) 630-2053 Fax: (714) 630-2241 anaheim@metalsupermarkets.com
<b>San Diego Store #024503</b> Maria Montalvo	1520 Corporate Center Drive	San Diego	CA	92154	Tel: (619) 816-4242 Fax: (619) 816-4453 sandiego@metalsupermarkets.com
<b>San Jose Store # 024504**</b> Ken Welsh	2413 Zanker Rd	San Jose	CA	95131	Tel: (669) 288.5393 Fax: (699) 288.5701 <a href="mailto:sanjose@metalsupermarkets.com">sanjose@metalsupermarkets.com</a>
<b>Ventura County * Store #024506</b> <b>Andrew Harding</b>	2630 Lavery Court, Unit D	Newbury Park	CA	91320	
<b>Denver (Commerce City) Store # 023902</b> Bill Bittorf	7003 E 47 <sup>th</sup> Ave Drive, Ste 400	Denver	CO	80216	Tel: (720) 779-0434 Fax: (720) 779-0435 <a href="mailto:denver-commerceciti@metalsupermarkets.com">Denver-commerceciti@metalsupermarkets.com</a>
<b>Denver (Wheat Ridge) Store #023901</b> Steven Senger	765 Moss Street	Golden	CO	80401	Tel: (303) 424-1030 Fax: (303) 424-1239 wheatridge@metalsupermarkets.com

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Denver (Englewood) Store # 023903</b> Jason Frank	1500 West Hampden Ave, Bldg 2	Sheridan	CO	80110	Tel: (720) 722-6317 <a href="mailto:denver-englewood@metalsupermarkets.com">Denver-englewood@metalsupermarkets.com</a>
<b>Danbury Store 020701 **</b> Ed DeStefano	4 Lee Mac Avenue	Danbury	CT	06810	Tel: (203) 293.0406 danbury@metalsupermarkets.com
<b>Miami (Hialeah) Store #021701</b> Mike Underwood	471 West 28 <sup>th</sup> Street	Hialeah	FL	33010	Tel: (305) 728-0456 Fax: (305) 728-0466 miami@metalsupermarkets.com
<b>Jacksonville Store #021703</b> Steven Braun	13913 Duval Road #300	Jacksonville	FL	32218	Tel: (904)660-0733 Fax:(904)660-0734 jacksonville@metalsupermarkets.com
<b>Fort Lauderdale Store 021711</b> Chip Jones	2210 NW 29 <sup>th</sup> St	Oakland Park	FL	33311	Tel: (954) 947-4763 Fax: (954) 947-4764 ftlauderdale@metalsupermarkets.com
<b>Lakeland Store 021709</b> Brian Thompson	3633 Century Blvd, Ste 1	Lakeland	FL	33811	Tel (863)215-6901 lakeland@metalsupermarkets.com
<b>Orlando (North) Store # 021704</b> Charlie Lim	3071 N. Orange Blossom Trail, Ste K	Orlando	FL	32804	Tel: (321)247-6002 Fax:(321)247-6003 orlando@metalsupermarkets.com
<b>Orlando South Store #021710</b> Stan Kinnett	3601 Vineland Road, Suite 5	Orlando	FL	32811	Tel: (407) 316-2909 Fax: (407)316-2906 <a href="mailto:orlandosouth@metalsupermarkets.com">orlandosouth@metalsupermarkets.com</a>
<b>Sarasota Store #021706</b> Stan Kinnett	1195 Tellevast Rd Airport Commerce Center	Sarasota	FL	32423	Tel: (941) 313-2590 Fax: (941) 313-2591 <a href="mailto:sarasota@metalsupermarkets.com">sarasota@metalsupermarkets.com</a>
<b>Tampa Store #021702</b> Brian Thompson	4901-A W. Rio Vista Ave.	Tampa	FL	33634	Tel: (813) 906-5077 Fax: (813) 906-5088 tampa@metalsupermarkets.com
<b>Tampa East Store # 021707</b> Brian Thompson	4414 N. 56 <sup>th</sup> St (56 Commerce Park)	Tampa	FL	33610	Tel: (813) 467-9916 Fax: (813) 467-9917 tampaeast@metalsupermarkets.com
<b>West Palm Beach Store #021708</b> Chip Jones	3625-C Prospect Avenue	Riviera Beach	FL	33404	Tel: (561) 486-0776 Fax: (561) 486-0778 westpalmbeach@metalsupermarkets.com
<b>St. Petersburg / Clearwater Store #021712</b> Brian Thompson	4501 Ulmerton Rd, Unit C	Clearwater	FL	33762	Tel: (727) 616-1226 <a href="mailto:pinellas@metalsupermarkets.com">pinellas@metalsupermarkets.com</a>
<b>Atlanta Store #021601</b> Michael Anderson	4301 Pleasantdale Rd, Suite J	Atlanta	GA	30340	Tel: (678) 421-0054 Fax: (678) 421-0026 Toll Free: 1 888 METALNU (888-638-2568) atlantasales@metalsupermarkets.com

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Atlanta Northwest (Marietta) Store #021602</b> Michael Frank	1000 Williams Drive, Suite 1012	Marietta	GA	30066	Tel: (770) 218-0550 Fax: (770) 218-1404 marietta@metalsupermarkets.com
<b>Atlanta South Store # 021603</b> Eric Rogers	800 Atlanta South Parkway, Suite 150	Atlanta	GA	30349	Tel: (470) 615-9580 Fax: (470) 615-9581 southatlanta@metalsupermarkets.com
<b>Cedar Rapids Store #023001</b> Rick Heller	6805 4 <sup>th</sup> St SW Ste 101	Cedar Rapids	IA	52404	Tel: (319)382-2325 Fax: (319)382-6727 cedarrapids@metalsupermarkets.com
<b>Chicago (Bolingbrook) Store #022505</b> Rana Ullah	999 Remington Blvd., Unit C	Bolingbrook	IL	60440	Tel: (630) 866-4200 Fax: (630) 866-4252 bolingbrook@metalsupermarkets.com
<b>Chicago (Bridgeview) Store #022502</b> Nick Campione	9012 S. Thomas	Bridgeview	IL	60455	Tel: (708) 599-8605 Fax: (708) 599-8606 bridgeview@metalsupermarkets.com
<b>Rockford Store # 022508</b> Prit Soni	5107 Forest Hills Court	Loves Park	IL	61111	Tel: (815) 282-6544 Fax: (815) 282-6542 rockford@metalsupermarkets.com
<b>Chicago (Niles) Store #022506</b> Dan Cahill	6285 West Howard	Niles	IL	60714	Tel: (847) 647-2423 Fax: (847) 647-2458 niles@metalsupermarkets.com
<b>Chicago (Villa Park) Store #0225803</b> Garrett Morrell	1187 N. Ellsworth Avenue	Villa Park	IL	60181	Tel: (630) 516-0537 Fax: (630) 516-0562 villapark@metalsupermarkets.com
<b>St. Louis (O'Fallon) *</b> <b>Store # 022902</b> <b>Shawn Scott</b>	1402 Frontage Road	O'Fallon	IL	62269	Tel: (618) 680-0761 ofallon@metalsupermarkets.com
<b>Fort Wayne Store #022304</b> Tony Lloyd	5400 Distribution Drive	Fort Wayne	IN	46825	Tel: (260) 482-9000 Fax: (260) 482-9200 Toll Free: 1 866 771-7070 fortwayne@metalsupermarkets.com
<b>Indianapolis (East) Store #022302</b> Jesse Johnson	3250 North Post Road, Ste. 102	Indianapolis	IN	46226	Tel: (317) 897-6330 Fax: (317) 897-6983 Indianapolis_east@metalsupermarkets.com
<b>Southbend / Elkhart Store # 022305</b> <b>Nick Kolavo</b>	1742 McKinley Avenue	Mishawaka	IN	46545	Tel: (574) 359-5268 <a href="mailto:sbe@metalsupermarkets.com">sbe@metalsupermarkets.com</a>
<b>Indianapolis West Store # 022303</b> Jesse Johnson	5226-5230 West 79 <sup>th</sup> Street	Indianapolis	IN	46268	Tel: (317) 584-8555 Fax: (317) 584-6100 Indianapolis_west@metalsupermarkets.com
<b>Kansas City (Olathe) Store # 023501**</b> Leith Winsor	1713 E. 123 <sup>rd</sup> St	Olathe	KS	66061	Tel (913) 289-0021 Fax: (913) 289-0819 <a href="mailto:olathe@metalsupermarkets.com">olathe@metalsupermarkets.com</a>
<b>Wichita Store #023503</b> Jim Hopper	9110 East 35 <sup>th</sup> Street North, Ste B	Wichita	KS	67226	Tel: (316) 217-8107 Fax: (316) 217-8911 wichita@metalsupermarkets.com

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Lexington Store #022001</b> John Hajek	848 Nandino Blvd., Unit 'V' Melbourne Plaza	Lexington	KY	40511	Tel: (859) 233-9803 Fax: (859) 281-6354 lexington@metalsupermarkets.com
<b>Louisville Store #022004</b> John Hajek	4620 Shepherdsville Rd.	Louisville	KY	40218	Tel: (502) 479-3231 Fax: (502) 479-3236 louisville@metalsupermarkets.com
<b>New Orleans Store # 022701 **</b> David Machado	5820 Plauche Street	Jefferson Parish	LA	70123	Tel: (504) 315-3213 Fax: (504) 315-2169 neworleans@metalsupermarkets.com
<b>Baltimore Store #021101</b> Henry Dow	7120 Golden Ring Road, Unit 112	Baltimore	MD	21221	Tel: (410) 918-0199 Fax: (410) 918-0198 baltimore@metalsupermarkets.com
<b>Beltsville Store #021102**</b> Marcos and Theresa Lora	11316 Old Baltimore Pike	Beltsville	MD	20705	Tel: (301) 970-9494 Fax: (301) 970-9382 beltsville@metalsupermarkets.com
<b>Boston (Woburn) Store 020504</b> Stefan Hristov	16A 6th Road	Woburn	MA	01801	Tel: (781) 933-0176 Fax: (781) 933-0518 bostonnorth@metalsupermarkets.com
<b>Boston (South) * Store 020505</b> Stefan Hristov					
<b>St. Louis Store #022901</b> Shawn Scott**	9427 Dielman Rock Island Industrial Drive	St. Louis	MO	63132	Tel: (314) 764-7610 Fax: (314) 764-7611 stlouis@metalsupermarkets.com
<b>Charlotte Store # 021401</b> Mitch Warner	6701-A Northpark Blvd.	Charlotte	NC	28216	Tel: (704) 599-3919 Fax: (704) 599-5801 carolinasales@metalsupermarkets.com
<b>Raleigh Store #021403</b> Jay Preble	1826 Garner Station Blvd.	Raleigh	NC	27603	Tel: (919) 446-4445 Fax: (919) 446-4450 raleigh@metalsupermarkets.com
<b>Omaha Store #02401</b> Rob Schlueter	13239 Portal Drive, Ste 103	Omaha	NE	68138	Tel: (402) 25.7545 omaha@metalsupermarkets.com
<b>Edison Store #02802</b> Mark Foldy	973 New Durham Rd,	Edison	NJ	08817	Tel: (848)-229-7900 Fax: (848)-229-7901 edison@metalsupermarkets.com
<b>Elizabeth Store #020805</b> Mark Foldy	606 Dowd Avenue, Unit D	Elizabeth	NJ	07201	Tel: (908) 440.0791 elizabeth@metalsupermarkets.com
<b>Fairfield Store #020801</b> Mark Foldy	3 Just Drive	Fairfield	NJ	07004	Tel: (862) 505-1600 Fax: (862) 505-1800 fairfield@metalsupermarkets.com
<b>Hackensack Store #020803</b> Daljeet (Jay) Singh	80 Hobart Street	Hackensack	NJ	07601	Tel: (201) 957-7955 Fax: (201) 957-7956 hackensack@metalsupermarkets.com

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Albany Store #020402</b> Diane Watters	1054 Broadway	Albany	NY	12204	Tel: (518) 435-0024 Fax: (518) 435-0265 albany@metalsupermarkets.com
<b>Buffalo Store #020403</b> David Penharlow	2230 Elmwood Avenue	Buffalo	NY	14216	Tel: (716) 877-7494 Fax: (716) 877-2285 buffalo@metalsupermarkets.com
<b>Las Vegas (South) * Store # 024602 Courtney Neville</b>	5140 S. Rogers Street, Suite A	Las Vegas	NV	89118	Tel: (702) 805-6051 lasvegassouth@metalsupermarkets.com
<b>Cincinnati Store #022101</b> Steve Micheli	4766 Dues Drive, Unit C	Cincinnati	OH	45246	Tel: (513) 942-8222 Fax: (513) 942-8299 24hr: (513) 602-0141 cincinnati@metalsupermarkets.com
<b>Cleveland (South) Store #022105 **</b> Nicholas Berchtold	5399 Lancaster Drive	Brooklyn Heights	OH	44131	Tel: (216) 369-9898 Fax: (216) 369-9899 clevelandsouth@metalsupermarkets.com
<b>Columbus Store # 022102</b> Steve Micheli	2180 Wilson Road	Columbus	OH	43228	Tel: (614) 363-1880 Fax: (614) 363-1881 columbus@metalsupermarkets.com
<b>Dayton Store #022103</b> Rick & Elizabeth Valencia	2310 Edwin C. Moses Blvd	Dayton	OH	45417	Tel: (937)610-7791 Fax: (937)610-7790 dayton@metalsupermarkets.com
<b>Oklahoma City Store #023602</b> Jason Price	8501 Gateway Terrace	Oklahoma City	OK	73149	Tel: (405) 616-3825 Fax: (405) 616-3828 Toll Free: 1 866 288-2466 oklahomacity@metalsupermarkets.com
<b>Tulsa Store #023603</b> Trae Caldwell	7340 E 38 <sup>th</sup> Street	Tulsa	OK	74145	Tel: (918) 221-9612 Fax: (918) 221-9613 tulsa@metalsupermarkets.com
<b>Portland Store #024702</b> Owen Zentil	13319 NE Whitaker Way	Portland	OR	97230	Tel: (503) 258-1151 Fax: (503) 258-1176 portland@metalsupermarkets.com
<b>Pittsburgh North Store # 020904</b> Alan Wilkinson	503-505 Thomson Park Drive	Cranberry Township	PA	16066	Tel: (412) 219-2470 Fax: (412) 219-2471 pittsburghnorth@metalsupermarkets.com
<b>Pittsburgh South * Store # 02095 Richard Russell</b>					
<b>York / Lancaster * Store 020905 Henry Dow</b>	900 Roosevelt Ave	York	PA	17604	Tel: (717) 850-8532 york@metalsupermarkets.com
<b>Warwick, RI (Providence) Store # 020601</b> Rumen Dimitrov	177 Chestnut St.	Warwick	RI	02888	Tel: (401) 287-7343 Fax: (401) 287-7344 providencewarwick@metalsupermarkets.com
<b>Charleston Store #021405</b> Greg Gallman	4204 Domino Avenue, Ste C	Charleston	SC	29405	Tel: (843) 310-4843 Fax: (843) 310.4846 charleston@metalsupermarkets.com

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Greenville (Greer) Store #021404</b> Mitch Warner	203 Inman Road	Lyman	SC	29365	Tel: (864) 801-9680 Fax: (864) 801-9625 carolinasales@metalsupermarkets.com
<b>Chattanooga Store #021903</b> Jeff Wolaver	6225 Vance Road	Chattanooga, TN	TN	37421	Tel: (423) 847.2820 chattanooga@metalsupermarkets.com
<b>Knoxville Store # 021902</b> Wayne Grimes	500 Milwaukee Way	Knoxville	TN	37932	Tel: (865) 630-2555 Fax: (865) 630-2566 knoxville@metalsupermarkets.com
<b>Memphis Store 021904</b> Andrew Miceli	6991 Appling Farms Pkwy Suite 104	Memphis	TN	38133	Tel: (901) 582-2267 memphis@metalsupermarkets.com
<b>Nashville Store #021901</b> Henry Niedzwecki	429 Enos Reed Drive	Nashville	TN	37210	Tel: (615) 256-9787 Fax: (615) 256-8348 nashville@metalsupermarkets.com
<b>Dallas Store #023710</b> Douglas & Robby Gillingham	1216 Dolton Dr., Suite 101	Dallas	TX	75207	Tel: (972) 445-2008 Fax: (972) 579-3346 24hr: (972) 849-6625 Toll Free: 1 877 883-0400 dallassales@metalsupermarkets.com
<b>Fort Worth Store #023702</b> Douglas & Robby Gillingham	5007 Martin Luther King Freeway	Fort Worth	TX	76119	Tel: (817) 496-9595 Fax: (817) 492-8058 fortworth@metalsupermarkets.com
<b>Houston (Northeast) Store # 023711</b> John Stanard	15905 Morales Rd	Houston	TX	77032	Tel: (832)621-0289 Fax: (832) 621-0657 <a href="mailto:houstonne@metalsupermarkets.com">houstonne@metalsupermarkets.com</a>
<b>Houston (Northwest) Store #023704</b> Clement Njowo	13240 Hempstead Highway, Unit 214	Houston	TX	77040	Tel: (713) 934-8528 Fax: (713) 934-8508 houstonnw@metalsupermarkets.com
<b>Houston (Southeast) Store #023707</b> Jay Ali	9191 Winkler Road, Ste. G	Houston	TX	77107	Tel: (713) 904-1720 Fax: (713) 904-1721 houstonse@metalsupermarkets.com
<b>Lewisville Store #023712</b> Michael Springer	1501 Eagle Crt Ste 1101	Lewisville	TX	75057	Tel: (469) 830-0722 Fax: (469) 830-0723 <a href="mailto:lewisville@metalsupermarkets.com">lewisville@metalsupermarkets.com</a>
<b>Dallas (Plano) Store #023703</b> Anthony Broadfoot	1401 Summit Ave., Suite 7	Plano	TX	75074	Tel: (972) 422-5167 Fax: (972) 422-8274 plano@metalsupermarkets.com
<b>Houston (Southwest) Store #023706</b> Jay Ali	10700 Corporate Drive #118	Stafford	TX	77477	Tel: (832) 939-4600 Fax: (832) 939-4599 houstonsw@metalsupermarkets.com
<b>Austin (North) * Store #023714</b> <b>Huzefa Mohamedali</b>	13816 Immanuel Road, Unit C	Pflugerville	TX	78660	Tel: (512) 580-7650 austinnorth@metalsupermarkets.com
<b>Salt Lake City Store #024301</b> Ken Sparks	537 W Pickett Circle Suite 800	Salt Lake City	UT	84115	Tel: (801) 972-5911 Fax: (801) 972-5912 slc@metalsupermarkets.com
<b>Ogden * Store 024303</b> <b>Jim Issertell</b>	1275 W 1450 S 2	Marriott-Slaterville	UT	84404	Tel: (385) 205-8738 <a href="mailto:ogden@metalsupermarkets.com">ogden@metalsupermarkets.com</a>

FRANCHISEE	STREET ADDRESS	CITY	STATE	ZIP CODE	PHONE/EMAIL
<b>Norfolk Store #021202</b> Rob Racine	1135 Lance Rd Ste 100	Norfolk	VA	23502	Tel: (757) 372-4540 Fax: (757) 372-4541 norfolk@metalsupermarkets.com
<b>Richmond, VA Store #021201</b> Rob Racine**	1728 Arlington Road	Richmond	VA	23230	Tel: (804) 977-0577 Fax: (804) 977-0552 richmondva@metalsupermarkets.com
<b>Newport News Store #021203</b> Rob Racine	321 Ed Wright Lane Unit B	Newport News	VA	23606	Tel: (757) 907.9979 Fax: (757) 907.9975 Newportnews@metalsupermarkets.com
<b>Alexandria, VA Store #021204</b> Theresa Lora	6460 General Green Way, Suite D	Alexandria	VA	22312	Tel: (571) 895.5237 Alexandria@metalsupermarkets.com
<b>Seattle (Kent) Store #024804</b> Owen Zentil	22029 – 70 <sup>th</sup> Avenue South	Kent	WA	98032	Tel: (253) 395-1835 (24 hr) Fax: (253) 395-5068 Toll Free: 1 888 422-1835 kent@metalsupermarkets.com
<b>Seattle (Everett) Store #024803</b> Allison Farragher	715 100 <sup>th</sup> St. SE, C-3	Everett	WA	98208	Tel: (425) 265-1830 Fax: (425) 265-9091 everett@metalsupermarkets.com
<b>Appleton Store # 022404</b> Chad Schiebe	1890 S. Technology Dr	Grand Chute	WI	54914	Tel: (920) 903-3515 Fax: (920) 903-3519 appleton@metalsupermarkets.com

\* Denotes franchisees who signed a franchise agreement but whose Store was not yet open as of September 30, 2023.

\*\* Denotes area developers.

<b>METAL SUPERMARKETS LIST OF COMPANY OWNED UNITS AS OF SEPTEMBER 30, 2023</b>					
<b>Minneapolis (Roseville)Store #023104 MSEI</b>	1900 Oakcrest Avenue, Suite 5	Roseville	MN	55113	Tel: (651) 634-0600 Fax: (651) 634-0700 sales-rose@metalsupermarkets.com
<b>Waukesha Store #022902 MSEI</b>	2000 Pewaukee Road	Waukesha	WI	53188	Tel: (262) 446-1818 Fax: (262) 446-3692 waukesha@metalsupermarkets.com

**Metal Supermarkets Franchising America Inc.****EXHIBIT E-2****LIST OF FORMER FRANCHISEES****(Who Left the System in 2023)**

Dwayne Swenson*	Portland / Seattle (Kent)	OR / WA	98032	(206) 755-0953
Angus Wathen*	Hackensack	NJ	07922	(973) 752-2193
Nick Voigt*	Rockford	IL	53538	(815) 298-4821
John Ayres	Green Bay	WI	54071	(715) 577-6773
Kay Chhoeu	Pico Rivera	CA	90805	(562) 382.5091
Shaun Ng**	Long Beach	CA	92610	(949) 887-0008

\* Sold Store to new owner

\*\*Signed franchise agreement but never opened a Store.

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT F**

**STATE ADDENDA TO FRANCHISE DISCLOSURE DOCUMENT**

**ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE  
STATE OF CALIFORNIA**

**THE CALIFORNIA FRANCHISE INVESTMENT LAW  
REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS  
RELATING TO THE SALE OF THE FRANCHISE BE  
DELIVERED TOGETHER WITH THE DISCLOSURE  
DOCUMENT.**

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANAICAL PROTECTION AND INNOVATION AT [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

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.

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.

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 made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the 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).

**Item 3:**

Item 3 is amended to provide that neither we nor any other person identified in Item 2 is subject to any currently effective order of any national securities association of 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.

The California Business and Professions Code Section 20000 through 20042 provide rights to the Franchisee concerning termination, transfer or non-renewal for 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.

You must sign a general release if you transfer your franchise. This provision may be unenforceable under California law. 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).

The Franchise Agreement requires application of the laws of New York. This provision may not be enforceable under California law.

**ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE  
STATE OF HAWAII**

THESE FRANCHISES 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 HEREIN 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 THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS 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 BOTH THE FRANCHISOR AND THE FRANCHISEE.

Registered agent in the state authorized to receive service of process: Commissioner of Securities, Department of Commerce and Consumer Affairs, Business Registration Division, Securities Compliance Branch, 335 Merchant Street, Room 203, Honolulu, Hawaii 96813.

## ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE STATE OF ILLINOIS

Illinois law governs the franchise agreement.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Franchisees' rights upon termination and non-renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

You must open your Store within 9 months of signing the Franchise Agreement. You must complete the training program 2 weeks before opening. There is no set schedule for the Initial Training Program.

While YOU are required to contribute to the Marketing Fund on a monthly basis, there is NO guarantee that any advertising will be conducted in your Territory, or in the United States.

As of October 2023, the Franchisor entered into nine Franchise Agreements with franchisees who have not opened their Stores. If other franchisees are experiencing delays in opening their Stores, you may also experience delays while establishing your Store.

Be certain to review Item 3 of the disclosure document.

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. This provision supersedes any other term of any document executed in connection with the franchise.

**ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE  
STATE OF MARYLAND**

Notwithstanding anything to the contrary set forth in the METAL SUPERMARKETS Disclosure Document, the following provisions supersede and apply to all Franchises offered and sold in the State of Maryland.

Item 17 is amended as follows:

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.).

Pursuant to COMAR 02.02.08 16L, the general release required as a condition of sale, renewal and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

You have the right to bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

## ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE STATE OF MINNESOTA

Notwithstanding anything to the contrary set forth in the METAL SUPERMARKETS Disclosure Document, the following provisions supersede and apply to all franchises and franchisees subject to Minnesota statutes and regulations.

The following Risk Factor is added to the FDD:

**Unopened Franchises.** The franchisor has signed a significant number of franchise agreements with franchisees who have not yet opened their outlets. If other franchisees are experiencing delays in opening their outlets, you also may experience delays in opening your own outlet.

### Item 13.

We will undertake the defense of any third-party claim of infringement involving the METAL SUPERMARKETS mark. You must cooperate with the defense in any reasonable manner we prescribe with any direct cost of such cooperation to be borne by us.

### Item 17.

1. Minnesota law provides you with certain termination and nonrenewal rights. As of the date of this Disclosure Document, Minn. Stat. Sec. 80C.14, Subd. 3, 4 and 5 require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for nonrenewal of the Franchise Agreement.

2. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or the franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

3. In the event you breach or threaten to breach any of the terms of this Agreement, we will be entitled to seek an injunction restraining such breach and/or to a decree of specific performance, without showing or proving any actual damage, together with recovery of reasonable attorneys' fees and other costs incurred in obtaining said equitable relief, until such time as the arbitrators make a final and binding determination.

4. Pursuant to Minnesota Statutes, Section 80C.17, Subd. 5, no action may be commenced pursuant to the Minnesota Franchise Law more than three years after the cause of action accrues.

5. Item 17(m) is revised to provide that pursuant to Minn. Rule 2860.4400D, any general release of claims that you or a transferor may have against us or our shareholders, directors, employees and agents, including without limitation claims arising under federal, state, and local laws and regulations shall exclude claims you or a transferor may have under the Minnesota Franchise Law and the Rules and Regulations promulgated thereunder by the Commissioner of Commerce.

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 any

statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed with the franchise.

**ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE  
STATE OF NEW YORK**

Item 3, shall be supplemented by the addition of the following at the beginning of the Item:

Except as described below, neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, 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.

Except as described below, neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten-year period 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.

Except as described below, neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, 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 a 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.

Item 4, shall be supplemented by the addition of the following at the beginning of the Item:

Except as described below, neither we, nor our predecessor or affiliate, nor any of our or their officers or general partners, during the 10-year period immediately before the date of the disclosure document: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner of the franchisor held this position in the company or partnership.

Item 17 is supplemented as follows:

The franchisee may terminate the franchise agreement on any grounds available by law.

17(j) However, no assignment will be made except to an assignee who in the good faith and judgment of the franchisor is willing and able to assume the franchisor's obligations.

17(w) The foregoing Choice of Law should not be considered a waiver of any right conferred upon either the Franchisor or upon the Franchisee by the General Business Law for the State of New York.

**ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE  
STATE OF RHODE ISLAND**

§ 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.”

## **ADDENDUM TO THE METAL SUPERMARKETS DISCLOSURE DOCUMENT FOR THE STATE OF WASHINGTON**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

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 arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings 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 annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

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. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

**Metal Supermarkets Franchising America Inc.**

**EXHIBIT G**

**STATE ADDENDA TO THE FRANCHISE AGREEMENT**

**RIDER TO THE FRANCHISE AGREEMENT  
FOR THE STATE OF CALIFORNIA**

This Rider to the Franchise Agreement is agreed to by and between METAL SUPERMARKETS FRANCHISING AMERICA INC., as successor to the original franchisor of the same name, and the Franchisee identified below, to amend and revise said Franchise Agreement as follows:

Section 16.14 of the Franchise Agreement, "Receipt of Disclosure Document and Agreement," is deleted and replaced with the following:

You acknowledge having received our franchise disclosure document ("FDD") at least fourteen (14) calendar days before signing a binding agreement or making any payment to us relating to this Agreement.

To the extent this Rider shall be deemed to be inconsistent with any term or conditions of the California Franchise Investment Law (California Corporations Code 31000 through 31516), the terms of the California Franchise Investment Law shall govern.

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 made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the California Franchise Investment Law are met independently, without reference to this Rider.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Rider, understands and consents to be bound by all of its terms, and agrees it shall become effective the \_\_\_ day of \_\_\_\_\_.

METAL SUPERMARKETS  
FRANCHISING AMERICA INC.

FRANCHISEE

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

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

## RIDER TO THE FRANCHISE AGREEMENT FOR THE STATE OF ILLINOIS

This Rider to the Franchise Agreement is agreed to by and between METAL SUPERMARKETS FRANCHISING AMERICA INC., as successor to the original franchisor of the same name, and the Franchisee identified below, to amend and revise said Franchise Agreement as follows:

Illinois law governs the franchise agreement.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Franchisees' rights upon termination and non-renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

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.**

Section 16.14 of the Franchise Agreement, "Receipt of Disclosure Document and Agreement," is deleted and replaced with the following: You acknowledge having received our franchise disclosure document ("FDD") at least fourteen (14) calendar days before signing a binding agreement or making any payment to us relating to this Agreement.

You must open your Store within 9 months of signing the Franchise Agreement. You must complete the training program 2 weeks before opening. There is no set schedule for the Initial Training Program.

While YOU are required to contribute to the Marketing Fund on a monthly basis, there is NO guarantee that any advertising will be conducted in your Territory, or in the United States.

As of October 2023, the Franchisor entered into nine Franchise Agreements with franchisees who have not opened their Stores. If other franchisees are experiencing delays in opening their Stores, you may also experience delays while establishing your Store.

Be certain to review Item 3 of the disclosure document.

To the extent this Rider is deemed to be inconsistent with any term or condition of the Franchise Agreement or its Exhibits and Attachments, the terms of **Illinois law** shall govern.

Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently, without reference to this Rider.

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. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Rider, understands and consents to be bound by all of its terms, and agrees it shall become effective the \_\_\_ day of \_\_\_\_\_.

METAL SUPERMARKETS  
FRANCHISING AMERICA INC.

FRANCHISEE

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**RIDER TO THE DEVELOPMENT AGREEMENT  
FOR THE STATE OF ILLINOIS**

This Rider to the Development Agreement is agreed to by and between METAL SUPERMARKETS FRANCHISING AMERICA INC., as successor to the original franchisor of the same name, and the Franchisee identified below, to amend and revise said Development Agreement as follows:

Illinois law governs the development agreement.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Franchisees' rights upon termination and non-renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

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.**

You must open your Store within 9 months of signing the Franchise Agreement. You must complete the training program 2 weeks before opening. There is no set schedule for the Initial Training Program.

While YOU are required to contribute to the Marketing Fund on a monthly basis, there is NO guarantee that any advertising will be conducted in your Territory, or in the United States.

As of October 2023, the Franchisor entered into nine Franchise Agreements with franchisees who have not opened their Stores. If other franchisees are experiencing delays in opening their Stores, you may also experience delays while establishing your Store.

Be certain to review Item 3 of the disclosure document.

To the extent this Rider is deemed to be inconsistent with any term or condition of the Franchise Agreement or its Exhibits and Attachments, the terms of **Illinois law** shall govern.

Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently, without reference to this Rider.

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. This provision supersedes any other term of any document executed in connection with the franchise.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Rider, understands and consents to be bound by all of its terms, and agrees it shall become effective the \_\_\_ day of \_\_\_\_\_

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

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

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

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

**Acknowledged and Agreed:**

\_\_\_\_\_  
**Developer Party**

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

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

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

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

**RIDER TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

This Rider to the Franchise Agreement by and between METAL SUPERMARKETS FRANCHISING AMERICA INC., as successor to the original franchisor of the same name, and Franchisee is dated \_\_\_\_\_

Sections 1.2 (Acknowledgements) of the Franchise Agreement is revised to include the following language:

The acknowledgements contained in this Section are not intended to nor shall they act as a release, estoppels or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

The following language shall be added to Section 16.12 of the Franchise Agreement:

Such representations are not intended to nor shall act as a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

The following language shall be added to Sections 11.2(f) and 13 of the Franchise Agreement:

Any general release, estoppel or waiver of liability required as a condition of purchase, renewal and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

The following language shall be added to Section 16.2 of the Franchise Agreement:

Franchisee has the right to bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Maryland law will apply.

The following language shall be added to Section 16.13 of the Franchise Agreement:

Representations requiring prospective franchisees to assert 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.

Section 16.14 of the Franchise Agreement, "Receipt of Disclosure Document and Agreement," is deleted and replaced with the following:

You acknowledge having received our franchise disclosure document ("FDD") at least fourteen (14) calendar days before signing a binding agreement or making any payment to us relating to this Agreement.

All initially capitalized terms not defined herein shall have the same meaning as ascribed to them in the Franchise Agreement. Except as expressly modified hereby, the agreements shall remain in full force and effect in accordance with its terms.

Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently, without reference to this Rider.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Rider concurrently with the execution of the Franchise Agreement on the day and year first above written.

METAL SUPERMARKETS  
FRANCHISING AMERICA INC.

FRANCHISEE

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**RIDER TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE MINNESOTA FRANCHISE LAW**

This Rider pertains to franchises sold in the State of Minnesota and is for the purpose of complying with Minnesota statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement to the contrary, the Agreement is amended as follows:

1. We will undertake the defense of any claim of infringement by third parties involving the METAL SUPERMARKETS mark, and you will cooperate with the defense in any reasonable manner prescribed by us with any direct cost of such cooperation to be borne by us.

2. Minnesota law provides franchisees with certain termination and nonrenewal rights. As of the date of this Franchise Agreement, Minn. Stat. Sec. 80C.14, Subd. 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days-notice of termination (with 60 days to cure) and 180 days-notice for nonrenewal of the franchise agreement.

3. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or the franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

4. Pursuant to Minnesota Statutes, Section 80C.17, Subd. 5, no action may be commenced pursuant to the Minnesota Franchise Law more than three years after the cause of action accrues.

5. Section 11.2(f) of the Franchise Agreement is amended to reflect that the general release shall exclude any claims Franchisee may have that have arisen under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce.

6. Section 16.14 of the Franchise Agreement, "Receipt of Disclosure Document and Agreement," is deleted and replaced with the following:

You acknowledge having received our franchise disclosure document ("FDD") at least fourteen (14) calendar days before signing a binding agreement or making any payment to us relating to this Agreement.

7. Except as amended herein, the Franchise Agreement will be construed and enforced in accordance with its terms.

To the extent this Rider shall be deemed to be inconsistent with any term or conditions of the Franchise Agreement or Exhibits or attachments thereto, the terms of the Minnesota Franchise Law as stated in this Rider shall govern.

Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota franchise laws are met independently, without reference to this Rider.

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 any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed with the franchise.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Rider, understands and consents to be bound by all of its terms, and agrees it shall become effective the \_\_\_ day of \_\_\_\_\_

METAL SUPERMARKETS  
FRANCHISING AMERICA INC.

FRANCHISEE

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**WASHINGTON ADDENDUM TO THE FRANCHISE AGREEMENT, APPLICANT  
AGREEMENT, HOSTING SUPPORT AND SOFTWARE AGREEMENT, DIGITAL  
PARTICIPATION AGREEMENT AND RELATED AGREEMENTS**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

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 arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings 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 annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

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. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Section 1.2(e) of the Franchise Agreement is revised to delete the words "or relied on".

Section 2.2(c) of the Franchise Agreement, and Section 3 of the Successor Franchise Addendum (Schedule E), are revised to delete the following language: "Neither our site selection requirements, our approval of the Premises, nor any information we may impart to you about the Premises or the Protected Area constitutes a representation, warranty, guarantee or collateral, that your Store will be profitable or successful."

Section 16.14 of the Franchise Agreement, “Receipt of Disclosure Document and Agreement,” is deleted and replaced with the following: You acknowledge having received our franchise disclosure document (“FDD”) at least fourteen (14) calendar days before signing a binding agreement or making any payment to us relating to this Agreement.

The undersigned does hereby acknowledge receipt of this addendum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Metal Supermarkets Franchising America Inc.

\_\_\_\_\_  
Prospective Franchisee

**RIDER TO THE DEVELOPMENT AGREEMENT PURSUANT TO  
THE STATE OF WASHINGTON**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

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 arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings 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 annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

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. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

The undersigned does hereby acknowledge receipt of this addendum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Metal Supermarkets Franchising America Inc.

\_\_\_\_\_  
Prospective Developer

**EXHIBIT H**

**DIGITAL PARTICIPATION AGREEMENT**

**METAL SUPERMARKETS  
DIGITAL PARTICIPATION AGREEMENT**

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This Metal Supermarkets Digital Participation Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Effective Date”) by and between Metal Supermarkets Franchising America Inc. (“Franchisor”), an Ontario corporation, and \_\_\_\_\_ (“Participant”).

**RECITALS**

**WHEREAS**, Franchisor and Participant are parties to a METAL SUPERMARKETS® Franchise Agreement dated \_\_\_\_\_ (the “Franchise Agreement”);

**WHEREAS**, Franchisor operates an Internet-based sales platform and may operate additional platforms (“Digital Platforms”) to support sales growth and development for Franchisor’s franchisees which Franchisor may refer Work (as defined below) to Participant; and

**WHEREAS**, Participant, as a franchisee of Franchisor, agreed to accept Work referred to it from Franchisor’s Digital Platforms for the benefit of Franchisor’s Digital Platforms customers (“Customers”) on the terms and conditions set forth in this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and covenants contained herein, Franchisor and Participant, intending to be legally bound, hereby agree as follows:

**1 Metal Sales**

- 1.1 All metal supplied by Participant to Customers as part of the Digital Platforms will be prime material as specified by Franchisor. Participant agrees that all such metal supply or service (including processing and delivery) work referred to Participant pursuant to the terms of this Agreement shall be performed in a professional and workmanlike manner, in strict accordance with the provisions of this Agreement, the Franchise Agreement, and Franchisor’s standards for packaging, delivery, material specifications, and material supply as amended from time to time by Franchisor in its discretion (collectively the “Work”).
- 1.2 Participant agrees to perform all Work requested by Franchisor on behalf of its Customers according to Section 2.1 below.
- 1.3 Participant shall follow all practices and procedures required by Franchisor in performing the Work. Franchisor has the right to amend its practices and procedures for Franchisees performing the Work provided that any amendments are in writing and delivered to Participant by means of e-mail, electronic transmission or posting to any

franchise communication network utilized by the Franchisor for hosting information for its franchisees.

- 1.4 Participant will accurately and fully complete all reporting and paperwork specified by Franchisor in connection with the Work.
- 1.5 Participant shall complete and retain all Work-related records in order to validate the Participant's Work and Work quality.
- 1.6 During the term of this Agreement, Participant will display any signage, promotional material, or literature referring to Franchisor's Digital Platforms as Franchisor may designate.
- 1.7 Participant acknowledges and agrees that all Customers are Franchisor customers and Participant agrees that it will not disparage by way of any activity or conduct the Franchisor's Digital Platforms.

## **2 Invoices; Payment for Work; Fees**

- 2.1 The Operating Manual, as defined under the Franchise Agreement (inclusive of its policies, procedures, and standards), amongst other things, sets out a description of the Digital Platforms, the specifications of its application to the Work, and the associated requirements, responsibilities and obligations of the Participant relating to the Digital Platforms and the Work.
- 2.2 Franchisor will notify Participant of any Work to be performed, payment for the Work (as applicable), and the requirements established by Franchisor for the Work (the "Work Order"), notwithstanding that the Participant acknowledges that consideration may not be payable to the Participant for each of its required actions. The price for the Work, as applicable, to be performed as stated in the Work Order will be a gross price and will include any and all costs that Participant may incur including, but not limited to, material costs, cutting, delivery, packaging, shearing, scrap, other processing services and packing materials.
- 2.3 If Participant (i) does not fulfill Work Order within the specified period, or (ii) fails to properly fulfill Work Orders, Franchisor may determine at its sole discretion that Participant has waived further rights to be offered any future Work Orders and Franchisor may either (a) suspend, for a period of time of its choice and without notice, Participant from receiving further Work from the Digital Platforms or (b) terminate this Agreement by sending Participant written notice of termination. Termination will be effective upon receipt and Participant will have no further rights, claims or obligations under this Agreement. Termination of this Agreement for any reason whatsoever will constitute grounds for termination by Franchisor of the Franchise Agreement under Section 12.2 of the Franchise Agreement.

- 2.4 Notwithstanding anything in this Agreement to the contrary, the Participant hereby acknowledges their express and unconditional approval and agreement to perform such Work for the established price and terms as set forth in the Work Order, which by reference includes all terms and conditions of this Agreement including the Operating Manual. Participant waives all claims against Franchisor or their respective employees, agents, directors, or officers for any amounts incurred in performing the Work that exceeds the price set forth in the Work Order established by the Franchisor.
- 2.5 Participant acknowledges and agrees that (i) Franchisor will pay Participant for the Work as stated in the Work Order, (ii) Customer is not responsible for paying Participant any amount related to the Work, (iii) Franchisor will charge its Customer a different price than the amount it will pay Participant for the Work, and (iv) Royalties are due and payable on all amounts Participant receives for the Work performed, in accordance with the terms and conditions set forth in the Franchise Agreement.
- 2.6 Payments will be disbursed to Participant via automatic deposit within fifteen (15) days after the month end in which the Work is completed and the Customer has possession. For example, for Work completed in August, payment will be made to Participant by September 15<sup>th</sup>.

### **3 Warranty**

- 3.1 Participant warrants that all products and materials used to complete the Work will be prime materials and will be free of any defects in material and workmanship, will comply with all applicable industry standards and specifications for such material, and material test reports will be available on selected items if requested and if available.
- 3.2 Participant agrees that if notified by a Customer or Franchisor of any complaint relating to the Work, Participant will perform all warranty work required within twenty-four (24) hours of notice of the complaint, or any longer period that is acceptable to Franchisor or its Customer. If a Customer contacts Participant directly with a complaint, Participant agrees to promptly notify Franchisor in writing of such complaint with recommendations as to how the complaint will be resolved for Franchisor's approval.
- 3.3 Participant shall be responsible for the cost and administration of all warranty work, including but not limited to cutting, processing or packaging errors in connection with the warranty work, regardless of whether the warranty work is performed by Franchisor, Participant or another sub-contractor due to timing, customer request, logistics or any other reasonable basis. Franchisor shall have the absolute right to recover the reasonable cost or value of any warranty work performed, including all related handling and administration costs from Participant, whether by set-off against amounts owed to Participant or otherwise.

## **4 Records**

- 4.1 Participant shall maintain full and complete records of all transactions arising out of or relating to Work performed under this Agreement, and other books and records as are customarily maintained in the ordinary course of business, for a period of at least seven (7) years. Franchisor shall have the right to audit such transactions, books and records for verifying quality and compliance with the terms of this Agreement.
- 4.2 Participant shall submit any records requested by Franchisor for audit within five (5) business days of the request, unless otherwise mutually agreed by the parties. If Participant fails to provide the records requested, Franchisor will have the right to terminate this Agreement by sending Participant written notice of termination. Participant acknowledges and agrees that Franchisor may recover any payment owed to Franchisor by Participant by means of set-off against amounts owed to Participant or otherwise. The aforementioned remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to Franchisor.

## **5 Liability for Damages; Release and Indemnification**

- 5.1 In addition to and specifically not as a replacement of the indemnity terms as set out under the Franchise Agreement, the Participant hereby releases and discharges Franchisor and all of its successors, assigns, directors, officers, agents, employees, and affiliated companies, and their respective officers, directors, agents and employees (collectively and individually “Indemnified Party”), from and against all claims, demands, liabilities, or causes of action of any kind or type whatsoever, including those arising from the partial or sole negligence of any Indemnified Party, whether arising by operation of law, contract, warranty, tort, or otherwise, that Participant ever had, has or may in the future have against any indemnified party arising from, related to, or connected with the Work generated or performed pursuant to this Agreement or any act or omission in the performance of such Work by the Participant.
- 5.2 Participant further agrees to indemnify, defend, and hold Indemnified Party harmless from any claims, costs, and expenses, including attorney fees, that may be asserted against or incurred by any of them as a result of claims, including those arising from the partial or sole negligence of any Indemnified Party, by any other party or entity alleging damage or claims of any kind or nature, including punitive damages, that arise out of, are related to, or are connected with the Work generated or performed pursuant to this Agreement or any act or omission in the performance of such Work by Participant.

## **6 Duration of Agreement and Termination**

- 6.1 This Agreement shall remain in effect until: (i) Franchisor with or without cause, and for any reason whatsoever, gives written notice of termination to the Participant at the address set forth below at least ten (10) days in advance of such termination; (ii) terminated as

otherwise provided in this Agreement; or (iii) Participant's Franchise Agreement expires or is terminated.

- 6.2 In the event of termination, Participant agrees that Participant will no longer represent to any party that Participant is a participant in Franchisor's Digital Platforms. Participant further acknowledges and agrees that all Customers are Franchisor's customers and, upon termination of this Agreement, all Confidential Information (as defined in Section 12), including all Franchisor customer contact information and customer lists, must be returned to Franchisor.
- 6.3 Notwithstanding any termination of this Agreement, Participant agrees to perform any warranty work that is required in connection with Work performed by Participant prior to the termination of this Agreement. If Participant refuses to perform such warranty work as provided for herein, Franchisor may refer the work to another participant or perform the work itself and shall be entitled to reimbursement from Participant for the warranty work performed.
- 6.4 It is understood that various aspects of the Digital Platforms, some of which may be referred to in this Agreement, may from time to time be altered or modified by Franchisor for any reason. These changes may be made without the consent or approval of Participant.

## **7 Referrals and Non-Exclusivity**

Participant understands and acknowledges that participation in Franchisor's Digital Platforms network is non-exclusive. Franchisor may contract with other participants, and may provide Customers with a choice of one or more participants. Participant expressly acknowledges that neither Franchisor nor any other person or entity acting on its behalf has made any commitments to it as to the volume or type of Work to be referred under the terms of this Agreement, and that Participant shall not acquire any proprietary right to any of Franchisor's customers by virtue of participation in Franchisor's Digital Platforms network.

## **8 Independent Contractor**

Participant and Franchisor are independent contractors. Neither party is the agent, legal representative, partner, subsidiary, joint-venturer or employee of the other. Neither party may obligate the other or represent any right to do so. This Agreement does not reflect or create a fiduciary relationship of special trust or confidence. Participant at all times shall be responsible for the payment of any and all insurance premiums and other business expenses that Participant may incur in connection with the Work performed under this Agreement. Participant acknowledges that Franchisor shall have no obligations to Participant other than as specifically provided for in this Agreement with regard to the subject matter.

## **9 Assignment and Subcontracting**

The rights and obligations under this Agreement, including the right to perform the Work are personal to Participant, and may not be sub-contracted, assigned, transferred or otherwise delegated to any third party, except as may be agreed to in writing by Franchisor.

## **10 Notices**

Any notice, demand, or communication provided for herein shall be delivered in accordance with the terms of Section 16.13 of the Franchise Agreement.

## **11 Waiver**

No waiver by either party of any breach by the other party, nor any delay or failure by either party to enforce any provision of this Agreement, will be deemed to be a waiver of any other or subsequent breach or be deemed an estoppel to enforce the non-breaching party's rights with respect to that or any other or subsequent breach. Except as specifically set forth herein, this Agreement may not be waived, altered or rescinded, in whole or in part, except in writing by both parties.

## **12 Confidentiality**

As used in this Agreement, the term "Confidential Information" is as defined under the Franchise Agreement.

Participant acknowledges the confidential and proprietary nature of the Confidential Information and agrees that the information: (a) will be kept confidential by the Participant, and will be used only for the purpose of performing Work under this Agreement or other agreements with Franchisor; and (b) will not be used or disclosed by the Participant other than for the purpose of performing Work under this Agreement except with the specific prior written consent of Franchisor. Upon termination of this Agreement for any reason, Participant will promptly deliver to Franchisor all documents or other materials containing Confidential Information.

In the event of any breach or threatened breach of this section, Franchisor shall be entitled to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to Franchisor.

## **13 Taxes**

Participant agrees that it will reimburse Franchisor for any state or local tax which is assessed against Franchisor relating to the Work performed by Participant under the terms of this Agreement.

## **14 Severability**

Should one or more clauses of this Agreement be held void or unenforceable for any reason by any court of competent jurisdiction, such clause or clauses will be deemed to be separable in such jurisdiction and the remainder of this Agreement will be deemed to be valid and in full force and effect and the terms of this Agreement will be equitably adjusted so as to compensate the appropriate party for any consideration lost because of the elimination of such clause or clauses. It is the intent and expectation of each of the parties that each provision of this Agreement will be honored, carried out and enforced as written. Consequently, each of the parties agrees that any provision of this Agreement sought to be enforced in any proceeding hereunder will, at the election of the party seeking enforcement and notwithstanding the availability of an adequate remedy at law, be enforced by specific performance or any other equitable remedy.

## **15 Governing Law and Venue**

This Agreement will be construed and enforced in accordance with the laws of the jurisdiction referenced under the Franchise Agreement, without regard to principles of conflicts of law. Any and all disputes, controversies, or claims arising from or relating to this Agreement, the Work, and any services or deliverables that may be provided will be resolved according to the dispute resolution procedures set forth in the Franchise Agreement. The provisions of this Section will survive the termination of this Agreement. Nothing in this Section 15 is intended to invoke the application of any franchise, business opportunity, antitrust, "implied covenant," unfair competition, fiduciary or any other doctrine of law which would not otherwise apply absent this Section 15.

## **16 Entire Agreement**

This Agreement, and the documents referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof and embody all prior agreements and negotiations with respect to the subject matter hereof. There are no representations or warranties of any kind, express or implied, except as contained herein. No amendment will be binding unless in writing and signed by the party against whom enforcement is sought. All representations, warranties, agreements and all other provisions of this Agreement which by their terms or by reasonable implication are intended to survive the closing of this transaction will survive it.

## **17 Capitalized Terms**

Capitalized terms used but not defined herein shall have the meanings set forth in the Franchise Agreement.

**IN WITNESS WHEREOF**, this Agreement has been executed to be effective as of the date first written above.

**FRANCHISOR:**

**PARTICIPANT:**

Metal Supermarkets  
Franchising America Inc.

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

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

Stephen Schober  
Its: President and Chief Executive Officer

Its:

## **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	April 3, 2024
Illinois	<i>Pending</i>
Indiana	January 26, 2024
Minnesota	<i>Pending</i>
New York	February 8, 2024
Rhode Island	January 30, 2024
Washington	<i>Pending</i>
Wisconsin	January 26, 2024

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 I****RECEIPTS**

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If we offer you a franchise, we must provide this disclosure document to you (a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale, or (b) under New York law, if applicable, at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale, or (c) under Iowa requirements at the earlier of the first personal meeting, or 14 days before signing the franchise or other agreement or the payment of any consideration that relates to the franchise relationship, or (d) Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If we do not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Metal Supermarkets Franchising America Inc. located at 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario Canada M9C 5K6 (tel.: 905-362-8226).

Issuance date: January 26, 2024.

The name, principal business address and telephone number of each franchise seller offering the franchise: Stephen Schober and Andrew Arminen, Metal Supermarkets Franchising America Inc., 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario Canada M9C 5K6 (tel.: 905-362-8226), and \_\_\_\_\_

We authorize the respective state agencies identified on Exhibit A to receive service of process for us in the particular state.

I have received a Disclosure Document dated January 26, 2024 that included the following Exhibits:

A	List of State Agencies and Agents for Service of Process	D	Table of Contents of Operations Manual
B	Financial Statements	E-1	List of Current Franchisees and List of Company-Owned Outlets
C-1	Applicant Agreement	E-2	List of Former Franchisees
C-2	Franchise Agreement	F	Addenda to the Franchise Disclosure Document for Registration States
C-3	Addendum to Lease	G	Riders to the Franchise Agreement for Certain Registration States
C-4	Hosting Support and Software Agreement	H	Digital Participation Agreement
C-5	Sample General Release	I	Receipts
C-6	Development Agreement		

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Please sign this copy of the receipt, date your signature, and return it to Andrew Arminen, Metal Supermarkets Franchising America Inc., 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario Canada M9C 5K6 (905-362-8226).

*Please retain – this is your copy*

## RECEIPT

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If we offer you a franchise, we must provide this disclosure document to you (a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale, or (b) under New York law, if applicable, at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale, or (c) under Iowa requirements at the earlier of the first personal meeting, or 14 days before signing the franchise or other agreement or the payment of any consideration that relates to the franchise relationship, or (d) Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If we do not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

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- |     |  |     |  |
|-----|--|-----|--|
| A   | List of State Agencies and Agents for Service of Process | D   | Table of Contents of Operations Manual                               |
| B   | Financial Statements                                     | E-1 | List of Current Franchisees and List of Company-Owned Outlets        |
| C-1 | Applicant Agreement                                      | E-2 | List of Former Franchisees   |
| C-2 | Franchise Agreement                                      | F   | Addenda to the Franchise Disclosure Document for Registration States |
| C-3 | Addendum to Lease  | G   | Riders to the Franchise Agreement for Certain Registration States    |
| C-4 | Hosting Support and Software Agreement                   | H   | Digital Participation Agreement                                      |
| C-5 | Sample General Release                                   | I   | Receipts   |
| C-6 | Development Agreement                                    |     |  |

Date	Signature	Printed Name
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Please sign this copy of the receipt, date your signature, and return it to Andrew Arminen, Metal Supermarkets Franchising America Inc., 5399 Eglinton Avenue West, Suite 210, Toronto, Ontario Canada M9C 5K6 (905-362-8226).

*Please date and sign, and return this copy, to Metal Supermarkets Franchising America Inc.*