



# NiteLites®

—The Outdoor Lighting Professionals

**FRANCHISE DISCLOSURE DOCUMENT  
NITELITES FRANCHISE SYSTEMS, INC.**

an Ohio corporation  
6107 Market Avenue  
Franklin, Ohio 45005  
(513) 424-5510  
info@NiteLites.com  
www.NiteLites.com

A NiteLites franchise sells superior-quality lighting products and services to, and designs and installs architectural and landscaping illumination products for, upscale homeowners and commercial enterprises.

The total investment necessary to begin operation of a NiteLites franchised business is \$66,275 to \$110,785. This includes between \$45,255 to \$68,255 that must be paid to franchisor and its affiliates.

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, the franchisor 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 Tom Frederick at 6107 Market Avenue, Franklin, Ohio 45005 and (513) 424-5510.

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. Call your state agency or visit your public library for other sources of information on franchising.

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

ISSUANCE DATE: April 1, 20172018

## STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit A for information about the franchisor, or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY MEDIATION AND LITIGATION ONLY IN OHIO. OUT-OF-STATE MEDIATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE TO MEDIATE OR LITIGATE WITH US IN OHIO THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT STATES THAT OHIO LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTION AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
- 3.
4. THE FRANCHISEE WILL BE REQUIRED TO MAKE AN ESTIMATED INITIAL INVESTMENT RANGING FROM \$66,275 to \$110,785. THIS AMOUNT EXCEEDS THE FRANCHISOR'S STOCKHOLDERS EQUITY AS OF DECEMBER 31, 2016, WHICH IS \$37,321.
5. YOU MUST MAKE MINIMUM ROYALTY, ADVERTISING, AND OTHER PAYMENTS, REGARDLESS OF YOUR SALES LEVELS. YOUR INABILITY TO MAKE THE PAYMENTS MAY RESULT IN TERMINATION OF YOUR FRANCHISE AND LOSS OF YOUR INVESTMENT.
6. YOU WILL BE REQUIRED TO A PAY MINIMUM ROYALTY RANGING BETWEEN \$750 PER MONTH FOR THE FIRST YEAR AND \$1,500 PER THE MONTH IN THIRD YEAR AND THERAFTER. YOU WILL BE REQUIRED TO ACHIEVE A MINIMUM LEVEL OF ANNUAL GROSS SALES RANGING FROM \$125,000 TO \$456,262 PER YEAR BEGINNING IN THE 2ND YEAR OF OPERATIONS, AND INCREASING EACH YEAR THERAFTER DURING THE TERM OF THE FRANCHISE AGREEMENT. IF YOU FAIL TO ACHIEVE THE MINIMUM ANNUAL GROSS SALES FOR 2 CONSECUTIVE FISCAL YEARS, WE HAVE THE RIGHT TO TERMINATE YOUR FRANCHISE AGREEMENT OR REDUCE THE SIZE OF YOUR PROTECTED TERRITORY.
7. THE FRANCHISOR HAS THE RIGHT AND OPTION TO UNILATERALLY TERMINATE THE FRANCHISE AGREEMENT "OPTION TO TERMINATE" AT ANY TIME BY REFUNDING THE FRANCHISE FEE ONLY. IF YOUR FRANCHISE FAILS, BOTH YOU AND YOUR SPOUSE'S MARITAL AND PERSONAL ASSETS, INCLUDING YOUR HOME, COULD BE LOST, IF:
  - YOU LIVE IN A COMMUNITY PROPERTY STATE, OR
  - YOU LIVE IN ANOTHER STATE, AND YOUR SPOUSE MUST SIGN A DOCUMENT SUCH AS A GUARANTEE THAT MAKES YOUR SPOUSE LIABLE FOR YOUR FINANCIAL OBLIGATIONS UNDER THE FRANCHISE AGREEMENT, EVEN IF YOUR SPOUSE DOES NOT OWN ANY PART OF THE FRANCHISE BUSINESS.
8. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should make sure to do your own investigation of the franchise.

Effective Date: See the next page for state effective dates.

STATE EFFECTIVE DATES

The following states 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 Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates: April 1, 2017~~2018~~

	State Effective Date
California	<del>April 14, 2017</del>
Hawaii	
Indiana	<del>August 26, 2017</del>
Michigan	<del>August 30, 2017</del>
Minnesota	<del>June 14, 2017</del>
New York	<del>October 13, 2017</del>
Rhode Island	
Virginia	<del>May 3, 2017</del>
Washington	
Wisconsin	<del>April 19, 2017</del>

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE</u>
ITEM 1. THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES.....	- 3 -
ITEM 2. BUSINESS EXPERIENCE .....	- 4 -
ITEM 3. LITIGATION.....	- 5 -
ITEM 4. BANKRUPTCY.....	- 5 -
ITEM 5. INITIAL FEES .....	- 5 -
ITEM 6. OTHER FEES.....	- 6 -
ITEM 7. ESTIMATED INITIAL INVESTMENT.....	<del>- 11 -</del>
ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES .....	<del>- 16 -</del>
ITEM 9. FRANCHISEE'S OBLIGATIONS.....	- 19 -
ITEM 10. FINANCING.....	- 20 -
ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING...	- 22 -
ITEM 12. TERRITORY .....	- 28 -
ITEM 13. TRADEMARKS.....	- 29 -
ITEM 14. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION .....	- 32 -
ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED BUSINESS.....	- 33 -
ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL.....	- 33 -
ITEM 17. RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION.....	- 34 -
ITEM 18. PUBLIC FIGURES.....	- 41 -
ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS.....	- 41 -
ITEM 20. OUTLETS AND FRANCHISEE INFORMATION .....	- 41 -
ITEM 21. FINANCIAL STATEMENTS .....	<del>- 46 -</del>
ITEM 22. CONTRACTS.....	<del>- 46 -</del>
ITEM 23. RECEIPT.....	<del>- 47 -</del>

EXHIBITS

- A. Franchise Agreement
- B. Promissory Note
- C. Guaranty and Assumption of Obligations
- D. Nondisclosure and Noncompetition Agreement
- E. Supply Agreement
- F. Call Center Service Agreement
- G. Franchisee Disclosure Questionnaire

- H. State Regulators and Agents for Service of Process
- I. Table of Contents of Operating Manual
- J. Initial Inventory Package and Start-Up Kit
- K. List of Current Franchisees
- L. Franchisees Who Have Left the System
- M. Financial Statements
- N. Successor Franchise Addendum
- O. Accounting Service Agreement
- P. State-Specific Addendum

## **ITEM 1. THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

The Franchisor. To simplify the language in this disclosure document, the words “we”, “us” or “our” mean the franchisor, NITELITES FRANCHISE SYSTEMS, INC. The word “you” means the person to whom we award the franchise. If you are a corporation, partnership, limited liability company, business trust or other business entity, certain provisions of this disclosure document also apply to your owners and will be noted. We were incorporated in the State of Ohio on January 21, 2004. Our principal business address is 6107 Market Avenue, Franklin, Ohio 45005. We do business only under our corporate name and the name NITELITES.

Our Business Activities. Our business activities include the grant of franchises to qualified persons or entities. We offer a franchise for a business that provides superior-quality LED lighting products and services, and designs and installs architectural and landscaping LED illumination products for upscale homeowners and commercial enterprises in conjunction with the service mark “NITELITES” and certain associated logos referred to as the “Marks.”<sup>1</sup> We refer to these businesses as “NiteLites Franchises.” We refer to the NiteLites Business you will operate as the “Franchised Business.”

A Franchised Business typically may be operated from a home office or similar location, which will accommodate storage of a small inventory of NiteLites Products and Equipment. You will operate the Franchised Business in accordance with our standards, methods, procedures and specifications, which we refer to as our “System,” which is more particularly described in our Franchise Agreement, attached as Exhibit A to this disclosure document.

We have offered franchises since August 26, 2004. As described in Item 5 of this disclosure document, we furnish you and other franchisees with a Start-up Kit of supplies and other items you will need to operate the Franchised Business. As described in Item 8, we also operate a national call center, which schedules appointments for you and other franchisees. Except for selling franchises, supporting franchisees, supplying franchisees with a Start-up Kit of supplies and operating the national call center, we are not engaged in any other line of business. We do not own or operate a business of the type being franchised, although one of our executives does.

Our Parents, Predecessors and Affiliate. We have no parents or predecessors. We have 1 affiliate, NL Manufacturing and Distribution Systems, Inc. (“NL Manufacturing”). We have three affiliates, which operate NiteLites outlets; Gem City IV, Inc., Gem City II, Inc. & Outdoor Lights, Inc., which have been operating locations in Franklin, Ohio since 2004. We have no other affiliates. No affiliate has previously offered franchises in this or any other line of business. No affiliate has ever conducted a business of the type being franchised.

NL Manufacturing is an Ohio corporation incorporated on November 5, 2002, and is located at 6107 Market Avenue, Franklin, Ohio 45005. NL Manufacturing developed a line of superior-quality exterior LED illumination products and equipment, which feature the NITELITES trademark and are referred to as “NiteLites Products and Equipment.” NL Manufacturing supplies NiteLites franchisees with NiteLites Products and Equipment. NL Manufacturing has never owned or operated a business of the type being franchised. NL Manufacturing does not and has not previously offered franchises in this or any other line of business. From June 2002 through August 2004, NL Manufacturing offered distributorships that offered NiteLites Products and Equipment. The distributorships differed from the

---

<sup>1</sup> Capitalized terms, not otherwise defined, have the same meaning as in our Franchise Agreement attached as Exhibit A to this disclosure document.

franchised business that we offer in that NL Manufacturing did not and does not offer any assistance to the distributors and did not require the distributors to adhere to any system. There are currently no distributorships that offer and sell NiteLites Products and Equipment.

General Description of the Market and Competition. Our concept is marketed to both residential and commercial customers. National, regional and local economic conditions, population density and general traffic conditions affect this industry and are generally difficult to predict. As a franchisee, you will likely face competition from other national and local businesses, distributors, and individuals performing similar services. You may also encounter competition from other NiteLites Franchises operated by other franchisees. In addition, as you expand your Franchised Business, you will face significant competition in this industry for qualified personnel.

Industry Specific Regulations. You must comply with all laws, rules and regulations governing the operation of the Franchised Business and obtain all permits and licenses necessary to operate the Franchised Business. We are aware of the following states that require a trade license or certification for persons who install low voltage electrical fixtures: California, Florida, Georgia, Kentucky, New Jersey and North Carolina. There may be other states, counties, or municipalities that also require a license. Each state, county, or municipality may have different licensing requirements for installing low voltage electrical fixtures. Ohio and other states and local jurisdictions have enacted laws, rules, regulations and ordinances which may apply to the operation of your Franchised Business, including those which: (a) set standards pertaining to employee health and safety; and (b) set standards and requirements for fire safety and general emergency preparedness. You should investigate whether there are regulations and requirements that may apply in the geographic area in which you are interested in locating your franchise and should consider both their effect and cost of compliance, as well as seek the advice of your attorney. You will be responsible for investigating and complying with the licensing requirements that apply in your market.

Agents for Service of Process. Our agents for service of process are listed in Exhibit H to this disclosure document.

## **ITEM 2. BUSINESS EXPERIENCE**

### CEO, President, Treasurer, Director: Thomas A. Frederick

Tom has been our CEO, President, Treasurer, and a member of our Board of Directors since our incorporation on January 21, 2004. In addition, since November 2002, Tom has served as President and CEO of NL Manufacturing.

### Director of Marketing, Secretary: Amanda Lewis

Amanda has served as our Director of Marketing since October 2005 and Secretary since January 2007.

### Operating Manager, Holly Nevels

Holly has served as our Operating Manager since December of 2004.

### Accounting & Administrative Assistant, Stephanie Cope

Stephanie has served as our Accounting & Administrative Assistant since June of 2014. From February of 2011 to June of 2014, Stephanie worked as a Sales Coordinator for us.

**ITEM 3. LITIGATION**

NiteLites Franchise Systems, Inc., NL Manufacturing & Distribution Systems, Inc. v. NiteLites, Inc. (CASE NO. 2013 CV 84662), Warren County Ohio Common Pleas. On September 5, 2013 we and our affiliate NL Manufacturing & Distribution Systems, Inc. filed a suit against former franchisee NiteLites, Inc. for breach of contract. We filed a motion of judgment on all counts. Former franchisee NiteLites, Inc. is not opposing our motion for judgment. The court granted NiteLites Franchise Systems, Inc., NL Manufacturing & Distribution Systems, Inc. motion for summary judgment on all counts issuing an order of judgment against the former franchisee finding the former franchisee in material breach of the franchise agreement, ordering the former franchisee to pay \$14,276.19, and directing the former franchisee to immediately and permanently cease use of NiteLites’ confidential information and Marks. The former franchisee has failed to pay monies, which were order to be paid by the court, but the former franchisee has ceased business using the NiteLites name and otherwise.

No other litigation is required to be disclosed in this Item.

**ITEM 4. BANKRUPTCY**

No bankruptcies are required to be disclosed in this disclosure document.

**ITEM 5. INITIAL FEES**

You must pay us a Franchise Fee as stated below:

Class Number	Population	Initial Franchise Fee
1*	500,001 – 1,000,000	\$19,995
2	1,000,001 – 1,500,000	\$27,495
3	1,500,001 – 2,000,000	\$34,995
4	2,000,001 – up to 3,000,000	\$42,995
SM	0 – 500,000	\$14,995

\*Class 1 with a population between 500,001 – 1,000,000 is the standard territory size that we offer.

Except as stated above, the Franchise Fee is uniform as to all franchisees.

Refunds. The Franchise Fee is not refundable under any circumstances except if we, in our discretion, determine that you are unable to satisfactorily complete the training program described in Item 11 of this disclosure document; then, we may terminate the Franchise Agreement and, if we do so, we will refund 50% of the Franchise Fee to you. At any time during the term of the Franchise Agreement, we have the right and option to unilaterally terminate the Franchise Agreement (the “Option to Terminate”) by refunding the Initial Franchise Fee paid by you and releasing you from your post-termination non-compete obligations.

Initial Inventory Package Fee. Before beginning operation of the Franchised Business, you will need to purchase from us, NL Manufacturing, or a supplier designated by us, and install at the Franchise Premises an initial inventory of NiteLites Products and Equipment, which we refer to as the “Initial Inventory Package.” You must pay us for the Initial Inventory Package when you attend the initial training program. The Initial Inventory Package, which is itemized on Exhibit J to this disclosure

document, includes transformers, fixtures, LED lighting systems and other items, which you will use for sales demonstration and display purposes. Your cost for the Initial Inventory Package will be about \$5,260. The cost of the Initial Inventory Package is included within the category “Initial Inventory” in Item 7 of this disclosure document. If your Franchise Agreement terminates before you begin operations, we will repurchase the initial inventory and refund the Initial Inventory Package Fee provided the various products are unopened or unused and remain in saleable condition. You are responsible for the transportation costs in returning the Initial Inventory Package to us.

**Start-up Kit.** Before you open your Franchised Business, you must purchase, from us, NL Manufacturing, or a supplier designated by us, a Start-up Kit consisting of a product demonstration kit, tools, vehicle graphics package, trade show display, uniforms and other supplies you will need for the operation of the Franchised Business. You must pay us for the Start Up Kit when you attend the initial training program. The cost of the Start-up Kit is \$20,000, which is included within the category “Furniture, Office Supplies, Start-up Kit” in the table in Item 7 of this disclosure document. If your Franchise Agreement terminates before you begin operations, we will repurchase any unopened, unused items remaining in a saleable condition from the Start-up Kit supplied by us or NL Manufacturing and provide you with a refund for the returned items. You are responsible for the transportation costs in returning Start-up Kit items.

**VetFran Discount.** We participate in the Veterans Transition Franchise Initiative, also known as “VetFran.” VetFran is a voluntary effort of International Franchise Association members to encourage franchise ownership by veterans of the U.S. military by offering financial incentives. If you are a honorably-discharged U.S. military veteran and otherwise meet the VetFran requirements, we will discount the Franchise Fee by 35%.

California Resident, please note that the California State Addendum contain in Exhibit P of this Franchise Disclosure Document modifies and supplements this Item 5 above. Virginia residents, and persons purchasing a franchise to be located in Virginia, should review the Virginia Addendum in Exhibit P that modifies and supplements Item 5.

**ITEM 6. OTHER FEES**

Type of Fee	Amount	Due Date	Remarks
Royalty Fee (per territory)	5% of Gross Sales (Note 1) or the Minimum Royalty Fee, whichever is higher (Note 2)	15 <sup>th</sup> of each month	The Minimum Royalty Fee applies to all Franchises except Franchises with Small Territories that have populations less than 500,000. Franchises with Small Territories are not subject to the Minimum Royalty Fee. Small Territory Franchises pay a Standard Royalty Fee of 5% of their Gross Revenues.

Type of Fee	Amount	Due Date	Remarks
Marketing Fund Contribution	2% of Wholesale Product Purchases	Varies	
Local Advertising (Note 4)	5% of Gross Sales	As incurred (Note 4)	You pay directly subject to our approval. Payable to the suppliers of advertising.
Cooperative Advertising	All or any portion of the Marketing Fund Contribution and/or the required Local Advertising may be re-designated for Cooperative Advertising	As directed	We have the right to establish a Cooperative Advertising program in your regional marketing area. Payable as directed to us or the advertising cooperative.
Call Center Service Fee	\$500	1st of each month beginning on the 1st day of the 2nd calendar month after the month in which you open your Franchised Business	You will pay to us or NL Manufacturing a fee for call center services as directed by us or as set forth in the Manual.
Internet Marketing Fee	\$275	Every 6 months after opening	The Internet Marketing Fee is for promoting our trademarks and products through the Internet and World Wide Web, maintaining your e-mail accounts and updating your Internet presence.

Type of Fee	Amount	Due Date	Remarks
Accounting Service Fee	\$500 per month for Annual Gross Sales \$400 thousand plus an additional \$100 per month for each \$100 thousand in Annual Gross Sales over \$400 thousand up to \$2 million in Annual Gross Sales.	1 <sup>th</sup> of each Month	The Accounting Service Fee is to NL Manufacturing for in putting of customer billing and invoicing information into accounting software system and reporting. You have access and control of your accounting software system and you may input information into the accounting system independently; however you will still be responsible for the payment of the Accounting Service Fee.
Ongoing Purchases of NiteLites Products and Equipment	\$50,000 to \$95,000 in your first year (estimated)	As invoiced	NL Manufacturing will provide you with NiteLites Products and Equipment as described in Item 8. There are no alternate sources of supply.
Audit Expenses	Cost of audit plus interest on underpayment	Upon demand	Audit costs payable only if the audit shows an understatement in amounts due of at least 3%.
Late Fees (Note 5)	Internet Marketing Fees: \$25 Call Center Service Fees: \$50 Marketing Fund Contributions: \$100	Upon demand	You must pay a late fee on any payment to us that is more than 5 days late.

Type of Fee	Amount	Due Date	Remarks
Interest	Highest applicable legal rate, not to exceed 1.5% per month	Upon demand	Applies to all overdue, Marketing Fund Contributions, Call Center Services Fees, Internet Marketing Fees and other amounts due to NL Manufacturing or us. Also applies to any understatement in amounts due revealed by an audit.
Supplier Approval	Reasonable cost of inspection and testing	At the time of inspection or test	Applies to new suppliers or supplies you wish to purchase that we have not approved.
Insurance	Amount of unpaid premiums	Upon demand	Payable to us only if you fail to maintain required insurance coverage and we elect to obtain coverage for you.
Transfer Fee	\$5,000	At the time of transfer	Payable when you transfer or sell your franchise. This transfer fee does not apply to an assignment of interest to an entity controlled by you.
Additional Training	Current rates as published in the Manual; currently \$300 per day, per person, plus your expenses as well as your employees' expenses in attending	Time of service	We provide 35 hours over 1 week of training for you and one additional person. You pay for additional training if you request it.
Additional Operations Assistance	Current rates as published in the Manual; currently \$750 per day per person plus our expenses	Time of assistance	We provide 3 consecutive days of assistance around the beginning of operations. You pay for additional assistance if you request it.

Type of Fee	Amount	Due Date	Remarks
Ongoing Training	You are required to pay your expenses as well as your employees' expenses in attending these programs	Time of program	Attendance will not be required more than 2 times per year and attendance will not exceed 4 days per calendar year.
Taxes	Variable	Upon demand	You must pay any state or local taxes (other than income taxes) that may be assessed on the, Marketing Fund Contributions, or other fees you pay us.
Cost of Enforcement	Cost including attorney fees	Upon demand	You will reimburse us for all costs in enforcing obligations under the Franchise Agreement if we prevail.
Liquidated Damages	An amount equal to 2 years of the minimum royalty fees or the actual royalty fees you paid in the previous 2 years prior to termination	Upon demand	If the Franchise Agreement terminates before its term is completed, we are entitled to receive monetary compensation.
Indemnification	Cost including attorney fees	As invoiced	You will defend suits at your cost and hold us harmless against suits involving damages resulting from your operation of the Franchised Business.

**NOTES:**

1. "Gross Sales" means the aggregate of all revenue accrued from the sale of all exterior lighting products and related products from all sources in connection with the Franchised Business, whether or not collected by you and whether for check, cash, credit or otherwise, including all proceeds from any business interruption insurance, but excluding all refunds made in good faith, promotional and coupon discounts, and any sales and equivalent taxes which are collected by you for or on behalf of any governmental taxing authority. (Section 1)
2. You are required to pay a Royalty Fee or the Minimum Royalty as stated below, whichever is higher.

**MINIMUM ROYALTY FEE**

<b>Fiscal Year (See Note 3)</b>	<b>Royalty Fee Amount</b>
1	\$750/ month
2	\$1,250/ month
3 and every year there after	\$1,500/ Month

Small territory with populations less than 500,000 are not subject to the minimum royalty fee and shall pay a standard royalty fee of 5% of their Gross Revenues.

The Minimum Royalty is not intended to be financial performance representation.

3. "Fiscal Year" means the 12-month period from January 1 through December 31. The first Fiscal Year will be the Fiscal Year beginning on the first January 1 after you open the Franchised Business.

4. "Local Advertising" means advertising, promotions and public relations within the local area to be serviced by your Franchised Business. Within 30 days after each calendar quarter, you must submit a report detailing your Local Advertising expenses for the quarter. If you fail to spend at least 5% of your Gross Sales on Local Advertising for 2 consecutive calendar quarters, we have the right to terminate your franchise.

5. Late fees and interest on Marketing Fund Contributions are payable to NiteLites Franchise Systems, Inc. in care of the NiteLites Marketing Fund. Late fees and interest on Call Center Service Fees, Internet Marketing Fees, and other amount are payable to us or NL Manufacturing.

All fees are non-refundable and are payable to us or NL Manufacturing unless otherwise specified. All fees are uniformly imposed on all new franchisees. Some NiteLites franchisees signed a different form of Franchise Agreement that may not require them to pay certain fees listed above.

## **ITEM 7. ESTIMATED INITIAL INVESTMENT**

<b>YOUR ESTIMATED INITIAL INVESTMENT</b>					
<b>Type of Expenditure</b>	<b>Amount</b>		<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment Is to be Made</b>
Franchise Fee (Note 1)	\$14,995	to \$42,995	Cashier's Check	When you sign the franchise agreement	Us
Rent (Note 2)	\$0	to \$4,800	As Arranged	According to agreement with Landlord	Landlord
Utility Deposits (Note 3)	\$0	to \$500	As Arranged	Before you open	Utilities

YOUR ESTIMATED INITIAL INVESTMENT					
Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment Is to be Made
Leasehold Improvements (Note 4)	\$0	to \$250	As Arranged	As incurred	Suppliers
Furniture, Office Supplies and Start-up Kit (Note 5)	\$22,500	to \$23,000	See Note 5	Before you open	Us, Suppliers
Insurance (Note 6)	\$3,000	to \$5,000	As Arranged	As incurred	Suppliers
Signage (Note 7)	\$0	to \$500	As Arranged	Before you open	Suppliers
Initial Inventory (Note 8)	\$5,260	to \$5,260	As Arranged	Before you open	Us
Vehicle (Note 9)	\$1,970	to \$2,130	As Arranged	Before you open and as incurred	Suppliers
Computer	\$ 1,000	to \$1,500	As Arranged	Before you open	Suppliers
Training (Note <del>1010</del> )	\$ 1,000	to \$3,000	As Arranged	Before you open	Airline, hotel, restaurants
Licenses & Permits (Note <del>1111</del> )	\$50	to \$850	As Arranged	Before you open	Licensing Authorities
Legal & Accounting (Note <del>1212</del> )	\$1,500	to \$3,500	As Arranged	Before you open	Attorney, Accountant
Grand Opening (Note <del>1313</del> )	\$5,000	to \$7,500	As Arranged	First 3 months of operation	Suppliers
Additional Funds - 3 months (Note <del>1414</del> )	\$10,000	to \$10,000	As Arranged	As incurred	Employees, landlord, suppliers, etc.
TOTAL (Note <del>1515</del> )	\$66,275	to \$110,785			

#### NOTES

Except as specifically indicated, all payments are non-refundable.

1. **Franchise Fee.** The Franchise Fee is not refundable unless we, in our discretion, determine that you are unable to satisfactorily complete our training program for new NiteLites Franchisees; then we may terminate the Franchise Agreement and, if so, we will refund 50% of the Franchise Fee to you. We may also, at any time during the term of the Franchise Agreement, unilaterally terminate the Franchise

Agreement (the “Option to Terminate”) by refunding the Initial Franchise Fee paid by you and releasing you from your post-termination non-compete covenants. The Franchise Fee is described in greater detail in Item 5 of this disclosure document. We may agree to a fifty percent (50%) discount of the initial Franchise Fee in exchange for your covenant and agreement to pay a higher Royalty Fee at a rate of two (2) time standard Fixed Royalty Fee rate for the initial term of the Franchise Agreement. We may finance a portion of the initial franchise fee for you. Financing options are discussed in Item 10. If you meet our Initial fee waiver qualification standards, we may in our sole discretion, waive the Franchise Fee.

Class Number	Population	Initial Franchise Fee
1	500,001 – 1,000,000	\$19,995
2	1,000,001 – 1,500,000	\$27,495
3	1,500,001 – 2,000,000	\$34,995
4	2,000,001 – up to 3,000,000	\$42,995
SM	0 – 500,000	\$14,995

\* Class 1 with a population between 500,001 – 1,000,000 is the standard territory size that we offer.

\*\* A Small Market class has a population of less than 500,000 in the immediate geographic area.

2. Rent. You may operate your franchise out of your home if doing so will not violate any zoning or building code or other ordinance. In the alternative you may purchase or lease a suitable premise from which to operate the Franchised Business. Subject to zoning rules and local ordinances, you may operate the Franchised Business from your home. We anticipate that most NiteLites Franchises not operated from the franchisee’s home will be located in Class C retail commercial or light industrial areas. The figures in the chart represent the rent for the start-up phase of the business (which we calculate to be approximately 3 months) for approximately 200 square feet for an office, an 80 square foot storage bay and a parking space. The figures are based upon a combined range of \$15 to \$20 per square foot. It is difficult to estimate lease acquisition costs because of the wide variation in these costs between various locations. Lease costs will vary based upon variance in square footage, cost per square foot and required maintenance costs. The estimates do not include real estate taxes and assume that rent commences when the Franchised Business opens. The terms of your lease will depend on the size, location, condition and desirability of the premises. Rent payments may or may not include site preparation and build-out costs, which will depend on the arrangements that you negotiate with your landlord. We assume the landlord will require the first month’s rent and a security deposit equal to one month’s rent. The amounts paid are typically not refundable except for a security deposit which may be refunded. The estimates assume that you will operate the Franchised Business from your home or lease space for the Franchised Business, and so do not include costs related to the purchase of land or the construction of any buildings. If you purchase and/or construct a site for the Franchised Business, your initial costs will likely be significantly greater than the estimates in the chart.

3. Utility Deposits. You will generally incur certain deposits with local utilities if you are a new customer; for example, electric, telephone, gas, water and others. The amount of deposit will vary depending upon the policy of the local utility. Monthly utility expenses are not included in this section. They are however, disclosed in Additional Funds.

4. Leasehold Improvements. You may need to make minimal leasehold improvements to install additional electrical or phone lines for an office. The cost of leasehold improvements will vary based

upon size, condition and location of the Franchised Business, local wage rates and material costs. No leasehold improvements may be necessary if you operate the Franchised Business from your home.

5. Furniture, Office Supplies, Start-up Kit. In addition to office furniture, office equipment and supplies, which you may purchase from any approved supplier, you will need to purchase a Start-up Kit consisting of a product demonstration kit, a vehicle graphics package, a trade show display, uniforms, specified tools, supplies and small equipment. You must purchase the Start-up Kit from us, NL Manufacturing or a supplier designated by us. The estimated cost of the Start-up Kit is \$20,000.00, and is due in full when you purchase it.

6. Insurance. Requirements are described in greater detail in Section 15 of the Franchise Agreement. Factors that may affect your cost of insurance include location of the Franchised Business, value of the leasehold improvements, amount of inventory, the model, year and type of vehicle you use, and your employees' driving records, and other factors.

7. Signage. You will receive a graphics package for 1 vehicle in the Start-up Kit, the cost of which is included under "Furniture, Office Supplies, and Start-up Kit." If you operate the Franchised Business from your home, you should not incur any costs for signage beyond that which is included in the Start-up Kit. The high estimate in this category reflects the approximate cost of office or warehouse signage used in the Franchised Business if you lease space.

8. Initial Inventory. You will need to purchase an initial inventory of NiteLites Products and Equipment, including transformers, fixtures, bulbs, LED lighting systems, and other items for sales demonstration and display purposes. Although the initial inventory may be purchased on an open account, the range shown represents the full cost of purchase.

9. Vehicle. The vehicle expense provided above represents 3 months' purchase or lease payments plus closing costs, the estimated cost to install an after-market global positioning system (GPS), and GPS subscription fees for 3 months. Each of your vehicles must be equipped with a GPS (NOTE: the required GPS does not provide maps, directions, or guidance to the driver of the vehicle—its functions are to track the vehicle's movements and monitor installation times and travel times). We estimate the cost to purchase and install a GPS to range from \$200 to \$300 for each vehicle. You will also be required to pay a monthly subscription fee for the GPS, which will range from \$20 to \$30 per month payable to provider or vendor of the GPS System.

10. Training. You are not charged an additional fee for initial training. You are responsible for transportation and expenses for meals and lodging and employees' salaries (if applicable), while attending training. The total cost will vary depending on how far you travel and the type of accommodations you choose.

11. Licenses & Permits. These amounts will be incurred for costs such as operating licenses and permits. Your actual costs may vary from the estimates based on the requirements of local government authorities.

12. Legal & Accounting. You will need to employ an attorney, an accountant and other consultants to assist you in establishing your Franchised Business. These fees may vary from state to state depending upon each state's laws and the prevailing rate of attorneys' and accountants' fees. We will support you in the setup of your business accounts on the required accounting software system.

13. Grand Opening. You will be required to spend at least \$5,000 on grand opening advertising during the first 3 months of operation. You may choose to spend more. Factors that may affect your decision

on the actual amount to spend includes local media cost, location of the Franchised Business and customer demographics in the surrounding area.

14. Additional Funds. This amount estimates operating expenses for the start-up phase of the Franchised Business, which we calculate as 3 months. These expenses do not include payroll costs or your living expenses. These amounts are estimates, and we cannot guarantee that such an amount will be sufficient. Additional working capital may be required if sales are low or fixed costs are high.

15. Total. This total is an estimate of your initial investment and the expenses you will incur during the first 3 months of operations. In compiling this chart, we relied on years of experience in operating a NiteLites Business that is similar to the Franchised Business you will establish and operate, our experience in offering and supporting NiteLites Franchises since 2004, and the experience of our president in operating NiteLites Franchises. The amounts shown are estimates only and may vary for many reasons including the capabilities of your management team, the geographic location of your Franchised Business and your business experience and acumen. The total listed above does not include compensation for your time or labor. Neither does the total take into account any finance charges or other costs which you may incur to finance all or any portion of your investment. In addition to the initial investment itemized in the above chart, you will also need sufficient savings or a source of income to cover your personal living expenses during the start-up phase of the business. You should review these estimates carefully with an accountant or other business advisor before making any decision to buy a franchise. These figures are estimates only and we cannot guarantee that you will not have additional expenses starting your Franchised Business.

16. Financing. Except for the initial Franchise Fee and purchases of the initial inventory, we do not offer direct or indirect financing to franchisees for any of the initial expenditures. We will finance part of the initial Franchise Fee for a NiteLites Franchise, if you meet our credit standards. Your specific payment and credit terms will depend upon your employment history and business experience; your credit history and rating; the amount, source and character of your assets, debts and income; and any other factors that may affect your creditworthiness. We offer two financing options:

(A) we will finance up to 50% of the initial Franchise Fee for up to 3 years at 10½% interest, or

(B) we will finance up to 25% of the initial Franchise Fee for up to 2 years at 9% interest.

In addition, if you meet NL Manufacturing's credit standards, you may be permitted to purchase NiteLites Products and Equipment on open account. Full payment for all purchases will be due no more than 30 days after NL Manufacturing invoices you—the specific terms will depend upon your credit history and rating, the amount, source and character of your assets, debts and income, and any other factors that may affect your creditworthiness, and NL Manufacturing has the right to modify the payment and credit terms based upon your financial condition and payment experience. You must pay an annual finance charge of 18% on any late payment. NL Manufacturing may require you to grant it a purchase money security interest in your inventory and all proceeds from the sale of your inventory. All of the owners of a franchise that is a corporation, limited liability company, or other limited liability entity must personally guaranty the franchisee's obligations under the Supply Agreement.

Financing of the initial franchisee and inventory, is discussed in Item 10,

17. Renewal of Franchise. The disclosures in the above table refer only to the original investment required to begin the operation of your Franchise. Except for capital expenditures that may be necessary to maintain uniformity with any of our required System modifications, there is no additional investment required when you renew your Franchise.

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

Except as described in this Item, you are not required to purchase or lease any goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the Franchised Business from us or designated suppliers.

Specifications/Approved Suppliers. All computer hardware and software, equipment, forms, marketing materials, stationery, supplies, products, tools, and other materials used in the Franchised Business shall comply with our specifications and, if required by us, shall be purchased only from "Approved Suppliers" that we designate or approve (which might include us, an affiliate or another supplier we designate). If we or one of our affiliates is an Approved Supplier, you will be required to sign a purchase, lease, and license or supply agreement. We will provide you, in the Manual or other written or electronic form, a list of services and products requiring approval and, if required, a list of Approved Suppliers for some or all of these services and products and will from time to time issue revisions. We formulate and modify our specifications and standards for products and services based on our industry knowledge and experience in operating a similar business.

If you desire to use any item or service in operating the Franchised Business that we have not approved (for items or services that require supplier approval), you will first send us sufficient information, specifications and/or samples for us to determine whether the item or service complies with our standards and specifications or the supplier meets our Approved Supplier criteria. You will bear all reasonable expenses incurred by us in connection with determining whether we will approve an item, service or supplier. We will decide and notify you within 30 days after receiving the required information whether you may purchase or lease such items or services or from such supplier. We reserve the right to review from time to time our approval of any items or suppliers. You acknowledge and agree that we may revoke our approval of any item, service or supplier at any time, in our sole discretion, by notifying you and/or the supplier. You agree, at your own expense, to promptly cease using, selling or providing any items or services disapproved by us and to promptly cease purchasing from suppliers, which we disapprove.

We apply the following general criteria in approving a proposed supplier: its ability to provide sufficient quantity of product; the quality of its products and/or services at competitive prices; its production and delivery capability; and the dependability and general reputation of the supplier. Nothing requires us to approve any particular supplier or to make available to prospective suppliers, standards and specifications that we, in our discretion, deem confidential.

NiteLites Products and Equipment. NL Manufacturing supplies you and our other franchisees with our proprietary line of NiteLites Products and Equipment. NiteLites Products and Equipment include: transformers, fixtures, bulbs, timers, outlets, lens covers, connectors, and LED lighting systems for path, spot, deck, and water lighting and other items described in our Manual which are especially suited for superior quality architectural and landscape LED illumination. There are no alternate sources of supply. We may introduce new or modify existing NiteLites Products and Equipment and there are no limits on our right to do so. We do not require you to carry a full line of NiteLites Products and Equipment at all times. You will be required at all times to maintain a sufficient inventory of NiteLites Products and Equipment to operate the Franchised Business at full capacity. When you sign the Franchise Agreement, you will also enter into a Supply Agreement with NL Manufacturing. A copy of NL Manufacturing's standard Supply Agreement is attached as Exhibit E to this disclosure document. As a result of NL Manufacturing's sale of NiteLites Products and Equipment to you and other franchisees, NL Manufacturing will derive revenue equal to the price it charges you and other franchisees for the items.

Call Center Services. We have developed a centralized call center specially designed to manage customer inquiries about NiteLites LED illumination design, and installation services. The NiteLites Call Center Service processes customer inquiries and sales leads, coordinates sales calls and estimate appointments for you and other franchisees. We currently charge a fee of \$500 per month for Call Center Services. You will not be required to pay the monthly Service Fee until the beginning of the second month after you begin operations of the franchise. When you sign the Franchise Agreement, you will also be required to sign the Call Center Service Agreement. A copy of this agreement is included as Exhibit F to the Franchise Agreement. We will derive revenue equal to the Call Center Service Fees we charge you and other franchisees.

Internet Marketing Fee. We have established an Internet site which posts advertisements and information about the products and services provided by you and other franchisees. We currently charge a semi-annual fee of \$275 for Internet Marketing. Our Internet Marketing services and policies are detailed in our Manual. Fees are collected in February and August each year via our standard required payment methods. Further details about advertising programs and our system wide Marketing Fund are provided in Item 11 of this disclosure document. We will derive revenue from you and other franchisees equal to the fees you and other franchisees pay for Internet Marketing conducted by us.

Accounting Services Fee. NL Manufacturing, our affiliate, provides accounting services including inputting of customer billing and invoicing information into accounting software and reporting. You have access and control of your accounting software system and you may input information into the accounting system independently; however you will still be responsible for the payment of the Accounting Service Fee. The fee for accounting services is based on Annual Gross Sales Revenue on prior 6 months of sales & are as follows per month:

\$0 - \$400K = \$500.00	\$701K to \$800K = \$900.00
\$401K to \$500K = \$600.00	\$801K to \$900K = \$1000.00
\$501K to \$600K = \$700.00	\$901K to \$1M = \$1100.00
\$601K to \$700K = \$800.00	*Max increment of \$100.00 per \$100K is \$2M

NL Manufacturing will derive revenue from you and other franchisees equal to the fees you and other franchisees pay for accounting services.

Start-up Kit. Before you open your Franchised Business, you are required to purchase, from us, NL Manufacturing, or a supplier designated by us, a Start-up Kit consisting of a product demonstration kit, tools, vehicle graphics package, tradeshow display, uniforms and other supplies you will need for the operation of the Franchised Business. As a result of our or NL Manufacturing's sale of the Start-up Kit to you and other franchisees, we or NL Manufacturing will derive revenue equal to the price you and other franchisees pay for the Start-up Kit.

We reserve the right to develop other proprietary products and services specially designed for use in the NiteLites System and to require you and other franchisees to purchase these products and services from us. We also reserve the right to designate ourselves as an Approved Supplier for any items or materials used in the operation of your Franchised Business. Neither we nor any affiliate of ours derive revenue as a result of your purchases from other Approved Suppliers, although we reserve the right to do so in the future.

Computer Hardware and Software. You are required to install and use the computer hardware and software as described in Item 11 of this disclosure document. Neither we nor any affiliate of ours will derive revenue as a result of your purchase of computer hardware and software.

Accounting Data. You are required to use our accounting package named QuickBooks Enterprise Solutions, which is hosted on our virtual private network ("VPN"). Your accounting data will be maintained at all times on our servers. You will be assigned a user ID and password to access the VPN. Neither we nor any affiliate of ours will derive revenue as a result of use of QuickBooks Enterprise Solutions.

Insurance. You shall procure, at your sole expense, and maintain in full force and effect during the term of the Franchise Agreement, insurance naming NiteLites Franchise Systems, Inc. and NL Manufacturing & Distribution Systems, Inc as additional insured and/or loss payee, in addition to any other insurance that may be required by applicable law, any lender or leaser as follows:

1. Comprehensive general public liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Franchised Business, or Franchisee's conduct of business pursuant to this agreement providing minimum liability coverage for claims, as specified by Franchisor from time to time covering occurrences at installation sites, Franchised Business Approved Location, or offsite; currently the minimum is Two Million Dollars (\$2,000,000.00) per occurrence and Four Million Dollars (\$4,000,000.00) aggregate.

2. "All Risk" coverage insurance on all contents including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of the Franchised Business for full "replacement cost" coverage.

3. Workers' Compensation that complies with the statutory requirements of the state in which the Franchised Business is located and employer liability coverage with a One Hundred Thousand Dollar (\$100,000.00) minimum limit or, if greater, the statutory minimum limit if required by state law.

4. Automobile Liability Insurance for owned, hired and non-owned vehicles with a combined single limit of at least One Million Dollars (\$1,000,000.00).

5. General property damage insurance, including fire and extended coverage, vandalism and malicious mischief insurance.

Such policy or policies shall be written by an insurance company licensed in the state in which Franchisee operates and having at least an "A" Rating Classification as indicated in A.M. Best's Key Rating Guide. We reserve the right to alter the insurance requirements. Neither we nor any affiliate of ours will derive revenue as a result of your purchase of insurance.

Vehicles. You will need to lease or purchase a vehicle to operate your Franchised Business. The vehicle per our current standards is a full size Chevrolet Express Cargo Van, Mercedes Sprinter, Dodge Promaster, Ford Transit, or Freightliner Sprinter with access package, minimum of ¼ ton or equivalent. You will use your vehicle to carry your tools and equipment and to make sales calls and service customers within your Protected Territory. Each of your vehicles must be equipped with a global positioning system (GPS). You and we will have full access to the data captured and stored on the GPS including vehicle movement and travel times. You must purchase the GPS from an Approved Supplier (currently a company named Realtrack GPS of Miami, Florida, is the only Approved Supplier for GPS equipment and services). The GPS does not provide maps, directions, or guidance to the driver

of the vehicle. Instead, it's a management tool, to enable the owner or manager of the franchise to monitor employees' activities. The functions of the GPS are to track the vehicle's movements and monitor installation times and travel times. We estimate the cost to purchase and install a GPS will range from \$200 to \$300 per vehicle. This cost is included in the table in Item 7 of this disclosure document. You will also be required to pay a monthly subscription fee to Realtrack GPS., which will range from \$20 to \$30 per vehicle per month. Neither we nor any affiliate of ours will derive any revenue as a result of your lease or purchase of vehicles or GPS equipment or services.

Miscellaneous. We may negotiate group rates, as appropriate, for purchases of equipment and supplies necessary for the operation of the Franchised Business. Presently, there are no such purchase or supply agreements in effect. There are no purchasing or distribution cooperatives that you are required to join. Neither we nor any affiliate of ours receive revenue or other material consideration from any third-party suppliers as a result of purchases by you or any other franchisee. We may, however, do so in the future. We may receive volume rebates, markups and other benefits from suppliers, or in connection with the furnishing of suppliers, and all such benefits will accrue to our benefit and you will have no entitlement or interest. Some suppliers may pay us fees for sponsorships or display space at our annual conference. These fees will defray our costs for the conference, but there may be no specific restrictions on their use. We did not receive any fees from suppliers for sponsorships or display space at our national conference in calendar year ~~2017~~2016.

We estimate that 20½% to 39% of your required expenditures for leases and purchases in establishing your Franchised Business and 30% to 55% of your expenditures on an ongoing basis will be for goods and services which must be purchased from approved or designated suppliers or in accordance with our specifications.

In calendar year ~~2017~~2016, our affiliate, NL Manufacturing, derived ~~\$2184,859.381,920,896~~ or ~~8483~~% of its total revenue of ~~\$2,595,535.67312,991~~, from the sale of all required purchases and leases of products and services to NiteLites franchisees. The other 16% of NL Manufacturing's revenue was derived from sales to non-franchised distributors of NiteLites Products and Equipment. The source of information used in determining NL Manufacturing's total revenue is its unaudited, internally-prepared income statement.

The franchisor, NiteLites Franchise Systems, Inc., derived ~~\$252,792.16302,037~~ or ~~7571.6~~% of our total revenues of ~~\$340,592.16216,258~~ in calendar year ~~2017~~2016 from the sale of required purchases and leases of products and services to NiteLites franchisees. Except for NL Manufacturing, which is owned by our CEO, none of our officers owns an interest in a supplier. We derived ~~\$80.80085,778.00~~ or ~~2528.4~~% of our total revenue of ~~\$340,592.16302,037~~ in calendar year ~~2017~~2016 from suppliers that sold or leased products and services to NiteLites franchisees.

We do not provide or withhold material benefits to you (such as renewal rights or the right to open additional NiteLites Franchises) based on whether or not you purchase through the sources we designate or approve, however, purchases of unapproved products or from unapproved suppliers in violation of the Franchise Agreement will entitle us, among other things, to terminate the Franchise Agreement.

## **ITEM 9. FRANCHISEE'S OBLIGATIONS**

**The following table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of the disclosure document.**

Obligation		Section in Franchise Agreement	Disclosure Document Item
a.	Site selection and acquisition/lease	5	12
b.	Pre-opening purchases/leases	5.D, 5.E, 11.D, 13, 15	7, 8
c.	Site development and other pre-opening requirements	5, 9	6, 7, 11
d.	Initial and ongoing training	9.A, 9.E	6, 7, 11
e.	Opening	5.F, 9.D, 10.D	11
f.	Fees	3, 4.B, 9, 10, 11.E, 13.M, 15.D, 18.E, 19.B, 22.C	5, 6
g.	Compliance with standards and policies/operating manual	5, 6, 7, 8, 10, 11, 12, 13, 15	8
h.	Trademarks and proprietary information	6, 7, 8	13, 14
i.	Restrictions on products/services offered	5.D, 13.B, 13.D	8, 16
j.	Warranty and customer service requirements	13.L	16
k.	Territorial development and sales quotas	13.E	12
l.	Ongoing product/service purchases	13.B, 13.C, 13.D	8, 11
m.	Maintenance, appearance and remodeling requirements	4.B, 12.B, 13.F	6, 17
n.	Insurance	15	6, 7, 8
o.	Advertising	10	6, 11
p.	Indemnification	22.B	6
q.	Owner's participation/management/staffing	13.G, 13.I	15
r.	Records and reports	11	11
s.	Inspections and audits	6.D, 11.E, 13.O	6, 11, 13
t.	Transfer	19	17
u.	Renewal	4.B, 4.C	17
v.	Post-termination obligations	18	17
w.	Non-competition covenants	16	17
x.	Dispute resolution	23	17
y.	Liquidated damages	18.E	6

## ITEM 10. FINANCING

**Franchise Fee.** If you meet our credit standards, we will finance part of the initial Franchise Fee for a NiteLites Franchise. Your specific payment and credit terms will depend upon your employment history and business experience; your credit history and rating; the amount, source and

character of your assets, debts and income; and any other factors that may affect your creditworthiness. We offer two financing options:

- (A) we will finance up to 50% of the initial Franchise Fee for up to 3 years at 10½% interest, or
- (B) we will finance up to 25% of the initial Franchise Fee for up to 2 years at 9% interest.

When you sign the Franchise Agreement, you must sign a promissory note for the amount that we agree to finance (a sample of the promissory note is attached to this disclosure document as Exhibit B) and pay us the balance of the initial Franchise Fee. The promissory note will be payable in equal monthly installments. The first installment will be due on the 15th day of the first full calendar month after you open your Franchised Business, but no later than 6 months after you sign the Franchise Agreement. The table below summarizes the financing options we offer for each class of Protected Territory.

Total Franchise Fee	Option A/B (% Financed)	Down Payment	Amount Financed	Term (Years)	Interest Rate	Monthly Payment	Sum of Monthly Payments
\$75,000	A (50%)	\$37,500	\$37,500	3	10.5%	\$1,244.96	\$ 44,818.30
	B (25%)	\$56,250	\$18,750	2	9%	\$ 872.34	\$ 20,936.12
\$65,000	A (50%)	\$32,500	\$32,500	3	10.5%	\$1,078.96	\$ 38,842.56
	B (25%)	\$48,750	\$16,250	2	9%	\$756.03	\$ 18,144.63
\$55,000	A (50%)	\$27,500	\$27,500	3	10.5%	\$912.97	\$ 32,866.76
	B (25%)	\$41,250	\$13,750	2	9%	\$639.72	\$ 15,353.14
\$40,000	A (50%)	\$20,000	\$20,000	3	10.5%	\$663.98	\$ 23,903.09
	B (25%)	\$30,000	\$10,000	2	9%	\$465.25	\$ 11,165.92
\$25,000	A (50%)	\$12,500	\$12,500	3	10.5%	\$414.99	\$ 14,939.41
	B (25%)	\$18,750	\$6,250	2	9%	\$290.78	\$ 6,978.71

The only security we require is a personal guaranty of the promissory note by all the owners of a franchisee that is a corporation, limited liability company, or other limited liability entity (a sample of the guaranty is attached to this disclosure document as Exhibit C). The promissory note may be prepaid without penalty. If you do not pay the promissory note on time, or if you breach the Franchise Agreement, we have the right to call the loan and demand immediate payment of the entire unpaid balance. We have the right to require you to make note payments by automatic electronic funds transfer. We also have the right to terminate your franchise if you do not make your payments on time. You must pay our attorney fees and court costs if a collection action is necessary. You waive your rights to presentment for payment and notice before a collection action may be started against you. You must pay a late charge equal to the greater of \$50 or 10% of any payment received after its due date.

NiteLites Products and Equipment. You may purchase NiteLites Products and Equipment only from our affiliate, NL Manufacturing. When you sign your Franchise Agreement, you must also enter into a Supply Agreement with NL Manufacturing (a copy of the Supply Agreement is attached to this disclosure document as Exhibit E). If you meet NL Manufacturing's credit standards, you may be

permitted to purchase NiteLites Products and Equipment on open account. Full payment for all purchases will be due no more than 30 days after NL Manufacturing invoices you—the specific terms will depend upon your credit history and rating, the amount, source and character of your assets, debts and income, and any other factors that may affect your creditworthiness, and NL Manufacturing has the right to modify the payment and credit terms based upon your financial condition and payment experience. You must pay an annual finance charge of 18% on any late payment. NL Manufacturing may require you to grant it a purchase money security interest in your inventory and all proceeds from the sale of your inventory. All of the owners of a franchise that is a corporation, limited liability company, or other limited liability entity must personally guaranty the franchisee's obligations under the Supply Agreement. We may require you to pay for NiteLites Products and Equipment when you place your order for Products and Equipment or prepay by way of an advance deposit account. If you do not pay an invoice on time or if you breach any other provision of the Supply Agreement, if you do not pay the promissory note described above on time, or if you breach the Franchise Agreement or any other agreement with us, NL Manufacturing has the right to demand immediate payment of your account and/or delay or withhold shipments of products and we may terminate your Franchise Agreement. NL Manufacturing has the right to require you to pay by automatic electronic funds transfer. We have the right to terminate your franchise if you do not pay NL Manufacturing's invoices on time or if you breach any other provision of the Supply Agreement. You must pay NL Manufacturing's attorney fees and court costs if legal action is necessary to enforce the Supply Agreement. You waive your right to a jury trial of any dispute between you and NL Manufacturing.

Except as described above, we do not offer financing that requires you to confess judgment or waive defenses or other legal rights. We do not arrange financing from other sources or receive direct or indirect payments to place financing. We do not sell, assign or discount to a third party all or any part of the financing arrangement, and although we reserve the right to do so in the future, we have no plans to do so as of the date you are receiving this disclosure document. We do not guarantee your obligations to third parties. Neither we nor any affiliate receives any consideration for placing financing with a lender

The highest interest rate allowed in California is 10% annually.

#### **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 Assistance. Before you begin operating your Franchised Business, we will (unless otherwise specified, all references to a "Section" mean the Franchise Agreement):

1. Designate your "Protected Territory" within which you will operate your Franchised Business. See Item 12 for additional information on the Protected Territory. (Section 2.D)
2. Review and approve your lease or purchase agreement for the site for the operation of the Franchised Business (Section 5.B). Our review of your lease or purchase agreement and any advice or recommendations we may offer do not constitute representations or guarantees by us that you will succeed at the leased or purchased premises.
3. Provide you with standard plans and specifications for the build-out and equipping of the Franchise Premises, and for the vehicles and products and services to be used in and offered for sale by the Franchised Business. (Section 5.C)

4. Provide you with a list of Approved Suppliers, either through the Manual or through written or electronic form. (Section 13.C)
5. Provide an initial training program for approximately 35 hours over 1 week. All training we provide will be subject to the terms in Section 9.A of the Franchise Agreement. This training is described in detail later in this Item.
6. Provide to you electronic access to our NiteLites Operating Manual and other manuals, which are part of the System, as more fully described in Section 8 of the Franchise Agreement. The total number of pages in the Operating Manual is listed on the Table of Contents of the Operating Manual, which is included in Exhibit I to this disclosure Document.

Length of Time to Open Franchise. We anticipate that a typical franchisee will open their Franchised Business 3 months after they sign a Franchise Agreement or pay the Initial Franchise Fee, whichever occurs first. Factors that may affect this time period include your ability to find suitable office space (provided you are not able to use an office in your home), ability to secure permits, zoning and local ordinances, delays in installation of equipment and completion of the initial training program. You are required to open your Franchised Business and be operational within 6 months after signing the Franchise Agreement, or we have the right to terminate your Franchise Agreement without refunding any money you have paid. (Section 5.D)

Ongoing Assistance. During the operation of your Franchised Business, we will:

1. Provide you with on-site assistance and guidance for approximately 3 days to assist you with any questions you may have. (Section 9.D)
2. From time to time, be available by telephone, e-mail or facsimile to discuss any problem and to render advice and guidance with respect to planning, opening and operation of the Franchised Business and other aspects of the System during our normal business hours. We do not charge for these services, however, we retain the right to discontinue this service should you, in our discretion, be deemed to be utilizing this service too frequently or in an unintended manner. (Section 14.A)
3. Make periodic visits to your Franchised Business for the purposes of consultation, assistance and guidance in various aspects of the operation and management of the Franchised Business. We may prepare written reports outlining any suggested changes or improvements. (Section 14.B)
4. Provide you with electronic modifications to the NiteLites Operating Manual as they are made available to franchisees. (Section 8.B)
5. Periodically make available changes and additions to the System as generally made available to all franchisees. (Section 12.B)
6. Provide forms of advertising and promotional materials including ad-slicks, brochures, fliers and other materials to you for use in the operation of the Franchised Business. (Section 14.C)
7. Make available to you ongoing training programs as we deem necessary. (Section 9.E)

Advertising and Promotion

You must spend 5% of your Gross Sales on Local Advertising. You will make these expenditures directly subject to our approval. (Section 10.A)

1. There is no advertising council that advises us on advertising policies.

2. We have established a system wide Marketing Fund, to which you are required to contribute two percent (2%) of your Wholesale Product Purchases, upon the purchase of Wholesale Products.

We will oversee all advertising programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof. The media used may include print, television, radio, Internet or other media. We cannot and do not ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising by the Marketing Fund.

Your Marketing Fund Contribution may be used to meet any and all costs of producing, maintaining, administering and directing consumer advertising (including the cost of preparing and conducting television, radio, Internet, magazine and newspaper advertising campaigns and other public relations activities developing and/or hosting an Internet web page of similar activities; employing advertising agencies to assist; and providing promotional brochures and other marketing materials to franchisees). We initially plan to conduct all advertising in-house, but may use a national or regional advertising agency in the future. All contributions by you to the Marketing Fund will be maintained in a separate account from our funds and will not be used to defray any of our general operating expenses, except for such reasonable administrative costs and overhead, if any, as we may incur in activities reasonably related to the administration of the Marketing Fund.

Affiliate and franchisor-owned businesses operating under the same System and Marks as the Franchised Business will make similar contributions to the Marketing Fund.

We anticipate that all contributions to the Marketing Fund will be expended for advertising and promotional purposes during our fiscal year within which the contributions are made. All expenditures in the following fiscal years will be made first out of any interest or other earnings from previous years (if any), next out of earnings in the current year, and finally from contributions. Although we intend the Marketing Fund to be of perpetual duration, we maintain the right to terminate the Marketing Fund. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes or returned to you on a pro rata basis.

An accounting of the operation of the Marketing Fund will be prepared annually and will be made available to you upon request. We reserve the right, at our option, to require that such annual accounting include an audit of the operation of the Marketing Fund prepared by an independent certified public accountant selected by us and prepared at the expense of the Marketing Fund.

During the one-year period ending on December 31, ~~2017~~<sup>2016</sup>, the Marketing Fund's total receipts were \$~~25,378.90~~<sup>49,333.19</sup> and total expenses were \$~~25,378.90~~<sup>49,333.19</sup>, of which ~~115~~<sup>115</sup>% was payment to independent advertising or public relations agencies, ~~12.2~~<sup>17.5</sup>% on media placement other than internet; ~~416~~<sup>416</sup>% on internet advertising or internet optimization; ~~61.2~~<sup>32</sup>% on marketing literature such as brochures, flyers, and mailers; ~~19.2~~<sup>of Tradeshow</sup>%; and ~~41.6~~<sup>10.3</sup>% on administrative expenses. No Marketing Fund dollars were used for soliciting new franchise sales

The Marketing Fund is not a trust and we assume no fiduciary duty in administering the Marketing Fund. (Section 10.B).

3. We have the right to create Cooperative Advertising programs for the benefit of all NiteLites Franchises located within a particular geographic area. We have the right to allocate any portion of your Marketing Fund Contributions, and collect and designate all or a portion of your required Local Advertising expenditures, for a Cooperative Advertising program. We have the right to determine the

composition of all geographic territories and market areas for the implementation of Cooperative Advertising programs and promotional campaigns, and to require that you participate in a Cooperative Advertising program if and when we establish one in an area that encompasses your Protected Territory. If a Cooperative Advertising program is implemented in a particular area, we have the right to establish an advertising cooperative for that area to administer the Cooperative Advertising program, and every Franchisee in the area will be required to participate in the cooperative according to the cooperative's rules and procedures and to abide by the cooperative's decisions. (Section 10.C). Each Franchisor or Affiliate-owned business using the Operating System and the Marks shall make contributions to the Cooperative Advertising program equivalent to the contributions required of franchisees within the NITELITES Network. If a Cooperative Advertising program is established, an accounting of the operation of the Cooperative Advertising program will be prepared annually and will be made available to you upon request. Cooperative Advertising program dollars will not be used for soliciting new franchise sales.

4. During the first 3 months of operation, you must spend at least \$5,000 on Grand Opening Advertising. We will provide you with guidance for conducting Grand Opening Advertising and you must obtain our prior approval of your Grand Opening Advertising materials. Your expenditures for Grand Opening Advertising are in addition to Local Advertising. (Section 10.D)

5. You are required to list and advertise the telephone number for the Franchised Business in the "white pages" telephone directory and the classified or "yellow pages" telephone directory distributed in the trade area of the Franchised Business and in such directory heading or category as we specify. The telephone number must be listed under an address or other location within your Protected Territory. You must place the classified directory advertisement and listings together with other NiteLites Franchises operating under the same System and Marks within the distribution area of the directories. If a joint listing is obtained, the cost of the advertisements and listings will be apportioned by all Franchised Businesses placed together. (Section 10.E)

6. We maintain an Internet site to market and advertise the products and services offered by franchisees. We charge you a semi-annual fee of \$275 for Internet Marketing. See Item 8 of this disclosure document. (Section 3.F)

We retain the sole right to establish and maintain a site on the Internet or World Wide Web using a domain name or uniform resource locator containing the Marks and to establish any social media accounts that we see fit and to advertise on the Internet. You agree not to establish a presence or advertise on the Internet using any of the Marks, or any confusingly similar words, names or marks without our prior consent. All Franchised Business email communication must be sent to, communicated from, and received using the email account and address established and furnished by Franchisor. Franchisee shall not use or publish any other email address other than the one furnished by Franchisor. We may request that you prepare content about the Franchised Business for our Internet marketing. We retain all rights, title and interest in any domain names and social media accounts that we designate in the Manual. (Sections 6.F and 10.F)

Computer System. To operate your NiteLites Franchise, you will need a Windows 7 or latest version based desktop or notebook computer, and cellular iPad, a color laser printer, word processing spreadsheet software, and mobile apps. Our minimum hardware and software specifications require an Apple iPad latest version, 64GB cellular and Windows or MAC laptop PC with Microsoft Office. In most cases a more recent version of a required software application will be acceptable.

We will provide you with a standard e-mail account capable of receiving and sending attached files up to 5 MB in size. You must have access to a high speed Internet connection for purposes of reaching our Virtual Private Network (VPN) and communicating with us and other franchisees via e-mail. If you connect to the Internet through a commercial Internet service provider ("ISP"), the ISP will typically require a monthly subscription charge (usually from \$20 to \$75). You will use your computer system and iPad to maintain information about your customers, prepare job proposals and invoices, maintain the financial records of the Franchised Business, access Internet sites, and communicate with prospective and current customers, suppliers, us, and others via e-mail. You must provide us with independent access to all of the information that will be generated and stored on your computer system and tablet if we request it. There are no contractual limitations on our right to access the information. You are contractually required to upgrade and update your computer system and tablet as we require during the term of the franchise, but not more than one time per year. There are no limits on the costs you may incur to upgrade or update. We currently do not require you to purchase a maintenance, repair, update, or upgrade service contract for your computer system, but we have the right to do so in the future. We do not know the annual cost of any optional or required maintenance, repair, updating, upgrading, or support contracts. Neither we nor any of our affiliates or any third party is obligated to provide ongoing maintenance, repairs, upgrades, or updates to your computer system. The cost of the computer system will range from \$1,000 to \$1,500, and is included in the table in Item 7. (Section 11.D)

Location of the Franchised Business. We do not select or approve a site, or provide you with assistance in selecting a site, for the Franchised Business. We do not impose any restrictions upon the location from which you operate the Franchised Business. You may operate your franchise out of your home, provided that doing so will not violate any zoning or building code or other ordinance. You are not required to operate the Franchised Business from a site within your Protected Territory, but you must maintain a business address in your Protected Territory, the telephone number for your franchise must be listed under an address or other location in your Protected Territory, and the location should be geographically convenient to the more densely populated areas of your Protected Territory and to major thoroughfares. You are not permitted to operate the Franchised Business outside your Protected Territory (see Item 12 below for a detailed explanation of the territorial restrictions). You must provide us with the address of the site and notify us promptly of any change in the location.

Initial Training. We provide an initial training program, for you (or your Designated Manager, if you are a business entity) and up to one other employee. You or your Designated Manager, if applicable, must attend and complete the initial training program to our satisfaction before beginning operations of the Franchised Business. The initial training program consists of approximately 35 hours over one week of instruction pertaining to the operation and management of a Franchised Business, including understanding of administrative, operational, sales/marketing matters, financial controls, other management and operational techniques and maintenance of quality standards. There is no additional fee for initial training; however, you must pay all expenses incurred during training, including travel, lodging, meals and employees' salaries, if applicable. (Section 9.A) Our initial training program is currently conducted in either Ft. Myers, Florida; Nashville, Tennessee; or Cincinnati, Ohio depending on which location is closest to where the Franchised Business will be located and which location is most convenient for you. At the time that the Protected Territory is defined, you shall be informed where the training shall be conducted. All training shall be conducted at one location in either FT. Myers, Florida; Nashville Tennessee; or Cincinnati, Ohio. If you cannot successfully complete the initial training program, we may terminate your Franchise Agreement. If we do so, we will refund 50% of the Franchise Fee you paid.

All training will be conducted by our President, Tom Frederick, and trainers Dave Thoma or Dustin Huling.

Tom Frederick has been our CEO, President, Treasurer, and a member of our Board of Directors since our incorporation on January 21, 2004. In addition, since November 2002, Tom has served as President and CEO of NL Manufacturing. From October 2001 through October 2005, he was CEO of Prescott Ellen, Inc. Prescott Ellen shared an office with NiteLites until October 2005 and offered marketing, forms management and promotion services. In October 2005, it sold all of its assets to a Michigan company named Prograde/Horak, LLC.

Mr. Thoma has been a full-time Training and Support Specialist with NL Manufacturing since May 2004. Since January of 2011, Mr. Thoma has also owned and operated the NiteLites franchise in Nashville, Tennessee. Before joining NL Manufacturing, he installed NiteLites lighting systems on a part-time basis for 4 years between 2000 and 2004. He has experience in all aspects of the installation of NiteLites lighting Systems.

Dustin Huling is general and design manager for the Dayton/Cincinnati franchise. He became a service manager in 2005. In 2009, Mr. Huling became a sales manager and in 2010 general manager of the Dayton franchise. Most recently Mr. Huling, in 2013 became general and design manager for the Dayton franchise and Corporate Trainer us, the Franchisor. Most recently in 2013, Mr. Huling, in addition to his role with the Dayton franchise, assumed the role of Corporate Trainer for us, the Franchisor.

The instructional material will be our Manual. The agenda of our initial training program is listed in the table below. We periodically may require that previously trained franchisees attend and participate in refresher programs. Attendance at refresher training programs will be at your sole expense, however, attendance will not be required at more than 2 refresher programs and will not exceed 4 days in any calendar year. (Section 9.E)

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b>
Introduction	2		Ft. Myers, FL Nashville, TN Cincinnati, OH
Sales	2		Ft. Myers, FL Nashville, TN Cincinnati, OH
Design and Layout	2	2	Ft. Myers, FL Nashville, TN Cincinnati, OH
Installation	2	10	Ft. Myers, FL Nashville, TN Cincinnati, OH
Inventory	.5	.5	Ft. Myers, FL Nashville, TN Cincinnati, OH
Marketing	2	.5	Ft. Myers, FL Nashville, TN

			Cincinnati, OH
Office Procedures	1		Ft. Myers, FL Nashville, TN Cincinnati, OH
Service and Troubleshooting	1	2	Ft. Myers, FL Nashville, TN Cincinnati, OH
Estimates	1	5	Ft. Myers, FL Nashville, TN Cincinnati, OH
Review	1.5		Ft. Myers, FL Nashville, TN Cincinnati, OH
Total	15	20	Ft. Myers, FL Nashville, TN Cincinnati, OH

**ITEM 12. TERRITORY**

We grant you the right to operate a NiteLites Franchise at a particular location known as the “Franchise Premises.” You may not relocate the Franchise Premises without our consent.

We will grant you a Protected Territory. We are prohibited by the Franchise Agreement from establishing any substantially similar franchised or franchisor-owned businesses under the name NITELITES or any other name within your Protected Territory. We have the following rights: (a) to operate and license others to operate NiteLites Franchises at any location outside your Protected Territory; (b) to operate and license others to operate businesses for the sale of products or services other than those offered by the Franchised Business including but not limited to, low voltage products and services, at any location, within or outside your Protected Territory, using different trademarks; (c) to sell products and services similar to those offered through the Franchised Business, either within or outside your Protected Territory, through alternate channels of distribution (other than franchised outlets, but including e-commerce, direct mail, retail outlets wholesale and distribution, and catalog sales), under any trademarks (including our Marks); and (d) to engage in any other activities not expressly prohibited by the Franchise Agreement. There is no provision in the Franchise Agreement that requires us to compensate you if we solicit or accept orders from inside your Protected Territory.

The grant of Protected Territory is non-exclusive. You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

The Franchise Fee you must pay when you sign your Franchise Agreement will be determined by the population of your Protected Territory (see Item 5 of this disclosure document for a more detailed explanation of the Franchise Fee). We may agree to a fifty percent (50%) reduction in the initial Franchise Fee in exchange for your covenant and agreement to pay a higher Royalty Fee at a rate two (2) times the standard Fixed Royalty rate for the initial term of the Franchise Agreement. The maximum population of a Protected Territory size is 3,000,000 people. Population figures for the Protected Territory will be based upon the most recent available U.S. Census data at the time the

Protected Territory is designated. We presently use a computer mapping application named Alteryx™<sup>1</sup> to determine territory populations, but we may substitute another product or use data freely available from the U.S. Census Bureau at any time in our unrestricted judgment.

You may not solicit or advertise for customers or operate the Franchised Business in another franchisee's Protected Territory, and you may not advertise on the Internet. There are no other restrictions on your right to solicit or accept orders from customers outside your Protected Territory.

You will be required to achieve a minimum level of annual gross sales, or "Minimum Annual Gross Sales," each Fiscal Year.

If you fail to achieve the Minimum Annual Gross Sales for 2 consecutive Fiscal Years, we have the right to terminate your Franchise Agreement or reduce the size of your Protected Territory. Except for that, your rights to your Protected Territory are not dependent upon your achievement of a certain sales volume, market penetration, or other contingency. If the U.S. Postal Service alters the boundary or number of any Postal Code assigned to you, we will re-define the boundaries of your Protected Territory to correspond as nearly as possible to your original Protected Territory. Our decision on this matter will be final. We do not have any other right to alter your Protected Territory without your consent. You maintain the rights to your Protected Territory even if the population increases. We will not change the boundaries of your Protected Territory if you renew your NiteLites Franchise, even if the population of your Protected Territory has increased or decreased since you originally purchased your Franchise. There are no other circumstances that would permit us to modify your territorial rights.

If you are in compliance with the Franchise Agreement and we contract with a major purchaser of NiteLites Products and Equipment for a location in your Protected Territory, we may receive proposals from others to fulfill the contract or we may offer the right directly to you. We refer to these major purchasers as "National Accounts." If we receive proposals from others, we will offer you a right of first refusal to fulfill the contract. If you opt to fulfill the contract after we receive a proposal from another, you must agree to fulfill the contract at the same price and on the same terms as contained in the proposal. (Section 2.F)

### **ITEM 13. TRADEMARKS**

Under the Franchise Agreement, we grant you the right to operate the Franchised Business under the trademark NITELITES. You may also use current or future Mark to operate your Franchised Business that we designate in writing, including the logo on the front of this disclosure document. By "Mark," we mean any trade name, trademark, service mark and logo that we authorize you to use to identify your business.

We have registered the following marks on the Principal Register of the U.S. Patent and Trademark Office. We have filed all required affidavits in connection with the registrations listed below.

---

<sup>1</sup> Alteryx™ is a registered trademark of SRC, LLC in the United States and other countries.

Trademark	Goods/Services	Registration Number	Registration Date
NITE LITES Design	Installation of outdoor low voltage lighting systems	1,872,819	January 10, 1995
NITELITES Word Mark	Design and installation of landscape lighting	3,501,821	September 16, 2008
NITELITES	Electric lighting fixtures	3,720,035	December 1, 2009
EZ-LATCH TREE RING		<del>86872008 (Serial Number 5065931)</del>	<del>Pending application filed January 11, 2016</del> Pending application filed October 18, 2016

The NITE LITES design (Reg. No. 1,872,819) was registered with the PTO by an individual named Constantine G. Pergantis. Mr. Pergantis is not affiliated with us. Under a trademark assignment agreement dated August 5, 2004, and recorded with the PTO on August 27, 2004, Mr. Pergantis assigned to us all of his rights in the NITE LITES Mark in connection with the sale and installation of architectural LED illumination products, in exchange for which we agreed to pay him a monthly assignment fee. The assignment fee is 2% of our “gross sales” through June 30, 2013, and 1½% of our gross sales from July 1, 2013 through August 4, 2034. “Gross sales” means the total royalties and franchise fees paid to us by NiteLites franchisees, and the total revenue of our affiliate, NL Manufacturing, from the sale of NiteLites Products and Equipment to NiteLites franchisees and distributors. Mr. Pergantis is entitled to a minimum assignment fee of \$1,000 per month through June 30, 2008, \$1,500 per month from July 1, 2008 through June 30, 2013, and \$2,000 per month from July 1, 2013 through August 4, 2034. The agreement also requires us to pay Mr. Pergantis a bonus of 2% of the proceeds from any sale of our stock or the sale of a substantial portion of our business or assets. We have the right to terminate the assignment fee payments at any time within the first 10 years of the agreement by paying a termination fee equal to 8 times the total assignment fees paid to Mr. Pergantis during any consecutive 12-month period chosen by him. If we breach the agreement and fail to cure the breach within 30 days, all rights to the NITE LITES Mark will revert to Mr. Pergantis. Under the same agreement, we granted Mr. Pergantis an exclusive license to use the NITE LITES Mark in Maryland, the counties of Arlington, Fairfax, Loudion and Prince William and the City of Alexandria in Virginia, and Washington, D.C. The term of Mr. Pergantis’s trademark license is for as long as Mr. Pergantis uses the Mark unless terminated sooner for cause.

In addition, NL Manufacturing claims common law trademark rights in and to the following Mark:

Trademark	Date Of Use
NITELIGHTS	June 1, 1998

Under an agreement dated July 30, 2004, NL Manufacturing assigned all of its rights in the NITELIGHTS Mark to us.

Other than the above, there are no agreements currently in effect which significantly limit our rights to use or license the use of the Marks in any manner material to the franchise.

There are currently no effective material determinations of the PTO, Trademark Trial and Appeal Board, the trademark administrator of this state or any court; pending infringement, opposition or cancellation; or pending material litigation involving the Marks.

We are aware of the following third-party uses of our NITELITES name or mark. Any franchisees in or around these geographic areas could be materially affected by these infringing uses.

1. A company named Night Lights, Inc. operates a business similar to the Franchised Business under the name NIGHT LIGHTS at 19651 Bruce B. Downs Boulevard, Tampa, Florida 33647. Although we do not know the parameters of its geographic market, it may be able to prevent us from using or licensing the use of the NITELITES Mark in certain areas. We believe that this use infringes upon our rights in our NITELITES Mark and that our rights are superior so as to enable us to prevent its use of the name.
2. An individual named Nick Young operates a business similar to the Franchised Business under the name NITE LITES BY NICK at 8 Candon Court, Columbia, South Carolina 29229. Although we do not know the parameters of his geographic market, he may be able to prevent us from using or licensing the use of the NITELITES Mark in certain areas. We believe that this use infringes upon our rights in our NITELITES Mark and that our rights are superior so as to enable us to prevent his use of the name.
3. A company named Night Light, Inc. operates a business similar to the Franchised Business under the name NIGHT LIGHT at 30 Acord Drive, Hawthorn Woods, Illinois 60047. Although we do not know the parameters of its geographic market, it may be able to prevent us from using or licensing the use of the NITELITES Mark in certain areas. We believe that this use infringes upon our rights in our NITELITES Mark and that our rights are superior so as to enable us to prevent its use of the name.

Except as disclosed above, there are no infringing or prior superior uses actually known to us that could materially affect the use of the Marks in this state or any other state in which the Franchised Business is to be located.

Your right to use the Marks is derived solely from the Franchise Agreement and is limited to the conduct of your Franchised Business. You may only use the Marks in accordance with our standards, operating procedures and specifications and any unauthorized use of the Marks by you is a breach of the Franchise Agreement and an infringement of our rights in and to the Marks. You will not acquire any rights in the Marks. In addition, under the Franchise Agreement, you agree not to contest the validity or the ownership of any of the Marks or assist any other person in contesting the validity or ownership of the Marks at any time, either during the term of the Franchise Agreement or after its expiration or termination.

You are required to immediately notify us of any apparent use of, or challenge to, a trademark identical or confusingly similar to any of our Marks, or claim by any person of any rights in any Marks. You may not communicate with any person other than us and our counsel regarding any infringements, challenges or claims, unless you are legally required to do so, however, you may communicate with your own counsel at your own expense. We have the right to take whatever action we think appropriate—we are not required to take any affirmative action. We are not required to protect your right to use our Marks or protect you against claims of infringement or unfair competition arising out of your use of our Marks. We are not required to participate in your defense or indemnify you for

your expenses or damages if you are a party to an administrative or judicial proceeding involving any of our Marks, or if the proceeding is resolved unfavorably to you. We have the right to control exclusively any settlement, litigation or PTO or other proceeding arising out of any alleged infringement, challenge or claim or otherwise concerning any Mark. You must execute any instruments and documents, render assistance, take actions, which in the opinion of our counsel, may be necessary or advisable to protect and maintain our interests in any litigation or other proceeding or to otherwise protect and maintain our interests in the Marks.

We may require you to modify or discontinue use of any Mark, to use one or more additional or substitute trademarks or service marks. We will not be required to reimburse you for your expenses to modify or discontinue the use of a Mark or adopt a substitute mark, or for any loss of goodwill associated with any modified or discontinued mark.

You must use the Marks as the sole trade identification of the Franchised Business. You may not use any Mark or part of any Mark as part of any corporate or trade name, in any modified form, nor may you use any Mark in connection with the sale of any unauthorized product or service, or in any other manner which we do not authorize in writing. You must give notices of trademark and service mark registrations as we specify and obtain such fictitious or assumed name registrations as may be required under applicable law.

You may not establish or operate an Internet site or website using any domain name containing any of the Marks or any variation of the Marks without our written consent. We retain the sole right to advertise using the Marks on the Internet and create a website using the Marks in the domain name and to use any other domain names we may designate in the Manual. We are the sole owner of all right, title and interest in and to such domain names as we designate in the Manual.

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

No patents are material to the franchise. We own certain copyrights in the Manual(s), marketing materials and other copyrightable items that are part of the System. While we claim copyrights in these and similar items, we have not registered these copyrights with the United States Registrar of Copyrights but need not do so to protect them. You may use these items only as we specify while operating your Franchised Business and must stop using them if we direct you to do so.

There are currently no effective determinations of the Copyright Office (Library of Congress) or any court regarding copyrighted materials. Our right to use or license copyrighted items is not materially limited by any agreement or known infringing use.

We will provide our Confidential Information to you during training, in the Manual and as a result of the assistance we furnish you during the term of the franchise. You may use our Confidential Information only for the purpose of operating your Franchised Business and only within the manner we authorize in writing. You will divulge Confidential Information only to employees who must have access to it in order to operate the Franchised Business. You may not contest our ownership of our trade secrets, methods and procedures. You may not use or disclose any Confidential Information in any manner other than as we permit in writing. You (and if applicable, your shareholders, officers, directors, partners, employees, trustees, members, and managers) agree to: (a) not use our Confidential Information in any other business or capacity; (b) maintain the absolute confidentiality of our Confidential Information during and after the term of the Franchise Agreement; (c) not make any unauthorized copies of any portion of the Confidential Information; and (d) adopt and maintain procedures we prescribe to prevent unauthorized disclosure of the Confidential Information.

Certain individuals having access to Confidential Information, including your shareholders, officers, directors, partners, members, managers, employees, trustees or professional staff, may be required to sign non-disclosure and non-competition agreements in a form we approve.

All ideas, concepts, techniques or materials concerning the Franchised Business, whether or not protectable intellectual property and whether created by or for you or your owners or employees, must be promptly disclosed to us and will be deemed part of the System which we may choose to adopt and/or disclose to other franchisees. Likewise, we agree to disclose to you ideas, concepts, techniques or materials developed by other franchisees, which are made a part of the System. You agree to assist us in obtaining property rights in any such item disclosed to us if requested by us.

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

The Franchised Business shall at all times be under the direct, on-premises supervision of either you, if you are an individual, or if you are a business entity, such as a corporation, limited liability company, business trust, or partnership, your Designated Manager. If you replace a Designated Manager for any reason, he or she must satisfactorily complete our training program. The Designated Manager is not required to have an ownership interest in the Franchised Business.

All shareholders, officers, directors, partners, members, managers, employees, trustees or professional staff are presumed to have access to Confidential Information, described in Item 14, and may be required to sign a Nondisclosure and Noncompetition Agreement in a form approved by us to maintain the confidentiality of the Confidential Information described in Item 14 and conform with the covenants not to compete similar to those described in Item 17. A copy of the Non-Disclosure and Non-Competition Agreement is attached to this disclosure document as Exhibit D.

We require each individual who owns a 5% or greater interest in the entity to sign the "Guaranty and Assumption of Obligations" attached as Exhibit C to this disclosure document. The Guaranty requires those who sign it to pay all monetary obligations under the Franchise Agreement and to perform and fulfill all other promises, obligations and duties you must perform under the Franchise Agreement. We do not require spouses of the franchisee or spouses of the owners of the franchisee to sign the Franchise Agreement or the Guaranty.

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

Unless you operate the Franchised Business from an office within your principal residence, you must use the Franchise Premises solely for the operation of the Franchised Business; must keep the Franchised Business open and in normal operation as specified in the Manual; must refrain from using or permitting the use of the Franchise Premises for any other purpose or activity at any time without first obtaining our written consent; and must take prompt action to ensure the safety of the Franchise Premises and the service vehicles. You may only provide authorized services and products that are within the scope of a business providing outdoor illumination products. You must comply with all of our reasonable requirements in that regard.

You must operate the Franchised Business in strict conformity with all applicable federal, state and local laws, rules and regulations. These laws, rules and regulations vary from jurisdiction to jurisdiction and are amendable and may be implemented or interpreted in different manners over time. It is solely your responsibility to apprise yourself of the existence and requirements of all laws, rules and regulations applicable to the Franchised Business and to adhere to them.

You are required to offer for sale and use all Authorized Products and Services specified in the Manual or that we has expressly approved. You may not offer or sell or provide services, which we have not approved. We may periodically change required or authorized products or services. There are no limits on our right to do so. If we change, modify or improve the System, you may be required to add or replace equipment, signs, and make improvements or modifications as necessary to maintain uniformity with our current standards and specifications.

You must maintain the Franchised Business, including the equipment, in “like new” condition and repair or replace damaged, worn out, unsafe or obsolete equipment, tools, computer hardware, signs, vehicles, and like items at the Franchised Business.

You may not solicit or advertise for customers or operate the Franchised Business in another franchisee’s Protected Territory, and you may not advertise on the Internet without our prior written consent. There are no other franchisor-imposed restrictions or conditions that limit access to customers.

**ITEM 17. RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

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

Provision		Section* in the Franchise Agreement	Summary
a.	Length of the franchise term	4.A, Supply Agreement Section 20.	5 years
b.	Renewal or extension of the term	4.B	Renewable for 2 additional successive terms of 5 years each.
c.	Requirements for you to renew or extend	4.B.1 - 4.B.8	Substantially comply with the provisions of the Franchise Agreement; have access to and right to retain possession of the Franchise Premises or suitable substitute location; provide notice of intent to renew; sign a current Franchise Agreement; make capital expenditures as necessary to maintain uniformity with any of our required System modifications; meet current qualifications and training requirements; sign a general release (unless prohibited by law); satisfy all monetary obligations to us or an affiliate.  You may be asked to sign a contract with materially different

Provision		Section* in the Franchise Agreement	Summary
			terms and conditions than your original contract.
d.	Termination by you	17.A	If you are in compliance, and we materially breach the Franchise Agreement and fail to cure or fail to begin to cure within 30 days of receiving your written notice.
e.	Termination by us without cause	17.C	Franchisor has the right and option to unilaterally terminate the Franchise Agreement (the "Option to Terminate") by refunding the Initial Franchise Fee and releasing Franchisee from the Post Termination Non-Compete obligation under the Franchise Agreement
f.	Termination by us with cause	17.B	We may terminate the Franchise Agreement only if you default under the Franchise Agreement or Supply Agreement.
g.	"Cause" defined – curable defaults	17.B.2	If you fail to make payments due to us under the Franchise Agreement or promissory note; fail to meet the Minimum Annual Gross Sales for 2 consecutive Fiscal Years; fail to spend the minimum amount for Local Advertising for 2 consecutive calendar quarters; buy, sell, or use competing or substitute products or equipment; or fail to comply with mandatory specifications in the Franchise Agreement or Manual, you generally have 30 days to cure, except for defaults included in (h) below.
h.	"Cause" defined – non-curable defaults	17.B.1., Supply Agreement Section 19	Non-curable defaults of the Franchise Agreement: failure to establish and equip the Franchise Premises and the service vehicles; failure to satisfactorily complete training; making a material misrepresentation or omission in the application for the franchise; conviction or plea of no contest to a felony or other crime or offense

Provision	Section* in the Franchise Agreement	Summary
		<p>that can adversely affect the reputation of either party or the Franchised Business; any unauthorized use of the Manual and trade secrets or Confidential Information; abandonment of the Franchised Business for 5 consecutive days; violation of an Anti-Terrorism Law; surrender or transfer of control of Franchised Business in an unauthorized manner; adjudication of Franchisee as bankrupt or insolvent; general assignment for the benefit of creditors; misuse of the Marks; failure to submit reports, records or payments on 3 or more separate occasions in any 12 month period; Fails to maintain Books and Records current up-to-date by more than fourteen (14) business days or maintains inconsistent or multiple sets of financial records; violation of any health, safety or other laws or conduct of Franchised Business in a manner creating a health or safety hazard; installation or sale of products in other franchisee's Protected Territory without our written permission.</p> <p>Non-curable defaults of the Supply Agreement: failure to pay an invoice when due, failure to perform obligations, default of Franchise Agreement, sale, relocation or transfer of Products except in the ordinary course of business, you are adjudicated bankrupt, insolvent or make a general assignment for the benefit of creditors; any attempt by another to garnish or attach the Product.</p>

Provision		Section* in the Franchise Agreement	Summary
i.	Your obligations on termination/non-renewal	18.A, 18.E	<p>Stop operations of the Franchised Business; assign or sublease the remainder of the lease for the Franchised Business to us; stop using the System, the Marks and any Confidential Information or proprietary material; cancel or if we request, assign any assumed names containing the Marks to us; pay all sums owed to us including damages and costs incurred in enforcing the termination provisions of the Franchise Agreement; Return any and all reproductions of the Manual and, copyrighted or other proprietary material and Confidential Information; assign your telephone and facsimile numbers and listings to us as requested; complete a de-identification of all vehicles and leasehold interest unless assigned or subleased to us; provide to us a complete detailed consumer list and copies of any and all outstanding service or other contracts; comply with the covenants not to compete and any other surviving provision.</p> <p>If termination is the result of your default, you must pay us an amount equal to 2 years of the minimum royalty fees or the actual royalty fees you paid in the previous 2 years prior to termination.</p>
j.	Assignment of contract by us	19.A, Supply Agreement Section 21	There are no restrictions on our right to assign except that the assignee must be financially responsible and economically capable of performing the obligations contained in the Franchise Agreement.

Provision		Section* in the Franchise Agreement	Summary
			There are no restrictions on NL Manufacturing's right to assign the Supply Agreement.
k.	"Transfer" by you - defined	19.B	Includes transfer of Franchise Agreement, ownership of franchisee entity or sale of assets.
l.	Our approval of transfer by you	19.B	No transfer without our prior written consent.
m.	Conditions for our approval of transfer	19.B.1 - 19.B.10	All obligations owed to us must be paid; unless prohibited by law, you and the transferee must sign a general release; the transferee must meet our qualifications; transferee must sign the current Franchise Agreement; you must provide us with all contracts relating to the transfer and the terms must be acceptable to us; you have paid a transfer fee of \$5,000; transferee must obtain all required consents and approvals; you agree to continue to be bound to the obligations of the new Franchise Agreement and to guarantee the transferee's performance; transferee must satisfactorily complete the training program; transferee must agree to honor the terms of your warranties and service agreements; and you and your owners execute a non-disclosure and non-competition agreement.
n.	Our right of first refusal to acquire your business	20	We can match any offer for the Franchised Business or an ownership interest you propose to sell.
o.	Our option to purchase your business	18.B	We are not obligated to do so, but, if the franchise is terminated or expires, we may purchase the assets of the Franchised Business at the lesser of cost or fair market value.

Provision		Section* in the Franchise Agreement	Summary
p.	Your death or disability	19.G	Your heirs, beneficiaries, devisees or legal representatives can apply to us to continue operation of the Franchised Business, or sell or otherwise transfer interest in the Franchised Business within 6 months of death or incapacity. If they fail to do so, the Franchise Agreement will terminate and we will have the option to buy the Franchised Business.
q.	Non-competition covenants during the term of the franchise	16.A	During the term of the Franchise Agreement, neither you, nor your Designated Manager, nor any affiliate, nor any officer, director, member, trustee, general partner nor other owner may divert or attempt to divert any business or customer of the Franchised Business to any competitor or engage in any act injurious to the goodwill associated with the Marks or the System; own or otherwise have any interest in any Competitive Business.
r.	Non-competition covenants after the franchise is terminated or expires	16.B	No individual franchisee, any owner, officer, director, trustee, or executive of a non-individual franchisee, or any affiliate, Designated Manager, or professional staff of the franchisee may: be involved in any Competitive Business for 2 years within 50 miles of the Franchised Business or within 50 miles of any other franchisor or franchisee-owned NiteLites Franchise; or solicit or attempt to solicit any of our employees or other business associates.
s.	Modification of the agreement	22.G	The Franchise Agreement can be modified only by written agreement between you and us. The Manual is subject to change

Provision		Section* in the Franchise Agreement	Summary
			but will not materially alter your fundamental rights.
t.	Integration/merger clause	22.G	Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises outside of the disclosure document and franchise agreement may not be enforceable.
u.	Dispute resolution by arbitration or mediation	23.F, Supply Agreement Section 28	Except for claims relating to the Marks or Confidential Information, all disputes must be mediated in Cincinnati, Ohio, before resorting to litigation. Please see the state specific addenda.
v.	Choice of forum	23.B, Supply Agreement Section 30	Except for certain claims, any litigation must take place in Warren County, Ohio or in the United States District Court for the Southern District of Ohio, Western Division, located in Cincinnati, Ohio, unless your state law prohibits.
w.	Choice of law	23.A, Supply Agreement Section 29	Ohio law governs (subject to your state law), except that disputes regarding the Marks will be governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sec. 1051 et seq.). Please see the state specific addenda.

\* All references to Section numbers mean the Franchise Agreement unless otherwise specified.

#### Termination on Bankruptcy

A provision in your Franchise Agreement that terminates the franchise on your bankruptcy may not be enforceable under federal bankruptcy law.

#### Reinstatements and Extensions

If any termination or expiration of the Franchise Agreement would violate any applicable law, we may reinstate or extend the term to comply with the law.

## ITEM 18. PUBLIC FIGURES

We do not presently use any public figures to promote the franchise or the NiteLites System.

## ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to disclose 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 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 performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Tom Frederick, CEO, at 6107 Market Avenue, Franklin, Ohio 45005, (513) 424-5510, the Federal Trade Commission, and the appropriate state or territorial regulatory agencies.

## ITEM 20. OUTLETS AND FRANCHISEE INFORMATION

Table No. 1  
**SYSTEMWIDE OUTLET SUMMARY**  
For Years ~~2014~~2015 to ~~2017~~2016

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised Outlets	<del>2015</del> 2014	<del>16</del> 15	<del>15</del> 11	<del>-1</del> 4
	<del>2016</del> 2015	<del>15</del> 11	<del>11</del> 14	<del>-4</del> 3
	<del>2016</del> 2017	<del>11</del> 14	<del>14</del> 11	<del>+3</del>
Company-Owned	<del>2015</del> 2014	<del>7</del> 6	<del>6</del> 7	<del>-1</del>
	<del>2016</del> 2015	<del>6</del> 7	7	<del>+1</del> 0
	<del>2016</del> 2017	7	7	0
Total Outlets	<del>2015</del> 2014	<del>23</del> 21	<del>21</del> 18	<del>-2</del> 3
	<del>2016</del> 2015	<del>21</del> 18	<del>18</del> 21	<del>-1</del> 3
	<del>2016</del> 2017	<del>18</del> 21	<del>21</del> 18	<del>+3</del>

Table No. 2  
**TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS**  
 (Other than the Franchisor)  
 For Years ~~2014~~2015 to ~~2017~~2016

State	Year	Number of Transfers
<del>Tennessee</del> Florida	<del>2015</del> 2014	0
	<del>2016</del> 2015	0
	<del>2016</del> 2017	0
<b>Total</b>	<del>2015</del> 2014	<b>0</b>
	<del>2016</del> 2015	<b>0</b>
	<del>2016</del> 2017	<b>0</b>

Table No. 3  
**STATUS OF FRANCHISED OUTLETS**  
 For Years ~~2014~~2015 to ~~2017~~2016\*

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
California	<del>2015</del> 2014	0	0	0	0	0	0	0
	<del>2016</del> 2015	0	0	0	0	0	0	0
	<del>2016</del> 2017	0	0	0	0	0	0	0
Delaware	<del>2015</del> 2014	1	0	0	0	0	0	1
	<del>2016</del> 2015	1	0	0	0	0	0	1
	<del>2016</del> 2017	1	0	0	0	0	0	1
Florida	<del>2015</del> 2014	2	0	0	0	<del>0</del> 1	0	<del>2</del> 1
	<del>2015</del> 2016	<del>2</del> 1	0	0	0	<del>1</del> 0	0	1
	<del>2016</del> 2017	1	0	0	0	0	0	1
Georgia	<del>2015</del> 2014	1	0	0	0	0	0	1
	<del>2016</del> 2015	1	<del>0</del> 1	0	0	0	0	<del>1</del> 2
	<del>2016</del> 2017	<del>1</del> 2	<del>0</del> 1	0	0	0	0	2

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Illinois	<del>2015</del> 2014	0	0	0	0	0	0	0
	<del>2016</del> 15	0	0	0	0	0	0	0
	<del>2016</del> 017	0	0	0	0	0	0	0
Indiana	<del>2015</del> 014	1	0	0	0	0	0	1
	<del>2016</del> 15	1	0	0	0	0	0	1
	<del>2016</del> 017	1	0	0	0	0	0	1
Kentucky	<del>2015</del> 014	0	0	0	0	0	0	0
	<del>2016</del> 15	0	0	0	0	1	0	0
	<del>2016</del> 017	0	0	0	0	0	0	0
Kansas	<del>2015</del> 014	1	0	0	0	0	0	1
	<del>2016</del> 15	1	0	0	0	0	0	1
	<del>2016</del> 017	1	0	0	0	0	0	1
Minnesota	<del>2015</del> 014	0	0	0	0	0	0	0
	<del>2016</del> 15	0	0	0	0	0	0	0
	<del>2016</del> 017	0	0	0	0	0	0	0
Missouri	<del>2015</del> 014	1	0	0	0	0	0	1
	<del>2016</del> 15	1	0	0	0	0	0	1
	<del>2016</del> 017	1	0	0	0	0	0	1
New Jersey	<del>2015</del> 014	0	0	0	0	0	0	0
	<del>2016</del> 15	0	0	0	0	0	0	0
	<del>2016</del> 017	0	0	0	0	0	0	0

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
North Carolina	<del>2015</del> 2014	3	0	0	0	0	<del>0</del> 3	<del>3</del> 30
	<del>2016</del> <del>2015</del>	<del>3</del> 30	0	0	0	0	<del>3</del> 30	0
	<del>2016</del> 2017	0	0	0	0	0	0	0
Ohio	<del>2015</del> 2014	<del>3</del> 32	0	0	0	0	<del>1</del> 10	2
	<del>2016</del> <del>2015</del>	<del>2</del> 2	0	0	2	0	0	2
	<del>2016</del> 2017	2	0	0	0	0	<del>0</del> 2	<del>2</del> 20
South Carolina	<del>2015</del> 2014	1	0	0	0	0	0	1
	<del>2016</del> <del>2015</del>	1	<del>0</del> 2	0	0	0	0	<del>1</del> 3
	<del>2016</del> 2017	<del>1</del> 13	<del>0</del> 20	0	0	0	<del>0</del> 1	<del>1</del> 32
Tennessee	<del>2015</del> 2014	1	0	0	0	0	0	1
	<del>2016</del> <del>2015</del>	1	0	0	0	0	0	1
	<del>2016</del> 2017	1	0	0	0	0	0	1
Texas	<del>2015</del> 2014	1	0	0	0	0	0	1
	<del>2016</del> <del>2015</del>	1	0	0	0	0	0	1
	<del>2016</del> 2017	1	0	0	0	0	0	1
Virginia	<del>2015</del> 2014	0	0	0	0	0	0	0
	<del>2016</del> <del>2015</del>	0	0	0	0	0	0	0
	<del>2016</del> 2017	0	0	0	0	0	0	0
Total	<del>2015</del> 2014	<del>16</del> 15	0	0	0	<del>0</del> 1	<del>1</del> 3	<del>15</del> 11
	<del>2016</del> <del>2015</del>	<del>15</del> 11	<del>0</del> 3	0	0	<del>1</del> 10	<del>3</del> 30	<del>11</del> 14
	<del>2016</del> 2017	<del>11</del> 14	<del>3</del> 30	0	0	0	<del>3</del> 0	<del>14</del> 11

\* If multiple events occurred affecting an outlet, this table shows the event that occurred last in time.

Table No. 4  
**STATUS OF COMPANY-OWNED OUTLETS**  
(including outlets owned by affiliates or officers of Franchisor)  
For Years ~~2014~~2015 to ~~2016~~2017

State	Year	Outlets at Start of Year	Outlets Opened	Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
Florida	<del>2015</del> 2014	2	0	0	0	0	2
	<del>2016</del> 2015	2	1	0	0	0	3
	<del>2016</del> 2017	3	0	0	0	0	3
Kentucky	<del>2015</del> 2014	1	0	0	0	0	1
	<del>2016</del> 2015	1	0	0	0	0	1
	<del>2016</del> 2017	1	0	0	0	0	1
North Carolina	<del>2014</del> 2015	1	0	0	0	1	0
	<del>2016</del> 2015	0	0	0	0	0	0
	<del>2016</del> 2017	0	0	0	0	0	0
Ohio	<del>2014</del> 2015	2	0	0	0	0	2
	<del>2015</del> 2016	2	0	0	0	0	2
	<del>2016</del> 2017	2	0	0	0	0	2
South Carolina	<del>2014</del> 2015	1	0	0	0	0	1
	<del>2016</del> 2015	1	0	0	0	0	1
	<del>2016</del> 2017	1	0	0	0	0	1
<b>Total</b>	<del>2014</del> 2015	7	0	0	0	1	6
	<del>2016</del> 2015	6	1	0	0	0	7
	<del>2016</del> 2017	7	0	0	0	0	7

Table No. 5  
**PROJECTED OPENINGS**  
As of December 31, ~~2016~~2017

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlet in the Next Fiscal Year
South Carolina	0	1	0
Colorado	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>1</b>	<b>0</b>

The names, business addresses and telephone numbers of all NiteLites locations, including those operated by affiliates or individuals listed in Item 2, are listed on Exhibit K. The names and last known home addresses and telephone numbers of all NiteLites franchisees who have had an outlet

terminated, cancelled, not renewed, otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during the most recently completed fiscal year, or who have not communicated with us within 10 weeks of the Issuance Date of this disclosure document, are listed on Exhibit L.

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

We may periodically compensate our existing Franchisees and third parties for referrals and/or for meeting with franchise candidates as permitted by applicable law.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the NiteLites system. While we encourage you to speak with current and former franchisees, be aware that not all such franchisees will be able to communicate with you.

As of the date of this disclosure document, there are no trademark-specific franchisee organizations associated with the NiteLites System that we have created, sponsored, or endorsed, and there are no independent trademark-specific franchisee organizations that have asked to be included in our disclosure document.

## **ITEM 21. FINANCIAL STATEMENTS**

Our audited Consolidated Statements of Income, Stockholders' Equity, and Cash Flows for the fiscal years ending December 31, ~~2014~~, 2015, 2016 and ~~2016~~2017 are attached to this disclosure document as Exhibit M.

Our fiscal year ends December 31.

## **ITEM 22. CONTRACTS**

The following contracts are attached to this disclosure document:

1. Franchise Agreement (Exhibit A), including the following exhibits to the Franchise Agreement:
  - A. Designated Area
  - B. Protected Territory
  - C. General Release Language
2. Promissory Note (Exhibit B)
3. Guaranty and Assumption of Obligations (Exhibit C)
4. Nondisclosure and Noncompetition Agreement (Exhibit D)
5. NiteLites Products and Equipment Supply Agreement (Exhibit E)
6. Call Center Service Agreement (Exhibit F)
7. Franchisee Disclosure Questionnaire (Exhibit G)
8. Successor Franchise Addendum (Exhibit N) –
9. Accounting Service Agreement (Exhibit O)
10. State-specific Addendum (Exhibit P) –

We provide no other contracts or agreements for your signature.

**ITEM 23. RECEIPT**

Our and your copies of the Franchise disclosure document Receipt are located on the last 2 pages of this disclosure document.



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT A TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**FRANCHISE AGREEMENT**

**NITELITES FRANCHISE SYSTEMS, INC.**

**FRANCHISE AGREEMENT**

Date of this agreement: \_\_\_\_\_

Required Opening date – No Later Than: \_\_\_\_\_

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

Franchise Fee: \_\_\_\_\_

Franchisor: NiteLites Franchise Systems, Inc.

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

Franchise Number: \_\_\_\_\_

## Contents

1.DEFINITIONS.....	1
2.SCOPE OF LICENSE.....	6
A. Grant.....	6
B. Franchise Premises.....	6
C. Franchise Premises Not Determined.....	7
D. Protected Territory.....	7
E. Franchisor’s Rights.....	7
3.FEES.....	9
H. Franchise Fee.....	9
I. Initial Inventory Package Fee.....	10
J. Start-up Kit Fee.....	10
K. Fixed Royalty Fee.....	10
L. Marketing Fund Contribution.....	10
M. Internet Marketing Fee.....	11
N. Call Center Service Fee.....	11
O. Accounting Service Agreement.....	11
P. Taxes.....	11
Q. Interest.....	12
R. Electronic Transfer.....	12
S. Application of Payments.....	13
4.TERM AND RENEWAL.....	13
T. Initial Term.....	13
U. Renewal Term.....	13
V. Notice.....	14
W. Continued Operation Following Expiration.....	14
5.FRANCHISE PREMISES.....	14
A. Selection of Franchise Premises.....	14
B. Lease of Franchise Premises.....	14
C. Development of Franchise Premises.....	15
D. Initial Inventory Package.....	16
E. Start-up Kit.....	16
F. Opening.....	16
G. Destruction of Franchise Premises; Relocation.....	17
H. Administration of the Franchised Business.....	17
6.MARKS.....	17
A. Ownership.....	17
B. Limitations on Franchisee’s Use of Marks.....	18
C. Notification of Infringements and Claims.....	18
D. Right of Inspection.....	18
E. Discontinuance of Use of Marks.....	18
F. Franchisor’s Sole Right to Domain Name and Social Media Accounts.....	19
7.CONFIDENTIAL INFORMATION.....	19
A. Requirement of Confidentiality.....	19
B. Improvements Developed by Franchisee.....	19
C. Exclusive Relationship.....	20

**TABLE OF CONTENTS (continued)**

<u>SECTION</u>	<u>PAGE</u>
D. Third Party Nondisclosure.....	20
E. Injunctive Relief .....	20
F. Disclosure of Information About Franchisee .....	20
8.MANUAL.....	21
A. Operation in Conformity with Manual.....	21
B. Revisions of Manual.....	21
C. Confidentiality of Manual.....	21
D. Ownership of Manual.....	21
9.TRAINING AND OPERATIONS ASSISTANCE .....	21
A. Initial Training.....	22
B. Failure to Complete Initial Training Program .....	22
C. New Designated Manager .....	22
D. Operations Assistance .....	22
E. Ongoing Training Meetings .....	23
F. Marketing and Promotions.....	23
G. Local Advertising.....	23
H. Systemwide Marketing Fund .....	23
I. Cooperative Advertising.....	24
J. Grand Opening Advertising.....	25
K. Telephone Directory Advertising.....	25
L. Internet Advertising.....	25
10.BOOKS AND RECORDS.....	25
A. Requirement to Maintain .....	26
B. Sales Reports .....	26
C. Monthly and Annual Financial Reports.....	26
D. Computer System .....	26
E. Right of Franchisor to Perform Inspection .....	27
F. Release of Records .....	27
11.FRANCHISE SYSTEM.....	27
A. Uniformity of Operating System.....	27
B. Modification of the Operating System.....	27
C. Variance.....	28
12.OPERATING STANDARDS.....	28
A. General Operation .....	28
B. Authorized Products and Services.....	28
C. Approved Suppliers .....	28
D. NITELITES Products and Equipment.....	29
E. Minimum Annual Gross Sales .....	29
F. Appearance and Condition of the Franchised Business .....	30
G. Employees and Subcontractors .....	30
H. Compliance with USA Patriot Act.....	31
I. Management and Operation of the Franchised Business.....	31
J. Best Efforts.....	31
K. Licenses and Permits .....	32
L. Compliance with Good Business Practices.....	32

**TABLE OF CONTENTS (continued)**

<u>SECTION</u>	<u>PAGE</u>
M. Payment of Liabilities and Taxes.....	32
N. Notification of Proceedings .....	32
O. Right to Inspect.....	33
P. Days of Operation.....	33
Q. Vending Machines .....	33
R. Credit Cards .....	33
S. Uniforms.....	33
13.FRANCHISOR’S ONGOING OPERATIONS ASSISTANCE .....	33
A. General Advice and Guidance .....	33
B. Periodic Visits .....	34
C. Advertising and Promotional Materials .....	34
D. System Improvements.....	34
14.INSURANCE.....	34
A. Types and Amounts of Coverage.....	34
B. Carrier Standards .....	35
C. Evidence of Coverage .....	35
D. Failure to Maintain Coverage.....	35
15.FRANCHISEE’S COVENANTS NOT TO COMPETE.....	35
A. During Term .....	35
B. After Termination or Expiration .....	36
C. Reasonableness of Restrictions .....	36
D. Remedies.....	36
E. Severability .....	37
16.DEFAULT AND TERMINATION .....	37
A. Termination by Franchisee .....	37
B. Termination by Franchisor.....	37
C. FRANCHISOR’S OPTION TO TERMINATE.....	39
D. Reinstatement and Extension.....	40
17.RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION .....	40
A. Events Upon Termination.....	40
B. Franchisor’s Option to Purchase Certain Assets.....	41
C. If Franchisee Starts Another Business .....	41
D. Survival of Certain Provisions.....	42
E. Liquidated Damages.....	42
F. Remedies.....	42
18.TRANSFERABILITY OF INTEREST.....	42
A. By Franchisor .....	42
B. By Franchisee to a Third Party.....	42
C. Pledge of Franchise.....	44
D. Transfer by Franchisee to an Entity Controlled by Franchisee.....	44
E. Franchisor’s Disclosure to Transferee.....	45
F. For Sale Advertising .....	45
G. Death or Incapacity of Franchisee .....	45
19.RIGHT OF FIRST REFUSAL .....	45
A. Submission of Offer.....	45

**TABLE OF CONTENTS (continued)**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
B. Franchisor’s Right to Purchase .....	46
C. Non-Exercise of Right of First Refusal .....	46
20.RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION.....	46
A. Independent Contractor .....	46
B. Indemnification .....	46
C. Right to Retain Counsel.....	47
21.GENERAL CONDITIONS AND PROVISIONS.....	47
A. Non-Waiver .....	47
B. Notices.....	48
C. Cost of Enforcement or Defense .....	48
D. Guaranty and Assumption of Obligations.....	48
E. Non-Individual Franchisee .....	48
F. Approvals.....	49
G. Entire Agreement .....	49
H. Severability .....	49
I. Construction .....	50
J. Force Majeure .....	50
22.DISPUTE RESOLUTION.....	50
A. Choice of Law .....	50
B. Jurisdiction and Venue .....	51
C. Cumulative Rights and Remedies .....	51
D. Limitation of Damages.....	51
E. Waiver of Jury Trial .....	51
F. Mediation .....	51
G. Injunctive Relief .....	51
23.ACKNOWLEDGMENTS.....	52
A. Receipt of Agreement.....	52
B. Receipt of Franchise Disclosure Document.....	52
C. Consultation by Franchisee .....	52
D. True and Accurate Information .....	52
E. Risk.....	52
F. No Guarantee of Success.....	53
G. Multiple Originals.....	53
H. No Violation of Other Agreements.....	53

**EXHIBITS**

- A. MAP OF OR DESCRIPTION OF DESIGNATED AREA
- B. MAP OF OR DESCRIPTION OF PROTECTED TERRITORY
- C. GENERAL RELEASE LANGUAGE

## NITELITES FRANCHISE AGREEMENT

This Franchise Agreement is between NITELITES FRANCHISE SYSTEMS, INC., an Ohio corporation (“Franchisor”), and \_\_\_\_\_ (“Franchisee”).

### RECITALS:

- A. Franchisor and its Affiliate<sup>1</sup> have developed, and are in the process of further developing, a System identified by the service mark NITELITES®, relating to the establishment and operation of NITELITES Franchises.
- B. Franchisor and its Affiliate have developed and manufacture a line of NITELITES Products and Equipment that are supplied to Franchisee and other NITELITES Franchisees on a for-profit basis.
- C. In addition to the NITELITES Products and Equipment, the service mark NITELITES and other Marks, the distinguishing characteristics of the Operating System include, among other things, uniform standards and procedures for efficient business operations; a confidential operating manual; procedures and strategies for marketing, advertising and promotion; distinctive customer development and service techniques; specifications for product sourcing, placement, presentation and demonstration techniques; distinctive architectural and landscaping illumination design and installation techniques; research and development; and other technical assistance.
- D. Franchisor grants franchises to qualified persons and business entities to own and operate a single NITELITES Franchise under the Operating System and using the Marks.
- E. Franchisee desires to operate a Franchised Business, has applied for a Franchise and such application has been approved by Franchisor in reliance upon all of the representations made therein.
- F. Franchisee understands and acknowledges the importance of Franchisor’s high and uniform standards of quality, operations and service and the necessity of operating its Franchised Business in strict conformity with Franchisor’s Operating System.

THEREFORE the parties agree as follows:

### 1. DEFINITIONS

Certain terms have been defined below and will be capitalized throughout this agreement. Capitalized words that are not defined below are defined in the section in which they first appear.

- 1. “Affiliate” means a Person that controls, is controlled by, or under common control with another Person. As to Franchisee, it includes an owner of any interest in Franchisee or the Franchised Business, any employee or agent of Franchisee, and any Person controlled by any of the foregoing.
- 2. “Anti-Terrorism Laws” means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (the “USA PATRIOT Act”), and all

---

<sup>1</sup> Capitalized terms are defined in section 1.

other present and future federal, state and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority (including the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

3. “Approved Supplier” is defined in section 13.C.

4. “Authorized Products and Services” means those products and services that Franchisee is permitted and required to offer and provide (currently superior-quality lighting products and services, including the design and installation of architectural and landscaping illumination products), as more specifically described in the Manual.

5. “Business Judgment” means Franchisor is allowed to exercise its judgment however it considers to be appropriate in its sole and unfettered discretion (except that it may not do so arbitrarily), and has the unrestricted right to make decisions and take or refrain from taking actions (except that it may not do so arbitrarily), and has the right to do so even if a particular decision/action may have negative consequences for Franchisee, another NITELITES Franchisee, or a group of NITELITES Franchisees. The exercise of Business Judgment is critical to Franchisor of the Operating System and to Franchisor’s goals for the continuing improvement of the Operating System. This definition is not intended to incorporate principles related to the application of the business judgment rule in a corporate law context.

6. “Business Organization” means a corporation, limited liability company, limited liability partnership, limited company, partnership of any kind, joint venture, unincorporated association, or other organization formed for a commercial purpose.

7. “Competitive Business” means any business that offers or sells, or grants franchises or licenses to others to operate a business that offers or sells, exterior lighting and related products and services or similar products and services to those offered as part of the Operating System or in which Confidential Information could be used to the disadvantage of Franchisor or its other franchisees or its Affiliate. The term “Competitive Business” does not apply to: (a) any business operated by Franchisee under a Franchise Agreement with Franchisor; or (b) ownership for investment purposes of less than one percent (1%) of the stock of any publicly-traded corporation.

8. “Confidential Information” means any trade secret and any information or matter that is competitively sensitive and not generally known by the public, whether or not in written or tangible form, and regardless of the media (if any) on which stored relating to the Operating System, including know-how, knowledge of and experience in operating a NITELITES Franchise, methods, techniques, formats, specifications, procedures, systems, policies and standards, business operating systems and techniques, record keeping and reporting methods, accounting systems, sales and marketing methods and training techniques, specifications for signs, displays, business forms and stationery to be used by franchisees, designs, drawings and specifications for the Franchise Premises, the Manual, ideas, research and development, lists of franchisees and suppliers, suggested pricing and cost information, software which Franchisor or its Affiliates may develop and introduce as part of the Operating System, and any other information or material identified to Franchisee by Franchisor as confidential.

9. “Controlling Interest” means the direct or indirect ownership (legal or beneficial) or control of more than 50% of the equity, profits or voting control of a Business Organization.

10. “Cooperative Advertising” means the combined advertising program of two (2) or more franchisees established within a common market which Franchisor may require for Franchised Businesses within a particular region.
11. “Designated Area” means the area within which Franchisee is required to locate the Franchised Business as defined by the map or other description set out in Exhibit A hereof and does not confer any territorial protection or exclusivity.
12. “Designated Manager” means the individual designated by a business entity Franchisee who has primary responsibility for managing the day-to-day affairs of the Franchised Business.
13. “Effective Date” or “Execution Date” means the date upon which Franchisor executes this agreement and commences the effectiveness and term of this agreement.
14. “Electronic Depository Transfer Account” means an account established at a national banking institution approved by Franchisor providing Franchisor with access to electronically withdraw any funds due Franchisor.
15. “Embargoed Person” means (a) a Specifically Designated National as identified by the Office of Foreign Assets Control of the U.S. Treasury Department; (b) a Person who is listed in the Annex to Executive Order 13224 (<http://www.treasury.gov/offices/enforcement/ofac/sdn>); or (c) any Person subject to trade restrictions under U.S. law, including any Anti-Terrorism Law, and any executive orders or regulations promulgated thereunder, with the result that the investment in a NITELITES Franchise, whether direct or indirect, is prohibited by law.
16. “Expiration Date” means the day before the fifth anniversary of the Effective Date, and is the last day of the term of this agreement.
17. “Exterior Illumination Products” means electrical and lighting products, equipment, and supplies used and installed in connection with architectural and illumination systems provided by the Franchised Business, including transformers, fixtures, bulbs, timers, outlets, lens covers, connectors, and lighting systems for path, spot, deck, grill and water lighting.
18. “Fiscal Year” means the twelve-month period from January 1 through December 31. For purposes of the Minimum Annual Gross Sales in section 13.E.1, Franchisee’s first Fiscal Year is the Fiscal Year beginning on the first October 1 after Franchisee opens the Franchised Business.
19. “Franchise” means the rights granted to Franchisee under this agreement to use the Operating System and the Marks to operate a NITELITES Franchise.
20. “Franchised Business” means the NITELITES Franchise to be established and operated by Franchisee in accordance with the Operating System and using the Marks pursuant to this agreement.
21. “Franchise Fee” is defined in section 3.A.
22. “Franchise Law” means a statute, regulation, or rule that (i) regulates the sale of franchises, franchise investments, or business opportunities; (ii) regulates the relationship between a franchisor and a franchisee or between a business opportunity seller and purchaser; or (iii) requires the delivery, filing, or registration of a pre-sale franchise or business opportunity disclosure document.
23. “Franchise Premises” means the site for the operation of the Franchised Business selected by Franchisee pursuant to section 5.A, which is more particularly described in section 2.B.

24. “Franchisee” means the individual or entity defined as “Franchisee” in the introductory paragraph of this agreement, and such term includes all holders of a legal or beneficial interest in Franchisee, and if “Franchisee” is a business entity, such term shall also include all partners of the entity (if the entity is a partnership); all shareholders, officers and directors of the entity (if the entity is a corporation); all members and managers of the entity (if the entity is a limited liability company), and any trustee (if the entity is a business trust) as of the Effective Date of this agreement, or which are appointed as such at any time during the term of this agreement. By Franchisee’s signature hereto, all partners, shareholders, officers, directors, members, managers and trustees as of the Effective Date of this agreement, or which are appointed as such at any time during the term of this agreement acknowledge and accept the duties and obligations imposed upon each of them, individually, by the terms of this agreement.
25. “Franchisor” means NITELITES FRANCHISE SYSTEMS, INC.
26. “Franchisor-Related Persons” means Franchisor and each and all of the following, whether past, current, or future: Persons acting through, in concert with, or as an Affiliate of Franchisor or of any of the foregoing; Principals, officers, directors, agents, attorneys, accountants and employees of Franchisor or any of the foregoing; and predecessors, successors or assigns of Franchisor or any of the foregoing.
27. “General Release” is a release, in the form prescribed by Franchisor at the time the release is to be delivered, of any and all claims, liabilities and obligations of any nature, including those existing as of, and/or arising before, the date of the release, however arising, whether known or unknown, whether against Franchisor and/or any or all of the Franchisor-Related Persons, the Marketing Fund (as defined in section 1.35), or any other branding, marketing, or advertising fund, and whether by Franchisee, any Principal of Franchisee, and/or any Affiliate of any of the foregoing. A copy of Franchisor’s current General Release language (which is subject to change) is attached as Exhibit C.
28. “Gross Sales” means the aggregate of all revenue and other consideration earned by Franchisee or any Affiliate or Principal of Franchisee in connection with the ownership or operation of the Franchised Business, from the sale of any Authorized Products and Services (as that term may be modified from time to time by Franchisor) or related products or services, or from the sale of any goods or services under the Marks, whether or not collected and whether paid by check, cash, credit or otherwise. Gross Sales includes all proceeds from any business interruption insurance. Gross Sales does not include refunds made in good faith, promotional and coupon discounts, and sales and equivalent taxes that are separately stated and that Franchisee may be required to and does collect from customers and pays to any federal, state, or local taxing authority.
29. “Incapacity” means the inability of Franchisee to operate or oversee the operation of the Franchised Business on a regular basis by reason of any continuing physical, mental or emotional incapacity, chemical dependency or other limitation.
30. “Initial Inventory Package” is defined in section 5.D.
31. “Initial Inventory Package Fee” is defined in section 3.B.
32. “Internet” means any one or more local or global interactive communications media that is now available, or that may become available, and includes sites and domain names on the World Wide Web.
33. “Local Advertising” is defined in section 10.A.

34. “Manual” means not only the NITELITES FRANCHISE SYSTEMS, INC. Operating Manual, but other items that may be provided in the future, including other manuals and all books, computer programs, pamphlets, memoranda and other publications prepared by or on behalf of Franchisor and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor from time to time setting out the standards, methods, procedures and specifications of the Operating System.
35. “Marketing Fund” means the systemwide advertising and promotion fund established by Franchisor described in section 10.B.
36. “Marketing Fund Contribution” is defined in section 3.E.
37. “Marks” means the service mark NITELITES and other trade names, trademarks, service marks, designs, graphics, logos and other commercial symbols that Franchisor designates and does not thereafter withdraw to be used in connection with the Franchised Business.
38. “Minimum Annual Gross Sales” is defined in section 13.E.1.
39. “Minimum Marketing Fund Contribution” is defined in section 3.E.
40. “National Account” means any account designated as such by Franchisor on the basis that such account holders are major purchasers such as a national or regional chain with separate locations. Such accounts are expressly excluded from Franchisee’s Protected Territory, except under the circumstances set forth in section 2.F.
41. “Network or “NITELITES Network” means the network of NITELITES Franchises established by Franchisor.
42. “NITELITES Franchise” means a business that offers superior-quality lighting products and services, including the design and installation of architectural and landscaping illumination products for upscale homeowners and commercial enterprises, using the Marks and Franchisor’s unique business format under a franchise agreement with Franchisor.
43. “NITELITES Franchisee” means an owner of a NITELITES Franchise other than the Franchised Business.
44. “NITELITES Products and Equipment” means a line of superior-quality Exterior Illumination Products, specially-suited for use in connection with the Franchised Business, supplied to Franchisee and other NITELITES Franchisees by Franchisor, an Affiliate, or a supplier designated by Franchisor, on a for-profit basis.
45. “Operating System” means the uniform standards, methods, procedures and specifications developed by Franchisor and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor for the operation of a NITELITES Franchise.
46. “Ownership Interest” means: (1) a share of capital stock in any corporation, a partnership interest in any partnership, a membership interest in any limited liability company, a legal or beneficial interest in any trust, or a right to a share of the revenues, profits or assets of any other Business Organization (other than the right of Franchisor and the Marketing Fund to receive Royalties, Marketing Contributions and other fees from any NITELITES Franchisee under this or any other agreement); (2) direct or indirect community property rights in an asset or property; and (3) with respect to Franchisee, in addition to the foregoing, any other equitable or legal right in the revenues, profits or assets of Franchisee or the Franchised Business (other than the right of

Franchisor and the Marketing Fund to receive Royalties, Marketing Contributions and other fees from Franchisee under this or any other agreement).

47. "Person" includes a corporation, Limited Liability Company, partnership of any kind, joint venture, unincorporated association, estate, trust, charitable organization, government, governmental body and agency, commission, and any other entity and organization, as well as an individual.

48. "Principal" means a legal or beneficial owner or holder of an Ownership Interest in a Business Organization, and includes both trustees and beneficiaries of a trust.

49. "Protected Territory" is defined in section 2.D.

50. "Start-up Kit" is defined in section 5.E.

51. "Start-up Kit Fee" is defined in section 3.C.

52. "System Standards" means the uniform specifications, standards, operating procedures, and rules prescribed by Franchisor for the development and operation of the Franchised Business and other NITELITES Franchises, as periodically supplemented, modified or withdrawn by Franchisor, in its Business Judgment, via the Manual or otherwise communicated to Franchisee in writing. The System Standards constitute provisions of this agreement as if fully reproduced in this agreement.

53. "Transfer" means any voluntary or involuntary, direct or indirect assignment, sale, gift, exchange, pledge, hypothecation, encumbrance or other transfer of this agreement, of Franchisee, of the Franchised Business, of any Ownership Interest in Franchisee, of fifteen percent (15%) or more of the assets of Franchisee or the Franchised Business, or of any interest in any of the foregoing, or any other event that may create an Ownership Interest or change the legal or beneficial title to any Ownership Interest, including a merger or consolidation of Franchisee, the issuance of additional Ownership Interests in Franchisee, a transfer in a divorce, insolvency, corporate dissolution proceeding, or otherwise by operation of law, and a transfer by will, declaration of or transfer in trust, or under the laws of intestate succession.

## **2. SCOPE OF LICENSE**

### **A. Grant**

Franchisor hereby grants to Franchisee, and Franchisee undertakes and accepts, upon the terms and conditions herein contained, the right, license and privilege to operate one (1) NITELITES Franchise under the Operating System and Marks at the specified Franchise Premises provided in section 2.B. Franchisee shall not relocate the Franchised Business without the prior consent of Franchisor, which may be withheld or delayed in Franchisor's Business Judgment.

### **B. Franchise Premises**

The street address (or sufficiently detailed description of the premises) of the Franchise Premises is:

---

---

---

### **C. Franchise Premises Not Determined**

If the Franchise Premises has not been determined as of the date of this agreement, then the geographical area in which the Franchised Business is to be located will be within a defined area which is described or otherwise mapped out in Exhibit A to this agreement ("Designated Area"). When the address of the Franchise Premises is determined, each party shall insert the address into section 2.B of the party's copy of this agreement. Franchisee acknowledges and understands that the Designated Area is delineated for the sole purpose of site selection and does not confer any territorial exclusivity or protection.

### **D. Protected Territory**

So long as this agreement is in force and effect and Franchisee is not in default under any of the terms hereof, Franchisor will neither establish nor license another to establish or operate a NITELITES Franchise within the geographic area identified in Exhibit B to this agreement (the "Protected Territory"). Population figures will be determined using a computer mapping/demographic application selected by Franchisor in its unrestricted judgment, and, to the extent practical, will be based upon the most recent available U.S. Census data at the time the Protected Territory is designated. Franchisee shall not operate the Franchised Business within a protected territory licensed to another franchisee of Franchisor.

### **E. Franchisor's Rights**

Notwithstanding any other provision of this agreement to the contrary, Franchisor expressly retains all rights and discretion with respect to the Marks and Operating System, including the right:

1. To establish and operate, and to license others to establish and operate, NITELITES Franchises at any location outside the Protected Territory;
2. To establish and operate, and to license others to establish and operate, other businesses for the sale of products or provision of services, other than those services described herein, including but not limited to, low voltage products and services, using other trademarks, service marks and commercial symbols at any location both within and outside the Protected Territory;
3. To sell or otherwise distribute, both within and outside the Protected Territory, products and/or services similar to those offered through the Franchised Business through alternate channels of distribution (other than franchised outlets, but including e-commerce, direct mail, retail outlets wholesale and distribution, and catalog sales) under terms and conditions that Franchisor deems appropriate; and
4. To engage in any activities not expressly forbidden by this agreement.

### **A. National Accounts**

If Franchisor contracts with a major purchaser such as a national or regional chain ("National Account") to distribute and install NITELITES Products and Equipment for a location within the Protected Territory, Franchisor reserves the right to engage or contract with individuals or entities other than Franchisee ("third parties"), to perform installation and service for the National Account; provided, however, if Franchisee is in compliance with this agreement, Franchisee shall have a right of first refusal to perform the installation and services for the National Account located within the Protected Territory at the cost equivalent (all terms and conditions subject to consideration)

contained in the Franchisor's third-party contract. Upon Franchisor's development of a proposal with a third-party to perform installation and services for a National Account located within the Protected Territory, Franchisor shall provide a notice along with a copy of the third party proposal to Franchisee. Franchisee shall be required within five (5) business days [Monday through Friday] to exercise its right of first refusal to perform the installation and services at the same price and on the same terms and conditions as contained in the notice of the third party proposal. Franchisee's notice of its right of first refusal to perform, pursuant to this section, must be in writing to be effective. If Franchisee exercises its right of first refusal, Franchisor shall contract with Franchisee for the installation and services for Franchisor's National Account within the Protected Territory. If Franchisee fails to exercise its right of first refusal within the time allotted or if Franchisee waives its right of first refusal, Franchisor may proceed with the proposed third party contract according to the original stated terms. If the price or any other terms and conditions differ in any material respect from those set forth in the proposed contract (in which case such changes shall constitute a new proposed contract) Franchisee's right of first refusal is reinstated. In the event, Franchisee fails to exercise its right of first refusal within the allotted time, or waives its right of first refusal, then NITELITES may service its National Accounts, in its Business Judgment, and such shall not constitute a breach of this agreement.

#### **B. Acquisition of Competing System**

Franchisor may own, acquire, establish and/or operate, and license others to establish and operate, businesses under other proprietary marks and other systems, whether such businesses are similar to or different from franchises operating under the Operating System, at any location within or outside the Protected Territory. Provided that Franchisee is in compliance with this agreement and any other agreement with Franchisor or any Affiliate, if, during the term of this agreement, Franchisor acquires a system of Competitive Businesses (an "Acquired System"), the following terms shall apply:

Franchisor shall offer Franchisee the option to purchase and operate, as NITELITES Franchise, any unit of the Acquired System (an "Acquired Unit") that is both purchased by Franchisor for operation by Franchisor or an Affiliate (e.g., the unit will not be operated by a licensee of the Acquired System) and is located within the Protected Territory. Franchisor shall provide Franchisee with written notice of Franchisor's purchase of the Acquired System, the terms and conditions applicable to Franchisee's option to purchase the Acquired Unit(s), and such other information that Franchisor deems necessary to include in the notice. The terms and conditions offered to Franchisee shall include the following: (i) the purchase price will reflect Franchisor's purchase costs of the Acquired Unit, including a per-unit allocation of Franchisor's costs in purchasing the Acquired System; and (ii) the requirement that Franchisee enter into Franchisor's then-current form of NITELITES franchise agreement for the Acquired Unit, provided that Franchisee shall not be required to pay an initial franchisee fee for an Acquired Unit. If Franchisee does not elect to purchase, or fails to complete the purchase of, an Acquired Unit, Franchisor shall have the right to operate itself, or through an Affiliate or third party licensee, the Acquired Unit under any trade name or trademark other than the Marks.

Franchisee has no right to purchase, and Franchisor is not obligated to offer Franchisee any option to purchase, any Acquired Unit that is operated by a licensee under the Acquired System. Franchisor may license such unit to be operated under any trade name or trademarks other than the Marks, and may also license additional units of the Acquired System to be developed and operated within the Protected Territory.

For any Acquired Unit that is located within the Protected Territory, but which either (a) Franchisee does not purchase as provided in section 2.G.1 above, or (b) is not offered for sale to

Franchisee in accordance with section 2.G.2 above, then for a period of two (2) years following the date of Franchisor’s purchase of the Acquired System, Franchisor shall pay Franchisee a reverse royalty in an amount equal to two percent (2%) of the Gross Sales for the preceding quarter of (i) the Acquired Unit(s) and (ii) any additional units of the Acquired System in operation during the two-year period, which are located within the Protected Territory. Franchisor shall make such distributions to Franchisee on the twentieth (20th) day of the month immediately following each quarterly period.

**3. FEES**

Franchisee agrees to pay Franchisor the following fees and amounts at the times specified herein:

**A. Franchise Fee**

1. Franchisee shall pay Franchisor a Franchise Fee as follow:

Class Number	Population	Initial Franchise Fee
1*	500,001 – 1,000,000	\$19,995
2	1,000,001 – 1,500,000	\$27,495
3	1,500,001 – 2,000,000	\$34,995
4	2,000,001 – up to 3,000,000	\$42,995
SM**	0 – 500,000	\$14,995

\*Class 1 with a population between 500,001 – 1,000,000 is the standard territory size that we offer.

\*\* A Small Market class has a population of less than 500,000 in the immediate geographic area.

2. Protected Territory. Population figures will be based upon the most recent available U.S. Census data at the time the Protected Territory is designated, as stated above. The Franchise Fee may be discounted by fifty percent (50%) upon continued payment of a Fix Royalty Fee at rate of two (2) times the standard Fix Royalty stated herein below. The Franchise Fee is deemed fully-earned and due upon the execution of this agreement, is nonrefundable, except under the conditions described in section 9.B, and is payable by bank, certified or cashier’s check. The Franchise Fee is payment, in part, for expenses incurred by Franchisor in furnishing assistance and services to Franchisee as set forth in this agreement and for costs incurred by Franchisor, including general sales and marketing expenses, training, legal, accounting and other professional fees.

3. If Franchisee meets Franchisor’s credit standards, Franchisor may, in its Business Judgment, agree to finance a portion of the Franchise Fee (the “Amount Financed”) upon the terms described in this paragraph. Simultaneously with Franchisee’s execution of this agreement, Franchisee shall execute and deliver to Franchisor a promissory note in a form satisfactory to Franchisor (the “Installment Note”) for the Amount Financed and pay the balance of the Franchise Fee by bank, certified or cashier’s check. The Installment Note will bear interest and will be payable in equal monthly installments of principal and interest as described in the table below. The first installment will be due on the earlier of the 15th day of the first full calendar month after the Franchised Business begins operating, or six (6) months after the Effective Date, with succeeding installments due on the 15th day of each month thereafter until paid in full. If Franchisee is a Business Organization, each Principal of Franchisee must personally guaranty all of Franchisee’s obligations under the Installment Note.

Amount Financed	Term	Annual Interest Rate
Up to 25% of Franchise Fee	24 months	9%
Up to 50% of Franchise Fee	36 months	10½%

**B. Initial Inventory Package Fee**

Franchisee shall pay Franchisor or its Affiliate, before opening the Franchised Business, a one-time Initial Inventory Package Fee to purchase an Initial Inventory of NITELITES Products and Equipment as described in further detail in section 5.D.

**C. Start-up Kit Fee**

Franchisee shall pay Franchisor or its Affiliate, before opening the Franchised Business, a one-time Start-up Kit Fee to purchase a Start-up Kit, including a product demonstration kit, tools, vehicle graphics package, trade show display, uniforms and other ancillary supplies as described in further detail in section 5.E.

**D. Fixed Royalty Fee**

1. After opening the Franchised Business, solely in consideration of Franchisee’s continued right to use the Marks, Franchisee shall pay Franchisor, on or before the 15th of each month a Fix Royalty Fee equal to five percent (5%) of the Gross Sales or the Minimum Royalty, whichever is greater as stated below:

Fiscal Year (See Note4)	Royalty Fee Amount
1	\$750/ month
2	\$1,250/ month
3 and every year there after	\$1,500/ Month

Franchised Business with Small Territories of populations less than 500,000 are not subject to the Minimum Royalty Fee. Small Territory Franchised Businesses shall pay a Standard Royalty Fee of 5% on Gross Revenues.

2. “Fiscal Year” means the 12-month period from January 1 through December 31. The first Fiscal Year will be the Fiscal Year beginning on January 1 after you open the Franchised Business.

**A. Marketing Fund Contribution**

After the commencement of the Franchised Business, Franchisee shall pay to the NITELITES Marketing Fund established two percent (2%) of Franchisee’s Wholesale Product Purchases immediately due and payable upon the purchase of such said Wholesale Product Purchases. All Marketing Fund Contributions must be paid in accordance with the electronic transfer provision in section 3.J, and maintained and administered by Franchisor or its designee in accordance with section 10. The Marketing Fund Contribution may be collected by an Affiliate of Franchisor in Franchisor’s Business Judgment.

## **B. Internet Marketing Fee**

Franchisee shall pay Franchisor an Internet Marketing Fee as directed by Franchisor or as set forth in the Manual. The Internet Marketing Fee must be paid in accordance with the electronic transfer provision as set forth in section 3.J. Franchisor has the right, in its Business Judgment, from time to time to adjust the amount of the Internet Marketing Fee. The current Internet Marketing Fee is Two Hundred Seventy-Five Dollars (\$275.00) per one-half (½) year billed in February and August of each year. Franchisee shall pay Franchisor an administrative late fee of \$25.00 for each Internet Marketing Fee payment received by Franchisor more than five (5) days after its due date.

## **C. Call Center Service Fee**

Franchisee shall pay to Franchisor a Call Center Service Fee as directed by Franchisor or as set forth in the Manual. Franchisee shall also execute a Call Center Service Agreement simultaneously with Franchisee's execution of this agreement. The Call Center Service Fee must be paid in accordance with the electronic transfer provision as set forth in section 3.J. Franchisor has the right, in its Business Judgment, to adjust the amount of the Call Center Service Fee. Franchisee is responsible for any and all applicable long distance fees associated with forwarding calls to Franchisor's call center. The Call Center Service Fee does not include any outbound telemarketing for Franchisee.

## **D. Accounting Service Agreement**

Franchisee shall execute an accounting service agreement as required by Franchisor or any other approved record and accountant service agreement designated by Franchisor. Franchisee agrees that Franchisor has no liability to Franchisee or any other person for any damages, costs or expenses caused by third party services contemplated hereunder. The obligations of Books and Reports as stated in section 11 herein, shall be sole responsibility of the Franchisee. Franchisor's rendering of the Account Services in no way alters or negates Franchisee's obligations and responsibilities as stated in section 11 of this agreement.

## **E. Taxes**

1. If any amounts payable by Franchisee to Franchisor are subject to withholding or other taxes that Franchisee is required to deduct from the payments, Franchisee shall promptly deliver to Franchisor at the time of payment all receipts of applicable governmental authorities for all such taxes withheld or paid. If Franchisee or any other Person is required by any law or regulation to make any deduction or withholding (on account of tax or otherwise) from any payment for the account of Franchisor or Franchisor's Affiliates, Franchisee shall, at Franchisor's option, either:

a. together with such payment, pay such additional amount as will ensure that Franchisor or Franchisor's Affiliates receive (free and clear of any tax or other deductions or withholding) the full amount which it would have received if no such deduction or withholding had been required; or

b. make such payment having taken into account the relevant deduction or withholding (on account of tax or otherwise).

2. Franchisee shall ensure that withholding or other taxes that Franchisee is required to deduct from amounts payable by Franchisee to Franchisor under this agreement are paid to the relevant taxation authority on the same date as the amounts payable by Franchisee to Franchisor under this agreement are paid to Franchisor.

3. Franchisee is responsible for and shall indemnify and hold harmless Franchisor and Franchisor's Affiliates against any penalties, interest and expenses incurred by or assessed against Franchisor or Franchisor's Affiliates as a result of Franchisee's failure to withhold such taxes or to timely remit them to the appropriate taxing authority.

4. Franchisee shall fully and promptly cooperate with and assist Franchisor to provide all information and records Franchisor may request in connection with any application by Franchisor to any taxing authority with respect to tax credits, exemptions or refunds available for any withholding or other taxes paid or payable by Franchisee.

5. If Franchisor is required to refund to Franchisee any amounts paid hereunder, Franchisor will not be required to refund that portion of those amounts that were withheld by Franchisee in order to comply with any applicable tax law unless and until Franchisor receives a refund of those amounts from the applicable government or agency thereof or uses a foreign tax credit which is directly attributable to those amounts on its income or with respect to which the period within which the credit may be reduced or disallowed has expired.

#### **F. Interest**

All monthly Fixed Royalty Fees, Marketing Fund Contributions, Internet Marketing Fees, Call Center Service Fees, amounts due Franchisor or its Affiliate for purchases by Franchisee, and other amounts due Franchisor or its Affiliate, that are not received by Franchisor within five (5) days after the due date, shall, in addition to any late fee provided elsewhere in this agreement or in any other agreement, bear interest at the highest applicable rate permitted by law not to exceed one and one-half percent (1.5%) per month. Franchisee acknowledges that this section shall not constitute an agreement by Franchisor or any Affiliate to accept any payments after they are due or a commitment by Franchisor to extend credit to or otherwise finance the operation of the Franchised Business. Further, Franchisee acknowledges that its failure to pay all amounts when due shall also constitute grounds for termination as provided in section 17.

#### **G. Electronic Transfer**

Franchisor may require that monthly Fixed Royalty Fees, Marketing Fund Contributions, Internet Marketing Fees, Call Center Service Fees, amounts due Franchisor or its Affiliate for purchases by Franchisee, and other amounts that Franchisee owes Franchisor or its Affiliate, all be paid through an Electronic Depository Transfer Account established at a national banking institution approved by Franchisor. Upon request, Franchisee shall establish the account providing for electronic funds transfer as approved by Franchisor, and Franchisor shall have access to such account for the purpose of receiving payment of any amounts that Franchisee owes Franchisor or its Affiliate. Franchisee shall execute any documents as Franchisor's or Franchisee's bank requires to establish and implement the Electronic Depository Transfer Account. Once established, Franchisee shall deposit funds sufficient to meet its obligations to Franchisor and may not close the Electronic Depository Transfer Account without Franchisor's consent. Every week, Franchisee shall make deposits to the account sufficient to cover amounts owed to Franchisor or its Affiliate. If Franchisee has not timely reported Franchisee's Gross Sales to Franchisor for any reporting period, then Franchisor is hereby authorized by Franchisee to debit the Electronic Depository Transfer Account an amount equal to 150% of the Marketing Fund Contribution payable by Franchisee for the last reporting period for which Franchisor received a Sales Report. Nothing in this paragraph is to be construed to waive Franchisee's obligations to submit any reports, records or other materials required by this agreement.

## **H. Application of Payments**

Notwithstanding any designation by Franchisee, Franchisor may apply any payments by Franchisee to any past due indebtedness of Franchisee for Marketing Fund Contributions, purchases from Franchisor or any Affiliate, interest or any other indebtedness.

### **4. TERM AND RENEWAL**

#### **A. Initial Term**

This agreement is effective and binding for an initial term of five (5) years from the Execution Date, unless sooner terminated under section 17.

#### **B. Renewal Term**

Franchisee has the right to renew the Franchise at the expiration of the initial term of the Franchise for two (2) additional successive terms of five (5) years each, provided that all of the following conditions have been fulfilled and remain true as of the last day of the initial term and each renewal term of this agreement:

1. Franchisee has, during the entire term of this agreement, substantially complied with all its provisions and is not in default at time of renewal;

2. Franchisee has access to and the right to remain in possession of the Franchise Premises, or a suitable substitute location, which is in compliance with Franchisor's then-current specifications and standards for the duration of the renewal term;

3. Franchisee has given notice to Franchisor of its decision to renew not less than nine (9) months nor more than twelve (12) months before the end of the initial term in accordance with section 4.C;

4. Franchisee has executed Franchisor's then-current form of the Franchise Agreement or has executed renewal documents at Franchisor's election (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise), which Franchise Agreement shall supersede this agreement in all respects, and the terms of which may differ from the terms of this agreement including a different Marketing Fund Contribution; provided, however, Franchisee shall not be required to pay the then-current initial Franchise Fee or its equivalent;

5. Franchisee has, at its expense, made such capital expenditures as were necessary to maintain uniformity with any Franchisor required Operating System modifications in accordance with section 12.B, such that the Franchised Business reflects Franchisor's then-current standards and specifications;

6. Franchisee has complied with Franchisor's then-current qualifications for a new franchisee and any training requirements;

7. Unless prohibited by the law of the state where the Franchised Business is located, Franchisee has executed a General Release; and

8. Franchisee has satisfied all monetary obligations owed by Franchisee to Franchisor, or any Affiliate of Franchisor, and has timely met these obligations throughout the term of this agreement.

### **C. Notice**

If Franchisee desires to obtain a successor franchise at the expiration of this agreement, Franchisee shall give Franchisor written notice of its desire to renew at least nine (9) months, but not more than twelve (12) months, prior to the expiration of the initial term of this agreement. Within thirty (30) days after its receipt of such timely notice, Franchisor shall furnish Franchisee with written notice of Franchisee's right to obtain a successor franchise. If, during the term of this agreement, Franchisee has failed to substantially comply with this agreement, Franchisor may refuse to grant Franchisee a successor franchise. If Franchisor determines that Franchisee is not eligible to obtain a successor franchise, but that the nature of the noncompliance may be cured so that Franchisor is willing to consider granting Franchisee a successor franchise, Franchisor will notify Franchisee accordingly. Franchisee will be eligible for a successor franchise if Franchisee has cured the noncompliance within thirty (30) days of Franchisor's notice of noncompliance to Franchisee.

### **D. Continued Operation Following Expiration**

Franchisee has no right to continue to operate the Franchised Business after the expiration of the initial term of this agreement. Without waiving any rights or remedies it may have, Franchisor may permit Franchisee to continue to temporarily operate the Franchised Business after the expiration of the initial term but before the execution by Franchisee of a new Franchise Agreement for a renewal term as required by section 4.B.4 above, in which case the temporary continuation of the Franchised Business will be on a month-to-month basis, and will be terminable at the will of Franchisor by giving Franchisee written notice of termination at least thirty days before the termination is effective. If the laws of the jurisdiction in which Franchisee or the Franchised Business are located require a longer notice period, the thirty-day period will be deemed modified to be the shortest notice period required by the laws of such jurisdiction.

## **5. FRANCHISE PREMISES**

### **A. Selection of Franchise Premises**

Franchisee shall lease, purchase or otherwise secure suitable Franchise Premises for the operation of the Franchised Business. The Franchise Premises must be located within Franchisee's Protected Territory. Franchisee may operate the Franchised Business from Franchisee's residence (whether or not Franchisee resides within Franchisee's Protected Territory) if permitted by, and so long as Franchisee fully complies with, all applicable building, zoning and licensing laws, ordinances, requirements and restrictions. If Franchisee resides outside of Franchisee's Protected Territory, Franchisee must obtain, prior to opening the Franchised Business, and maintain at all times during the term of this agreement, a mailing address located within the Protected Territory. Franchisee shall provide Franchisor with the address of the Franchise Premises prior to opening the Franchised Business, and shall notify Franchisor promptly of any change in the location of the Franchise Premises.

### **B. Lease of Franchise Premises**

If Franchisee leases the Franchise Premises, Franchisee shall submit a copy of the proposed lease to Franchisor for its approval before Franchisee executes the lease. Franchisor may not unreasonably withhold its approval. Franchisor is entitled to require that nothing in the lease is contradictory to, or likely to interfere with, Franchisor's rights or Franchisee's duties under this agreement. Franchisee shall take all actions necessary to maintain the lease of the Franchise Premises in effect while this agreement is in effect. Any default for which the lease may be terminated will also be a default under this agreement, and the time to cure the default shall expire when the lease is terminated. Franchisor

may require that the lease for the Franchise Premises be collaterally assigned by Franchisee to Franchisor to secure the performance by Franchisee of its obligations under this agreement. Franchisor's review of any lease or any advice or recommendations offered by Franchisor does not constitute a representation or guarantee that Franchisee will succeed at the Franchise Premises nor an expression of Franchisor's opinion regarding the terms of the lease. Franchisor's approval of the lease will be conditioned upon inclusion in the lease of terms acceptable to Franchisor and the lease must contain such provisions as Franchisor may reasonably require, including:

1. A provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the Franchise grant;

2. A provision which expressly permits the lessor of the premises to provide Franchisor all sales and other information lessor may have obtained or received relating to the operation of the Franchised Business, as Franchisor may request;

3. A provision that requires the lessor concurrently to provide Franchisor with a copy of any written notice of deficiency under the lease sent to Franchisee and which grants to Franchisor, in its sole discretion and sole option, the right (but not the obligation) to cure any deficiency under the lease should Franchisee fail to do so within fifteen (15) days after the expiration of the period in which Franchisee may cure the default;

4. A provision which evidences the right of Franchisee to display the Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;

5. A provision that the premises shall be used only for the operation of the Franchised Business;

6. A provision which expressly states that any default under the lease shall constitute a default under this agreement, and any default under this agreement shall constitute a default under the lease; and

7. A provision which states that upon default of this agreement and in accordance with this agreement, Franchisor or its nominee may take possession of the premises and operate the Franchised Business.

### **C. Development of Franchise Premises**

Once Franchisor and Franchisee have agreed upon the site and designated the Franchise Premises, its development is to be conducted as more particularly described below:

1. Obtain all permits and licenses for the installation of fixtures and equipment in, and any improvements to, the Franchise Premises, including those required by applicable zoning, access, safety, environmental, building, utility, sign, health, sanitation and business laws, rules, ordinances and regulations;

2. Purchase or lease service vehicles and the equipment and tools to outfit such vehicles according to Franchisor's specifications and requirements;

3. Purchase and install the required vehicle signs, computer hardware and software, furniture, fixtures, tools, and equipment according to Franchisor's plans and specifications for equipping the Franchised Business;

4. Construct all required improvements;
5. Purchase sufficient office supplies and materials as may be prescribed by Franchisor;
6. Obtain a telephone number solely dedicated to the Franchised Business. The telephone number shall be listed in telephone directories only under an address or other location within Franchisee's Protected Territory. Franchisor has the sole right and interest in all telephone numbers and directory listings used in connection with Franchisor's Marks. If Franchisee's rights to use the Operating System are terminated, Franchisee must transfer the telephone number to Franchisor or Franchisor's designee. Franchisee may not disconnect, transfer, or assign any telephone number used in connection with the Operating System to any Person without Franchisor's written consent; and
7. Satisfactorily complete initial training as prescribed in section 9.A.

#### **D. Initial Inventory Package**

Before opening the Franchised Business, Franchisee shall purchase from Franchisor or its Affiliate, and install at the Franchise Premises, an initial inventory of NITELITES Products and Equipment ("Initial Inventory Package"). The Initial Inventory Package contains necessary NITELITES Products and Equipment including transformers, fixtures, LED lighting systems, and the like, which Franchisee will utilize for sales demonstration and display purposes. Franchisor may stipulate and mandate, in its sole discretion, the size and composition of the initial inventory. The exact size and composition of the Initial Inventory Package and corresponding Initial Inventory Package Fee will vary depending on such factors as the amount of available storage space within the Franchise Premises, the number and character of National Accounts Franchisee services and other like factors.

#### **E. Start-up Kit**

Prior to commencing operation of the Franchised Business, Franchisee agrees to purchase from Franchisor or its Affiliate a package of supplies and other items necessary for the operation of the Franchised Business ("Start-up Kit"). The Start-up Kit consists of a product demonstration kit, tools, vehicle graphics package, trade show display, uniforms and other supplies to be utilized in the operation of the Franchised Business. Franchisor may stipulate and mandate, in its sole discretion, the size and composition of the Start-up Kit. The exact size and composition of the Start-up Kit and corresponding Start-up Kit Fee will vary depending on such factors as the amount of available storage space within the Franchise Premises, the number and character of National Accounts Franchisee services and other like factors.

#### **F. Opening**

Franchisee may not open the Franchised Business and commence operations until:

1. All of the obligations pursuant to the other provisions of section 4.D have been fulfilled;
2. Franchisee has satisfactorily completed initial training as described in section 9.A;
3. Franchisee has furnished Franchisor with evidence satisfactory to Franchisor that all required building, utility, sign, health, sanitation, safety, environmental, business and other permits and licenses have been obtained from any applicable governmental authority, including any

certificate of occupancy, lien waiver from general and/or subcontractors and approvals necessary to operate the Franchised Business;

4. Franchisor has been furnished with copies of all insurance policies required by this agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor may request as described in section 15;

5. Franchisee has paid in full all amounts due to Franchisor; and

6. Franchisee shall comply with these conditions and be prepared to open and continuously operate the Franchised Business no later than six (6) months from the Effective Date. Time is of the essence.

#### **G. Destruction of Franchise Premises; Relocation**

Franchisee may operate the Franchised Business only at the Franchise Premises. If the lease for the site of the Franchise Premises expires or terminates without fault of Franchisee or is otherwise rendered unusable or as otherwise may be agreed upon in writing by Franchisor and Franchisee, Franchisee shall relocate the Franchised Business to a new location within thirty (30) days. Any such relocation shall be at Franchisee's sole expense and Franchisor shall have the right to charge Franchisee for any costs incurred by Franchisor including legal and accounting fees incurred in providing assistance to Franchisee. Notwithstanding the foregoing, Franchisor is under no obligation to provide relocation assistance if Franchisee relocates the Franchised Business in accordance with the terms of this section 4.D. If the site of the Franchised Business is rendered unusable and Franchisee fails to relocate the Franchised Business to a substitute site within thirty (30) days, this agreement will terminate as provided in section 17.B.

#### **H. Administration of the Franchised Business**

Subject to local zoning rules and local ordinances, Franchisee may manage and administer the Franchised Business from an office located within Franchisee's principal residence or another location suitable for such purposes. Franchisee shall have sole responsibility for access to facilities necessary for the management and administration of the Franchised Business. If the Franchised Business is managed from a residential office, Franchisee will be required to obtain dedicated telephone and fax lines and an e-mail address, which are solely dedicated to the purpose of managing the Franchised Business.

### **6. MARKS**

#### **A. Ownership**

Franchisee acknowledges that its right to use the Marks is derived solely from this agreement, is nonexclusive and is limited to the conduct of business by Franchisee pursuant to and in compliance with this agreement and all applicable standards, specifications and operating procedures prescribed by Franchisor. Franchisee agrees that its every use of the Marks and any goodwill created shall inure to the benefit of Franchisor and that Franchisee shall not at any time acquire rights in the Marks by virtue of any use it may make of the Marks. This agreement does not confer any goodwill, right, title or interest in the Marks to Franchisee.

### **B. Limitations on Franchisee's Use of Marks**

Franchisee shall not use any Mark or portion of any Mark as part of any corporate or trade name, with any prefix, suffix or other modifying words, terms, designs or symbols or in any modified form, without the prior written consent of Franchisor. Franchisee shall not use any Mark in connection with the sale of any unauthorized service or product or in any other manner not expressly authorized in writing by Franchisor. All photographs, images, or other depictions created by Franchisee, or its agent, contractors, or assigns become the sole property of Franchisor. To wit, Franchisee gives up all rights to the photos. All work installed by NiteLites Franchisee becomes the intellectual property of Franchisor and is in no way to be reproduced or distributed, or any derivative thereof, without Franchisor's written permission. Franchisee shall not, at any time during the term of this agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other Person in contesting the validity or ownership of any of the Marks. Franchisee agrees it will not register or seek to register as a trademark or service mark, either with the United States Patent and Trademark Office or any state or foreign country, any of the Marks or a trademark or service mark that is confusingly similar to any Mark licensed to Franchisee.

### **C. Notification of Infringements and Claims**

Franchisee shall immediately notify Franchisor of any infringement of the Marks or challenge to its use of any of the Marks or claim by any Person of any rights in any of the Marks. Franchisee agrees that Franchisee will not communicate with any Person other than Franchisor and Franchisor's counsel in connection with any such infringement, challenge or claim; provided, however, Franchisee may communicate with its own independent counsel at its own expense. Franchisor shall have sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge, or claim or otherwise relating to any of the Marks. Franchisee agrees to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of Franchisor's counsel, be necessary or advisable to protect and maintain Franchisor's interests in any such litigation or other proceeding or to otherwise protect and maintain Franchisor's interest in the Marks. At Franchisor's option, Franchisor or its designee may defend and control the defense of any proceeding arising directly from Franchisee's use of any Mark.

### **D. Right of Inspection**

In order to preserve the validity and integrity of the Marks licensed herein and to ensure that Franchisee is properly employing the Marks in the operation of the Franchised Business, Franchisor and its agents shall have the right of entry and inspection of the Franchise Premises at all reasonable times and, additionally, shall have the right to observe the manner in which Franchisee is rendering its services and conducting its activities and operations and to inspect inventory, equipment, accessories, products, supplies, reports, forms and documents and related data to make certain that the Franchised Business is being operated in accordance with the quality control provisions and performance standards established by Franchisor.

### **E. Discontinuance of Use of Marks**

Should it become necessary, in Franchisor's sole Business Judgment, for Franchisee to modify or discontinue use of any of the Marks or other commercial symbols, Franchisee shall, upon receiving written notice from Franchisor, immediately modify or discontinue use of any Marks and adopt any such modified or substitute trademark or trade name as Franchisor may require. Franchisor shall not be required to reimburse Franchisee for its expenses in modifying or discontinuing the use of a Mark

or any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by Franchisee to promote a modified or substitute trademark or service mark.

#### **F. Franchisor's Sole Right to Domain Name and Social Media Accounts**

Franchisee shall not establish an Internet site, social media account, or other internet account or site using a domain name or uniform resource locator containing the words "NITELITES" or any variation thereof without prior written consent from Franchisor. All Franchised Business email communication must be sent to, communicated from, and received using the email account and address established and furnished by Franchisor. Franchisee shall not use or publish any other email address other than the one furnished by Franchisor. Franchisor retains the sole right to advertise on the Internet and create a website and social media accounts using the "NITELITES" domain name. Franchisee acknowledges that as between Franchisor and Franchisee, Franchisor is the owner of all right, title and interest in and to such domain names and social media accounts as Franchisor shall designate in the Manual.

### **7. CONFIDENTIAL INFORMATION**

#### **A. Requirement of Confidentiality**

Franchisor shall disclose Confidential Information to Franchisee in the training program, the Manual and in guidance furnished to Franchisee during the term of this agreement. Franchisee shall not acquire any interest in the Confidential Information, other than the right to utilize it in performing its duties and obligations pursuant to and during the term of this agreement, and Franchisee acknowledges that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. Franchisee acknowledges and agrees that the Confidential Information is proprietary, includes Franchisor's trade secrets, and is disclosed to Franchisee solely on the condition that Franchisee (and its legal and beneficial owners, including Principals, officers, managers or trustees, if Franchisee is a Business Organization) does hereby agree that it: (a) shall not use the Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Confidential Information during and after the term of this agreement; (c) shall not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information. Franchisee agrees to enforce the preceding provisions of this section as to its employees, agents, representatives and prospective purchasers of the Franchised Business, and shall be liable to Franchisor for any unauthorized disclosure or use of Confidential Information by any of them.

#### **B. Improvements Developed by Franchisee**

All ideas, concepts, techniques or materials concerning the Franchised Business, whether or not protectable intellectual property and whether created by or for Franchisee or its Principals or employees, must be promptly disclosed to Franchisor and will be deemed the sole and exclusive property of Franchisor, may be made part of the Operating System and shall be considered works made-for-hire for Franchisor, and no compensation will be due to Franchisee or its Principals or employees therefor. To the extent that any item does not qualify as a "work made-for-hire" for Franchisor, Franchisee shall assign ownership of that item, and all related rights to that item, to Franchisor and must sign whatever assignment or other documents Franchisor requests to show Franchisor's ownership or to assist Franchisor in obtaining intellectual property rights in the item.

Likewise, Franchisor agrees to disclose to Franchisee ideas, concepts, techniques or materials developed by other franchisees, which are made a part of the Operating System.

### **C. Exclusive Relationship**

Franchisee specifically acknowledges and agrees that Franchisor would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among NITELITES Franchisees, if owners of Franchised Businesses, and members of their immediate families or households were permitted to hold interest in or perform services for any Competitive Business. Franchisee, therefore, agrees that during the term of this agreement, neither Franchisee nor any member of its immediate family or household or any holder of a legal or beneficial interest in Franchisee will: (a) have any direct or indirect Ownership Interest in any Competitive Business located or operating anywhere in the world; or (b) perform services as a director, officer, manager, employee, trustee, consultant, representative, agent or otherwise for any Competitive Business or any entity which is granting franchises or licenses to others to operate a Competitive Business located or operating anywhere in the world.

### **D. Third Party Nondisclosure**

Franchisee shall require each of its management and professional staff and, if Franchisee is a business entity, each of its shareholders, officers, directors, partners, members, managers, employees, trustees or professional staff, to execute a nondisclosure and non-competition agreement in a form approved by Franchisor at the time this agreement is executed or prior to such persons becoming shareholders, officers, partners, directors, members, managers, employees, trustees or professional staff, whichever is earlier. Franchisee shall require each prospective purchaser of the Franchised Business, of the license granted under this agreement, or of any interest in Franchisee, before disclosing any confidential information to such Person, to execute a nondisclosure and confidentiality agreement, in a form approved by Franchisor, requiring that all proprietary or confidential information that may be disclosed to such Person in connection with his or her investigation of Franchisee or the Franchised Business will be held in strict confidence and used solely to evaluate the contemplated transaction. Franchisor shall be a third party beneficiary with the right to enforce the covenants contained in such agreements.

### **E. Injunctive Relief**

As any breach by Franchisee of any of the covenants contained in this section would result in irreparable injury to Franchisor, and as the damages arising out of any such breach would be difficult to ascertain, Franchisee agrees that, in addition to all other remedies provided by law or in equity, Franchisor shall be entitled to seek an injunction against any such breach, whether actual or contemplated.

### **F. Disclosure of Information About Franchisee**

Franchisee acknowledges that Franchisor may from time to time be required or find it necessary to disclose to third parties certain information about Franchisee and Franchisee's Principals, including personally identifiable information such as names, addresses, and telephone numbers, and information collected by Franchisor under this agreement. Franchisee hereby consents to Franchisor's collection, use and disclosure of any information pertaining to the Franchised Business (including personally identifiable information of Franchisee and Franchisee's Principals) for Franchisor's reasonable business purposes and for any purpose described in Franchisor's privacy policy (as may be amended from time to time), subject to the limitations of this paragraph. Without limiting the generality of the foregoing sentence, Franchisee hereby consents to: (i) the collection,

use and disclosure of any information about Franchisee and Franchisee's Principals (including personally identifiable information) to develop, modify and enhance the System, to conduct credit checks or other personal history investigations, to develop general franchisee profiles, to comply with federal and state Franchise Laws, and to otherwise comply with any applicable law; (ii) the transfer of any information (including personally identifiable information) to any third party in order for Franchisor to fulfill its obligations under this agreement or attempt to obtain any benefit for Franchisor, Franchisee, other NITELITES Franchisees, or the NITELITES Network as a whole; and (iii) the release to Franchisee's landlord, lenders or prospective landlords or lenders, of any financial or operational information relating to Franchisee and/or the Franchised Business (without obligating Franchisor to do so). Franchisor shall protect confidential data and personally identifiable information of Franchisee's employees and customers. If Franchisor discloses financial information of Franchisee in a Franchise Disclosure Document, Franchisor shall not identify Franchisee or disclose any personally identifiable information of Franchisee in connection with the financial information. "Personally identifiable information" is any information about a Person that can be used to uniquely identify, contact or locate the Person.

## **8. MANUAL**

### **A. Operation in Conformity with Manual**

While this agreement is in effect, Franchisor give Franchisee electronic access to view the Manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by Franchisor and information relative to other obligations of Franchisee. Franchisee agrees to conduct the Franchised Business strictly in accordance with all of the provisions set forth in the Manual. The Manual may consist of one (1) or more separate manuals and other materials as designated by Franchisor and may be in written or electronic form.

### **B. Revisions of Manual**

Franchisor shall have the right to add to and otherwise modify the Manual from time to time; provided, however, that no such addition or modification shall alter Franchisee's fundamental status and rights under this agreement. Franchisor may make such additions or modifications without prior notice to Franchisee. Franchisee shall immediately, upon notice, adopt any such changes.

### **C. Confidentiality of Manual**

The Manual contains proprietary information and certain Confidential Information of Franchisor. Franchisee agrees to maintain confidentiality both during the term of this agreement and subsequent to the expiration or termination of the Franchise. Franchisee shall not grant any unauthorized access, make any disclosure, duplication or other unauthorized use of any portion of the Manual. At all times, Franchisee shall only grant authorized personnel access to the Manual and any pass code, identification information for access to the Manual. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's headquarters shall be controlling.

### **D. Ownership of Manual**

The Manual shall, at all times, remain the sole property of Franchisor and shall promptly be returned upon the expiration or termination of this agreement.

## **9. TRAINING AND OPERATIONS ASSISTANCE**

### **A. Initial Training**

Franchisor shall make an initial training program available to Franchisee (or, if Franchisee is a corporation, limited liability company, partnership, business trust or other business entity, its Designated Manager) and up to one (1) assistant. Before opening the Franchised Business, Franchisee (or its Designated Manager, if applicable) must attend and successfully complete, to Franchisor's satisfaction, an initial training program consisting of approximately one (1) week of classroom and on-the-job instruction pertaining to the operation of the Franchised Business including administrative, operational, sales/marketing matters, financial controls, other management and operational techniques and maintenance of quality standards. Franchisor shall conduct the initial training program at such facility or facilities as Franchisor may designate from time to time. Franchisor shall not charge tuition or similar fees for initial training; however, all expenses incurred by Franchisee in attending such program including travel costs, room and board expenses and employees' salaries, if applicable, shall be the sole responsibility of Franchisee. Franchisee shall be responsible for training its management and other employees.

### **B. Failure to Complete Initial Training Program**

If Franchisor determines, in its sole Business Judgment, that Franchisee is unable to satisfactorily complete initial training described above, Franchisor shall have the right to terminate this agreement. If this agreement is terminated pursuant to this section 9.B, Franchisor shall refund to Franchisee fifty percent (50%) of the Franchise Fee paid by Franchisee pursuant to section 3.A. Upon the refund of said amount, Franchisor shall be fully and forever released from any claims or causes of action Franchisee may have under or pursuant to this agreement, except to the extent prohibited by the laws of the state where the Franchised Business is located. In the event Franchisee is a business entity and the Designated Manager of the Franchised Business fails to complete the initial training program to Franchisor's reasonable satisfaction, in Franchisor's sole Business Judgment, Franchisee may be permitted to select a substitute manager and such substitute manager must complete the initial training to Franchisor's reasonable satisfaction. Franchisee may be required to pay Franchisor's then-current rates for additional training, if any, for providing an initial training program for such substitute manager.

### **C. New Designated Manager**

If, after beginning operations, Franchisee names a new Designated Manager, the new Designated Manager must complete the initial training program to Franchisor's satisfaction within sixty (60) days. Franchisee will be solely responsible for all travel and living expenses as well as any salary expenses incurred by Franchisee in sending a new Designated Manager to attend Franchisor's initial training program. Franchisee may be required to pay Franchisor's then-current rates for additional training, if any, for providing an initial training program for such new Designated Manager.

### **D. Operations Assistance**

For three (3) consecutive days after the opening of the Franchised Business, Franchisor shall furnish to Franchisee, at the Franchised Business and at Franchisor's expense, one (1) of Franchisor's representatives for the purpose of providing general assistance and guidance in connection with opening and the day-to-day operations of the Franchised Business. If Franchisee requests additional assistance from Franchisor in order to facilitate the opening of the Franchised Business, and Franchisor deems it necessary and appropriate to comply with such request, Franchisor shall provide such additional assistance at Franchisor's then-current standard rates, plus expenses.

### **E. Ongoing Training Meetings**

Franchisor may require Franchisee to attend additional refresher training and/or seminars. Attendance at such training programs or seminars shall be at Franchisee's sole expense including travel costs, room and board expenses and employees' salaries. Franchisor, at its option, may charge Franchisee a fee for such additional refresher training and/or seminars. Franchisor shall not require attendance at more than two (2) sessions in any calendar year and Franchisee shall not be required to attend more than four (4) days of refresher training or seminars in any calendar year.

### **F. Marketing and Promotions**

Recognizing the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of the NITELITES Marks and Operating System, Franchisee agrees as follows:

### **G. Local Advertising**

Franchisee shall spend five percent (5%) of its Gross Sales on advertising, promotions and public relations within the local area to be serviced by the Franchised Business ("Local Advertising"). All Local Advertising expenditures are to be made directly by Franchisee. Within thirty (30) days after the end of each calendar quarter, Franchisee shall furnish to Franchisor a detailed report of the Local Advertising expenditures for the quarter. The failure of Franchisee to spend the minimum amount on Local Advertising for two (2) consecutive quarters will constitute a material default of this agreement. Franchisee may cure the default by paying to the Marketing Fund, within thirty (30) days after notice from Franchisor, the difference between the minimum Local Advertising amount for the relevant quarters less Franchisee's actual Local Advertising expenditures for the same periods. Franchisee shall submit to Franchisor for prior approval all advertising and promotional materials to be used by Franchisee, including circulars, flyers, local newspaper and direct mail advertising. Franchisor shall use reasonable efforts to provide notice of approval or disapproval within ten (10) days from the date all requested material is received by Franchisor. If Franchisee does not receive written approval within the ten-day period, Franchisor will be deemed to have not given the required approval.

### **H. Systemwide Marketing Fund**

Franchisor has established a systemwide Marketing Fund, which Franchisor or its designee shall maintain and administer as follows:

1. Franchisor shall oversee all advertising programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof. Franchisor cannot and does not ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising or other activities conducted by the Marketing Fund.

2. Franchisee's Marketing Fund Contribution may be used to meet any and all costs of producing, maintaining, administering and directing consumer advertising (including the cost of preparing and conducting television, radio, Internet, magazine and newspaper advertising campaigns and other public relations activities; developing and/or hosting an Internet web page of similar activities; employing advertising agencies to assist therein; and providing promotional brochures and other marketing materials to franchisees). All contributions by Franchisee to the Marketing Fund shall be maintained in a separate account from the funds of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Franchisor may incur in activities reasonably related to

the administration of the Marketing Fund, including the costs of enforcing contributions to the Marketing Fund required under this agreement and the costs of preparing an accounting of the operation of the Marketing Fund. Solicitations for the sale of NITELITES franchises that are an incidental part of the Web Site, advertisements, or promotional materials paid for by the Marketing Fund do not violate this paragraph.

3. Although Franchisor intends the Marketing Fund to be of perpetual duration, Franchisor maintains the right to terminate the Marketing Fund. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes or returned to Franchisee and other franchisees based upon their respective Marketing Fund Contributions during the one (1) year period immediately preceding the termination of the Marketing Fund.

4. An accounting of the operation of the Marketing Fund shall be prepared annually and shall be made available to Franchisee upon request. Franchisor reserves the right, at its option, to require that such annual accounting include an audit of the operation of the Marketing Fund prepared by an independent certified public accountant selected by Franchisor and prepared at the expense of the Marketing Fund.

5. Each Franchisor or Affiliate-owned business using the Operating System and the Marks shall make contributions to the Marketing Fund equivalent to the contributions required of franchisees within the NITELITES Network.

6. Franchisee agrees that Franchisor (and any designee of Franchisor) shall not have any direct or indirect liability or obligation to Franchisee, to the Marketing Fund, or otherwise with respect to the management, maintenance, direction, or administration of the Marketing Fund. Franchisee further agrees that Franchisor shall not be liable for any act or omission, whether with respect to the Marketing Fund or otherwise, which is consistent with this agreement or other information provided to Franchisee, or which is done in subjective good faith. Franchisee and Franchisor, each having a mutual interest and agreeing on the critical practical business importance of their relationship being governed solely by written instruments signed by the parties to be bound (and not having either party subject to the uncertainty inherent in the application of legal or other concepts not expressly agreed to in writing by both parties), agree that their rights and obligations with respect to the Marketing Fund and all related matters are governed solely by this agreement and that neither this agreement nor the Marketing Fund are in the nature of a "trust," "fiduciary relationship" or similar special arrangement, but is only an ordinary commercial relationship between independent businesspersons for their independent economic benefit.

### **I. Cooperative Advertising**

Franchisor has the right, but not the obligation, to create Cooperative Advertising programs for the benefit of Franchisee and other NITELITES Franchises (including those owned and/or operated by Franchisor or its Affiliate) if two (2) or more franchisees are established in a common market. Franchisor has the right to (a) allocate any portion of the Marketing Fund to the Cooperative Advertising program; and (b) collect and designate all or any portion of the Local Advertising for a Cooperative Advertising program. Franchisor has the right to determine the composition of all geographic territories and market areas for the implementation of each Cooperative Advertising program and to require that Franchisee participate in all Cooperative Advertising programs established within Franchisee's region. If a Cooperative Advertising program is implemented on behalf of a particular region, Franchisor has the right to establish an advertising cooperative for that region to administer the Cooperative Advertising program. Franchisee shall participate in any such cooperative

established in its region according to the cooperative's rules and procedures, and shall abide by the cooperative's decisions.

#### **J. Grand Opening Advertising**

Franchisee must spend at least Five Thousand Dollars (\$5,000.00) during the first three (3) months of operation of the Franchised Business on Local Advertising and promotion conducted in accordance with the opening of the Franchised Business ("Grand Opening Advertising"). All advertising and other materials used in conducting Grand Opening Advertising will be subject to Franchisor's prior approval. Grand Opening Advertising is in addition to the minimum Local Advertising expenditure required in section 10.A.

#### **K. Telephone Directory Advertising**

Franchisee must list and advertise the telephone number for the Franchised Business in the "white pages" telephone directory and the classified or "yellow pages" telephone directory distributed in its trade area and in such directory heading or category as specified by Franchisor ("Telephone Directory Advertising"). Franchisee must place the classified directory advertisement and listings together with other NITELITES Franchises operating within the distribution area of the directories. If a joint listing is obtained, the cost of the advertisements and listings will be apportioned among NITELITES Franchises that are placed together. Telephone Directory Advertising expenditures shall be in addition to the Local Advertising required in section 10.A and the Grand Opening Advertising required in section 10.D.

#### **L. Internet Advertising**

Franchisor has established and maintains an Internet website at the uniform resource locator ("URL") [www.nitelites.com](http://www.nitelites.com) that provides information about the NITELITES Network and the services that Franchisor and its franchisees provide. Franchisor may (but is not required to) include at the NITELITES website an interior page containing information about the Franchised Business. If Franchisor includes such information on the NITELITES website, Franchisor may require Franchisee to prepare all or a portion of the page, at Franchisee's expense. All such information shall be subject to Franchisor's approval prior to posting. Franchisor retains the sole right to market on the Internet, including all rights and use of websites, domain names, social media accounts, URL's, linking, meta-tags, marketing, auction sites, e-commerce and co-branding arrangements. Franchisee may be requested to provide Franchisor content for Franchisor's Internet marketing and shall be required to follow Franchisor's Intranet, social media, and Internet usage rules, policies and requirements. All Franchised Business email communication must be sent to, communicated from, and received using the email account and address established and furnished by Franchisor. Franchisee shall not use or publish any other email address other than the one furnished by Franchisor. Franchisor retains the sole right to use the Marks on the Internet, including on websites, as domain names, directory addresses, search terms, meta-tags, social media accounts, and in connection with linking, marketing, co-branding and other arrangements. Franchisor retains the sole right to approve any linking or other use of the NITELITES website. Franchisee may not establish a presence on, or market using, the Internet in connection with the Franchised Business unless Franchisee has obtained Franchisor's express prior written consent and subject to Franchisor's specifications in connection with the same. In the event Franchisor approves an independent Franchisee website, Franchisor may require that such site shall be accessed only through Franchisor's home page.

### **10. BOOKS AND RECORDS**

#### **A. Requirement to Maintain**

During the term of this agreement, Franchisee shall maintain and preserve for the time period specified in the Manual, full, complete and accurate books, records and accounts in accordance with the standard accounting system prescribed by Franchisor in the Manual or otherwise in writing. Franchisee shall retain during the term of this agreement, and for three (3) years thereafter, all books and records related to the Franchised Business including invoices, purchase orders, payroll records, sales tax records, state and federal income tax returns, cash receipts, disbursement journals, general ledgers and any other financial records designated by Franchisor or as required by law.

#### **B. Sales Reports**

Franchisee shall maintain an accurate record of daily Gross Sales and shall deliver to Franchisor, by the fifteenth (15th) day of each month, a signed and verified statement of monthly Gross Sales of the Franchised Business for the preceding calendar month, using such form as Franchisor approves or provides in the Manual, which may either be in written or electronic form.

#### **C. Monthly and Annual Financial Reports**

Franchisee shall, at its own expense, supply to Franchisor on or before the tenth (10th) day of the following calendar month, in a form approved by Franchisor, a balance sheet as of the last day of the preceding month, an income statement for the preceding month and Fiscal Year-to-date, and an electronic back-up of Franchisee's bookkeeping records, in such format and on such medium as may be specified in the Manual. Additionally, Franchisee shall submit to Franchisor within ninety (90) days after the end of each Fiscal Year during the term of this agreement, an income statement for the Fiscal Year and a balance sheet as of the last day of the Fiscal Year, prepared in accordance with generally accepted accounting principles, certified by Franchisee or by an officer of Franchisee as accurately reflecting the results of operations and the financial condition of the Franchised Business and, if required by Franchisor, reviewed or audited by a certified public accountant. Franchisee shall also submit to Franchisor, on or before April 30 of each year, signed copies of Franchisee's federal income tax return for the previous tax year as filed with the Internal Revenue Service. If Franchisee has received an extension of time to file and Franchisee submits to Franchisor a signed, file-stamped copy of IRS Form 4868 or 2688, as applicable, by April 30, then Franchisee shall submit the tax returns within fifteen days after the final due date for such return, but in no event later than October 30 of each year. In addition, Franchisee shall submit to Franchisor such other periodic reports, forms and records in the manner and at the time specified in the Manual or otherwise in writing.

#### **D. Design Files**

Franchisee shall no less than monthly produce and deliver up to Franchisor all client hard and electronic files and designs depicting, relating to, or incident to Franchised Business' offering and selling of products or service to be memorialized and archived.

#### **E. Computer System**

Franchisee shall install, maintain, and at all times operate such computer hardware and software, including electronic devices and technology, as Franchisor may specify in the Manual or otherwise in writing as reasonably necessary for the efficient management and operation of the Franchised Business and the transmission of data to and from Franchisor. Franchisee agrees to permit Franchisor to access to, by modem, Internet or otherwise, the computer system and electronic devices and technology for the purpose of downloading information from Franchisee's computer system, devices and technology.

#### **F. Right of Franchisor to Perform Inspection**

Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records and tax returns of Franchisee. In addition, the same shall have the right to interview customers, employees, vendors and/or suppliers and, at any time, to have an independent audit made of Franchisee's books and records at Franchisor's expense. If an inspection should reveal that the Gross Sales or any fees or payments to Franchisor have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated plus interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law. If an inspection discloses an understatement in any payment report of three percent (3%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all reasonable costs and expenses in connection with the inspection including travel expenses, reasonable accounting and legal fees. The foregoing remedies shall be in addition to any other remedies Franchisor may have.

#### **G. Release of Records**

Upon Franchisor's request, Franchisee shall authorize and direct any and all third parties including accounting professionals to release to Franchisor Franchisee's accounting and financial records arising from, or relating to, the operation of the Franchised Business including any and all records evidencing and/or reflecting Gross Sales, profits and/or losses, income, tax liabilities, tax payments, revenues, and expenses, and any and all correspondence, notes, memoranda, audits, business records, or internal accountings within said third parties' possession, custody or control and to continue to release the same to Franchisor on a monthly basis for the length of the unexpired term of this agreement or until such time as Franchisor withdraws its request. Franchisee agrees to execute any and all documents necessary to facilitate the release of records referenced herein to Franchisor.

### **11. FRANCHISE SYSTEM**

#### **A. Uniformity of Operating System**

Franchisee shall comply with all requirements set forth in this agreement, the Manual and other policies as required by Franchisor. Mandatory specifications, standards, operating procedures and rules prescribed from time to time by Franchisor in the Manual, or otherwise communicated to Franchisee in writing, shall constitute provisions of this agreement as if fully set forth herein. Franchisee shall comply with all such mandatory specifications, standards and operating procedures and rules.

#### **B. Modification of the Operating System**

Franchisee recognizes that from time to time, Franchisor may introduce, as part of the Operating System, certain Operating System modifications including the adoption and use of new computer hardware and software, equipment or signs. Franchisee agrees to make all required upgrades and modifications at its expense as may be required by Franchisor; provided, however, that Franchisor shall not require any expenditures which are unreasonably disproportionate to Franchisee's original investment to establish the Franchised Business. No additional investment will be required during the first year of the initial term; if such additional investment is required to be made in the last year of the initial term, Franchisee may avoid making the investment by providing notice of intent not to renew the Franchise. Franchisee acknowledges that any required expenditures for changes or upgrades to the Operating System shall be in addition to expenditures for repairs and maintenance as required in section 13.F.

### **C. Variance**

Franchisee acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right and privilege, at its sole Business Judgment and as it may deem in the best interests of all concerned in any specific instance, to vary System Standards for any NITELITES Franchisee based upon any condition that Franchisor deems to be of importance to the successful operation of such franchisee's business. Franchisee shall not be entitled to require Franchisor to disclose or grant to Franchisee a like or similar variation hereunder.

## **12. OPERATING STANDARDS**

### **A. General Operation**

Franchisee will use the Marks and the Operating System in strict compliance with the standards, procedures, specifications and requirements, which are required of all NITELITES franchisees.

### **B. Authorized Products and Services**

Franchisee acknowledges that the reputation and goodwill of the NITELITES Network and the Operating System is based upon offering high quality services and products and the satisfaction of its customers. Accordingly, Franchisee shall offer for sale and use at the Franchised Business only Authorized Products and Services specified in the Manual or that Franchisor has expressly approved from time to time and which are not thereafter disapproved, and shall not offer for sale or sell or provide through the Franchised Business, any products or services which Franchisor has not approved. Franchisee shall not use the Franchise Premises for any purpose other than the operation of the Franchised Business in full compliance with this agreement and the Manual. Franchisor shall notify Franchisee of Authorized Products and Services that are authorized in the Manual and subsequent revisions to the Manual.

### **C. Approved Suppliers**

1. All computer hardware and software, equipment, forms, marketing materials, stationery, supplies, NITELITES products, tools, and other materials used in the Franchised Business shall comply with Franchisor's specifications and, if required by Franchisor, shall be purchased only from Approved Suppliers that Franchisor designates or approves. If Franchisor or an Affiliate is an Approved Supplier, Franchisee shall execute a standard form purchase, lease, supply or license agreement for the items to be supplied by Franchisor or its Affiliate. Franchisor shall provide Franchisee, in the Manual or other written or electronic form, with a list of specifications for equipment, supplies, and other materials and, if required, a list of designated or Approved Suppliers for some or all of these items, which may include Franchisor or its Affiliates.

2. Upon Franchisor's request, or if Franchisee desires to utilize any services or products that Franchisor has not approved (for services and products that require supplier approval), Franchisee shall first send Franchisor sufficient information, specifications and/or samples for Franchisor to determine whether the service or product complies with its standards and specifications or the supplier meets its Approved Supplier criteria. Franchisee shall bear all reasonable expenses incurred by Franchisor in connection with determining whether it shall approve an item, service or supplier. Franchisor will decide within a reasonable time (usually thirty [30] days) after receiving the required information whether Franchisee may purchase or lease such items or services or from such supplier. Approval of a supplier may be conditioned on requirements related to the frequency of delivery, standards of service, consistency, availability, quality, reliability,

and general reputation. Notwithstanding anything contrary in this agreement, Franchisor reserves the right to review from time to time its approval of any items or suppliers. Franchisee acknowledges and agrees that Franchisor may revoke its approval of any item, service or supplier at any time, in its sole Business Judgment, by notifying Franchisee and/or the supplier. Franchisee agrees, at its own expense, to promptly cease using, selling or providing any items or services disapproved by Franchisor and to promptly cease purchasing from suppliers that Franchisor disapproves. Franchisee acknowledges that Franchisor may receive volume rebates, markups and other benefits from suppliers, or in connection with the furnishing of supplies, and Franchisee agrees that all such benefits shall accrue to the benefit of Franchisor and that Franchisee shall have no entitlement or interest therein. Nothing in this section shall be construed to require Franchisor to approve any particular supplier, or to require Franchisor to make available to prospective suppliers, standards and specifications that Franchisor, in its Business Judgment, deems confidential.

#### **D. NITELITES Products and Equipment**

1. Franchisor and its Affiliate have developed and manufacture a proprietary line of superior-quality Exterior Illumination Products, referred to as NITELITES Products and Equipment. In order to maintain the consistency, quality and uniformity of the Operating System, Franchisor shall make the NITELITES Products and Equipment available to Franchisee in reasonable quantities in accordance with the procedures for ordering, handling and shipping that Franchisor may determine from time to time, provided that Franchisee is in compliance with this agreement and all other agreements with Franchisor and its Affiliate. Franchisor's Affiliate's current standard form Supply Agreement is attached as Exhibit D to this agreement.

2. Franchisee acknowledges and agrees that the NITELITES Products and Equipment developed by Franchisor and its Affiliate are distinctive as a result of being developed pursuant to Franchisor and its Affiliate's experience and are inextricably interrelated with the Marks. Franchisee shall order and purchase all of its requirements of Exterior Illumination Products exclusively from Franchisor, its Affiliate, or a supplier designated by Franchisor, shall use only NITELITES Products and Equipment in connection with the operation of the Franchised Business, and may not purchase, sell, or use any other competing or substitute Exterior Illumination Products in connection with the operation of the Franchised Business. Franchisee shall at all times maintain an inventory of NITELITES Products and Equipment as necessary to operate the Franchised Business at full capacity.

3. Franchisor commits to provide the NITELITES Products and Equipment supplied by Franchisor or its Affiliate at competitive prices; however, Franchisee acknowledges that Franchisor and its Affiliate have the right to earn a reasonable profit on the sale of its NITELITES Products and Equipment

#### **E. Minimum Annual Gross Sales**

1. Franchisee's Gross Sales for each Fiscal Year (as defined in section 1.18) must equal or exceed the applicable "Minimum Annual Gross Sales" in the table below. Franchisee's failure to achieve or exceed the Minimum Annual Gross Sales for two consecutive Fiscal Years is a material breach of this agreement, for which Franchisor, in addition to its other legal and equitable remedies, may terminate this agreement in accordance with section 13.2, refuse to renew the Franchise granted under this agreement, or reduce the geographic size of the Protected Territory:

MINIMUM ANNUAL GROSS SALES

Protected Territory Class*	Fiscal Year				
	1st	2nd	3rd	4th	5th
1	- 0 -	\$300,000	\$345,000	\$396,750	\$456,262
2	- 0 -	\$250,000	\$287,500	\$330,625	\$380,218
3	- 0 -	\$225,000	\$258,750	\$297,562	\$342,196
4	- 0 -	\$175,000	\$201,250	\$231,437	\$266,153
5	- 0 -	\$125,000	\$143,750	\$165,312	\$190,109

2. Franchisee acknowledges that the Minimum Annual Gross Sales amounts in the above table do not constitute, and are not in the nature of, “earnings claims” or “financial performance representations.” Franchisor disclaims any representation, warranty or guarantee that Franchisee can or will achieve levels of sales necessary to comply with the Minimum Annual Gross Sales amounts above, or any other level or range of sales, income, or other measures of performance. As a practical business matter, Franchisor is unable to reliably estimate or predict the future financial or other results of any NITELITES Franchisee, and is unable to reliably estimate or predict Franchisee’s potential results.

**Franchisee specifically understands that section 13.E.1 above permits Franchisor to terminate this agreement, refuse to renew the Franchise granted under this agreement, or reduce the size of Franchisee’s Territory if Franchisee fails to achieve or exceed the applicable Minimum Annual Gross Sales for two consecutive Fiscal Years.**

\_\_\_\_\_ **Initials** of Franchisee or individual signing on behalf of Franchisee

**F. Appearance and Condition of the Franchised Business**

During the term of this agreement, Franchisee agrees to maintain the Franchised Business in “like new” condition, including the equipment and vehicles used therein. Franchisee shall repair or replace damaged, worn out or obsolete equipment, computer hardware and software, fixtures, and signs at the Franchised Business if, at any time in Franchisor’s reasonable judgment, the general state of repair or safety of the premises or any service vehicle does not meet with Franchisor’s specifications or standards. Franchisor will notify Franchisee specifying the action(s) which needs to be taken to correct the deficiency and Franchisee agrees to take such action(s) promptly.

**G. Employees and Subcontractors**

Franchisee is solely responsible for the hiring of all employees and/or subcontractors to be employed or engaged in the operation of the Franchised Business. Franchisee shall be exclusively responsible for the terms of their compensation and for the training of such employees required for the proper operation of the Franchised Business. Franchisee acknowledges and understands that Franchisee’s employees will be entering clients’ residences for the purpose of selling and providing Authorized Products and Services. Accordingly, in order to ensure the safety of Franchisee’s clients, prior to hiring any prospective employee, Franchisee shall conduct a background review of each prospective employee’s criminal, motor vehicle, medical and/or credit histories. Franchisee shall not hire any

prospective employee for any position involving entrance to a client's residence if such prospective employee's background review indicates, in Franchisee's reasonable discretion, a propensity for violence, dishonesty, negligent, reckless or careless behavior, or a conviction for any crime within the past seven (7) years. Franchisor shall not be liable to Franchisee, any employee or prospective employee of Franchisee, or any third party for any act or omission of Franchisee or any employee or agent of Franchisee, and Franchisee shall indemnify, hold harmless and defend Franchisor against and from any and all claims, demands or actions arising from any act or omission of Franchisee or any employee or agent of Franchisee (including refusal to hire or discrimination claims or claims asserted by third parties for intentional torts allegedly committed by any employee or agent of Franchisee).

#### **H. Compliance with USA Patriot Act**

Franchisee hereby certifies that neither Franchisee nor any of its Affiliates, Principals, employees or other Persons associated with Franchisee is an Embargoed Person (as defined in section 1.15). Franchisee shall not hire or have any dealings with an Embargoed Person or permit an Embargoed Person to hold an Ownership Interest in or position as a director or officer of Franchisee. Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee or any of its Affiliates, Principals, employees or other Persons associated with Franchisee being an Embargoed Person. Franchisee shall comply with and assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with the Anti-Terrorism Laws (as defined in section 1.2). In connection with that compliance, Franchisee certifies, represents and warrants that none of its property or interests is subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its Affiliates and Principals are not otherwise in violation of any of the Anti-Terrorism Laws. Franchisee is solely responsible for ascertaining what actions must be taken by Franchisee to comply with all Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities in section 21.B include Franchisee's obligations under this paragraph. Any misrepresentation by Franchisee under this paragraph or any violation of the Anti-Terrorism Laws by Franchisee, its Affiliates, Principals or employees, will constitute grounds for immediate termination of this agreement and any other agreement between any Franchisor-Related Person and Franchisee or any of its Affiliates, Principals or employees.

#### **I. Management and Operation of the Franchised Business**

The Franchised Business shall, at all times, be under the direct full-time supervision of Franchisee (or a Designated Manager if Franchisee is a corporation, limited liability company, business trust or partnership). Full-time means the expenditure of at least thirty-five (35) hours per week, excluding vacation, sick leave, etc. Franchisee shall keep Franchisor informed, in writing, at all times of the identity of its Designated Manager of the Franchised Business. The Designated Manager is not required to have an Ownership Interest in the Franchised Business.

#### **J. Best Efforts**

Franchisee shall use its best efforts to promote and increase the sales and recognition of services offered through the Franchised Business. Franchisee shall require all of Franchisee's employees, managers, officers, agents and representatives to make a good faith effort to enhance and improve the Operating System and the sales of all services and products provided as part of the Operating System. Franchisee must at all times faithfully, honestly and diligently perform its obligations under this agreement and must not engage in any business or other activities that will conflict with its obligations under this agreement.

#### **K. Licenses and Permits**

Franchisee shall secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchised Business and shall operate the Franchised Business in full compliance with all applicable laws, ordinances, rules and regulations including all government regulations. Without limiting the generality of the foregoing, Franchisee shall fully comply with all laws of each state in which the Franchised Business operates requiring the registration of fictitious or assumed names, and shall provide Franchisor with evidence of compliance within thirty (30) days after opening the Franchised Business.

#### **L. Compliance with Good Business Practices**

Franchisee acknowledges that each and every detail of the quality of appearance and demeanor of Franchisee and its employees, equipment and materials utilized by Franchisee is important to Franchisor and to other franchisees. Franchisor shall endeavor to maintain high standards of quality and service by all franchisees. To this end, Franchisee agrees to cooperate with Franchisor by maintaining such high standards in the operation of the Franchised Business. Franchisee shall at all times: (i) give prompt, courteous and efficient service to customers of the Franchised Business; (ii) use its best efforts to ensure the satisfaction of each customer; (iii) use good faith in all dealings with customers and potential customers; (iv) respond to customer complaints in a courteous, prompt, and professional manner; (v) use its best efforts to promptly and fairly resolve customer disputes in a mutually-agreeable manner; and (vi) honor, in accordance with their terms, all written product and service warranties provided by Franchisee in connection with its Franchised Business. All services provided by the Franchised Business shall be performed competently and in a professional manner. The Franchised Business shall in all dealings with its customers, potential customers, suppliers, creditors and the public adhere to the highest standards of honesty, fair dealing, moral and ethical conduct. If, in any situation, Franchisor deems that Franchisee did not fairly handle a customer complaint, Franchisor has the right to intervene and satisfy the customer, for the sole purpose of protecting the goodwill and reputation of the Marks. Franchisee shall reimburse Franchisor for all costs incurred by Franchisor in servicing a customer of the Franchised Business.

#### **M. Payment of Liabilities and Taxes**

Franchisee shall pay its distributors, lessors, contractors, suppliers, trade creditors, employees, and other creditors promptly as the debts and obligations to such parties become due, and pay all taxes on real and personal property, leasehold improvements and fixtures and equipment, and all sales and use, income, payroll and other taxes promptly when due and hold Franchisor harmless therefrom. Franchisee's failure to do so shall constitute a breach of this agreement. All taxes shall be paid directly to the taxing authorities prior to the delinquent date. If Franchisee shall fail to pay any such obligations promptly as the debts to such parties become due, or if any taxes become delinquent, Franchisor, in addition to its other remedies provided in this agreement, may elect to pay any such obligation or delinquent tax on behalf of Franchisee, together with late charges, penalties and interest, if any, and Franchisee shall, upon demand, reimburse Franchisor for any sums so paid by Franchisor, together with interest at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is less, from the date of payment by Franchisor to the date of reimbursement by Franchisee.

#### **N. Notification of Proceedings**

Franchisee shall notify Franchisor, in writing, within five (5) days of the commencement of any action, suit or proceeding and of the issuance of any order, writ, injunction, award or decree of any

court, agency or other governmental instrumentality, including action against professional services/credentials of any employee associated with Franchisee, which may adversely affect the operation or financial condition of the Franchised Business. Franchisee shall deliver to Franchisor, within five (5) days of Franchisee's receipt thereof, a copy of any inspection report, warning, certificate or rating by any governmental agency relating to any health or safety law, rule, or regulation that reflects Franchisee's failure to meet and maintain the highest applicable rating or Franchisee's noncompliance or less than full compliance with any applicable law, rule or regulation.

#### **O. Right to Inspect**

In addition to the rights described in section 6.D, Franchisor, or its agents, shall have the right, at any reasonable time, to remove product samples from the Franchised Business in amounts reasonably necessary for testing by Franchisor to determine whether such samples meet Franchisor's then-current standards.

#### **P. Days of Operation**

Franchisee shall keep the Franchised Business open for business during normal business hours and on such days as specified in the Manual, or as otherwise required by Franchisee's lease agreement, if any, for the Franchise Premises.

#### **Q. Vending Machines**

Franchisee agrees not to install nor use at its Franchised Business or the Franchise Premises any vending machines, amusement devices, video machines or other similar devices unless the installation and use of such devices has been approved in writing by Franchisor.

#### **R. Credit Cards**

Franchisor requires that Franchisee have arrangements in place with Visa, MasterCard, American Express and such other credit card issuers as Franchisor may designate from time to time in order that the Franchised Business may accept such methods of payment from its customers.

#### **S. Uniforms**

Franchisee agrees to abide by any uniform requirements stated in the Manual. All required uniforms, if any, must be purchased from Franchisor or a designated supplier who meets Franchisor's specifications and quality standards.

### **13. FRANCHISOR'S ONGOING OPERATIONS ASSISTANCE**

#### **A. General Advice and Guidance**

Franchisor will be available by telephone, e-mail or facsimile to discuss any problem and to render advice and guidance with respect to planning, opening and operation of the Franchised Business. Franchisor does not charge for these services, however, Franchisor retains the right to discontinue this service should Franchisee, in Franchisor's Business Judgment, be deemed to be utilizing this service too frequently or in an unintended manner. Franchisor's advice or guidance to Franchisee relative to prices for products and services that, in Franchisor's judgment, constitute good business practice is based upon the experience of Franchisor and its franchisees in operating NITELITES Franchises and an analysis of the costs of such services and prices charged for competitive services and products. Franchisee shall have the sole right to determine the prices to be charged by the Franchised Business.

## B. Periodic Visits

Franchisor or Franchisor's representative shall make periodic visits to the Franchised Business, at its expense, for the purposes of consultation, assistance and guidance of Franchisee in various aspects of the operation and management of the Franchised Business. Franchisor and Franchisor's representatives who visit the Franchised Business may prepare, for the benefit of both Franchisor and Franchisee, written reports with respect to such visits outlining any suggested changes or improvements in the operations of the Franchised Business and detailing any defaults in such operations which become evident as a result of any such visit. A copy of any such written report may be provided to Franchisee.

## C. Advertising and Promotional Materials

Franchisor may periodically provide advertising and promotional materials including ad-slicks, brochures, fliers and other materials to Franchisee for use in the operation of the Franchised Business.

## D. System Improvements

Franchisor will communicate improvements in the Operating System to Franchisee as such improvements may be developed or acquired by Franchisor and implemented as part of the Operating System.

# 14. INSURANCE

## A. Types and Amounts of Coverage

Franchisee shall procure before the earliest of either sixty (60) days of the Effective Date of this agreement or commencement of the Franchised Business, whichever occurs first, at its sole expense, and maintain in full force and effect, during the term of this agreement, the following insurance **naming NiteLites Franchise Systems, Inc. and NL Manufacturing & Distribution Systems, Inc as additional insured and/or loss payee, in addition to any other insurance that may be required by applicable law, any lender or lessor.** In addition, each insurance policy shall contain a waiver of all subrogation rights against Franchisor and its successors and assigns.

1. Comprehensive general public liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Franchised Business, or Franchisee's conduct of business pursuant to this agreement providing minimum liability coverage for claims, as specified by Franchisor from time to time covering occurrences at installation sites, Franchised Business Approved Location ,or offsite; currently the minimum is Two Million Dollars (\$2,000,000.00) per occurrence and Four Million Dollars (\$4,000,000.00) aggregate.

2. "All Risk" coverage insurance on all contents including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of the Franchised Business for full "replacement cost" coverage.

3. Workers' Compensation that complies with the statutory requirements of the state in which the Franchised Business is located and employer liability coverage with a One Hundred Thousand Dollar (\$100,000.00) minimum limit or, if greater, the statutory minimum limit if required by state law.

4. Automobile Liability Insurance for owned, hired and non-owned vehicles with a combined single limit of at least One Million Dollars (\$1,000,000.00).

5. General property damage insurance, including fire and extended coverage, vandalism and malicious mischief insurance.

6. Such insurance as necessary to provide coverage under the indemnity provisions set forth in section 22.B.

7. Such other and further insurance as Franchisor may require.

#### **B. Carrier Standards**

Such policy or policies shall be written by an insurance company licensed in the state in which Franchisee operates and having at least an "A" Rating Classification as indicated in A.M. Best's Key Rating Guide in accordance with standards and specifications set forth in the Manual.

#### **C. Evidence of Coverage**

Franchisee's obligation to obtain and maintain the foregoing policy or policies shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in section 22.B. Franchisee agrees to provide annually a certificate of insurance showing compliance with the foregoing requirements. Such certificate shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days prior written notice to Franchisor and shall reflect proof of payment of premiums.

#### **D. Failure to Maintain Coverage**

Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) to immediately procure such insurance coverage and to charge same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

### **15. FRANCHISEE'S COVENANTS NOT TO COMPETE**

The restrictive covenants contained in this section are provided for reasons including the following: (a) to protect the trade secrets of Franchisor; (b) to induce Franchisor to grant a Franchise to Franchisee; and (c) to protect Franchisor against its costs in training and advising Franchisee and its Principals, officers, directors, trustees, executives, managers and professional staff. Franchisor may require Franchisee to have each of its Principals, officers, directors, trustees, executives, managers and professional staff sign like restrictive covenants, which shall protect both Franchisor and Franchisee, and, if required, said covenants executed by each of them shall remain on file at the offices of Franchisee and are subject to audit or review as otherwise set forth herein.

#### **A. During Term**

Franchisee specifically acknowledges that pursuant to this agreement, Franchisee will receive valuable training and Confidential Information of Franchisor and the Operating System. Franchisee covenants that, except as otherwise approved in writing by Franchisor, neither Franchisee, nor any Principal of Franchisee, nor any Affiliate of Franchisee, nor the Designated Manager, nor any officer

or director of Franchisee shall, during the term of this agreement, either directly or indirectly, for themselves, or through, on behalf of or in conjunction with, any Person:

1. Divert or attempt to divert any business or customer of the Franchised Business to any competition, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the Operating System;

2. Own an interest in, manage, operate, act as a consultant with respect to the management or operation of any Competitive Business wherever located.

3. Employ or seek to employ any individual who is at that time employed by Franchisor or by any franchisee of Franchisor, or otherwise directly or indirectly induce or attempt to induce such individual to leave his or her employment; or

4. Promote, sell, or provide for compensation any products or services offered by the Franchised Business, or otherwise operate the Franchised Business, within a protected territory licensed to another franchisee of Franchisor, or otherwise infringe upon rights granted under franchise agreements with other franchisees of Franchisor.

#### **B. After Termination or Expiration**

Franchisee covenants that, except as otherwise approved in writing by Franchisor, neither Franchisee, nor any Principal of Franchisee, nor any Affiliate of Franchisee nor the Designated Manager, nor any officer, director, trustee, or any other owner of a legal or beneficial interest in Franchisee, executive or professional staff shall, for a period of two (2) years after the expiration or termination of this agreement, regardless of the cause of termination, either directly or indirectly, for themselves or through, on behalf of or in conjunction with, any Person:

1. Own an interest in, manage, operate, act as a consultant with respect to the management, or operation of any Competitive Business within fifty (50) miles of the Franchised Business, or within fifty (50) miles of any other Franchisor or franchisee-owned NITELITES Franchise; or

2. Solicit or otherwise attempt to induce or influence any employee or other business associate to terminate or modify his, her or its business relationship with Franchisor or to compete against Franchisor.

#### **C. Reasonableness of Restrictions**

Franchisee acknowledges that the restrictive covenants contained in this section 16 are essential elements of this agreement and that without their inclusion, Franchisor would not have entered into this agreement. Franchisee agrees that each of the terms set forth in this section, including the restrictive covenants, are fair and reasonable, and are reasonably required for the protection of Franchisor and the Operating System.

#### **D. Remedies**

As any breach by Franchisee of any of the covenants contained in this section would result in irreparable injury to Franchisor, and as the damages arising out of any such breach would be difficult to ascertain, Franchisee agrees that, in addition to all other remedies provided by law or in equity, Franchisor, in the event of a breach or threatened breach of the covenants herein contained, shall be

entitled to seek immediate equitable remedies including restraining orders, preliminary and permanent injunctions in order to prevent Franchisee, its partners, members, officers, directors or employees from continuing to breach the covenants contained in this section 16.

#### **E. Severability**

The foregoing covenants shall be construed as independent of any other covenant or provision of this agreement. If all or any portion of a covenant in this section is held unreasonable, then this section 16 is hereby amended to provide for limitations to the maximum extent provided and permitted by law.

### **16. DEFAULT AND TERMINATION**

#### **A. Termination by Franchisee**

If Franchisee is in substantial compliance with this agreement and Franchisor materially breaches this agreement and fails to cure such breach within a reasonable time after written notice thereof is delivered to Franchisor, Franchisee may terminate this agreement unless the breach cannot reasonably be cured within thirty (30) days, in which case, Franchisee will have the right to terminate this agreement if, after receipt of a written notice of default, Franchisor does not promptly undertake and continue efforts to cure such material breach within a reasonable period of time and furnish Franchisee reasonable proof of such efforts. To terminate this agreement under this paragraph, Franchisee must provide a separate written notice of termination, which will be effective no less than thirty (30) days after delivery of such notice to Franchisor.

#### **B. Termination by Franchisor**

1. This agreement shall, at the option of Franchisor, terminate upon written notice to Franchisee and without opportunity to cure, if Franchisee:

- a. Fails to establish and equip the Franchise Premises and service vehicles as required by section 5.C;
- b. Fails to satisfactorily complete the initial training program as required by section 9.A;
- c. Has made any material misrepresentation or omission in the application for the Franchise;
- d. Is convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of Franchisor, Franchisee or the Franchised Business;
- e. Violates any of the provisions of section 13.H;
- f. Makes any unauthorized use, disclosure or duplication of any portion of the Manual or duplicates or discloses or makes any unauthorized use of any trade secret or Confidential Information provided to Franchisee;
- g. Abandons, fails or refuses to actively operate the Franchised Business for five (5) or more consecutive days, unless the Franchised Business has not been operational for a purpose approved by Franchisor;
- h. Surrenders or transfers control of the operation of the Franchised Business,

makes or attempts to make an unauthorized direct or indirect assignment of the Franchise or an Ownership Interest in Franchisee, or fails or refuses to assign the Franchise or the interest in Franchisee of a deceased or incapacitated owner of a Controlling Interest therein as herein required;

i. Is adjudicated as bankrupt, becomes insolvent, commits any affirmative act of insolvency or files any action or petition of insolvency; if a receiver (permanent or temporary) of its property or any part thereof is appointed by a court of competent authority; if it makes a general assignment for the benefit of its creditors; if a final judgment remains unsatisfied of record for thirty (30) days or longer (unless supersede as bond is filed); if execution is levied against the Franchised Business or its property; if suit to foreclose any lien or mortgage against the premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days or is not in the process of being dismissed;

j. Materially misuses or makes any unauthorized use of any of the Marks or commits any other act which can reasonably be expected to materially impair the goodwill associated with any of the Marks;

k. Fails on three (3) or more separate occasions within any period of twelve (12) consecutive months to submit reports or other information or supporting records when due, monthly Fixed Royalty Fees, Marketing Fund Contributions, or other payments when due to Franchisor or any Affiliate of Franchisor, or otherwise fails to comply with this agreement, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;

l. Continues to violate any health or safety law, ordinance or regulation after receipt of notice (regardless of the source of the notice), or operates the Franchised Business in a manner that presents a health or safety hazard to its customers or the public; or

m. Fails to maintain Books and Records current up-to-date by more than fourteen (14) business days or maintains inconsistent or multiple sets of financial records; or

n. Promotes, sells or provides for compensation any products or services offered by the Franchised Business, or otherwise operates the Franchised Business, within a protected territory licensed to another NITELITES Franchisee, or otherwise infringes upon rights granted under franchise agreements with other NITELITES Franchisees, without the written permission of Franchisor.

2. This agreement shall terminate, at Franchisor's sole option, upon the occurrence of any of the following events and Franchisee's failure to cure within the specified time periods if:

a. Franchisee fails or refuses to make payments of any amounts due Franchisor, or any Affiliate of Franchisor, for monthly Fixed Royalty Fees, Marketing Fund Contributions, purchases from Franchisor or any Affiliate of Franchisor, or any other amounts due to Franchisor or any Affiliate of Franchisor, and does not cure the failure or refusal within thirty (30) days after written notice thereof is delivered to Franchisee;

b. Franchisee fails to spend at least the minimum Local Advertising expenditure for two consecutive calendar quarters (unless cured as provided in section 10.A within thirty (30) days after receipt of written notice thereof);

c. Franchisee fails to attain the Minimum Annual Gross Sales quotas required by section 13.E.1 for two consecutive Fiscal Years (unless, within thirty (30) days

after written notice thereof is delivered to Franchisee, the parties mutually agree on a reduction of the size of the Protected Territory in lieu of termination);

- d. Franchisee violates section 13.D.2, and does not cure the default by paying Franchisor, within thirty (30) days after receipt of written notice, by paying Franchisor an amount equal to seventy-five percent (75%) of the revenue received by Franchisee from sales of competing or substitute products or equipment; or
- e. Franchisee fails or refuses to comply with any other provision of this agreement not otherwise listed in section 17.B.1 above, any System Standard, or any other mandatory specification, standard or operating procedure prescribed in the Manual or otherwise in writing, and does not, within thirty (30) days after receipt of written notice thereof, either cure the default or, if the default cannot reasonably be corrected within thirty (30) days, provide proof acceptable to Franchisor that Franchisee has made all reasonable efforts to cure the default and shall continue to make all reasonable efforts to cure until a cure is affected.

### **C. FRANCHISOR'S OPTION TO TERMINATE**

1. **Exercise of Option.** At any time during the term of this Agreement, Franchisor has the right and option to unilaterally terminate this Agreement (the "Option to Terminate") by refunding the Franchise Fee paid by Franchisee pursuant to Section 3.A of this Agreement, and releasing Franchisee from its post-termination obligations under Section 16.B. To exercise the Option to Terminate, Franchisor shall provide Franchisee with written notice thereof. The notice shall (i) specify a date (the "Termination Date") upon which this Agreement will terminate without further notice or action, and (ii) contain a waiver and release of Franchisee's obligations under Sections 16.B and 18.A of this Agreement (except those portions of Section 18.A reiterated in Section 21.B below). The Termination Date shall be not less than three (3) months (or such longer period as may be required by applicable state law), but not more than six (6) months, after Franchisee's receipt of the notice. Franchisor shall deliver to Franchisee, on or before the Termination Date, a certified or bank check in the amount of the Franchise Fee paid by Franchisee. Franchisor shall have the right to set-off, against the amount due Franchisee under this paragraph, any amounts due Franchisor or any Affiliate from Franchisee, including, by way of illustration and not limitation, any Marketing Fund Contributions, interest, late charges or audit expenses.

2. **Franchisee's Obligations Upon Exercise of Option.** Upon the termination of this Agreement by Franchisor pursuant to Section 21.A below, this Agreement and all rights granted hereunder to Franchisee shall terminate as of the Termination Date, whereupon Franchisee shall:

3. cease and refrain from directly or indirectly representing to the public or holding itself out as a present or former franchisee of Franchisor;

4. immediately and permanently cease to use the Confidential Information, the System, the Marks and any distinctive forms, slogans, signs, symbols, logos, photographs or devices associated with the Marks or System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, stationery, forms and any other article, which display the Marks;

5. take such action as may be necessary to cancel or assign to Franchisor, at Franchisor's option, any assumed name or equivalent registration filed with state, city or county authorities which contains the name "NITELITES" or any of the Marks, and Franchisee shall furnish Franchisor with

evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after the Termination Date;

6. pay all sums owing to Franchisor;
7. immediately turn over to Franchisor any reproductions of the Manual or any derivatives thereof, all Confidential Information, all copyrighted or proprietary materials and all other records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by Franchisor to Franchisee relating to the operation of the Franchised Business (all of which are acknowledged to be Franchisor's property);
8. assign to Franchisor, at Franchisor's option, all telephone numbers (and associated listings) for the Franchised Business; and
9. comply with all other applicable provisions of this Agreement except the non-compete provisions in Section 16.B of this Agreement.
10. Right of Franchisor to Discontinue Sales to Franchisee

If Franchisor delivers to Franchisee a notice of termination or default pursuant to section 17.B, in addition to Franchisor's other remedies, Franchisor and its Affiliate(s) have the right to discontinue sales to Franchisee of any services or products for which they are Approved Suppliers (until such time as Franchisee cures the default in the case of a notice pursuant to section 17.B.2).

#### **D. Reinstatement and Extension**

To the extent that the provisions of this agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation, nonrenewal or the like, other than in accordance with applicable law, to the extent such are not in accordance with applicable law, Franchisor may reinstate or extend the term for the purpose of complying with applicable law by submitting a written notice to Franchisee without waiving any of Franchisor's rights under this agreement.

### **17. RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION**

#### **A. Events Upon Termination**

Upon termination or expiration, this agreement and all rights granted hereunder to Franchisee shall terminate and Franchisee will:

1. immediately cease to operate the Franchised Business under this agreement and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor; and
2. upon demand by Franchisor, assign (or, if an assignment is prohibited, sublease for the full remaining term and on the same terms and conditions as Franchisee's lease) its interest in the lease then in effect for the Franchise Premises to Franchisor, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this agreement. Franchisor shall have the right to make rental and other payments directly to the landlord or other party to whom such payment is ultimately due; and
3. immediately and permanently cease to use the Confidential Information, the Operating System, the Marks and any distinctive forms, slogans, signs, symbols, logos, photographs or devices

associated with the Marks or Operating System. In particular, Franchisee shall cease to use all signs, advertising materials, stationery, forms and any other items that display the Marks; and

4. take such action as may be necessary to cancel or assign to Franchisor, at Franchisor's option, any assumed name or equivalent registration filed with state, city or county authorities which contains the name NITELITES or any of the Marks, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this agreement; and
5. complete a de-identification and removal of Marks from any and all vehicles and leasehold interest unless such leasehold interest is assigned or subleased to Franchisor; and
6. tender to Franchisor a complete detailed consumer list and copies of any and all outstanding service or other contracts; and
7. pay all sums owing to Franchisor. In the event of termination for any default of Franchisee, such sums shall include, but not be limited to, all damages, costs and expenses, including reasonable attorneys' fees incurred by Franchisor as a result of the default; and
8. pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of the Franchise in obtaining injunctive or other relief for the enforcement of any provisions of this section 18; and
9. immediately turn over to Franchisor any and all reproduction of Manual and any derivative thereof, all Confidential Information, all copyrighted or proprietary materials and all other records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by Franchisor to Franchisee relating to the operation of the Franchised Business (all of which are acknowledged to be Franchisor's property); and
10. assign to Franchisor, at Franchisor's option, all telephone numbers (and associated listings) for the Franchised Business; and
11. comply with all other applicable provisions of this agreement including the non-compete provisions contained in section 16.

#### **B. Franchisor's Option to Purchase Certain Assets**

Franchisor shall have the right (but not the duty) to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase for cash, except as provided in this section 18.B, any or all assets of the Franchised Business containing the Marks, including leasehold improvements, equipment, supplies and other inventory, advertising materials and any other additional items, at Franchisee's cost or fair market value, whichever is less. If Franchisor elects to exercise any option to purchase as herein provided, it shall have the right to set off all amounts due from Franchisee under this agreement, if any, against any payment therefor.

#### **C. If Franchisee Starts Another Business**

If Franchisee continues to operate or subsequently begins to operate any other business, Franchisee shall not use any reproduction, counterfeit, copy or colorable imitation of the Marks either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake or deception, or which is likely to dilute Franchisor's rights in and to the Marks. Franchisee shall not utilize any designation of origin, or description or representation which falsely suggests or

represents an association or connection with Franchisor. This section 18.C is not intended as an approval of Franchisee's right to operate other businesses and in no way is it intended to contradict section 18.A. Franchisee shall make such modifications or alterations to the Franchise Premises (including the changing of telephone and facsimile numbers) immediately upon termination or expiration of this agreement as may be necessary to prevent any association between Franchisor or the Operating System and any business thereon subsequently operated by Franchisee or others, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose, including the removal of all distinctive physical and structural features identifying the Operating System. If Franchisee fails or refuses to comply with the requirements of this section 18.C, Franchisor shall have the right to enter upon the Franchise Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee shall pay upon demand.

#### **D. Survival of Certain Provisions**

All obligations of Franchisor and Franchisee, which expressly or by their nature survive the expiration or termination of this agreement, shall continue in full force and effect subsequent to and notwithstanding their expiration or termination and until satisfied or by their nature expire.

#### **E. Liquidated Damages**

If termination is the result of Franchisee's default, Franchisee shall pay Franchisor a lump sum payment (as liquidated damages for causing the premature termination of this agreement and not as a penalty) equal to 2 years of the minimum royalty fees or the actual royalty fees you paid in the previous 2 years prior to termination. The parties agree that a precise calculation of the full extent of the damages that Franchisor will incur on termination of this agreement as a result of Franchisee's default is difficult and the parties desire certainty in this matter and agree that the lump sum payment provided under this section is reasonable in light of the damages for premature termination that Franchisor will incur. This payment is not exclusive of any other remedies that Franchisor may have including, equitable remedies, attorneys' fees and costs.

#### **F. Remedies**

Franchisee acknowledges that Franchisor shall be entitled to seek immediate equitable remedies including restraining orders, preliminary and permanent injunctions in order to safeguard the Confidential Information, Marks and Operating System of Franchisor and that money damages alone may not be a sufficient remedy with which to compensate Franchisor for any breach of the terms of this section 18.

### **18. TRANSFERABILITY OF INTEREST**

#### **A. By Franchisor**

This agreement and all rights hereunder can be assigned and transferred by Franchisor and, if so, shall be binding upon and inure to the benefit of Franchisor's successors and assigns. With respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall assume the obligations of Franchisor hereunder.

#### **B. By Franchisee to a Third Party**

The rights and duties of Franchisee as set forth in this agreement, and the Franchise herein granted, are personal to Franchisee, and Franchisor has agreed to enter into this contract with Franchisee in

reliance upon Franchisee's personal skill and financial ability. Accordingly, neither Franchisee nor any successor of Franchisee, either immediate or remote, to any part of Franchisee's interest in this agreement may Transfer (as defined in section 1.55) any interest in Franchisee, in this agreement or in the Franchise granted under this agreement. Any purported Transfer, whether by operation of law or otherwise, will be null and void and constitute a material breach of this agreement, for which breach Franchisor may then terminate this agreement without notice or opportunity to cure, unless the Transfer has the prior written consent of Franchisor. If Franchisee desires to make a Transfer, Franchisee shall first obtain the written consent of Franchisor, which will be conditioned upon the satisfaction of the following requirements:

1. All obligations owed to Franchisor and all other outstanding obligations relating to the Franchised Business shall be fully paid and satisfied.
2. Unless prohibited by the law of the state where the Franchised Business is located, Franchisee shall have executed a General Release. If a General Release is prohibited, Franchisee shall give the maximum release allowed by law.
3. The transferee shall have satisfied Franchisor that it meets Franchisor's management, business and financial standards and otherwise possesses the character and capabilities, including business reputation and credit rating, as Franchisor may require, to demonstrate ability to conduct the Franchised Business.
4. The transferee and, at Franchisor's option, all persons owning any interest in the transferee, shall execute the then-current Franchise Agreement for new franchisees, which may be substantially different from this agreement including differences in Marketing Fund Contributions, required advertising expenditures and contributions, territorial protections and other material provisions. The Franchise Agreement then executed shall be for the term specified in such agreement.
5. The transferee shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its officers, directors, shareholders and employees, in their corporate and individual capacities, with respect to any representations regarding the Franchise or the business conducted pursuant thereto or any other matter that may have been made to the transferee by the transferring Franchisee.
6. Franchisee shall have provided Franchisor with a complete copy of all contracts and agreements and related documentation between Franchisee and the transferee relating to the Transfer.
7. Franchisee shall have paid to Franchisor a transfer fee of *Five Thousand Dollars (\$5,000.00)*. No transfer fee will be required for a Transfer by Franchisee to a Controlled Entity under the terms of section 19.D.
8. The transferee shall have obtained all necessary consents and approvals by third parties (such as the lessor of the Franchise Premises), and the Transfer shall be made in compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
9. The transferee shall agree to assume all of Franchisee's obligations under customer and product warranties and service contracts.
10. The transferee must complete the initial training program as provided in section 9.A.

11. Franchisee shall (and shall cause all of its Principals to if Franchisee is a Business Organization) execute and deliver to Franchisor a nondisclosure and non-competition agreement in a form satisfactory to Franchisor and, in substance, the same as the non-competition agreement referenced in section 7.D.

### **C. Pledge of Franchisee**

Notwithstanding any other provision of this section 19, neither Franchisee, nor any of its Principals, nor any immediate or remote successor to any part of Franchisee's interest in the Franchised Business, shall pledge, mortgage, grant a security interest, or otherwise encumber any interest in this agreement, in the Franchise granted hereunder, or in Franchisee (whether or not in connection with an absolute transfer of an interest in the Franchised Business). Franchisor is not obliged to consent to any such Transfer.

### **D. Transfer by Franchisee to an Entity Controlled by Franchisee**

If Franchisee wishes to transfer this agreement or any interest herein to a Business Organization controlled by Franchisee ("Controlled Entity") formed for financial planning, asset protection, tax or other convenience of Franchisee, Franchisor's consent to the Transfer will be conditioned upon the following requirements:

1. The Controlled Entity shall be newly organized and its charter shall provide that its activities are confined exclusively to the operation of the Franchised Business.
2. There may be no more than five (5) Principals of the Controlled Entity, and all Principals must be individuals
3. Franchisee shall beneficially own a Controlling Interest in the Controlled Entity, shall not diminish its Ownership Interest therein, except as may be required by law, and shall act as the principal officer and (if the Controlled Entity is a corporation) a director thereof.
4. All obligations of Franchisee to Franchisor or any Affiliate shall be fully paid and satisfied before Franchisor's consent, except that Franchisee is not required to pay a transfer fee for any Transfer under this section 19.D.
5. The Controlled Entity shall enter into a written agreement with Franchisor expressly assuming the obligations of this agreement and all other agreements relating to the operation of the Franchised Business. If the consent of any other contracting party to any such agreement is required, Franchisee shall have obtained such written consent and provided the same to Franchisor prior to consent by Franchisor.
6. All Principals of the Controlled Entity shall enter into an agreement with Franchisor, jointly and severally guaranteeing the full payment of the Controlled Entity's obligations to Franchisor and the performance by the Controlled Entity of all the obligations of this agreement.
7. Each stock certificate or other certificate evidencing an Ownership Interest in the Controlled Entity shall have conspicuously endorsed upon the face thereof of a statement in a form satisfactory to Franchisor that it is held subject to, and that further Transfer thereof is subject to, all restrictions imposed upon Transfers by this agreement. If Franchisee is a partnership, limited liability company, or other Business Organization without certificates evidencing ownership, Franchisee shall provide Franchisor with acceptable evidence that its partnership or operating agreement or other organizational documents contain provisions acceptable to Franchisor prohibiting the transfer of any

Ownership Interest in Franchisee other than in compliance with the terms of this agreement. Franchisee shall not cause or permit any such provision to be deleted or modified during the term of this agreement.

8. Copies of the Controlled Entity's articles of incorporation or organization, bylaws, operating agreement, and other governing regulations or documents, including resolutions of the board of directors authorizing entry into this agreement, shall be promptly furnished to Franchisor. Any amendment to any such documents shall also be furnished to Franchisor immediately upon adoption.

9. The term of the transferred Franchise shall be the unexpired term of this agreement.

10. Franchisor's consent to a Transfer will not constitute a waiver of any claims Franchisor may have against the transferor or the transferee, nor shall it be deemed a waiver of Franchisor's right to demand compliance with the terms of this agreement.

#### **E. Franchisor's Disclosure to Transferee**

Franchisor may, without liability of any kind or nature whatsoever to Franchisee, make available for inspection by any intended transferee of Franchisee all or any part of Franchisor's records relating to this agreement, the Franchised Business or to the history of the relationship of the parties hereto. Franchisee hereby specifically consents to such disclosure by Franchisor and absolutely releases and agrees to hold Franchisor harmless from and against any claim, loss or injury resulting from an inspection of Franchisor's records relating to the Franchised Business by an intended transferee identified by Franchisee.

#### **F. For Sale Advertising**

Franchisee shall not, without prior written consent of Franchisor, place in, on or upon the location of the Franchised Business, or in any communication media, any form of advertising relating to the sale of the Franchised Business or the rights granted hereunder.

#### **G. Death or Incapacity of Franchisee**

Upon the death or incapacity of any individual with an interest in this agreement as determined by a court of competent jurisdiction, the executor, administrator, or personal representative of such individual's estate shall transfer its interest to a third party approved by Franchisor within six (6) months after such death or incapacity. Such Transfers, including transfers by devise or inheritance, shall be subject to the same conditions as set forth in section 19.B. However, in the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such individual are unable to meet the conditions in this section 19, the personal representative of the deceased Franchisee shall have six (6) months in which to dispose of the deceased's interest in the Franchise, which disposition shall be subject to all the terms and conditions for Transfers in this agreement. If the interest is not disposed of within such six (6) month period, Franchisor may terminate this agreement.

### **19. RIGHT OF FIRST REFUSAL**

#### **A. Submission of Offer**

If Franchisee or its Principals propose to sell the Franchised Business (or any of its assets), any Ownership Interest of Franchisee or any Ownership Interest in this agreement or in the Franchise granted hereunder, Franchisee shall obtain and deliver a bona fide, executed written offer or proposal to purchase, along with all pertinent documents including any contract or due diligence

materials to Franchisor. The offer must apply only to the approved sale of the above and may not include any other property or rights of Franchisee or its Principals.

#### **B. Franchisor's Right to Purchase**

Franchisor shall, for thirty (30) days from the date of delivery of all such documents, have the right, exercisable by written notice to Franchisee, to purchase the Ownership Interest or assets for the price and on the same terms and conditions contained in such offer or proposal to Franchisee. Franchisor may substitute cash for the fair market value of any form of payment proposed in such offer or proposal. Franchisor's credit shall be deemed equal to the credit of any proposed buyer. Franchisor shall be entitled to receive from Franchisee all customary representation and warranties given by Franchisee as the seller of the assets or such Ownership Interest.

#### **C. Non-Exercise of Right of First Refusal**

If Franchisor does not exercise this right of first refusal within thirty (30) days of Franchisor's receipt of all of the pertinent offer documents referenced in section 20.A above, the offer or proposal may be accepted by Franchisee or its Principals, subject to the prior written approval by Franchisor, as provided in section 19, of the proposed Transfer. Should the sale fail to close within one hundred twenty (120) days after the offer is delivered to Franchisor, Franchisor shall again have the right of first refusal herein described. Should a transferee assume the rights and obligations under this agreement, such transferee shall likewise be subject to Franchisor's right of first refusal under terms and conditions as set forth herein.

### **20. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

#### **A. Independent Contractor**

This agreement does not constitute Franchisee as an agent, legal representative, joint venturer, partner, employee or servant of Franchisor for any purpose whatsoever. Franchisee may not represent to third parties that Franchisee is an agent of Franchisor and it is understood between the parties hereto that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, or to create any obligation, express or implied, on Franchisor's behalf. Under no circumstances shall Franchisor be liable for any act, omission, contract, debt or any other obligation of Franchisee. Franchisee specifically acknowledges that Franchisor shall in no way be responsible for any injuries to persons or property resulting from the operation of the Franchised Business. In addition, any third party contractors and vendors retained by Franchisor to perform conversion or construction of the Franchise Premises are independent contractors. During the term of this agreement and any extension hereof, Franchisee shall hold itself out to the public as an independent contractor operating the Franchised Business pursuant to a franchise from Franchisor. Franchisee shall take such affirmative action as may be necessary to do so, including exhibiting a notice of that fact in a conspicuous place at the Franchise Premises and on all forms, stationery or other written materials, the content of which Franchisor reserves the right to specify.

#### **B. Indemnification**

Franchisee shall hold harmless and indemnify Franchisor and its Affiliates and their respective members, partners, shareholders, officers, directors, employees and agents and successors or assigns (collectively "Franchisor Indemnitees") from and against all losses, damages, fines, costs, expenses, lost profits, loss, damages, or liability (including attorneys' fees and all other costs of litigation) incurred in connection with any action, suit, demand, claim, investigation, proceeding or inquiry, or any settlement

thereof which arises from or is based upon Franchisee's (a) ownership or operation of the Franchised Business; (b) violation, breach or asserted violation or breach of any federal, state or local law, regulation or rule; (c) breach of any representation, warranty, covenant, or provision of this agreement or any other agreement between Franchisee and Franchisor or Franchisor's Affiliates; (d) libel, slander or other form of defamation of Franchisor or the Operating System by Franchisee; (e) acts, errors or omissions incurred in connection with or arising out of the Franchised Business, including any negligent or intentional acts; or (f) infringement, violation or alleged infringement or violation of any Mark, patent or copyright or any misuse of the Confidential Information (excluding, however, liabilities caused by (i) Franchisee's proper reliance on or use of procedures or materials provided by Franchisor or (ii) Franchisor's negligence). In addition, Franchisee shall indemnify Franchisor Indemnitees for any and all losses, compensatory damages, exemplary or punitive damages, fines, charges, costs, expenses, lost profits, settlement amounts, judgments, damages to Franchisor's reputation and goodwill, costs of advertising material, media time and space and substituting and replacing the same, all costs of recall, refunds, compensation, all public notices and other such amounts which may arise or result from any of the actions, commissions or items listed in this section.

### **C. Right to Retain Counsel**

Franchisee agrees to give Franchisor immediate notice of any such action, suit, proceeding, claim, demand, inquiry or investigation that may give rise to a claim by a Franchisor Indemnitee pursuant to section 21.B. Franchisor shall have the absolute right to retain counsel of its own choosing in connection with any such action, suit, proceeding, claim, demand, inquiry or investigation. In order to protect persons or property or Franchisor's reputation or goodwill of others, Franchisor may, at any time without notice, take such other remedial or corrective actions as it deems expedient with respect to any action, suit, proceeding, claim, demand, inquiry or investigation if, in Franchisor's sole judgment, there are reasonable grounds to believe any of the acts or circumstances listed above have occurred. In the event Franchisor's exercise of its rights under this section actually results in any of Franchisee's insurers refusing to pay on a third party claim, all cause of action and legal remedies Franchisee might have against such insurer shall automatically be assigned to Franchisor without the need for any further action on either party's part. Under no circumstances shall Franchisor be required or be obligated to seek coverage from third parties or otherwise mitigate losses in order to maintain a claim against Franchisee. Franchisee agrees that the failure to pursue such remedy or mitigate such loss will in no way reduce the amounts recoverable by Franchisor from Franchisee.

## **21. GENERAL CONDITIONS AND PROVISIONS**

### **A. Non-Waiver**

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions or covenants hereof, affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this agreement.

**B. Notices**

Any payments and reports to be made pursuant to this agreement may be made by ordinary mail, postage prepaid, but the sender assumes all risk of delay or failure of delivery. Unless expressly provided otherwise, all due dates in this agreement refer to the date of receipt. All notices, requests, demands and other communications required or permitted under this agreement shall be in writing, shall be addressed as provided below in this section 23.B, shall be made (i) by personal delivery, (ii) by certified mail, postage prepaid, return receipt requested, or (iii) by overnight delivery service with proof of delivery, and shall be effective upon receipt or refusal thereof. Any notice sent by certified mail as provided in this paragraph, if returned unclaimed, may be re-sent by ordinary mail, postage prepaid, and will be effective seventy-two (72) hours after deposit in the U.S. mail. All notices, requests, demands, payments, reports and other communications shall be addressed as follows, or to such other persons or address as the parties may provide by notice to the other party as provided in this section 23.B:

to Franchisor:            NITELITES FRANCHISE SYSTEMS, INC.  
                                  Attention: President  
                                  6107 Market Avenue  
                                  Franklin, Ohio 45005

to Franchisee:            \_\_\_\_\_  
                                  Attention: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

**C. Cost of Enforcement or Defense**

If Franchisor or Franchisee is required to enforce this agreement in a judicial or arbitration proceeding, the prevailing party shall be entitled to reimbursement of its costs, including reasonable accounting and legal fees, in connection with such proceeding.

**D. Guaranty and Assumption of Obligations**

All Principals of Franchisee shall execute the Guaranty and Assumption of Obligations attached hereto as Exhibit E and incorporated herein by reference.

**E. Non-Individual Franchisee**

If Franchisee is other than an individual, it shall comply with the requirements of subparagraphs 1 through 8 below before or simultaneously with its execution of this agreement.

1. Franchisee must be newly organized and its charter, articles of organization, bylaws, or operating agreement must provide that its activities are confined exclusively to operating the Franchised Business.
2. There may be no more than five (5) Principals of Franchisee, and all Principals must be individuals.
3. Franchisee shall provide Franchisor with written information about each Principal of Franchisee, and the Ownership Interest of each, and shall promptly notify Franchisor of any changes in any of that information.

4. Each Principal of Franchisee must enter into an agreement, in a form satisfactory to Franchisor, jointly, severally and unconditionally guaranteeing the full payment and performance of Franchisee's obligations to Franchisor.
5. Each certificate evidencing an Ownership Interest in Franchisee must have conspicuously endorsed upon its face the following legend: "The transfer, sale or pledge of these shares is subject to the terms and conditions of a Franchise Agreement with NiteLites Franchise Systems, Inc."
6. If Franchisee is a partnership or limited liability company without certificates evidencing ownership, Franchisee shall provide Franchisor with acceptable evidence that its partnership or operating agreement or other organizational documents contain provisions acceptable to Franchisor prohibiting the Transfer of any Ownership Interest in Franchisee other than in compliance with the terms of this agreement. Franchisee shall not cause or permit any such provision to be deleted or modified.
7. Franchisee shall furnish copies of its articles of incorporation or organization, by-laws, partnership agreement, operating agreement, and other governing documents, including the resolutions of its Principals or governing board authorizing the execution of this agreement, to Franchisor for approval.
8. Franchisee's name may not consist of or contain the word NITELITES, any colorable variation thereof (including NIGHT or LIGHT), or any of the other Marks.

#### **F. Approvals**

Whenever this agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. Franchisor makes no warranties or guarantees upon which Franchisee may rely and assumes no liability or obligation to Franchisee or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to Franchisee in connection with this agreement, or by reason of any neglect, delay or denial of any request therefor.

#### **G. Entire Agreement**

This agreement, together with the exhibits attached hereto and the documents referred to herein, are to be construed together and constitute the entire, full and complete agreement between the parties concerning the subject matter hereof, and supersede all prior agreements. No representation other than those contained herein or in Franchisor's Franchise Disclosure Document has induced Franchisee to execute this agreement and there are no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, which are of any force or effect with reference to this agreement or otherwise. No amendment, change or variance from this agreement shall be binding on either party unless executed in writing by both parties. Nothing in this or in any related agreement, however, is intended to disclaim the representations made by Franchisor in the franchise disclosure document furnished to Franchisee.

#### **H. Severability**

Each paragraph, part, term and/or provision of this agreement shall be considered severable, and if, for any reason, any paragraph, 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, such shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and/or provisions of this

agreement, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid paragraphs, parts, terms and/or provisions shall be deemed not part of this agreement; provided, however, that if Franchisor determines that said finding of illegality adversely affects the basic consideration of this agreement, Franchisor may, at its option, terminate this agreement. Anything to the contrary herein notwithstanding, nothing in this agreement is intended, nor shall be deemed, to confer upon any Person other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by this agreement, any rights or remedies under or by reason of this agreement. Franchisee expressly shall be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision hereof, as though it were separately stated in and made a part of this agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

### **I. Construction**

All headings and captions in this agreement are intended solely for the convenience of the parties, and are not to be construed to affect the meaning or construction of any provision of this agreement. All references to section numbers mean sections of this agreement unless another document is specified. If there is an inconsistency between the terms of this agreement and the Manual, the terms of this agreement will control. Throughout this agreement, the singular includes the plural and vice versa, and the masculine includes the feminine or neuter and vice versa, wherever and whenever the context may require. The word "including" is to be construed to include the words "without limitation."

### **J. Force Majeure**

Neither party is liable to the other for any failure to perform any obligation under this agreement due to an event beyond the control of the non-performing party, including acts of God, war, insurrection, riot, civil unrest, terrorism, acts of civil or military authorities, or regulations imposed by government agencies. Any party affected by such an event shall immediately inform the other party and make all reasonable efforts to comply with this agreement.

## **22. DISPUTE RESOLUTION**

### **A. Choice of Law**

**This agreement and the rights of the parties will not take effect unless and until this agreement is accepted and signed by Franchisor. Except to the extent this agreement or any particular dispute is governed by the U.S. Trademark Act of 1946, this agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Ohio (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a Franchisor and Franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this section. References to any law or regulation refer also to any successor laws or regulations or any published regulations for any statute as in effect at the relevant time. References to a governmental agency also refer to any successor regulatory body that succeeds the function of such agency.**

**B. Jurisdiction and Venue**

Franchisee acknowledges that this agreement was accepted and executed by Franchisor in Warren County, Ohio, and that any action, other than an action seeking injunctive relief, sought to be brought by either party shall be brought in the appropriate state court located in Warren County, Ohio, or in the United States District Court for the Southern District of Ohio, Western Division, located in Cincinnati, Ohio. Franchisee waives all questions of personal jurisdiction or venue for the purposes of carrying out this provision. The exclusive choice of jurisdiction and venue governs except that claims for injunctive relief may be brought by Franchisor where Franchisee is located. This exclusive choice of jurisdiction and venue provisions shall not affect the full faith and credit of any judgment obtained.

**C. Cumulative Rights and Remedies**

No right or remedy conferred upon or reserved to Franchisor or Franchisee by this agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be in addition to every other right or remedy. Nothing herein contained shall bar Franchisor's right to seek injunctive relief against threatened conduct that shall cause it loss or damages including obtaining restraining orders, preliminary and permanent injunctions.

**D. Limitation of Damages**

FRANCHISEE AND FRANCHISOR EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IF THERE IS A DISPUTE WITH THE OTHER, EACH WILL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT INCLUDING REASONABLE ACCOUNTING AND/OR LEGAL FEES AS PROVIDED IN SECTION 22.C. FRANCHISEE WAIVES AND DISCLAIMS ANY RIGHT TO CONSEQUENTIAL DAMAGES IN ANY ACTION OR CLAIM AGAINST FRANCHISOR CONCERNING THIS AGREEMENT OR ANY RELATED AGREEMENT. IN ANY CLAIM OR ACTION BROUGHT BY FRANCHISEE AGAINST FRANCHISOR CONCERNING THIS AGREEMENT, FRANCHISEE'S CONTRACT DAMAGES SHALL NOT EXCEED AND SHALL BE LIMITED TO REFUND OF FRANCHISEE'S FRANCHISE FEE PAYMENTS.

**E. Waiver of Jury Trial**

FRANCHISEE AND FRANCHISOR EACH IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, WHETHER AT LAW OR EQUITY, BROUGHT BY EITHER OF THEM.

**F. Mediation**

If a dispute arises between the parties that cannot be settled through negotiation, the parties shall first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to litigation or other dispute resolution procedure. The mediation proceedings shall take place at the American Arbitration Association location nearest Franchisor's principal place of business (presently Franklin, Ohio).

**G. Injunctive Relief**

Notwithstanding the provisions of section 23.F requiring the mediation of all disputes before resorting to litigation, Franchisor expressly reserves the right to seek temporary and permanent

injunctions and orders of specific performance from a court of competent jurisdiction to enforce the provisions of this agreement, without prior mediation, relating to:

1. Franchisee's use of the Marks;
2. Franchisee's obligations upon the termination or expiration of this agreement;
3. Franchisee's obligations under section 16;
4. Any Transfer in violation of section 19; or
5. As necessary to prohibit any act or omission by Franchisee or its agents:

that would constitute a violation of any applicable law, ordinance or regulation;

that is dishonest or misleading to Franchisor and/or Franchisor's other franchisees; or

that may harm, tarnish, or impair Franchisor's reputation, name, services or Marks.

## **23. ACKNOWLEDGMENTS**

### **A. Receipt of Agreement**

Franchisee acknowledges that it has received a copy of this agreement, and all attachments thereto, at least seven (7) business days before the date on which this agreement was executed. Franchisee represents and acknowledges that it has received, read and understood this agreement and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this agreement.

### **B. Receipt of Franchise Disclosure Document**

Franchisee acknowledges that Franchisee has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled *Disclosure Requirements and Prohibitions Concerning Franchising* at least fourteen (14) days before the date on which this agreement was executed.

### **C. Consultation by Franchisee**

Franchisee has been advised to consult with its own advisors with respect to the legal, financial and other aspects of this agreement, the business franchised hereby and the prospects for that business. Franchisee has either consulted with such advisors or has deliberately declined to do so.

### **D. True and Accurate Information**

Franchisee affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Franchisee expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

### **E. Risk**

Franchisee has conducted an independent investigation of the business contemplated by this agreement and recognizes that, like any other business, an investment in a NITELITES Franchise involves business risks and that the success of the venture is dependent, among other factors, upon

the business abilities and efforts of Franchisee. Franchisor does not, in this agreement or otherwise, make any representation or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

**F. No Guarantee of Success**

Franchisee acknowledges that it has not received or relied on any guarantee, express or implied, as to the revenues, profits or likelihood of success of the Franchised Business that it will operate pursuant to this agreement. Franchisee acknowledges that there have been no representations by Franchisor’s directors, employees or agents that are not contained in, or inconsistent with, the statements made in Franchisor’s Franchise Disclosure Document or with the provisions of this agreement.

**G. Multiple Originals**

Both parties will execute multiple copies of this agreement, and each executed copy will be deemed an original.

**H. No Violation of Other Agreements**

Franchisee represents that its execution of this agreement will not violate any other agreement or commitment to which Franchisee is a party.

The parties are signing this agreement on the dates below.

<b>NITELITES FRANCHISE SYSTEMS, INC.</b>		<b>BUSINESS ORGANIZATION FRANCHISEE:</b>	
By:	_____	By:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
<b>INDIVIDUAL FRANCHISEE:</b>		<b>INDIVIDUAL FRANCHISEE:</b>	
_____	_____	_____	_____
<i>Signature</i>		<i>Signature</i>	
_____	_____	_____	_____
Print Name		Print Name	
Date:	_____	Date:	_____

**EXHIBIT A TO THE FRANCHISE AGREEMENT**

MAP OR DESCRIPTION OF DESIGNATED AREA

Franchisee acknowledges that the Designated Area is delineated solely for the purpose of establishing a geographic area within which Franchisee will locate the Franchise Premises for the NITELITES Franchise and for no other purpose. The Designated Area does not grant to Franchisee any promise of exclusivity or territorial protection.

The parties are signing this Exhibit simultaneously with the Franchise Agreement to which it is attached.

**NITELITES FRANCHISE SYSTEMS, INC.**

**BUSINESS ORGANIZATION FRANCHISEE:**

By:

---

By:

---

Title:

---

Title:

---

Date:

---

Date:

---

**INDIVIDUAL FRANCHISEE:**

**INDIVIDUAL FRANCHISEE:**

---

*Signature*

---

*Signature*

---

Print Name

---

Print Name

Date:

---

Date:

---

**EXHIBIT B TO THE FRANCHISE AGREEMENT**

**MAP OR DESCRIPTION OF PROTECTED TERRITORY**

In the event of a discrepancy between the map of the Protected Territory and the written description thereof, the written description controls. If any street, road or highway serves as a boundary of the Protected Territory, the actual boundary is the centerline of the street, road or highway, and only the land and structures within the boundary are included in the Protected Territory.

The parties are signing this Exhibit simultaneously with the Franchise Agreement to which it is attached.

**NITELITES FRANCHISE SYSTEMS, INC.**

**BUSINESS ORGANIZATION FRANCHISEE:**

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

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

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

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

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

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

**INDIVIDUAL FRANCHISEE:**

**INDIVIDUAL FRANCHISEE:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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

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

## EXHIBIT C TO THE FRANCHISE AGREEMENT

### GENERAL RELEASE LANGUAGE

[Effective June 2009]

1. Release – General Provisions. Franchisee and each of the Principals and Remote Principals of Franchisee, and all Affiliates of any of them, on their own behalf and on behalf of their respective successors, assigns, and anyone claiming through or under them (collectively referred to as the “Releasing Parties”), hereby waive, release, acquit, and forever discharge each and all of the Franchisor-Related Persons of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, damages, losses or expenses, of any nature whatsoever, known or unknown, fixed or contingent, which they have, or may hereafter have, against the Franchisor-Related Persons, individually or collectively, including all matters, causes or things whatsoever, that were or have been, or could have in any way been alleged in any pleadings filed in any suit or arbitration (the “Claims”).

2. Without limiting the generality of paragraph 1, the Releasing Parties intend this release, as it pertains to Claims by them or to anyone claiming through or under them, to cover, encompass, relinquish, and extinguish all Claims against the Franchisor-Related Persons, including all Claims arising from any misrepresentation in or omission from any disclosure document received by Franchisee or any of the Affiliates, Principals, or Remote Principals of Franchisee, or from a violation of the Sherman Antitrust Act, the Federal Trade Commission Act, the Federal Trade Commission Trade Regulation Rule entitled *Disclosure Requirements and Prohibitions Concerning Franchising* (16 C.F.R. 436), all other Franchise Laws, any amendment or successor to any of the foregoing statutes or regulations, or any other federal or state (including the state in which the principal office of the Franchised Business is located and the state in which Franchisee was organized) securities, franchise, business opportunity, antitrust, consumer protection, or unfair or deceptive trade practices law or regulation.

3. The Releasing Parties expressly acknowledge and agree that the Claims each of them is releasing include any and all claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, accrued or contingent, intentional or unintentional, and liquidated or unliquidated. The Releasing Parties specifically waive the protection afforded by any statute or law in any jurisdiction, the purpose, substance, or effect of which is to provide that a general release does not extend to claims, material or otherwise, which do not exist or which the person giving the release does not know or suspect to exist at the time of executing the release. The Releasing Parties intend for this release to be as broad as is permitted by law and unqualifiedly general in scope and effect, and that any Claims against any of the Franchisor-Related Persons are hereby forever canceled and forgiven.

4. California Civil Code section 1542. The Releasing Parties acknowledge that they are familiar with the provisions of California Civil Code section 1542 and intend this release to cover, encompass, release, and extinguish, among others, all claims and matters that might otherwise be reserved by California Civil Code section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO 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 RELEASING PARTIES, BEING AWARE OF CALIFORNIA CIVIL CODE SECTION 1542, HEREBY EXPRESSLY WAIVE ALL OF THEIR RIGHTS THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES

OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT OF ANY APPLICABLE JURISDICTION (INCLUDING THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE FRANCHISED BUSINESS IS LOCATED AND THE STATE IN WHICH FRANCHISEE WAS ORGANIZED).

5. Risk of Mistake. The Releasing Parties expressly assume the risk of any mistake of fact or fact of which they may be unaware or that the true facts may be other than any facts now known or believed to exist by them, and it is their intention to forever settle, adjust and compromise any and all present and future disputes with respect to all matters from the beginning of time to the date of this document, finally and forever, and without regard to who may or may not have been correct in their understanding of the facts, law or otherwise. All releases given by the Releasing Parties are intended to constitute a full, complete, unconditional and immediate substitution for any and all rights, claims, demands and causes of action that exist, or might have existed, on the date of this release. The Releasing Parties represent and warrant that they have made such independent investigation of the facts, law and otherwise pertaining to all matters discussed, referred to or released in or by this release as the Releasing Parties, in their independent judgment, believe necessary or appropriate. The Releasing Parties have not relied on any statement, promise or representation, whether of fact or law, or lack of disclosure of any fact or law, by the Franchisor-Related Persons or anyone else, not expressly set forth herein, in executing this document and the related releases.

6. No Assignment or Transfer of Interest. The Releasing Parties represent and warrant that there has been, and there will be, no assignment or other transfer of any interest in any Claims that the Releasing Parties may have against any or all of the Franchisor-Related Persons, all Claims having been fully and finally extinguished, and the Releasing Parties shall forever indemnify and hold the Franchisor-Related Persons harmless from any liability, claims, demands, damages, losses, costs, expenses or legal fees incurred by any of the Franchisor-Related Persons as a result of any Person asserting any interest in any of the Claims or any voluntary, involuntary or other assignment or transfer, or any rights or claims under any assignment, transfer, or otherwise. It is the intention of the parties that this indemnity does not require payment by any of the Franchisor-Related Persons as a condition precedent to recovery against the Releasing Parties under this indemnity.

7. Legal Expenses. If the Releasing Parties, or any Person acting for or on behalf of, the Releasing Parties or claiming to have received, by assignment or otherwise, any interest in any of the Claims, commence, join in, or in any manner seek relief through any suit or other legal or equitable proceeding arising out of, based upon or relating to any of the Claims released hereunder, or in any manner asserts against all or any of the Franchisor-Related Persons any of the Claims released hereunder, the Releasing Parties shall pay all legal expenses and other costs incurred by any of the Franchisor-Related Persons in defending or otherwise responding to said suit or assertion, directly to the Franchisor-Related Persons incurring such costs.

8. Date of Releases; Joint and Several Liability. The releases granted hereunder will be deemed effective as to each of the Releasing Parties as of the date this document is signed by each of the Releasing Parties. The liabilities and obligations of each of the Releasing Parties (and any other Person providing releases to the Franchisor-Related Persons) will be joint and several.

9. Defined Terms. Capitalized words that are not defined in this document are used as defined in the franchise agreement between Franchisee and Franchisor.



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT B TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**PROMISSORY NOTE**

## PROMISSORY NOTE

\$ \_\_\_\_\_

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

For value received, the undersigned ("Borrower") promises to pay to the order of NITELITES FRANCHISE SYSTEMS, INC. ("Payee"), the principal sum of (\$ \_\_\_\_\_), plus interest thereon from the above date at the rate of \_\_\_\_% per annum until all amounts due hereunder are paid in full. This Note is payable in monthly installments of \$ \_\_\_\_\_ each beginning on the 15th day of the first full calendar month after Borrower opens its Franchised Business, but no later than six (6) months the above date, and continuing on the 15th day of each month thereafter until all principal and interest have been paid in full.

All payments due under this Note are payable at 6107 Market Avenue, Franklin, Ohio 45005, or at such other place as Payee may designate in writing, or by electronic funds transfer, in Payee's discretion. Each payment will be applied as follows: (i) repayment of any amounts advanced by Payee for collection costs; (ii) late fees; (iii) accrued interest; and (iv) reduction of the unpaid principal. All payments are payable only in United States dollars. Any payment received after the due date will incur a late fee of \$50.00 or 10% of the payment, whichever is greater. This Note may be prepaid in whole or in part at any time without penalty.

Upon the occurrence of any one or more of the following events ("Events of Default"), Payee has the right, at its option, to declare the entire unpaid principal of this Note and any unpaid interest accrued hereon immediately due and payable upon demand: (i) Borrower fails to make any payment due hereunder within thirty days after it is due; (ii) Borrower fails to perform or breaches any provision of this Note, and such failure or breach is not cured within thirty days after Borrower receives notice thereof; (iii) Borrower fails to perform or breaches any provision of its Franchise Agreement or any other agreement with Payee, and such failure or breach is not cured within the applicable cure period (if any) provided in the relevant agreement; (iv) Borrower fails to perform or breaches any provision of its Supply Agreement or any other agreement with Payee's affiliate, NL Manufacturing and Distribution Systems, Inc., and such failure or breach is not cured within the applicable cure period (if any) provided in the relevant agreement; or (v) the insolvency of, appointment of a receiver of any of the property of, assignment for the benefit of creditors by, or commencement of any proceedings under any bankruptcy or insolvency laws by or against, Borrower.

Notwithstanding any provision to the contrary in this Note, in no event shall the total of (i) the aggregate amount of interest accrued or paid on this Note through the date of any calculation of interest, and (ii) the aggregate amount of any other sums accrued or paid that, under applicable law, are deemed to constitute interest hereon or on the loan evidenced by this Note through the date of any such calculation of interest, ever exceed the maximum contract rate of interest that can be lawfully charged under the law applicable to this Note on the principal balance of this Note from time to time remaining unpaid. It is the intention of Borrower and Payee in connection with the making, delivery, and acceptance of this Note to contract in strict compliance with the usury laws of the United States of America and the laws of the state where Borrower where has its principal place of business. In furtherance of that intention, none of the terms of this Note shall ever create or be construed to create a contract to pay interest at a rate in excess of the maximum contract rate of interest permitted to be charged on this Note under applicable law. Borrower, and any endorsers, guarantors, sureties, or other persons now or hereafter becoming liable for the payment of this Note, shall never be liable for interest in excess of the maximum contract rate of interest that may be lawfully charged under the law

applicable to this Note; and, if Payee ever receives or collects any such excess interest, the amount that would be excessive interest shall be applied to reduce the principal amount of this Note until the principal of this Note and all lawful interest are paid in full, and any remaining excess shall be paid to the Borrower or any endorsers, guarantors, sureties, or other persons, as the case may be. The provisions of this paragraph supersede any inconsistent or conflicting provisions of this Note.

Borrower shall pay all costs, including reasonable attorneys' fees, incurred by Payee to collect or otherwise enforce the terms of this Note, hereby waives presentment for payment, demand, protest, and/or further notice of dishonor of any kind in connection with the delivery, acceptance, performance, and enforcement of this Note, and consents and assents to extensions of time of payment or forbearance or other indulgences without notice. No delay or omission of Payee in exercising, or failure of Payee to exercise, any right under this Note will operate as a waiver of the right or of any other right under this Note. A waiver on any one occasion is not to be construed as a bar to or a waiver of the same or any similar right on any future occasion. The laws of the jurisdiction where Borrower has its principal place of business govern all aspects of this Note. Jurisdiction and venue in any action to enforce this Note are solely in a state or federal court within the State of Ohio in the judicial district where Payee has its principal place of business. Borrower hereby submits to the exercise of personal jurisdiction by any such court and waives any defense of lack of personal jurisdiction or improper venue. As used in this Note, "Payee" includes the original payee of this Note, a holder in due course, or any endorsee or assignee of this Note who is in possession of it.

Capitalized terms used but not defined in this Note are used as defined in the franchise agreement between Borrower and Payee executed simultaneously with this Note (the "Franchise Agreement").

FRANCHISEE:

\_\_\_\_\_  
[Print Name of Franchisee]

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

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



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT C TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

## GUARANTY AND ASSUMPTION OF OBLIGATIONS

In consideration of and as an inducement to: (i) the execution by NITELITES FRANCHISE SYSTEMS, INC., an Ohio corporation ("Franchisor"), of a franchise agreement dated \_\_\_\_\_ (the "Agreement") between Franchisor and the "Business Entity Franchisee" identified on the last page of this Guaranty, and (ii) the extension of credit to the Business Entity Franchisee, as evidenced by the promissory note (the "Note") payable to Franchisor executed by the Business Entity Franchisee simultaneously with this Guaranty, each of the undersigned Personal Guarantors hereby personally and unconditionally, jointly and severally:

1. guarantees to Franchisor and the Franchisor-Related Persons and each of their successors and assigns, for the term of the Agreement, and for any renewal franchise term, and thereafter as provided in the Agreement, that the Business Entity Franchisee will punctually pay and perform each and every undertaking, agreement and covenant in the Agreement, as currently set forth and as amended or otherwise changed in the future, including any renewal franchise agreement;
2. guarantees to Franchisor and its successors and assigns that the Business Entity Franchisee will punctually pay and perform, in accordance with its terms, each and every undertaking, agreement and covenant in the Note, as currently set forth and as amended or otherwise changed in the future;
3. agrees to be personally bound by, and personally liable for, the breach of, each and every provision in the Agreement (including all confidentiality, non-competition, indemnity, and post-termination provisions) and the Note, as currently set forth and as amended or otherwise changed in the future, including any renewal franchise agreement; and
4. agrees to be personally bound by, and personally liable for, each past, current and future obligation of the Business Entity Franchisee to Franchisor and the Franchisor-Related Persons and each of their successors and assigns.

Each of the Personal Guarantors intends that the guarantees and other obligations in this Guaranty be unqualifiedly general and without limitation in scope, nature and effect. Franchisor and the Franchisor-Related Persons, and each of their successors and assigns, need not bring suit first against the Business Entity Franchisee or any one or all of the Personal Guarantors in order to enforce this Guaranty, and may enforce this Guaranty against any or all of the Personal Guarantors as they choose in their sole and absolute discretion.

Each of the Personal Guarantors waives: presentment, demand, notice of demand, dishonor, protest, nonpayment, default and all other notices (including, but not limited to, acceptance and notice of acceptance, notice of any contracts or commitments, notice of the creation or existence of any liabilities under the Agreement or otherwise and of the amounts, terms or otherwise thereof, notice of any defaults, disputes or controversies between Franchisor and the Business Entity Franchisee or otherwise, and any settlement, compromise or adjustment thereof); any right the Personal Guarantor may have to require that an action be brought against Franchisor, Business Entity Franchisee or any other person as a condition of liability, and any and all other notices and legal or equitable defenses to which he or she may be entitled.

Each of the Personal Guarantors consents and agrees that:

1. his or her direct and immediate liability under this Guaranty is joint and several;
2. he or she will render any payment or performance required under the Agreement or the Note on demand if the Business Entity Franchisee fails or refuses to do so punctually;
3. his or her liability under this Guaranty is not contingent or conditioned on pursuit by Franchisor or otherwise of any remedies against the Business Entity Franchisee or any other person;
4. his or her liability will not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence that Franchisor or any other person may from time to time grant to the Business

Entity Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable so long as any of the Business Entity Franchisee's obligations under the Note remain unpaid and during the term of the Agreement and any renewal franchise term;

5. the liabilities and obligations of the Personal Guarantors, whether under this Guaranty or otherwise, will not be diminished or otherwise affected by the termination, rescission, expiration, renewal, modification or otherwise of the Agreement;
6. terms used but not defined in this Guaranty will have the meanings assigned in the Agreement; and
7. the provisions of Section 23 of the Agreement are incorporated in and will apply to this Guaranty as if fully set forth herein and will apply to any dispute involving Franchisor, the Franchisor-Related Persons, any Marketing Fund, or any of their successors and assigns, on one side, and any of the Personal Guarantors on the other side.

In connection with this Guaranty and Franchisor (a) not requiring that the Franchise be initially awarded in the name of one or more of the Personal Guarantors and (b) not requiring the payment of a full transfer fee in connection with any related transfer from the Personal Guarantors to the Business Entity Franchisee, each of the Personal Guarantors hereby grants a General Release of any and all claims, liabilities and obligations, of any nature whatsoever, however arising, known or unknown, against Franchisor, the Franchisor-Related Persons, the Marketing Fund, and each of their successors and assigns.

In this Guaranty, the term "Franchisor-Related Persons" means Franchisor and each and all of the following, whether past, current, or future: persons acting through, in concert with Franchisor, or as affiliates of Franchisor or of any of the foregoing; partners, members, shareholders, officers, directors, agents, attorneys, accountants, and employees of Franchisor or any of the foregoing; and predecessors, successors, or assigns of Franchisor or any of the foregoing. The word "person" includes individuals, corporations, limited liability companies, partnerships of any kind, unincorporated associations, joint ventures, governments, governmental bodies or agencies, commissions, estates, trusts, charitable organizations, and all other entities and organizations of any kind.

The undersigned are signing this Guaranty on the dates below.

**PERSONAL GUARANTOR**

**PERSONAL GUARANTOR**

\_\_\_\_\_  
Personally and Individually (Printed Name)

\_\_\_\_\_  
Personally and Individually (Printed Name)

\_\_\_\_\_  
Personally and Individually (Signature)

\_\_\_\_\_  
Personally and Individually (Signature)

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

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

HOME ADDRESS

HOME ADDRESS

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

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

TELEPHONE NO.: \_\_\_\_\_

TELEPHONE NO.: \_\_\_\_\_

PERCENTAGE OF OWNERSHIP

PERCENTAGE OF OWNERSHIP

IN FRANCHISEE: \_\_\_\_\_%

IN FRANCHISEE: \_\_\_\_\_%

**PERSONAL GUARANTOR**

\_\_\_\_\_  
Personally and Individually (Printed Name)

\_\_\_\_\_  
Personally and Individually (Signature)

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

HOME ADDRESS

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

TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_%

**PERSONAL GUARANTOR**

\_\_\_\_\_  
Personally and Individually (Printed Name)

\_\_\_\_\_  
Personally and Individually (Signature)

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

HOME ADDRESS

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

TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_%

**BUSINESS ENTITY FRANCHISEE:**

\_\_\_\_\_  
Print Name

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

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

**PERSONAL GUARANTOR**

\_\_\_\_\_  
Personally and Individually (Printed Name)

\_\_\_\_\_  
Personally and Individually (Signature)

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

HOME ADDRESS

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

TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_%

**PERSONAL GUARANTOR**

\_\_\_\_\_  
Personally and Individually (Printed Name)

\_\_\_\_\_  
Personally and Individually (Signature)

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

HOME ADDRESS

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

TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_%

Franchise No. \_\_\_\_\_

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



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT D TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**NONDISCLOSURE AND NONCOMPETITION AGREEMENT**

## NONDISCLOSURE AND NONCOMPETITION AGREEMENT

This agreement is between \_\_\_\_\_ (“the Company”) and \_\_\_\_\_ (“Covenantor”), an individual resident of the state of \_\_\_\_\_.

A. Pursuant to a franchise agreement dated \_\_\_\_\_ (the “Franchise Agreement”), NiteLites Franchise Systems, Inc. (“Franchisor”) licensed the Company to operate an architectural and landscape lighting business (the “Franchise”) using Franchisor’s unique franchise system and Franchisor’s NITELITES® trademark.

B. Covenantor holds a position as a shareholder, officer, director, partner, member, manager, employee, or trustee of the Company.

C. Franchisor has expended substantial amounts of time and money in developing the Marks (as defined in section 2 below) and Franchisor’s distinctive franchise system (“the System”), including, without limitation, unique sales and marketing methods, unique and proprietary products, pricing techniques, promotional materials, new product development, financial information, and procedures for the efficient operation of a Franchise, all of which Covenantor acknowledges to be confidential and proprietary information.

D. In connection with the operation of the Franchise, Covenantor will have access to such confidential and proprietary information.

E. The Franchise Agreement requires that all shareholders, officers, directors, partners, members, managers, employees, and trustees of the Company must execute this agreement.

THEREFORE Covenantor hereby agrees as follows:

1. Confidential Information. In this agreement, “Confidential Information” means trade secrets and any information or matter that is competitively sensitive and not generally known by the public (whether or not in written or tangible form and regardless of the media (if any) on which stored) relating to the System, including, without limitation, know-how, knowledge of and experience in operating a Franchise, methods, techniques, formats, specifications, procedures, systems, policies and standards, business operating systems and techniques, record keeping and reporting methods, accounting systems, sales and marketing methods and training techniques, specifications for signs, displays, business forms and stationery to be used by franchisees, designs, drawings and specifications for the Franchise premises, Franchisor’s operations manuals (which the Company has received on loan from Franchisor), ideas, research and development, lists of franchisees and suppliers, suggested pricing and cost information, software developed or introduced by Franchisor or its affiliates as part of the System, and any other information or material identified by Franchisor or the Company as confidential. Covenantor acknowledges the proprietary and confidential nature of all Confidential Information. Covenantor shall use Confidential Information solely for the Company’s benefit and may not at any time disclose, communicate, divulge, or use any Confidential Information to or for the benefit of any other person.

2. Marks. Covenantor acknowledges Franchisor’s right, title, and interest in and to the NITELITES word and design trademarks and certain other proprietary trademarks, designs, logos, symbols, and trade names used by Franchisor or that Franchisor in the future may use or provide for use by the Company, and the identification, schemes, standards, specifications, operating

procedures, and other concepts embodied in the System (the "Marks"). Covenantor further acknowledges that any use of the Marks outside the scope of the Franchise Agreement without Franchisor's prior written consent would be an infringement of Franchisor's rights in the Marks. Accordingly, Covenantor shall not, directly or indirectly, commit an act of infringement or contest, or aid in contesting, the validity or ownership of the Marks or take any other action in derogation thereof at any time.

3. Nonsolicitation. Covenantor shall not, during the term of the Franchise Agreement and for a continuous and uninterrupted period commencing upon the expiration or termination of the Franchise Agreement (regardless of the cause for termination) and continuing for two years thereafter, either directly or indirectly, for himself or through, on behalf of, or in conjunction with, any other person:

(a) divert or attempt to divert any business or customer of the Company or of any other franchisee of Franchisor to any competitor or to Covenantor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act that may injure or prejudice the goodwill associated with the Marks and the System; or

(b) employ or seek to employ any person who is at that time employed by the Company, by Franchisor, or by any other franchisee of Franchisor, or otherwise directly or indirectly attempt to induce such person to leave his or her employment.

4. Noncompetition. During the term of the Franchise Agreement and for a continuous and uninterrupted period commencing upon the expiration or termination of the Franchise Agreement (regardless of the cause for termination) and continuing for two years thereafter, directly or indirectly, for himself or through, on behalf of, or in conjunction with, any other person, own, maintain, operate, engage in, or have any interest in, any business which offers or sells, or grants franchises or licenses to others to operate a business that offers or sells, exterior lighting and related products and services or similar products and services to those offered as part of the System or in which Confidential Information could be used to the disadvantage of Franchisor, its other franchisees, or its affiliates, which is or is intended to be located within fifty miles of the Company's Franchise or within fifty miles of any other Franchise (whether owned by Franchisor or another franchisee). This restriction does not apply to the beneficial ownership by Covenantor of less than one percent of the outstanding equity securities of any corporation the securities of which are registered under the Securities and Exchange Act of 1934.

5. Remedies. Covenantor acknowledges that his violation of any of the covenants in this agreement would result in irreparable injury to Franchisor and the Company, for which no adequate remedy at law may be available, and accordingly consents to the issuance of, and agrees to pay all court costs and reasonable attorney fees incurred by Franchisor or the Company in obtaining, an injunction enjoining any conduct by Covenantor prohibited by this agreement. This remedy is in addition to any other remedies that may be available to Franchisor or the Company.

6. Modification. The terms of this agreement may be modified or amended only by a written instrument signed by all parties.

7. Delay in Exercising Rights Not a Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this agreement will operate as a waiver thereof, nor will a single or partial exercise of any right, power, or privilege under this agreement by any party

preclude any other or further exercise thereof or the exercise of any other right, power, or privilege by that party.

8. Severability. Each of the covenants in this agreement is to be construed as independent of any other covenant or provision of this agreement. If any provision of this agreement is held to be illegal, invalid, or unenforceable, the provision will be deemed to be modified to the extent necessary to permit its enforcement to the maximum extent permitted by applicable law, and Covenantor expressly agrees to be bound by any lesser covenants subsumed within the terms of the provision that imposes the maximum duty permitted by law, as if the resulting covenants were separately stated in and made a part of this agreement. The remainder of this agreement and all other provisions hereof will not be affected thereby.

9. Effect. This agreement is binding upon and inures to the benefit of the parties and their respective legal representatives, successors, and assigns.

10. Governing Law. The laws of the state in which the Company's principal office is located govern all aspects of this agreement.

11. Jurisdiction and Venue. Any action based upon this agreement brought by any party against any other party may be brought in state or federal court in the state of Ohio in the judicial district in which Franchisor has its principal place of business, and each party hereby consents to the exercise of personal jurisdiction by any such court and waives all objections or defenses of lack of personal jurisdiction or improper venue for the purpose of carrying out this provision.

12. Third-Party Beneficiary. Each of the parties acknowledges and intends that the covenants in this agreement directly benefit Franchisor, and Franchisor is a third-party beneficiary of this agreement, entitled to enforce the provisions of this agreement in its own name without the Company as a party, and further entitled to all remedies provided in section 5 hereof.

13. "Person" Defined. In this agreement, the word "person" includes corporations, limited liability companies, partnerships of any kind, joint ventures, unincorporated associations, estates, trusts, charitable organizations, governments, governmental bodies and agencies, commissions, and all other entities and organizations, as well as individuals.

The parties are signing this agreement on the dates below.

COMPANY:

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

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

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

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

\_\_\_\_\_

COVENANTOR



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT E TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**SUPPLY AGREEMENT**

## NITELITES PRODUCTS AND EQUIPMENT SUPPLY AGREEMENT

This agreement is dated \_\_\_\_\_ between NL MANUFACTURING & DISTRIBUTION SYSTEMS, INC., an Ohio corporation ("Seller"), and \_\_\_\_\_, a/an \_\_\_\_\_ ("Customer").

Pursuant to a franchise agreement dated \_\_\_\_\_ (the "Franchise Agreement") with NiteLites Franchise Systems, Inc. ("Franchisor"), an affiliate of Seller, Customer operates a business offering architectural and landscape illumination products and services using Franchisor's unique business format and registered trademark NITELITES® (the "Franchised Business").

Seller has developed and is a distributor of certain architectural and landscape illumination products, some of which bear the NITELITES trademark, which meet Franchisor's standards and specifications for quality (the "Products").

Under the terms of the Franchise Agreement, Customer must purchase its requirements of the Products from Seller or another supplier designated by Franchisor.

This agreement contains the terms and conditions upon which Seller will sell the Products to Customer for subsequent resale.

Therefore the parties agree as follows:

1. Products. The term "Products" means all goods bearing the brand label NITELITES and other brands distributed by Seller for resale in the Franchised Business, including those listed on Seller's "Product and Price List" as stated in the NiteLites Franchise Systems, Inc. Operations Manual from time to time. Customer acknowledges that the Products may be manufactured by Seller or by a third party acting under contract with Seller or an affiliate of Seller.

2. Resale of Products. Customer shall sell the Products only at retail and only through the Franchised Business. Customer may not make any wholesale, Internet or mail order sales of the Products. Seller may suggest retail prices and pricing strategies for the Products, but Customer has sole discretion over the prices it charges for the Products. Customer may resell the Products only in their original state and packaging under the original names and trademarks. Customer may not alter the Products in any way without Seller's prior written consent.

3. Purchasing Procedures.

(a) All offers to purchase Products from Seller must be submitted online via NiteLites order Site ("online order"). The terms and conditions of this agreement are hereby incorporated into and made a part of every online order. No additional terms or conditions will be deemed to be a part of any online order unless specifically accepted in writing by Seller. Each online order received by Seller must include the price, quantity, description of Products, and shipping instructions (i.e., carrier and requested shipping date). Seller will not accept verbal orders for Products.

(b) Online orders placed by Customer are accepted by Seller unless rejected by Seller within two entire business days after Seller's receipt. Seller shall confirm the requested shipping date or specify an alternative shipping date ("Acknowledged Shipping Date"). All shipping dates are subject to

Seller's receipt of Customer's payment for the Products. All credit terms of each online order are subject to approval by Seller.

(c) Seller shall use its best efforts to make all Products available to Customer as ordered. Seller reserves the right to accept or reject any online order or to ship all or part of any online order after the requested shipping date, which right shall not be unreasonably exercised. Seller shall not extend or otherwise modify the Acknowledged Shipping Date without Customer's written consent, so long as Seller receives Customer's payment for the Products by that date.

(d) In the event of a shortage of a Product for any reason, Seller may allocate its available supply of the Product among its customers, including Customer and Customer's customers, in whatever manner Seller deems equitable, if Seller notifies Customer of the shortage as soon as practicable. Seller may terminate a online order, in whole or in part, or extend an Acknowledged Shipping Date for a Product subject to allocation due to shortage, so long as Seller gives Customer written notice of the termination or the new shipping date at least ten entire business days before the Acknowledged Shipping Date. Seller shall not extend or otherwise modify the Acknowledged Shipping Date for more than thirty days without Customer's written consent.

4. Discontinued Products.

(a) Customer may, within thirty days after its receipt of a notification that a Product will be discontinued by Seller, request that Seller allow it to exchange its unused inventory of the discontinued Product for the number of units of its replacement Product, or any other Product in Seller's product line, having an aggregate net purchase price equal to the aggregate net purchase price of the discontinued Product being returned. If there is no replacement Product offered by Seller, Seller, at Customer's option, shall credit Customer's account by the aggregate net purchase price of the discontinued Product. All requests for return must specify the model, quantity, and original shipping date of each Product to be returned. Upon receipt of a request for return that satisfies the above criteria, Seller shall issue a Return Material Authorization ("RMA") number to Customer. Seller is not required to accept the return of any discontinued Product without a valid RMA number. Any Products returned by Customer must be new, unused, and in the original shipping container. The "aggregate net purchase price" of a Product is the purchase price of the Product as shown on the most recent invoice from Seller, or, if no invoice has been issued, the purchase price shown on the Product and Price List then in effect, multiplied by the number of units of the Product being returned or exchanged.

(b) If, after notification that a Product will be discontinued, Seller is unable to fill Customer's order, Customer may cancel the order and return to Seller the discontinued Product without following the procedures set forth in the preceding subparagraph 4(a), if Customer notifies Seller of the cancellation in writing within thirty days after Customer's receipt of the notification that the Product will be discontinued. Customer shall provide Seller with the quantity and model number of the discontinued Products being returned. Upon their return, Seller shall credit Customer's account for aggregate net purchase price of the returned Products.

5. Pricing and Shipping.

(a) Seller shall make the Products available to Customer upon prices that are comparable for products with similar features and of similar quality in the marketplace. Customer shall pay the

prices for Products listed in the most current Product and Price List, which is published periodically by Seller and subject to change. Seller may, in its discretion, establish or modify from time to time the prices, pricing structure, charges, and other terms and conditions governing the sale of Products by giving Customer at least ten days' written notice. Except as provided in subparagraph 5c of this section, any change becomes effective upon the date specified in the notice and applies to each online order received by Seller on and after that date.

(b) Customer shall pay all shipping costs, insurance, and sales and use taxes in connection with its sale of Products to its customers, as well as duties, value-added, withholding, and other taxes, excises and tariffs, none of which will be included in calculating any credits, refunds, price protection, or other offsets under this agreement. ALL SHIPMENTS OF PRODUCT SHALL BE F.O.B. ORIGIN.

(c) The following billing procedures apply to any online order not made, accepted or completely shipped by Seller before the effective date of any price change:

(1) Price Increases.

(i) Back-ordered Products under online orders received before the effective date of the price increase that were scheduled for shipment no later than ten days after the effective date of the price increase, as reflected in the online order, will be billed at the price in effect before the increase.

(ii) Products scheduled for shipment more than ten days after the effective date of the price increase will be billed at the increased price unless Seller postponed shipment more than thirty days.

(iii) Customer may cancel, at no additional cost to Customer, any online order for Products subject to a price increase, by notifying Seller in writing within ten business days after the effective date of the price increase.

(2) Price Decreases. A price decrease applies to all unshipped Products under online orders accepted by Seller before the effective date of the price decrease and to new online orders accepted by Seller on or after the effective date of the price decrease.

6. Risk of Loss. Customer shall inspect the Products immediately upon receipt, count and verify the accuracy of the shipment, and promptly notify Seller in writing of any visible defects, shortages or spillages. Risk of loss, casualty or damage to the Products passes to Customer as soon as Seller delivers the Products to the carrier for shipment, even if Seller serves as the carrier. Customer shall identify and document any loss or damage directly to the freight company. Seller is not liable to Customer for any failure to deliver or delay in making delivery that results from causes not directly attributable to or controlled by Seller.

7. Payment Terms.

(a) Customer shall pay for all Products prior to delivery by Seller in U.S. dollars by cash, check, prepayment, C.O.D., credit card, wire transfer, electronic funds transfer, or other terms acceptable to Seller. Customer shall pay a finance charge of 1.5% per month, or the highest rate allowed by law, whichever is lower, on any unpaid amount from the date payment is due until the date payment is received by Seller. This does not obligate Seller to accept any payment after the due date or to extend credit to Customer.

(b) If Customer fails to pay any invoice when due or otherwise comply with this agreement, Seller may decline to accept orders for any more Products from Customer or delay the shipment of any orders that have been accepted until payment in full of all sums due and owing to Seller. In addition, Seller may require that amounts owed to Seller be paid through an Electronic Depository Transfer Account established at a national banking institution approved by Seller. When requested, Customer shall establish the account providing for electronic funds transfer as approved by Seller, and Seller shall have access to the account for the purpose of receiving payment for any amounts due for purchases by Customer. Customer shall execute all documents that Seller's or Customer's bank requires to establish and implement the Electronic Depository Transfer Account. Once established, Customer shall deposit funds sufficient to meet its obligations to Seller and shall not close the Electronic Depository Transfer Account without Seller's consent.

(c) Seller may, from time to time, in its sole and absolute discretion, establish and modify, without notice, payment and credit terms based upon Customer's financial condition and payment experience, and Seller may delay or withhold shipment of Products based upon these terms. Customer shall provide Seller with all financial information as Seller may reasonably request from time to time (including, without limitation, verified financial statements with supporting documentation, and adequate assurances of customer orders, bank commitment letters, and the like) for purposes of establishing or reviewing Seller's credit terms. Seller may require Customer to execute security agreements and financing statements to grant or perfect Seller's security interest in Customer's inventory, proceeds, accounts, or other collateral, and may further require Customer's principals personally guaranty Customer's financial obligations to Seller.

8. Seller's Purchase Money Security Interest. If Seller, in its discretion, extends credit to Customer or accepts payment by check, Seller retains and Customer hereby grants Seller a purchase money security interest in Customer's inventory and all proceeds therefrom (including insurance proceeds). Customer hereby authorizes Seller to execute and file, on Customer's behalf, all financing statements to perfect Seller's security interest, and grants Seller an irrevocable power of attorney coupled with an interest for that purpose.

9. Modification of Products. Customer shall use and display the Products only in the form and manner approved by Seller. Customer acknowledges that the Products have a reputation of high quality and that any non-permitted modification in the design or recommended use of any Product may adversely impact the reputation of Seller and the Products. Therefore, Customer may not make any material modifications to any Product without Seller's prior written consent. Any approved modification in the design of a Product is at Customer's sole cost and risk.

10. Relationship of Parties.

(a) Each party is an independent contractor of the other. This agreement does not create any relationship of principal and agent, employer and employee, partnership or joint venture between the parties, and neither party is the agent of the other. Nothing in this agreement grants either party any power, right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party, or to bind the other party in any manner, and neither party may represent that it has any power, right or authority to do so.

(b) Without limiting the generality of subparagraph 10(a) above, Customer is solely responsible for all federal, state, and local income taxes, unemployment taxes, social security contributions, worker's

compensation premiums and insurance, and all other taxes and payments relating to Customer, the Franchised Business, and Customer's employees. Customer and its employees are not eligible for any of Seller's employee benefit programs. Neither Customer nor any employee of Customer has any claim against Seller for sick leave, retirement benefits, social security, worker's compensation, disability or unemployment benefits.

(c) This agreement does not, and is not intended to, create a franchisor-franchisee relationship between the parties under any state or federal statutes, regulations, or rules, including, without limitation, the Ohio Business Opportunity Plans Act (Chapter 1334 of the Ohio Revised Code) or any similar statute of any jurisdiction. Seller will not secure or provide assistance in securing customer accounts or business locations for the benefit of Customer. Nothing in this agreement restricts Customer's right or power to sell, distribute, and market any goods and services in the operation of its business, so long as Customer does not use Seller's trademarks in connection with the sale and distribution of those goods and services.

11. Intellectual Property Rights. The intellectual property rights associated with or relating to the Products are the valid and exclusive properties of Seller, and Customer has and acquires no rights to those intellectual property rights. Customer does not possess and will not acquire any title or ownership in the technology pertaining to the Products and may not transfer any title to or ownership in that technology. Customer may not take any action that may prejudice the validity of or Seller's title to its intellectual property rights. Customer may not assert the invalidity or contest Seller's ownership of the intellectual property rights associated with or relating to the Products at any time, either as a defense to a claim made by Seller or as a basis of any claim against Seller.

12. Proprietary Information. Customer acknowledges that in the course of performing its duties under this agreement, it may obtain information relating to Seller, the Products, and Seller's business that is confidential and proprietary in nature ("Proprietary Information"). Proprietary Information includes, without limitation, trade secrets, formulas, inventions, innovations, techniques, processes, programs, diagrams, schematics, financial information, product information and plans, and prices, that Seller considers confidential and that is not generally available to the public. Customer may use Proprietary Information only in connection with the performance of its duties under this agreement and shall safeguard all Proprietary Information in strict confidence and exercise due care in its handling and protection, consistent with policies concerning the protection of its own proprietary or trade secret information. Customer may not disclose, divulge, or publish any Proprietary Information for its own benefit or the benefit of any other person or entity; except to those of its employees, representatives, or agents who need access to the Proprietary Information in order to carry out the purposes of this agreement and who have executed a nondisclosure agreement restricting use and strictly prohibiting non-permitted dissemination. Customer may nevertheless disclose Proprietary Information that: (i) is known in the public domain through no fault of Customer; (ii) was lawfully acquired by Customer from sources other than Seller; or (iii) is required to be disclosed by Customer in connection with lawful process (*i.e.*, court or administrative order, or subpoena in conjunction with governmental activity); provided that, before disclosure, Customer gives Seller reasonable advance notice and shall cooperate in seeking a protective order disallowing non-permitted disclosure or restricting disclosure in order to protect confidential and proprietary information.

13. Limited Warranty. Seller warrants each Product delivered to Customer under this agreement only as provided in Seller's limited warranty in effect from time to time for the Product. A copy of Seller's limited warranty will accompany each shipment of Products. Seller may modify its limited warranty from time to time, in its sole and absolute discretion and without liability to Customer. Any modification of Seller's

warranty is effective immediately with respect to all Products shipped after the modification, even if ordered before the modification. In no case will Seller's liability exceed the cost of the Products on which a claim for damages is based. Defective parts that are under warranty must be returned to Seller.

14. Warranty Disclaimer. SELLER MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE PERFORMANCE OF SELLER'S PRODUCTS OR AS TO SERVICE TO CUSTOMER OR TO ANY OTHER PERSON, EXCEPT AS PROVIDED IN SELLER'S LIMITED WARRANTY ACCOMPANYING EACH SHIPMENT OF PRODUCTS. SELLER RESERVES THE RIGHT TO MODIFY ITS WARRANTY AND THE SERVICE POLICY CONTAINED IN THE WARRANTY, OR OTHERWISE, AT ANY TIME, WITHOUT FURTHER NOTICE AND WITHOUT LIABILITY TO CUSTOMER OR ANY OTHER PERSON. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE HEREBY EXPRESSLY EXCLUDED. THIS EXCLUSION IS APPLICABLE REGARDLESS WHETHER ANY REMEDY IN THIS AGREEMENT OR IN SELLER'S LIMITED WARRANTY ACCOMPANYING EACH SHIPMENT OF PRODUCTS FAILS OF ITS ESSENTIAL PURPOSE OR FAILS TO COMPENSATE IN FULL FOR THE RESULTING HARM.

15. Limitation of Liability and Remedies. SELLER SHALL NOT BE LIABLE FOR ANY LOST PROFITS, BUSINESS INTERRUPTION, LOST DATA, OR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND SUFFERED BY CUSTOMER, ITS CUSTOMERS, OR OTHERS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PRODUCTS.

16. Customer Acknowledgment. Customer acknowledges that the limitation of liabilities and remedies, disclaimer of warranties, and disclaimer of liability in this agreement apply regardless of whether Customer has accepted any Products or service under this agreement. Customer acknowledges that Seller has set its prices and entered into this agreement in reliance on the limitation of liabilities and remedies, disclaimer of warranties, and disclaimer of liability in this agreement, and that the intended allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss) forms an essential consideration and basis of the bargain between the parties.

17. Indemnification by Customer. Customer shall indemnify and defend Seller and hold Seller harmless against and from any and all claims, demands, causes of action or damages, including, without limitation, attorney fees, made against Seller based upon, arising out of, or in any way related to:

- (a) Customer's sale, distribution, or marketing of Products under this agreement;
- (b) Customer's combination, operation, or use of any Product with equipment, data, or programming not supplied by Seller;
- (c) Customer's non-permitted alteration or modification of Products;
- (d) Customer's conduct of the Franchised Business or any other business operated by Customer;
- (e) Customer's ownership or possession of property; or
- (f) any negligent act, misfeasance, nonfeasance, malfeasance, or misconduct by Customer or any of its officers, directors, principals, employees, contractors, servants or agents.

Indemnification includes any and all fees, costs and expenses, including, without limitation, attorney fees incurred by or on behalf of Seller in the investigation of or defense against any of the foregoing claims,

consulting and expert fees, transportation, and copying. Further, Customer shall indemnify and defend Seller and hold Seller harmless against and from any and all debts, accounts, obligations, or other liabilities or torts of Customer, its officers, directors, principals, employees or agents, except as may be expressly provided in this agreement. Notwithstanding the foregoing, Customer shall not be obligated to indemnify Seller for any action involving patent, trademark or copyright infringement or other similar actions arising out of the authorized use by Customer of the Products or Seller's trademarks or promotional materials.

18. Insurance. During the term of this agreement and for a period of two years after the later of (i) the expiration of this agreement or (ii) the date of the last shipment of Products to Customer, Customer shall obtain and maintain product liability insurance suitable to Seller providing protection for Seller, its agents and employees as named insureds, in an amount of coverage not less than \$2,000,000.00, applicable to any claims, demands, causes of action, or damages, including, without limitation, attorney fees, due to, arising out of, or in any way connected to any alleged use of, or alleged defects in, the Products. Customer shall furnish Seller with a certificate of insurance evidencing compliance with the requirements of this paragraph within thirty days after the date of this agreement. The insurance policy must provide Seller with at least thirty days advance written notice of non-renewal or cancellation.

19. Default

(a) Each of the following is an "Event of Default" under this agreement:

- (1) Customer fails to pay when due any invoice for payment for Products sold to Customer under this agreement;
- (2) Customer breaches any provision of this agreement or otherwise fails to perform or observe any of Customer's obligations in this agreement;
- (3) Customer is in default under any other agreement or instrument to which both Customer and Seller (or any affiliate of Seller) are parties, including, but not limited to, the Franchise Agreement and any security agreement, and the default continues beyond the applicable cure period;
- (4) Customer sells, relocates, transfers, or attempts to sell, relocate, or transfer the Products, except in the ordinary course of business;
- (5) the insolvency, appointment of a receiver, assignment for the benefit of creditors, commencement of any proceedings under any bankruptcy or insolvency law, or termination of existence of Customer;
- (6) any attempted garnishment or attachment of the Products;
- (7) a creditor of Customer obtains possession of any Products by any means, including, without limitation, levy, distraint, replevin or self-help.

(b) Upon the occurrence of an Event of Default and without notice to Customer, Seller may accelerate the maturity of any money owed Seller by Customer and declare the same immediately due and payable, proceed to protect and enforce its rights by suit in equity or by action at law, and obtain a judgment or any other relief appropriate to the action or proceeding. Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code. Without limiting the

generality of the foregoing, Seller may immediately, without demand of performance and without other notice to Customer (all of which Customer hereby expressly waives):

- (1) repossess the Products at their location;
- (2) with or without advertisement, sell at public or private sale or otherwise realize upon the whole or, from time to time, any part of the Products, or any interest that Customer may have in them;
- (3) to the full extent permitted by applicable law, enter any premises where the Products are located and take possession and control of them; and
- (4) set-off against any or all amounts owing to Customer by Seller.

All rights and remedies of Seller under this agreement are cumulative and not exclusive of any other rights or remedies available to Seller, and no course of dealing between the parties operates as a waiver of such rights or remedies. Customer shall, on demand, reimburse Seller for all expenses, including reasonable attorney fees and legal expenses, incurred by Seller in connection with the enforcement of this agreement.

20. Term. The terms of this agreement apply to all purchases of Products by Customer. This agreement expires automatically upon the termination or expiration of the Franchise Agreement. The expiration or termination of the Franchise Agreement does not extinguish any obligations that arose under this agreement while it was in force.

21. Assignment. Customer may not assign any of its rights or obligations under this agreement to any other party without Seller's prior written consent. Notwithstanding any permitted or authorized assignment, Customer shall remain liable according to the original tenor of this agreement. Any assignment to an affiliate of Customer is effective only if the affiliate agrees in writing to assume all rights and obligations of Customer under this agreement. Seller may assign its rights and obligations under this agreement pursuant to (by way of example and not by way of limitation) consolidation or merger, a buy-out or asset purchase, stock sale, acquisition, reorganization, or change of business entity.

22. Notices. Any payments to be made pursuant to this agreement may be made by ordinary mail, postage prepaid, but the sender assumes all risk of delay or failure of delivery. Unless expressly provided otherwise, all due dates in this agreement refer to the date of receipt. All notices, requests, demands and other communications required or permitted under this agreement shall be in writing, shall be addressed as provided below in this Section 22, shall be made (i) by personal delivery, (ii) by certified mail, postage prepaid, return receipt requested, or (iii) by overnight delivery service with proof of delivery, and shall be effective upon receipt or refusal thereof. Any notice sent by certified mail as provided in this paragraph, if returned unclaimed, may be re-sent by ordinary mail, postage prepaid, and will be effective seventy-two (72) hours after deposit in the U.S. mail. All notices, requests, demands, payments, reports and other communications shall be addressed as follows, or to such other persons or address as the parties may provide by notice to the other party as provided in this Section 22:

Seller: NL Manufacturing & Distribution Systems, Inc.  
Thomas Frederick, President  
6107A Market Avenue  
Franklin, Ohio 45005

Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

23. Amendment or Modification. This agreement may be modified or amended only by a written instrument that specifically refers to this agreement, recites that an amendment or modification is being made, and is signed by both parties.

24. Binding Effect. The provisions of this agreement are binding upon and inure to the benefit of both parties and their respective heirs, legal representatives, successors, and assigns.

25. Entire Agreement. This agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreements, understandings, course of dealing, or course of performance. All exhibits and schedules are incorporated by this reference.

26. Waiver. The failure of either party to insist in any one or more instances upon performance of any provision of this agreement or to enforce any of its rights under this agreement is not, and may not be construed as, a continuing waiver of any provisions or the relinquishment or abandonment of any rights, all of which remain in full force and effect. No single or partial exercise by either party of any right or remedy precludes another or further exercise of the right or remedy, or the exercise of any other right or remedy. No waiver is, or may be construed as, a continuing waiver or a waiver of any other breach of any other provision of this agreement.

27. Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION, WHETHER AT LAW OR IN EQUITY, FILED BY EITHER PARTY.

28. Mediation. If a dispute arises between the parties that cannot be settled through negotiation, the parties shall first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to litigation or other dispute resolution procedure. The mediation proceedings shall take place at the American Arbitration Association location nearest Seller's principal place of business (presently Franklin, Ohio).

29. Governing Law. The laws of the State of Ohio govern all aspects of this agreement.

30. Jurisdiction and Venue. Except for actions seeking injunctive relief filed by Seller against Customer, which may be brought in any jurisdiction in which Customer is located, any action by either party against the other in any court may be brought only in state courts located in Warren County, Ohio, or the U.S. District Court for the Southern District of Ohio, Western Division, in Cincinnati, Ohio. Each party hereby submits to the jurisdiction of these courts and waives any defense of lack of personal jurisdiction. Venue is proper in any of these courts and each party hereby waives any right to transfer or change the venue.

31. Force Majeure. Neither party is liable to the other for any failure to perform any obligation under this agreement due to an event beyond the control of the non-performing party, including, but not limited to, acts of God, war, insurrection, riot, civil unrest, terrorism, acts of civil or military authorities, or regulations imposed by government agencies. Any party affected by such an event shall immediately inform the other party and make all reasonable efforts to comply with this agreement.

32. Severability. If any provision of this agreement is held to be illegal, invalid or unenforceable in any respect, that term or provision will be deemed to be modified to the extent necessary to permit its enforcement to the maximum extent permitted by applicable law, and the remainder of this agreement will not be affected.

The parties are signing this agreement on the dates below.

NL MANUFACTURING & DISTRIBUTION SYSTEMS, INC.

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

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

CUSTOMER:

\_\_\_\_\_  
Name of Company

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



**Nitelites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT F TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**CALL CENTER SERVICE AGREEMENT**

## CALL CENTER SERVICE AGREEMENT

This Agreement is between NITELITES FRANCHISE SYSTEMS, INC. ("NFS") and \_\_\_\_\_ ("You"), a NITELITES Franchisee under a franchise agreement with NFS dated \_\_\_\_\_ (the "Franchise Agreement").

- 1. SERVICE FEE.** NFS will provide You with the services described in Section 2 below at no charge beginning on the date Your NITELITES Franchise opens for business until the first day of the second calendar month following the month in which Your NITELITES Franchise opens for business. Beginning on the first day of the second calendar month following the month in which Your NITELITES Franchise opens for business, and thereafter on the first day of each calendar month, for and in consideration of the services provided by NFS as described in Section 2 below, You agree to pay NFS a Call Center Service Fee of \$500.00 per month, in advance. You agree to pay a late payment charge of \$50.00 for each Service Fee payment received by NFS more than five (5) days after its due date. You will be solely responsible for all long-distance and forwarding charges associated with forwarding calls to the Call Center. NFS reserves the right to increase the Service Fee if and when necessitated by improvements to the Call Center equipment or service.
- 2. TERMS OF USE.** The Call Center will field incoming calls to Your NITELITES business line during business hours per the Operating Manual. You must have both a fax machine AND either a mobile telephone or pager in order to use the Call Center's services. The Call Center will answer incoming calls by identifying your business as "NITELITES," take messages, answer questions related to NITELITES services, products and sales, and if warranted, schedule product demonstrations. The Call Center Service Fee does not include forwarding charges or charges related to outbound telemarketing, for which You are solely responsible. NFS may assign or subcontract any or all of its obligations under this Agreement without notice to You.
- 3. DEFAULT.** If You fail to pay any amounts due hereunder (including, but not limited to, Call Center Service Fees or late charges) within ten days after its due date, or if You default under Your Franchise Agreement, NFS may discontinue Your Call Center service, without notice to You or opportunity to cure, until all past due amounts and applicable interest and late charges are paid in full and all defaults are cured. NFS, in its sole discretion, may permanently discontinue Call Center services upon a third default under this Agreement or the Franchise Agreement. The remedies in this paragraph are in addition to, and not exclusive of, all other remedies NFS may have for default.
- 4. ELECTRONIC FUNDS TRANSFER.** NFS may require that all amounts payable hereunder be paid through an Electronic Depository Transfer Account established at a national banking institution approved by NFS. When requested, You shall establish the account providing for electronic funds transfer as approved by NFS, and NFS shall have access to such account for the purpose of receiving any payments or charges due under this Agreement. You agree to execute any documents that NFS's or Your bank requires to establish and implement the Electronic Depository Transfer Account. Once established, You agree to deposit funds sufficient to meet Your obligations hereunder and not to close the Electronic Depository Transfer Account without NFS's consent.
- 5. NO LIABILITY.** Call Center personnel will endeavor to handle Your business calls in a courteous, professional, and competent manner, but You agree that neither NFS nor any

employee or agent of will be responsible for any damages, expenses, or lost opportunities resulting from any act or omission by Call Center personnel or any employee or agent of NFS.

NITELITES FRANCHISE SYSTEMS, INC.:

\_\_\_\_\_  
Print Your Name

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

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

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

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

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

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



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT G TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**FRANCHISEE DISCLOSURE QUESTIONNAIRE**

NITELITES FRANCHISEE DISCLOSURE QUESTIONNAIRE

As you are aware, you are preparing to enter into a Franchise Agreement with NiteLites Franchise Systems, Inc. (**Franchisor**) for the operation of a NITELITES Franchise. The purpose of this Questionnaire is to determine whether any statements or promises were made to you, either orally or in writing, that the Franchisor did not authorize and that may be untrue, inaccurate, or misleading. Please read each of the following questions carefully and provide honest and complete responses to each question.

1. Did you receive a copy of the Franchise Agreement at least 7 days before you signed it?

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Did you read the Franchise Agreement, the exhibits attached to it, and the other franchise contracts?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Did you understand everything in the Franchise Agreement, the exhibits attached to it, and the other franchise contracts?

YES \_\_\_\_\_ NO \_\_\_\_\_

If "No," what parts did you NOT understand?

(Attach additional pages if necessary.)

---

---

---

4. Did you receive a copy of the Franchisor's Franchise Disclosure Document?

YES \_\_\_\_\_ NO \_\_\_\_\_

5. Did you sign a receipt for the Disclosure Document, to show when you received it?

YES \_\_\_\_\_ NO \_\_\_\_\_

6. Did you understand all of the information in the Disclosure Document?

YES \_\_\_\_\_ NO \_\_\_\_\_

7. If "No," what parts of the Disclosure Document did you NOT understand?

(Attach additional pages if necessary.)

---

---

---

8. Have you discussed your purchase of a NITELITES Franchise with an attorney, accountant, or other professional advisor?

YES \_\_\_\_\_ NO \_\_\_\_\_

9. If "No," did you have an opportunity to do so?

YES \_\_\_\_\_ NO \_\_\_\_\_

10. Do you understand the risks of investing in and operating a NITELITES Franchise?

YES \_\_\_\_\_ NO \_\_\_\_\_

11. Do you understand that the success or failure of your NITELITES Franchise will depend in large part upon your skills and abilities, the number of hours you are willing to work, competition from other businesses, interest rates, the general state of the economy, inflation, labor and supply costs, and other general economic and business factors?

YES \_\_\_\_\_ NO \_\_\_\_\_

**NOTE: QUESTIONS 12 THROUGH 19 DO NOT RELATE TO ANY INFORMATION YOU WERE GIVEN DIRECTLY BY A NITELITES FRANCHISEE. THESE QUESTIONS REFER ONLY TO INFORMATION YOU MAY HAVE BEEN GIVEN BY AN EMPLOYEE OF THE FRANCHISOR OR OTHER PERSON SPEAKING ON BEHALF OF THE FRANCHISOR.**

Has any employee of the Franchisor or other person speaking on behalf of the Franchisor made any written or oral statement or promise regarding:

12. ... the actual revenue, profits, or operating costs of a NITELITES Franchise, **that is contrary to or different from the information in the Disclosure Document?**

YES \_\_\_\_\_ NO \_\_\_\_\_

13. ... the amount of money YOU can earn operating a NITELITES Franchise?

YES \_\_\_\_\_ NO \_\_\_\_\_

14. ... the amount of sales revenue YOUR NITELITES Franchise will or may generate?

YES \_\_\_\_\_ NO \_\_\_\_\_

15. ... the costs you may incur in operating a NITELITES Franchise, **that is contrary to or different from the information in the Disclosure Document?**

YES \_\_\_\_\_ NO \_\_\_\_\_

16. ... your initial investment to open a NITELITES Franchise, **that is contrary to or different from the information in the Disclosure Document?**

YES \_\_\_\_\_ NO \_\_\_\_\_

17. ... the likelihood of success that you should or might expect to achieve from operating a NITELITES Franchise?

YES \_\_\_\_\_ NO \_\_\_\_\_

18. Has any employee of the Franchisor or other person speaking on behalf of the Franchisor made any statement, promise or agreement about the advertising, marketing, training, support services, or assistance that the Franchisor will provide you **that is contrary to or different from the information in the Disclosure Document?**

YES \_\_\_\_\_ NO \_\_\_\_\_

19. Has any employee of the Franchisor or other person speaking on behalf of the Franchisor made any statement, promise, or agreement about any other aspect of a NITELITES Franchise **that is contrary to or different from the information in the Disclosure Document?**

YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered "Yes" to any of Questions 12 through 19, please provide a full explanation of your answer in the following space (attach additional pages if necessary, and refer to them in the space below). If you answered "No" to every Question 12 through 19, please leave the following space blank.

---

---

---

---

---

---

---

---

---

---

You understand that your answers are important to us and that we will rely on them in entering into the Franchise Agreement with you.

**NOTHING IN THIS DOCUMENT IS TO BE CONSTRUED AS A RELEASE, ESTOPPEL OR WAIVER OF ANY LIABILITY OR OBLIGATION IMPOSED BY A STATE FRANCHISE OR INVESTMENT LAW.**

By signing below, you represent that you have responded truthfully to the above questions.

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

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Print Name



**Nitelites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT H TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

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

## LIST OF STATE REGULATORS

The following is a list of state regulators responsible for the registration and review of franchises. We may register in one or more of these states.

### California

Department of Business Oversight  
One Sansome Street Suite 600  
San Francisco, CA 94140-4428  
1-866-275-2677

### Connecticut

Connecticut Banking Commissioner  
Dept. of Banking  
Securities & Business Investments  
Division  
260 Constitution Plaza  
Hartford, Connecticut 06103  
860-240-8230

### Hawaii

Business Registration Division  
Dept. of Commerce and Consumer  
Affairs  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
808-586-2021

### Illinois

Illinois Attorney General  
Franchise Division  
500 South Second Street  
Springfield, Illinois 62706  
217-782-4465

### Indiana

Indiana Secretary of State  
Securities Division  
302 West Washington Street  
Room E-111  
Indianapolis, Indiana 46204  
317-232-6681

### Maryland

Office of the Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202  
410-576-6360

### Michigan

Dept. of the Attorney General  
Consumer Protection Division  
Antitrust and Franchise Unit  
670 Law Building  
Lansing, Michigan 48913  
517-373-7117

### Minnesota

Minnesota Dept. of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101  
651-539-1500

### New York

New York State Office of the  
Attorney General  
Investor Protection Bureau  
Franchise Section  
120 Broadway, 23rd Floor  
New York, NY 10271-0332  
(212) 416-8236 Phone  
(212) 416-6042 Fax

### North Dakota

North Dakota Securities Department  
State Capitol – 5th Floor  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505  
701-328-4712

### Oregon

Secretary of State, Corporation Div.  
255 Capitol Street, Northeast  
Salem, Oregon 97310  
503-986-2200

### Rhode Island

Dept. of Business Regulation  
Securities Division  
John O. Pastore Complex  
1511 Pontiac Ave., Building 69-1  
Cranston, Rhode Island 02910  
401-462-9587

### South Dakota

Dept. of Revenue and Regulation  
Division of Securities  
124 S. Euclid, Suite 104  
Pierre, South Dakota 57501  
605-773-4013

### Virginia

State Corporation Commission  
Div. of Securities & Retail  
Franchising  
Tyler Building, 9th Floor  
1300 East Main Street  
Richmond, Virginia 23219  
804-371-9276

### Washington

Dept. of Financial Institutions  
Securities Division  
150 Israel Road, Southwest  
Tumwater, Washington 98501  
360-902-8760

### Wisconsin

Division of Securities  
Dept. of Financial Institutions  
345 West Washington Avenue, 4th  
Floor  
Madison, Wisconsin 53703  
608-266-1064

## AGENTS FOR SERVICE OF PROCESS

The following state agencies are designated as our agent for service of process in accordance with the applicable state laws. We may register in one or more of these states.

### California

Corporations Commissioner  
One Sansome Street Suite 600  
San Francisco, CA 941404-4428

### Connecticut

Connecticut Banking Commissioner  
Dept. of Banking  
Securities & Business Investments Division  
260 Constitution Plaza  
Hartford, Connecticut 06103

### Hawaii

Hawaii Commission of Securities  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

### Illinois

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706

### Indiana

Indiana Secretary of State  
Securities Division  
302 West Washington Street, Room E-111  
Indianapolis, Indiana 46204

### Maryland

Maryland Securities Commissioner  
Office of Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202

### Michigan

Michigan Dept. of Commerce  
Corporations and Securities Bureau  
P.O. Box 30054  
6546 Mercantile Way  
Lansing, Michigan 48909

### Minnesota

Commissioner of Commerce  
Minnesota Dept. of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101  
651-539-1500

### New York

New York Department of State  
One Commerce Plaza,  
99 Washington Avenue, 6th Floor  
Albany, NY 12231-0001

### North Dakota

North Dakota Securities Dept.  
State Capitol – 5th Floor  
600 East Boulevard  
Bismarck, North Dakota 58505

### Oregon

Secretary of State  
Corporation Division  
255 Capitol Street Northeast  
Suite 157  
Salem, Oregon 97310

### Rhode Island

Dept. of Business Regulation  
Securities Division  
John O. Pastore Complex  
1511 Pontiac Avenue, Building 69-1  
Cranston, Rhode Island 02910

### South Dakota

Dept. of Revenue and Regulation  
Division of Securities  
445 East Capitol Avenue  
Pierre, South Dakota 57501

### Virginia

Clerk, State Corporation Commission  
Tyler Building, 1st Floor  
1300 East Main Street  
Richmond, Virginia 23219

### Washington

Director, Dept. of Financial Institutions  
Securities Division  
150 Israel Road Southwest  
Olympia, Washington 98501

### Wisconsin

Commissioner of Securities  
345 West Washington Street, 4th Floor  
Madison, Wisconsin 53703



**Nitelites<sup>®</sup>**

*—The Outdoor Lighting Professionals*

**EXHIBIT I TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**TABLE OF CONTENTS OF OPERATING MANUAL**

**A**  
**INTRODUCTION**

Letter from the President and CEO.....1

NiteLites Mission Statement.....2

Services of the Franchisor Organization.....3-5

Responsibilities of a NiteLites Franchisee.....6-7

Visits from the Corporate Office .....8

    Your Field Representative.....9

    Field Visit Confirmation.....10

    Franchise Survey Form.....11-16

**B**  
**ESTABLISHING A NITELITES BUSINESS**

Introduction.....	19
Selecting Your Business Type.....	20-23
Your Status as an Independent Contractor.....	24-25
Required Insurance Coverage.....	26-27
Required/Recommended Bank Accounts .....	28
Special Licenses and Permits .....	29
Selecting an Office .....	30
Leasing Office Space: Required Lease Inclusions .....	31
Setting Up the Office.....	32
Working in Your Home and Still Being Professional .....	33
Outlook, Google Calendar and the Online Store .....	34-35
Required Equipment, Supplies and Furnishings.....	36-41
Contracting Utilities .....	42
Selecting the Right Phone Service.....	43
Vehicle Specifications.....	44
Vehicle Maintenance.....	45
Sample Vehicle Wrap.....	46-48
The NiteLites Logo Specifications.....	49
Sample Logos.....	50
Recommended Initial Inventory .....	51

**B**  
**Establishing a NiteLites Business**  
**(Continued)**

Recommended Initial Inventory.....	52-56
Paying Taxes.....	57-58
Federal Taxes.....	59-61
State Taxes.....	62-63
County or Town Taxes.....	64
Federal Tax Filing Checklist.....	65
Paying Additional Fees.....	66-70
Sample NiteLites Initial Training Schedule.....	71

**C**  
**PERSONNEL**

Introduction.....74

The NiteLites Policy on Fair Employment Practices.....75-77  
    Inappropriate Pre-Employment Inquiries.....78-81

Wage and Labor Laws.....82-87

Complying with the Immigration Reform and Control Act of 1986.....88-89  
    Form I-9.....90  
    Example of I-9 Form.....91-97

The NiteLites Policy on Sexual Harassment.....98

Job Descriptions.....99  
    Master Technician/Owner Operator.....100-102  
    Assistant Technician/Installer.....103  
    Suggested Commission Guidelines.....104-106

The Recruitment and Selection Process.....107-108  
    Opening Personnel Files.....109  
    Employment Application.....110-116  
    Example of I-9 Form.....117-123  
    Sample New Hire Reporting Form.....124  
    NiteLites Drug Test Consent.....125

Protecting the NiteLites System.....126  
    Sample Confidentiality and Non-Competition Agreement.....127-133

Orientation and Training of Personnel.....134-135  
    Training Outline.....136-137

The Trial Period.....138

Scheduling Employee Work Hours.....139

Cell Phone & Tablet Usage Policy.....140-143

**C**  
**Personnel**  
**(Continued)**

Sample W-4 Form.....144-145

Sample Authorization Agreement for Direct Deposit.....146

Time Reporting Procedures.....147

Uniform/Dress Code.....148

Vehicle Use Policy.....149-152

Establishing Personnel Policies.....153  
    Personnel Policy Worksheet.....154-159

Evaluating Employees.....160-161  
    Employee Progress Report.....162-163

Discipline and Termination.....164-166  
    Statement of Warning.....167  
    Separation Notice.....168

**D**  
**OFFICE PROCEDURES**

Introduction.....	171
Suggested Office Hours.....	172
Maintaining Customer Lists.....	173
Sample Customer List.....	174
Scheduling Service Calls.....	175
Tracking Installation and Service Work.....	176
Sample of Service Contract Check List.....	177
Invoicing the Customer .....	178
NiteLites Rewards Program.....	179
Collections Procedures.....	180
Daily Banking Procedures.....	181
Franchise Reporting Requirements and Procedures.....	182
Getting Started with InSitu Sales for iPad.....	183-202
Warranty Activation and Submitting a Claim.....	203
Royalty Submission Form.....	204
Advertising Activity Report.....	205
Preparing Financial Statements.....	206
NiteLites Model Chart of Accounts.....	207
Sample Income Statement.....	208
Sample Balance Sheet.....	209
Customer Service.....	210
Handling Customer Complaints.....	211

Pricing NiteLites Services.....212

Equipment Maintenance.....213

**D**  
**Office Procedures**  
**(Continued)**

Ordering Equipment and Supplies.....	214
Receiving and Storing Procedures.....	215
Using Approved Sources.....	216
Best Practices.....	217-218
Return Form.....	219
Packing Slip.....	220

**E**  
**DEMONSTRATION PROPOSAL PROCEDURES**

Introduction.....	222
Demonstration Proposals.....	223-227
Sample NiteLites Proposal.....	228
Presentation Folder.....	229
Sample NiteLites Folder.....	230
Sample NiteLites Commercial LED Brochure.....	231
Sample NiteLites LED Retrofit Brochure.....	232
Sample NiteLites Door Hanger.....	233
Sample NiteLites Service Door Hanger.....	234
Sample NiteLites Business Card.....	235
Sample Company and Personal Credentials.....	236
Sample Average Energy Cost Calculations.....	237
Sample Warranty	
Residential.....	238
Commercial.....	239
Sample Testimonials.....	240
Sample Big Full Color Photos of NL Work.....	241
Commercial	
Sample NiteLites Product Specifications.....	242
Mini Demo Kit – NITE-DEMO-S .....	243

**F**  
**INSTALLATION PROCEDURES**

Introduction.....	246
Universal Components for all Installations.....	247
Preparing for Installations.....	248
Preparing for Installation Checklist.....	249
Conducting Installations.....	250
Fixtures: Uses, Runs and Connections/Wire.....	251-267
Snaploc Low Voltage Wire Connectors.....	252
Anchor Pins.....	253
Well Lights.....	254
Lens Covers.....	255
Path Lights.....	256
Surface Mounts.....	257
Spot Lights.....	258
Micro Spot Lights.....	259
Wash Lights.....	260
Deck Lights.....	261
Recessed Step Lights.....	262
Water Lights.....	263
Photo Cell.....	264
Timers .....	265
Transformers.....	266
Risers .....	267
Installing Well Lights, Path Lights, Spot Lights and Transformers.....	268-270
Installing Deck Lights, Recessed Lights, and Submersible Lights.....	271-272
Post-Installation Procedures.....	273
Permission to Photograph Property.....	274

**F**  
**Installation Procedures**  
**(Continued)**

Service Calls.....	275-276
Parameters of Service Calls with Contract.....	277
Parameters of Service Calls without Contract.....	278
Trouble Shooting/System Problems.....	279-283
Fixture Problems.....	284

**G**  
**SELLING NITELITES SERVICES**

Introduction.....	287
Prospect Identification.....	288
Prospect Management.....	289
Selling NiteLites Services to a Prospective Customer.....	290
Corporate Sales Center.....	291
Seven Ideal Selling Techniques.....	292-294
Protocol to Request to Perform Work in Another Franchisee’s Protected Territory...	295
The NiteLites Advertising Program.....	296-298
The Grand Opening.....	299-300
Developing a Local Advertising Program.....	301
Yellow Pages.....	302
Newspapers.....	303-304
Direct Mail.....	305-306
Radio.....	307
Television/Social Media.....	308

**G**  
**Selling NiteLites Services**  
**(Continued)**

Specialty Advertising .....	309
Publicity.....	310
Sample Press Release Format.....	311
The Call Tracking Metrics System.....	312
Guidelines for Using NiteLites' Marks.....	313
Sample NiteLites Marks.....	314
Obtaining Approval for Advertising Concepts and Materials.....	315
Request for Advertising Approval.....	316
Advertising Activity Report.....	317
NiteLites LED Proposal Form.....	318
Sample Pre-Construction Tip Sheet.....	319



**NiteLites<sup>®</sup>**

*—The Outdoor Lighting Professionals*

**EXHIBIT J TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**INITIAL INVENTORY PACKAGE and START-UP KIT**

## RECOMMENDED INITIAL INVENTORY

### INITIAL INVENTORY

NiteLites has developed the following list of initial inventory items needed to open a NiteLites franchise. You will need to order these items directly from NiteLites.

Once you get up and running, you will continually need to modify your inventory per job so you can maintain sufficient inventory on hand to fulfill customer's orders. Your Field Representative can provide advice and assistance as you learn how to monitor your inventory and make adjustments as needed.

### SUGGESTED START-UP INVENTORY LIST

The items recommended for your initial inventory purchase are included in the following list. We highly recommend that you increase this start-up inventory to reduce shipping and administrative costs.

Item	Description	Price	Qty	Extension
NITE-003	Mini Path Light - Aged Brass	44.00	5	\$220.00
NITE-004	Spot Light - Aged Brass	37.50	18	\$675.00
NITE-008	Micro Spot Light - Aged Brass	34.00	3	\$102.00
NITE-009 PYR	Aged Brass Pyramid Design Hat Only for IPS (5 per box)	19.00	5	\$95.00
NITE-009 STEMLLED	18" Stem Only for IPS with NEW 3.6W LED Design included - Aged Brass	60.00	5	\$300.00
NITE-025DL	Down Light with Mountin Base - Aged Brass	51.25	3	\$153.75

NITE-028	Commercial Grade Cast Brass PAR36 Above Ground Well Light - Aged Brass	51.00	5	\$255.00
----------	--	-------	---	----------

\$1,800.75

Item	Description	Price	Qty	Extension
NITE-046	Commercial Grade Micro Spread Light - Aged Brass	38.50	3	\$115.50
NITE-048	Commercial Grade Spread Light - Aged Brass	64.00	3	\$192.00
NITE-063	Circle Grate Well Light - Aged Brass	58.00	2	\$116.00
NITE-077	CG 8" Brass Step Light with Louvers - Aged Brass	36.00	3	\$108.00
NITE-0151WW	7" Alpha Light with Built-in 2W LED in Warm White - Aged Brass	45.00	4	\$180.00
NITE-101M	Mini MR-16 Inground Well Light	33.00	3	\$99.00
NITE-124A	Commercial Grade Stake & Brass Cover	30.00	3	\$90.00
NITE-189	PAR36 Underwater Light	96.00	2	\$192.00
NITE-209	Digital Astro Timer	31.00	3	\$93.00
NITE-429BR5W	5W MR-16 COB Warm White, Bright LED	15.00	18	\$270.00
NITE-434	4W Multiple Chip LED Module for Commercial Micro Spread Light	52.00	3	\$156.00
NITE-435	11W Multiple Chip LED Module for Commercial Spread Light	74.00	3	\$222.00
NITE-437	3W Multiple Chip LED Module	34.00	3	\$102.00
NITE-441	7W PAR36 LED	53.00	5	\$265.00
NITE-442	11W PAR36 LED	66.00	2	\$132.00
NITE-470	MR8 Microspot/Mini Path Bi-pin 2.5W LED - Non-dimmable	22.00	10	\$220.00
NITE-614	300 Watt SS Plug n Go Transformer	196.00	3	\$588.00
NITE-703	NiteLites 14/2 Wire - 500' per box	163.75	2	\$327.50
NITE-950	Snaploc Wire Connector	136.00	1	\$136.00
NITE-955	Anchor Pins 500 per box	26.00	1	\$26.00

**Recommended Initial Inventory Total**

**\$5,430.75**



**NiteLites<sup>®</sup>**

*—The Outdoor Lighting Professionals*

**EXHIBIT K TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**LIST OF CURRENT FRANCHISEES**

**NiteLites Franchise Systems, Inc.**  
**Customer Contact List**  
December 31, 2017

<b>State</b>	<b>Franchise Location</b>	<b>Company Name &amp; Address</b>	<b>Phone</b>
DE	Wilmington, DE	Quandary, Inc. 5550 Kirkwood Hwy Wilmington, DE 19808	866-662-9111
FL	Jacksonville, FL	Outdoor Lighting Solutions, LLC 1000 Riverside Ave., Ste 400 Jacksonville, FL 32204	904-779-9020
GA	Atlanta, GA	Cadeco, LLC 15 Eagles Point Circle Bluffton, SC 29910	843-815-6208
GA	Savannah, GA	RNE Group, LLC 122 Hampton Hall Blvd, Bluffton , SC 29910	864-357-7984
IN	Indianapolis, IN	Mykal Minor & Associates, Inc. 4210 N. Broadway Ave. Indianapolis, IN 46205	317-706-8550
KS	Kansas City, KS	DB Lighting, LLC 15001 Carter Rd. Overland Park, KS 66221	913-871-1299
MO	St Louis, MO	Nitelites of St. Louis, Inc. 113 Oakland Drive Troy, IL 62294	314-993-8155
SC	Charleston, SC	RLG Co., Inc. 764 Whispering Marsh Dr. Charleston, SC 29412	843-723-1660
SC	Greenville, SC	BH Unlimited, LLC 111 Candleston Place, Simpsonville, SC 29681	864-451-3317
SC	Hilton Head, SC	RNE Group, LLC 122 Hampton Hall Blvd, Bluffton , SC 29910	864-357-7984
TN	Nashville, TN	Thoma Enterprises, LLC 9050 Carothers Pkwy Franklin, TN 37067	615-760-4750
TX	Houston, TX	Pickee Inspection Services, Inc. 12202 Pine Shadows Ln. Pinehurst, TX 77362	281-454-4900



**Nitelites<sup>®</sup>**

*—The Outdoor Lighting Professionals*

**EXHIBIT L TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**FRANCHISEES WHO HAVE LEFT THE SYSTEM**

CLOSED FRANCHISEE LIST  
DECEMBER 31, 2017

STATE	CITY	ZIP	NAME	ADDRESS
OH	Lima	45895	NiteLights Lim/Toledo, Inc	15333 Bay Road Wapakoneta, OH 45895
OH	Toledo	45895	NiteLights Lim/Toledo, Inc	15333 Bay Road Wapakoneta, OH 45895
SC	Myrtle Beach	45005	Gem City II, Inc	6107 Market Ave Franklin, OH 45005
FL	Jacksonville	32258	Trevor James II, Inc	13820 St. Augustin Rd., Suite 113-290 Jacksonville, FL 32258

CLOSED FRANCHISEE LIST  
DECEMBER 31, 2015

**TELEPHONE**

419-221-2248  
419-221-2248  
843-903-0765  
904-779-9020



**Nitelites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT M TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**FINANCIAL STATEMENTS**

**NITELITES FRANCHISE SYSTEMS, INC.**

**FINANCIAL STATEMENTS AND  
INDEPENDENT AUDITOR'S REPORT**

**DECEMBER 31, 2017, 2016 AND 2015**

**NITELITES FRANCHISE SYSTEMS, INC.**

**TABLE OF CONTENTS**

INDEPENDENT AUDITOR'S REPORT	1
FINANCIAL STATEMENTS	
Balance Sheets	2 - 3
Statements of Operations and Retained Deficit	4
Statements of Cash Flows	5
Notes to Financial Statements	6 - 9

ERIC H LAMPL, CPA, INC.  
991 LIGORIO AVENUE  
CINCINNATI, OHIO 45218  
513-521-2379  
ericlampl@fuse.net

**INDEPENDENT AUDITOR'S REPORT**

To the Board of Directors  
NiteLites Franchise Systems, Inc.  
Franklin, Ohio

I have audited the accompanying financial statements of NiteLites Franchise Systems, Inc. (an Ohio corporation), which comprise the balance sheets as of December 31, 2017, 2016, and 2015, and the related statements of operations, retained deficit, and cash flows for the years then ended and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements**

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

**Auditor's Responsibility**

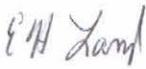
My responsibility is to express an opinion on these financial statements based on my audits. I conducted my audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements 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 entity's internal control. Accordingly, I express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

**Opinion**

In my opinion, the financial statements referred to above present fairly in all material respects, the financial position of NiteLites Franchise Systems, Inc. as of December 31, 2017, 2016, and 2015, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.



March 8, 2018

**NITELITES FRANCHISE SYSTEMS, INC.**  
**BALANCE SHEETS**  
**DECEMBER 31, 2017, 2016 and 2015**

**ASSETS**

	<u>2017</u>	<u>2016</u>	<u>2015</u>
<b>CURRENT ASSETS</b>			
Cash	\$ 10,371	\$ 13,541	\$ 6,192
Accounts Receivable	57,945	145,689	328,614
Accounts Receivable - Jacksonville	<u>53,500</u>	<u>183,780</u>	<u>-</u>
<b>TOTAL CURRENT ASSETS</b>	<u>121,816</u>	<u>343,010</u>	<u>334,806</u>
<b>FIXED ASSETS</b>			
Vehicles	50,427	50,427	50,427
Office Furniture and Equipment	<u>60,205</u>	<u>60,205</u>	<u>59,350</u>
	110,632	110,632	109,777
Accumulated Depreciation	<u>(109,015)</u>	<u>(107,548)</u>	<u>(106,108)</u>
<b>TOTAL FIXED ASSETS</b>	<u>1,617</u>	<u>3,084</u>	<u>3,669</u>
<b>TOTAL ASSETS</b>	\$ <u>123,433</u>	\$ <u>346,094</u>	\$ <u>338,475</u>

See auditor's report and accompanying information.

**NITELITES FRANCHISE SYSTEMS, INC.**  
**BALANCE SHEETS**  
**DECEMBER 31, 2017, 2016 and 2015**

**LIABILITIES AND STOCKHOLDER'S DEFICIT**

	<u>2017</u>	<u>2016</u>	<u>2015</u>
<b>CURRENT LIABILITIES</b>			
Accounts Payable	\$ 10,133	\$ 6,356	\$ 6,475
Accrued Marketing Fund Liability	10,797	12,617	14,775
Due to Related Parties	<u>159,600</u>	<u>289,800</u>	<u>416,400</u>
<b>TOTAL CURRENT LIABILITIES</b>	<u>180,530</u>	<u>308,773</u>	<u>437,650</u>
<b>TOTAL LIABILITIES</b>	<u>180,530</u>	<u>308,773</u>	<u>437,650</u>
<b>STOCKHOLDER'S DEFICIT</b>			
Common Stock	20,000	20,000	20,000
Additional Paid in Capital	105,534	105,534	105,534
Retained Deficit	<u>(182,631)</u>	<u>(88,213)</u>	<u>(224,709)</u>
<b>TOTAL STOCKHOLDER'S DEFICIT</b>	<u>(57,097)</u>	<u>37,321</u>	<u>(99,175)</u>
<b>TOTAL LIABILITIES AND STOCKHOLDER'S DEFICIT</b>	<u>\$ 123,433</u>	<u>\$ 346,094</u>	<u>\$ 338,475</u>

See auditor's report and accompanying information.

**NITELITES FRANCHISE SYSTEMS, INC.**  
**STATEMENTS OF OPERATIONS AND RETAINED DEFICIT**  
**YEARS ENDED DECEMBER 31, 2017, 2016, AND 2015**

	<u>2017</u>	<u>2016</u>	<u>2015</u>
<b>REVENUE</b>	\$ <u>302,037</u>	\$ <u>310,564</u>	\$ <u>248,921</u>
<b>EXPENSES</b>			
Assignment Fees	28,339	30,050	28,622
Automobile		105	-
Bad Debt	201,538	-	-
Bank Service	12	12	5
Call Center Expense	85,800	87,800	80,500
Depreciation	1,467	1,439	1,296
Dues and Subscriptions	8,706	8,482	8,595
Franchise Support	39,329	5,181	28,878
Insurance	3,916	6,426	5,470
Office		235	-
Professional Fees	12,346	13,096	27,825
Rent	12,000	12,000	12,000
Repairs and Maintenance		-	(50)
State Registration	2,800	4,900	2,675
Travel and Entertainment	52	4,192	3,195
	<u>396,305</u>	<u>173,918</u>	<u>199,011</u>
<b>TOTAL EXPENSES</b>			
	<u>(94,268)</u>	<u>136,646</u>	<u>49,910</u>
<b>OPERATING (LOSS) PROFIT</b>			
<b>OTHER INCOME (EXPENSES)</b>			
Taxes	<u>(150)</u>	<u>(150)</u>	<u>(150)</u>
<b>TOTAL OTHER INCOME (EXPENSES)</b>	<u>(150)</u>	<u>(150)</u>	<u>(150)</u>
<b>NET PROFIT (LOSS)</b>	(94,418)	136,496	49,760
<b>RETAINED DEFICIT, BEGINNING</b>	<u>(88,213)</u>	<u>(224,709)</u>	<u>(274,469)</u>
<b>RETAINED DEFICIT, ENDING</b>	\$ <u><u>(182,631)</u></u>	\$ <u><u>(88,213)</u></u>	\$ <u><u>(224,709)</u></u>

See auditor's report and accompanying information.

**NITELITES FRANCHISE SYSTEMS, INC.**  
**STATEMENTS OF CASH FLOWS**  
**YEARS ENDED DECEMBER 31, 2017, 2016, AND 2015**

	<u>2017</u>	<u>2016</u>	<u>2015</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Net Profit (Loss)	\$ (94,418)	\$ 136,496	\$ 49,760
Adjustment to Reconcile Income (Loss) to Net Cash Provided (Used) by Operating Activities			
Depreciation	1,467	1,439	1,296
Change In			
Accounts Receivable	87,744	182,925	12,141
Accounts Receivable - Jacksonville	130,280	(183,780)	
Accounts Payable	<u>3,777</u>	<u>(119)</u>	<u>1,123</u>
<b>CASH (USED) PROVIDED BY OPERATIONS</b>	128,850	136,961	64,320
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Acquisition of Fixed Assets	-	(855)	-
Accrued Marketing Fund Liability	(1,820)	(2,157)	2,600
Due to Related Parties	<u>(130,200)</u>	<u>(126,600)</u>	<u>(70,600)</u>
<b>CASH PROVIDED (USED) BY INVESTING ACTIVITIES</b>	<u>(132,020)</u>	<u>(129,612)</u>	<u>(68,000)</u>
<b>CHANGE IN CASH</b>	(3,170)	7,349	(3,680)
<b>CASH AT BEGINNING OF YEAR</b>	<u>13,541</u>	<u>6,192</u>	<u>9,872</u>
<b>CASH AT END OF YEAR</b>	\$ <u><u>10,371</u></u>	\$ <u><u>13,541</u></u>	\$ <u><u>6,192</u></u>

See auditor's report and accompanying information.

**NITELITES FRANCHISE SYSTEMS, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**AT DECEMBER 31, 2017, 2016, AND 2015**

**NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Organization

NiteLites Franchise Systems, Inc. (the Company), is a corporation organized under the laws of the State of Ohio on January 21, 2004. The Company sells and grants franchises for the operation of outdoor lighting businesses throughout the United States under the trade name NiteLites – The Landscape Lighting Professionals<sup>SM</sup>. These businesses provide superior-quality lighting services, and will plan and install architectural and landscaping illumination products for upscale homeowners and commercial enterprises.

As of December 31, 2016, 2015 and 2014, NiteLites Franchise Systems, Inc. had nineteen (19), twenty one (21), and sixteen (16) franchises operating in North America.

Use of Estimates

The process of preparing financial statements in conformity with accounting principles generally accepted in the United States of America requires the use of estimates and assumptions regarding certain assets, liabilities, revenues, and expenses. Certain estimates relate to unsettled transactions and events as of the date of the financial statements and relate to assumptions about the ongoing operations and may impact future periods. Accordingly, upon settlement, actual results may differ from estimated amounts.

Accounts Receivable

No allowance for bad debts has been provided as management expects no material losses.

Fixed Assets

The cost of fixed assets is depreciated over the estimated useful lives of the related assets which range from five to seven years. Depreciation is computed on the accelerated methods for financial reporting. Maintenance and repairs costs are charged to operations when incurred.

Income Tax Status

The Company, with the consent of its shareholders, has elected under the Internal Revenue Service to be an S-Corporation. Therefore, the profits (losses) are passed thru to the shareholders (based on ownership percentage) that are liable for the federal and state income taxes on their individual returns. Therefore, no provision or liability for federal income taxes has been included in these financial statements.

Advertising Expense

Advertising costs are expensed as incurred.

Marketing Fund

The Company administers a national advertising fund (the Fund) on behalf of its franchisees. Each franchisee is required to contribute per month to the Fund, which is used to develop advertising and marketing materials and promote the Company's service markets and the franchisee's services on a local, regional, and national basis. Receipts are reflected as "Accrued Marketing Fund Liability" account and a separate cash account is maintained.

## NITELITES FRANCHISING SYSTEMS, INC.

### NOTE B - STOCKHOLDERS' EQUITY

#### Common Stock

Common stock of one hundred shares (100) has been authorized and outstanding at December 31, 2017, 2016, and 2015. There is no par value for this stock.

### NOTE C - INCOME RECOGNITION

The initial franchise fee from the sale of a franchise is recognized as revenue upon substantial performance by the Company of all material conditions related to the initial fee. Under the franchise agreement, the Company is required to:

- designate the franchise's "protected territory" within which it will operate
- review and approve the lease or purchase agreements for the site of operations
- provide standard plan for the build-out and equipping of the premises
- provide 32 hours of off-site training
- provide on-site assistance for approximately three days and make ongoing training programs available as deemed necessary
- be available to render advice and guidance

Franchisees are required to pay royalties of \$750. per month for the first fiscal year, \$1,250. per month for the second fiscal year, and \$1,500. per month for the third fiscal year and thereafter for the term of their agreement. Franchise agreements have a five-year term and can be renewed for two additional five-year terms at no cost.

Call center service fees and internet marketing fees are recognized as revenue as the service is rendered.

Distributorships who convert to franchises do not pay initial franchise fees or royalties, but are subject to call center and internet marketing fees.

The following are components of revenue:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Royalty Income	\$ 209,325	\$ 175,809	\$ 163,130
Franchise Fee Income	-	40,995	-
Call Center Service Fees	85,800	87,800	80,500
Other Income	<u>6,912</u>	<u>5,960</u>	<u>5,291</u>
Total	<u>\$ 302,037</u>	<u>\$ 310,564</u>	<u>\$ 248,921</u>

## NITELITES FRANCHISING SYSTEMS, INC.

### NOTE D - CASH AND CASH EQUIVALENTS

Cash and cash equivalents include the Company's cash in bank. The Company has no other assets that would be classified as a cash equivalent.

At December 31, 2017, 2016 and 2015, there were \$1,219, \$1,327, and \$2,709 of cash and cash equivalents that must be spent on cooperative advertising activities that benefit all franchisees pursuant to the franchise agreements.

At various times throughout the year, the company may have had cash in certain financial institutions in excess of insured limits. At December 31, 2017, 2016 and 2015, the Company did not have cash in excess of insured limits.

### NOTE E - RELATED PARTIES

The Company's sole shareholder is a 100% shareholder of a corporation that purchased a franchise during 2004 (Gem City IV, Inc. dba Nitelites of SW Florida) and 100% shareholder of a territory (which was a distributorship) in Myrtle Beach, South Carolina. The Nitelites of SW Florida is subject to the same rules as other franchisees and the Myrtle Beach franchise is under the rules of a distributorship that switched.

The Company shares with another related party (that is owned by the shareholder of NiteLites Franchise System, Inc.) their office space, phone service, utilities, office supplies, and office equipment. Each month, the company that pays an expense is reimbursed by the other for its portion of the expense. The reimbursement of this has been recorded in the specific expense category.

The following activity occurred between the Company and its related parties amounts are included in accounts receivable and revenue for the year ended December 31:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
<u>Revenue from Related Parties</u>			
Internet Marketing Revenue	\$ <u>6,912</u>	\$ <u>5,960</u>	\$ <u>5,291</u>
<u>Due to Related Parties</u>	\$ <u>159,600</u>	\$ <u>289,800</u>	\$ <u>416,400</u>
<u>Purchases from Related Parties</u>			
Call Center Expense	\$ 85,800	\$ 87,800	\$ 80,500
Rent	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>
	\$ <u>97,800</u>	\$ <u>99,800</u>	\$ <u>92,500</u>

## **NITELITES FRANCHISING SYSTEMS, INC.**

---

### **NOTE F - REFUNDABLE DEPOSIT**

During 2005, the company entered into an agreement for \$45,000 to purchase a non-property owner golf membership in the Grand Dunes Country Club located in Myrtle Beach, South Carolina. Membership does not provide an ownership interest in Grand Dunes, but a portion of the initial investment is refundable based on length of membership. As amounts become non-refundable, they are recorded as amortization expense. The refundable balance at December 31, 2017, 2016 and 2015 is \$-0-, \$-0-, and \$-0- respectively. The non-refundable portion of this deposit recorded as amortization expense in 2017, 2016 and 2015 was \$-0-, \$-0-, and \$-0-.

The Company uses the Grand Dunes facilities for corporate training and other meeting room needs.

### **NOTE G - COMMITMENTS**

The Company has a one year lease with its sole shareholder to rent office space that expires in November, 2018. Rent expense for December 31, 2017, 2016 and 2015 was \$12,000 for each year.

### **NOTE H - UNCERTAIN TAX POSITION**

The Company files income tax returns in the U. S. federal jurisdiction and local jurisdiction. As of December 31, 2017, 2016 and 2015, no authorities have commenced tax examinations. The Company's U. S. federal income tax returns prior to 2010 are closed. U. S. and local jurisdiction have statutes of limitations that generally range from three to five years.

The Company follows the provisions of uncertain tax provisions as addressed in FASB Accounting Standards Codification 740-10-65-1. The Company recognized no increase in the liability for unrecognized tax benefits. The Company has no tax position at December 31, 2017, 2016 or 2015 for which the ultimate deductibility is highly certain but for there is uncertainty about the timing of such deductibility. The Company recognizes interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. No such interest or penalties were recognized during the periods presented. The Company had no accruals for interest and penalties at December 31, 2017, 2016 or 2015.

### **NOTE I - SUBSEQUENT EVENTS**

Management has evaluated events through March 8, 2018, the date on which the financial statements were available for issue. The Company did not have any events subsequent to December 31, 2017 through March 8, 2018 to disclose.

**ERIC H LAMPL, CPA, INC.**  
991 LIGORIO AVENUE  
CINCINNATI, OHIO 45218  
513-521-2379  
513-521-2589 FAX  
ericlampl@fuse.net

**CONSENT OF ACCOUNTANT**

ERIC H LAMPL, CPA, INC., consents to the use in the Franchise Disclosure Document issued by NiteLites Franchise Systems, Inc. ("Franchisor") on April 1, 2018, as it may be amended, of our report dated March 8, 2018 related to the financial statements of Franchisor for the periods ending December 31, 2015, 2016 and 2017.

ERIC H LAMPL, CPA, INC.

By: Eric H Lampl

Eric H Lampl, President



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT N TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**SUCCESSOR FRANCHISE ADDENDUM**

SUCCESSOR FRANCHISE ADDENDUM  
TO NITELITES FRANCHISE AGREEMENT

This addendum is between NITELITES FRANCHISE SYSTEMS, INC. ("Franchisor") and \_\_\_\_\_ ("Franchisee").

PREAMBLE:

- A. Franchisee has been operating a NiteLites Franchise under a franchise agreement with Franchisor (the "Prior Franchise Agreement") executed on \_\_\_\_\_.
- B. The Prior Franchise Agreement will expire on \_\_\_\_\_.
- C. Section \_\_\_\_ of the Prior Franchise Agreement granted Franchisee the right to renew the Franchise.
- D. Franchisee has requested and Franchisor has agreed to renew the Franchise upon the terms and conditions of section \_\_\_\_ of the Prior Franchise Agreement.
- E. Accordingly, simultaneously with their execution of this addendum, Franchisor and Franchisee are entering into Franchisor's current form of NiteLites franchise agreement (the "Successor Franchise Agreement").
- F. This addendum modifies certain aspects of the Successor Franchise Agreement to reflect the fact that Franchisee is renewing the Franchise granted under the Prior Franchise Agreement and that it is an experienced operator of a NiteLites Franchise, and to delete and/or waive the provisions of the Successor Franchise Agreement that are intended to apply only to new franchisees.

THEREFORE the parties hereby amend the Successor Franchise Agreement as follows:

- 1. Amendment of Franchise Agreement; Defined Terms. This addendum is an integral part of, and is incorporated into, the Successor Franchise Agreement. Nevertheless, this addendum supersedes any inconsistent or conflicting provisions of the Successor Franchise Agreement. The parties hereby ratify and affirm the Successor Franchise Agreement in all other respects. Capitalized terms used but not defined in this addendum are used as defined in the Successor Franchise Agreement.
- 2. Effective Date. The "Effective Date," and the first day of the term of the Successor Franchise Agreement and this addendum, is the day after the expiration date of the Prior Franchise Agreement, regardless of the actual date that the agreements were signed.
- 3. Option to Renew Franchise. Notwithstanding anything to the contrary in section 4.B of the Successor Franchise Agreement, Franchisee has the right to renew the Franchise at the expiration of the term of the Successor Franchise Agreement for ONE additional term of FIVE years if Franchisee complies with the conditions in subparagraphs 1 through 8 of section 4.B of the Successor Franchise Agreement.
- 4. Initial Fees. No Franchise Fee, Initial Inventory Package Fee, or Start-up Kit Fee is required to renew a Franchise. Accordingly, sections 3.A, 3.B, and 3.C of the Successor Franchise Agreement are inapplicable and are hereby deleted in their entirety.
- 5. Training and Operating Assistance. Franchisor has already satisfied its obligations under section 8.A, 9.A, and 9.D of the Successor Franchise Agreement to provide Franchisee with initial training and other pre-opening assistance, and to loan Franchisee a copy of the Manual. However, Franchisee shall

comply with Franchisor’s current training requirements, including any refresher training programs or training requirements specifically designed for Successor Franchisees.

6. **Business Operation.** Franchisee has already opened the Franchised Business before the Effective Date. Accordingly, the first sentence of section 5.F.6 of the Successor Franchise Agreement, which gives Franchisee six months after the Effective Date to open the Franchised Business, is hereby deleted.

7. **Minimum Quarterly Gross Sales.** The Minimum Quarterly Gross Sales amount required by section 13.E of the Successor Franchise Agreement will be the amount listed in the table below throughout the entire term of the Successor Franchise Agreement. Section 13.E of the Successor Franchise Agreement is hereby amended accordingly.

Protected Territory Class	Population	Minimum Annual Gross Sales
1	Over 2,000,000 up to 3,000,000	\$456,262
2	Over 1,250,000 up to 2,000,000	\$380,218
3	Over 750,000 up to 1,250,000	\$342,196
4	Over 350,000 up to 750,000	\$266,153
5	350,000 or less	\$190,109

8. **Exclusive Relationship.** Franchisee represents that, except for other NiteLites Franchises operated under franchise agreements with Franchisor, neither Franchisee nor any Affiliate or Principal of Franchisee, nor any member of the immediate families of any Affiliate or Principal of Franchisee: (a) have any Ownership Interest in any Competitive Business; (b) have any Ownership Interest in any Person that grants franchises or licenses to others to operate Competitive Businesses; or (c) perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for any Competitive Business or any Person that grants franchises or licenses to others to operate Competitive Businesses.

9. **Releases.** Simultaneously with the execution of this addendum, Franchisee and each of its Principals must sign and deliver to Franchisor a General Release in the form attached to the Successor Franchise Agreement as Exhibit C.

10. **Remaining Terms Unaffected.** All terms of the Successor Franchise Agreement not deleted, modified or waived by this addendum remain binding on the parties.

The parties are signing this addendum on the dates below.

NITELITES FRANCHISE SYSTEMS, INC. Franchisor:

FRANCHISEE:

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

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

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

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

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

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



**NiteLites<sup>®</sup>**

*—The Outdoor Lighting Professionals*

**EXHIBIT O TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**ACCOUNTING SERVICES AGREEMENT**

## ACCOUNTING SERVICES AGREEMENT

THIS ACCOUNTING SERVICES AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between NL MANUFACTURING & DISTRIBUTION SYSTEMS, INC. (NLMD), and \_\_\_\_\_, (the "Franchisee", a NITELITES Franchisee under a franchise agreement with NITELITES FRANCHISE SYSTEMS, INC. dated \_\_\_\_\_ (the "Franchise Agreement").

1. **Accounting Services.** NLMD shall enter accounting and booking data as provided by Franchisee into the designated NiteLites Accounting Software which may include Cash receipts recording and monthly reconciliation of accounts receivable and posting of payments and accounts payable and monthly reconciliation of accounts.

2. **Services Fee.** Franchisee shall pay to NLMD an Accounting Service Fee based on Annual Gross Revenues for the previous 12 month period as follows:

<u>Annual Gross Revenues</u>	<u>Fee</u>
\$0 - \$400K	\$500.00
\$401K to \$500K	\$600.00
\$501K to \$600K	\$700.00
\$601K to \$700K	\$800.00
\$701K to \$800K	\$900.00
\$801K to \$900K	\$1000.00
\$901K to \$1M	\$1100.00

**\*Max increment of \$100.00 per \$100K is \$2M**

The Accounting Service Fee must be paid in accordance to terms set forth by NLMD. NLMD may, upon 30 days written notice, adjust the amount of the Accounting Service Fee. Franchisee shall pay NLMD an administrative late fee of \$25.00 for each Accounting Service Fee payment received by NLMD more than five (5) days after its due date.

3. **ELECTRONIC FUNDS TRANSFER.** NLMD may require that all amounts payable hereunder be paid through an Electronic Depository Transfer Account established at a national banking institution approved by NLMD. When requested, Franchisee shall establish the account providing for electronic funds transfer as approved by NLMD, and NLMD shall have access to such account for the purpose of receiving any payments or charges due under this Agreement. Franchisee agrees to execute any documents that NLMD's or Franchisee bank requires to establish and implement the Electronic Depository Transfer Account. Once established, Franchisee agrees to deposit funds sufficient to meet Franchisees' obligations hereunder and not to close the Electronic Depository Transfer Account without NLMD's consent.

4. **Necessary information & Materials.** Franchisee will be solely responsible to supply NLMD all information, materials, data, and documents necessary to perform the Services agreed upon under this Agreement. Franchisee acknowledges and agrees that the accuracy of financial information supplied to NLMD is the sole responsibility of the Franchisee. NLMD shall not be held responsible for the production of inaccurate financial statements, records and billings, or any other financial reports if the financial data submitted by the Franchisee is inaccurate or incomplete.

5. **Term.** This Agreement is effective upon the signing of this Agreement and shall terminate coterminous with the expiration or termination of the Franchise Agreement. Upon expiration or termination of the Franchise Agreement NLMDS will send via US Mail the franchisee's complete data file. This file will be compatible with Intuit Quickbooks Enterprise Solutions software (not included).

6. **Independent Contractor.** NLMDS shall provide the Services as an independent contractor and NLMDS shall not act as an employee, agent or broker of the Franchisee. As an independent contractor, Franchisee shall be solely responsible for paying any and all taxes levied by applicable laws on NLMDS's compensation and the Franchisee's Franchised Business.

7. **Termination.** If Franchisee fails to pay any amounts due hereunder (including, but not limited to, Account Service Fees or late charges) within ten days after its due date, or if Franchisee defaults under the Franchise Agreement, NLMDS may discontinue Franchisee's Accounting service, without notice to Franchisee or opportunity to cure, until all past due amounts and applicable interest and late charges are paid in full and all defaults are cured. NLMDS, in its sole discretion, may permanently discontinue Accounting services upon a third default under this Agreement or the Franchise Agreement. The remedies in this paragraph are in addition to, and not exclusive of, all other remedies NLMDS may have for default.

8. **Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

Franchisor: NL MANUFACTURING & DISTRIBUTION SYSTEMS, INC.  
Attention: President  
6107 Market Avenue  
Franklin, Ohio 45005

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

9. **Severability.** If any provision of this Agreement shall be held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect.

10. **Limitation of Liability.** IN NO EVENT SHALL EITHER FRANCHISOR, NLMDS, ITS EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, OWNERS, PRINCIPALS, AFFILIATES, SUCCESSORS, OR ASSIGNS BE LIABLE TO FRANCHISEE OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOSS OF OR UNAUTHORIZED ACCESS TO INFORMATION, DAMAGES FOR LOSS OF

PROFITS, EVEN IF FRANCHISEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FRANCHISOR'S LIABILITY ON ANY CLAIM, LOSS OR LIABILITY ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT SHALL EXCEED THE AMOUNTS PAID TO FRANCHISOR DURING THE TWO MONTHS PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM OR ACTION BY FRANCHISEE.

11. **Entire Agreement; Amendment.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether written or oral, between the parties relating to the subject matter hereof and all past courses of dealing or industry custom. No modification of or amendment to this Agreement shall be effective unless in writing and signed by each of the parties.

12. **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

13. **Captions.** The headings used in this Agreement are for convenience only and shall not be used to limit or construe the contents of any of the sections of this Agreement.

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

NL MANUFACTURING & DISTRIBUTION SYSTEMS, INC.. BUSINESS ORGANIZATION FRANCHISEE:

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

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

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

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

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

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

INDIVIDUAL FRANCHISEE: INDIVIDUAL FRANCHISEE:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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

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



**NiteLites**<sup>®</sup>

*—The Outdoor Lighting Professionals*

**EXHIBIT P TO THE  
NITELITES FRANCHISE DISCLOSURE DOCUMENT**

---

**STATE SPECIFIC ADDENDUM**

## MINNESOTA ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

ITEM 5 and ITEM 7 of the Disclosure Document is amended to add the following:

The Minnesota Department of Commerce Security Section requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchised business is open.

The following additional disclosures are required by the Minnesota Franchise Law:

The Minnesota Department of Commerce requires that the franchisor indemnify Minnesota franchisees against liability to third parties resulting from claims by third parties that the franchisee's use of the franchisor's trademark infringes trademark rights of the third party. The franchisor does not indemnify against the consequences of the franchisee's use of the franchisor's trademark except in accordance with the requirements of the franchise.

Minnesota Rules, 1989, Department of Commerce, Chapter 2860, Section 4400D prohibits a franchisor from requiring a franchisee to assent to a release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes 1973 Supplement, Section 80C.01 to 80C.22; provided, that this part shall not bar the voluntary settlement of disputes.

Minn. Rule 2860.4400J states that it is unfair and inequitable for a franchisor to require a franchisee to waive his or her rights to a jury trial or to waive rights to any procedure, forum, or remedies provided for by the laws of Minnesota, or to consent to liquidated damages, termination penalties, or judgment notes. Any language found in the disclosure document or Franchise Agreement contrary to this rule is amended so that it does not apply to Minnesota franchisees.

THE STATE OF MINNESOTA HAS STATUTES WHICH MAY SUPERSEDE THE FRANCHISE AGREEMENT IN YOUR RELATIONSHIP WITH THE FRANCHISOR, INCLUDING THE AREAS OF TERMINATION AND RENEWAL OF YOUR FRANCHISE. THE STATE OF MINNESOTA ALSO HAS COURT DECISIONS WHICH MAY SUPERSEDE THE FRANCHISE AGREEMENT IN YOUR RELATIONSHIP WITH THE FRANCHISOR, INCLUDING THE AREAS OF TERMINATION AND RENEWAL OF YOUR FRANCHISE. WITH RESPECT TO FRANCHISES GOVERNED BY MINNESOTA LAW, THE FRANCHISOR MUST COMPLY WITH MINNESOTA STATUTE 80C.14, SUBDIVISIONS 3, 4 AND 5, WHICH REQUIRE, EXCEPT IN CERTAIN SPECIFIC CASES, THAT A FRANCHISEE BE GIVEN 90 DAYS NOTICE OF TERMINATION (WITH 60 DAYS TO CURE) AND 180 DAYS NOTICE FOR NON-RENEWAL OF THE FRANCHISE AGREEMENT. A PROVISION IN THE FRANCHISE AGREEMENT WHICH TERMINATES THE FRANCHISE UPON THE BANKRUPTCY OF THE FRANCHISEE MAY NOT BE ENFORCEABLE UNDER TITLE 11, UNITED STATES CODE §101. THE STATE OF MINNESOTA HAS COURT DECISIONS LIMITING THE FRANCHISOR'S ABILITY TO RESTRICT YOUR ACTIVITY AFTER THE FRANCHISE AGREEMENT HAS ENDED. LIQUIDATED DAMAGE PROVISIONS ARE VOID UNDER MINNESOTA LAW.

Pursuant to Minn. Stat. Sec. 80C.21 and Minn. Rule Part 2860.4400J, the requirement that all litigation must take place in California shall not in any way abrogate or reduce any rights of the franchisee as provided for in Minnesota Statutes, Chapter 80C.

With respect to franchises governed by Minnesota law, the franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5, which 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 non-renewal of the franchise agreement.

To the extent this addendum is inconsistent with any terms or conditions of the franchise disclosure document, the Franchise Agreement, or any of their exhibits or attachments, the terms of this addendum control.

MINNESOTA ADDENDUM TO FRANCHISE AGREEMENT

The Franchise Agreement to which this addendum is attached is amended as follows to comply with the Minnesota Franchise Law:

1. The payment of the Franchise Fee as set forth in Section 3(H) and all other initial payments owed by franchisees to the franchisor deferred and not due until the Franchised Business is open.
2. A general release required as a condition of renewal, assignment, or transfer does not apply to any claim or liability arising under the Minnesota Franchise Law.
3. Franchisor shall protect the right of Franchisee to use the Marks in accordance with the requirements of the Franchise Agreement.
4. Sections 22(E) and 22(D) are deleted.
5. Section 22(B) does not apply to any action to enforce any liability created by the Minnesota Franchise Law. Any claim arising under the Minnesota Franchise Law may be brought in the state of Minnesota.
6. Pursuant to Minn. Stat. Sec. 80C.21 and Minn. Rule Part 2860.4400J, the Franchise Agreement does not in any way abrogate or reduce any rights of Franchisee as provided for in Minnesota Statutes, Chapter 80C. These statutes prohibit Franchisor from requiring litigation to be conducted outside Minnesota, or abrogating or reducing any of Franchisee's rights to any procedure, forum, or remedies provided for by the laws of Minnesota.
7. With respect to franchises governed by Minnesota law, Franchisor shall comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5, which 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 non-renewal of the Franchise Agreement.
8. Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the Minnesota Franchise Law are met independently of this addendum. To the extent this addendum is inconsistent with any term or condition of the Franchise Agreement or its exhibits or attachments, the terms of this addendum control. Franchisor and Franchisee hereby ratify and affirm the Franchise Agreement in all other respects.

The parties are signing this addendum concurrently with the Franchise Agreement to which it is attached.

**NITELITES FRANCHISE SYSTEMS, INC.,**

Franchisor:

**FRANCHISEE:**

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

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

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

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

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

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

## CALIFORNIA STATE ADDENDUM DISCLOSURES:

1. The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the franchise be delivered together with the franchise disclosure document.
2. Neither the franchisor, any person or franchise broker in Item 2 of the UFOC are subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.
3. California Business and Professions Code 20000 through 20043 provides rights to the franchisee concerning termination, transfer or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.
4. 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.).
5. 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.
6. The franchise agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
7. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.
8. The franchise agreement requires application of the laws of Ohio. This provision may not be enforceable under California law.
9. 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.
10. 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).
11. "The earnings claims figure(s) does (do) not reflect the costs of sales, operating expenses, or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your franchise business. Franchisees or former franchisees, listed in the offering circular, may be one source of this information."
12. Our website has not been reviewed or approved by the California Department of Business Oversight. Any complaints concerning the contents of the website may be directed to the California Department of Business Oversight at [www.dbo.ca.gov](http://www.dbo.ca.gov).

13. ITEM 5 of the Disclosure Document is amended as follows: With respect to franchises governed by California law, the payment of all initial fees (described in Item 5 of the Disclosure Document) is deferred until we complete our pre-opening obligations to you and the franchise is opens. At that time, you must pay all initial fees in full.14. Items 6 and 10 are amended to provide that the highest rate allowed by law in California is 10%

▪

## CALIFORNIA ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement dated eveny herewith between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ amends and revises said Franchise Agreement as follows:

1. In recognition of the requirements of the California Franchise Investment Law, Cal. Corp. Code §§31000-31516 and the California Franchise Relations Act, Cal. Bus. And Prof. Code §§20000-20043, the Franchise Agreement for NITELITES FRANCHISE SYSTEMS, INC. shall be amended as follows:

- The California Franchise Relations Act provides rights to Franchisee concerning and transfer termination or nonrenewal of the Franchise Agreement, which may supersede provisions in the Franchise Agreement, specifically Sections 4.B and 18.
- Section 3.H. of the Franchise Agreement requires Franchisee to pay an Initial Franchisee Fees; such fee is deferred until Franchisor completes its pre-opening obligations to Franchisee and the Franchise Business e is open for business. At that time, Franchisee must pay all initial fees in full.
- Sections 4.B.7 and 19.B.2 of the Franchise Agreement require Franchisee to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under California Franchise Investment Law and California Franchise Relations Act.
- Section 16.B of the Franchise Agreement contains a covenant not to compete which extends beyond the expiration or termination of the Franchise Agreement; this covenant may not be enforceable under California law.
- Section 17.B.1.i of the Franchise Agreement which terminates the Franchise Agreement upon the bankruptcy of the Franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, *et seq.*).
- The Franchise Agreement requires litigation to be conducted in a court located outside of the State of California. This provision might not be enforceable for any cause of action arising under California law. Prospective franchisees are encouraged to consult legal counsel to determine the applicability of California laws (such as Business and Professions Code Section 20040.5 and Code of Civil Procedure Section 1281) to any provisions of the Franchise Agreement restricting venue to a forum outside of the State of California.
- The Franchise Agreement requires application of the laws of a state other than California. This provision might not be enforceable under California law.
- Section 18.E of the Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
- Notwithstanding any provision of the Franchise Agreement to the contrary, Franchisee is not obligated to pay to Franchisor, and Franchisor shall not accept from Franchisee, any money or other consideration (including, but not necessarily limited to, the fees described in Section 3 of the Franchise Agreement) until Franchisor has satisfied all of its initial obligations to

Franchisee required by Sections 1, 5 and 8 and Subsections A, B and D of Section 9 of the Franchise Agreement.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the California Investment Law and/or the California Franchise Relations Act are met independent of this Amendment. To the extent this addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

**NITELITES FRANCHISE SYSTEMS, INC.:**

**FRANCHISEE:**

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

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

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

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

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

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

HAWAII ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

ITEM 5 and 21 of the Disclosure Document is amended to add the following:

The Hawaii Business Registration Division Department of Commerce and Consumer Affairs requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

HAWAII ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

- The Hawaii Business Registration Division Department of Commerce and Consumer Affairs requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

NITELITES FRANCHISE SYSTEMS, INC.:

FRANCHISEE:

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

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

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

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

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

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

## ILLINOIS ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

- The Illinois Franchise Disclosure Act of 1987, Ill. Rev. Stat. Ch. 815 Par. 705/1 – 705/44 (“the Act”), governs the interpretation and construction of the Franchise Agreement, including choice of law issues.
- The Act, 815 ILCS 705/27, provides that you may not maintain an action for liability under the Act later than (i) 3 years after the act or transaction upon which the violation is based, (ii) 1 year after you become aware of facts or circumstances reasonably indicating that you may have a claim for relief, or (iii) 90 days after you receive a written notice of the violation, whichever occurs first.
- Any provision in the Franchise Agreement that requires the application of the laws of a state other than Illinois is void with respect to a claim otherwise enforceable under the Act or its regulations.
- Any condition, stipulation or provision in the Franchise Agreement that requires you to waive any of your rights under, or our obligation to comply with any provision of, the Act, its regulations, or any other law of Illinois, is void.
- Any provision in the Franchise Agreement that designates jurisdiction or venue in a forum outside the State of Illinois is void with respect to any cause of action that is otherwise enforceable in Illinois.
- ITEM 5 of the Disclosure Document is amended as follows:

The Illinois Attorney General’s Office has imposed an escrow requirement based upon our financial condition. All franchise fees that you pay will be held in escrow until we have completed our initial obligations to you and you open your NiteLites franchise. A copy of the escrow agreement is on file with the Illinois Attorney General’s Office.

- ITEM 17 of the Disclosure Document is amended to add the following:

The conditions under which a franchise can be terminated and your rights upon non-renewal may be affected by Sections 705/19 and 705/20 of the Act.

ILLINOIS ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement dated eveny herewith between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ amends and revises the Franchise Agreement as follows:

1. In recognition of the requirements of the Illinois Franchise Disclosure Act, 815 ILCS 705 (“the Act”), the Franchise Agreement for NITELITES FRANCHISE SYSTEMS, INC. is amended as follows:

- Section 3 of the Franchise Agreement is amended to add:

The Illinois Attorney General’s Office has imposed an escrow requirement based upon Franchisor’s financial condition. All franchise fees collected by Franchisor from Illinois Franchisees shall be held in escrow until such time as Franchisor has completed its initial obligations to Franchisee and Franchisee has opened for business. A copy of the escrow agreement is on file with the Illinois Attorney General’s Office.

- Section 4.B.7 of the Franchise Agreement is amended to add:

Any condition, stipulation, or provision purporting to bind Franchisee to waive compliance with any provision of the Act or any other law of Illinois is void.

- Section 17 of the Franchise Agreement is amended to add:

The conditions under which the Franchise Agreement can be terminated and Franchisee’s rights upon non-renewal, as well as the application by which Franchisee must bring any claims, may be governed by the Act, 815 ILCS 705/19 and 705/20.

- Section 23.A of the Franchise Agreement is amended to add:

Any provision in the Franchise Agreement requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under the Act.

- Section 23.B of the Franchise Agreement is amended to add:

Any provision in the Franchise Agreement that designates jurisdiction or venue in a forum outside the State of Illinois is void with respect to any cause of action otherwise enforceable in Illinois.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Act are met independently of this Amendment. To the extent this Amendment is inconsistent with any terms or conditions of the Franchise Agreement or its exhibits or attachments, the terms of this Amendment will control.

The parties are signing this Amendment on the dates below.

**NITELITES FRANCHISE SYSTEMS, INC.:**

**FRANCHISEE:**

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

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

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

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

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

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

## INDIANA ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

1. ITEM 8 of the Disclosure Document is amended to add the following:

Under Indiana Code Section 23-2-2.7-1(4), the franchisor will not obtain money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person, other than for compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted by the franchisee.

2. ITEMS 6 and 9 of the Disclosure Document is amended to add the following:

The franchisee will not be required to indemnify franchisor for any liability imposed upon franchisor as a result of franchisee's reliance upon or use of procedures or products which were required by franchisor, if such procedures or products were utilized by franchisee in the manner required by franchisor.

3. ITEM 17 of the Disclosure Document is amended to add the following:

- Indiana Code 23-2-2.7-1(5) prohibits a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Law.
- ITEM 17(r) is amended subject to Indiana Code 23-2-2.7-1(9) to provide that the post-term non-competition covenant shall have a geographical limitation of the territory granted to Franchisee.

INDIANA ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement dated eveny herewith between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ amends and revises said Franchise Agreement as follows:

1. In recognition of the requirements of the Indiana Deceptive Franchise Practices Law, IC 23-2-2.7 and the Indiana Franchise Disclosure Law, IC 23-2-2-2.5, the Franchise Agreement for NITELITES FRANCHISE SYSTEMS, INC. shall be amended as follows:

- Sections 4.B.7 and 19.B.2 of the Franchise Agreement do not provide for a prospective general release of claims against Franchisor, which may be subject to the Indiana Deceptive Franchise Practices Law or the Indiana Franchise Disclosure Law.
- Section 16.B of the Franchise Agreement is amended subject to Indiana Code 23-2-2.7-1(9) to provide that post-term non-competition covenants shall have a geographical limitation of the territory granted to Franchisee.
- Section 21.B of the Franchise Agreement is amended to provide that Franchisee will not be required to indemnify Franchisor for any liability imposed upon Franchisor as a result of Franchisee's reliance upon or use of procedures or products which were required by Franchisor, if such procedures or products were utilized by Franchisee in the manner required by Franchisor.
- Section 23.A of the Franchise Agreement is amended to provide that in the event of a conflict of law, the Indiana Franchise Disclosure Law, IC 23-2-2.5, and the Indiana Deceptive Franchise Practices Law will prevail.
- Section 23.B of the Franchise Agreement is amended to provide that Franchisee may commence litigation in Indiana for any cause of action under Indiana law.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Indiana law applicable to the provisions are met independent of this Amendment. To the extent this addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

NITELITES FRANCHISE SYSTEMS, INC.:

FRANCHISEE:

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

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

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

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

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

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

## NEW YORK ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

1. All references made herein to an "Disclosure Document" shall be replaced with the term "Offering Prospectus" as used under New York law.
2. The UFOC Cover Page is amended as follows:
  - REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT THE STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE NEW YORK STATE DEPARTMENT OF LAW, 120 BROADWAY, NEW YORK, NEW YORK 10271-0332. INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION.
  - THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS DISCLOSURE DOCUMENT.
  - YOU WILL BE REQUIRED TO MAKE AN ESTIMATED INITIAL INVESTMENT RANGING FROM \$84,000 to \$164,050. THIS AMOUNT EXCEEDS THE FRANCHISOR'S STOCKHOLDERS EQUITY AS OF DECEMBER 31, 2007, WHICH IS \$[50,033].
3. ITEM 3 is amended by the addition of the following language:
  - Neither franchisor nor any person identified in ITEM 2 has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against them 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. In addition, neither franchisor nor any person identified in ITEM 2 has any pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.
  - Neither franchisor nor any person identified in ITEM 2 has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been held liable in a civil action by final judgment or been the subject of a material compliant or other legal proceeding involving violation of any franchise law, antifraud or securities law; fraud, embezzlement, fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.
  - Neither Franchisor nor any person identified in ITEM 2 is subject to any injunctive or restrictive order or decree relating to the franchises, or any Federal, State or

Canadian franchise, securities, antitrust, trade regulation or trade practice law, as a result of a concluded or pending action or proceeding brought by a public agency.

4. ITEM 4 is amended to state that:

Neither the franchisor, nor its predecessor, officers or general partner of the franchisor has, during the ten (10) year period immediately before the date of the Disclosure Document, has: (a) filed as a 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; (c) was a principal officer of any company or a general partner in any partnership that either filed as a debtor (or had filed against it) a petition to start action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the Bankruptcy Code during or within one (1) year after the officer or general partner of the franchisor held this position in the company or partnership.

5. ITEM 5 of the Disclosure Document is amended to add the following:

The Franchise Fee will be used to defray Franchisor's costs in obtaining and screening Franchisees, providing training, training materials and assisting in opening the Franchised Business for business.

6. ITEMS 6 and 11 of the Disclosure Document are amended to add the following:

The franchisee will not be required to indemnify franchisor for any liability imposed on franchisor as a result of franchisee's reliance upon or use of procedures or products which were required by franchisor, if such procedures or products were utilized by franchisee in the manner required by franchisor.

7. ITEM 17 of the Disclosure Document is amended to add the following:

- No general release shall be required as a condition of renewal and/or transfer which is intended to exclude claims arising under the General Business Law of the State of New York, Article 3, Sections 687.4 and 687.5.
- ITEM 17(d) is amended to provide that you may terminate the Franchise Agreement on any grounds available by law.
- ITEM 17(j) is amended to state, that no assignment will be made except to an assignee who, in the good faith judgment of Franchisor, is able to assume Franchisor's obligations under the Franchise Agreement.
- ITEM 17(w) is amended to state that New York law governs any cause of action which arises under the General Business Law of the State of New York, Article 33, Section 680-695.

8. The Franchisor represents that this Disclosure Document does not knowingly omit anything or contain any untrue statements of a material fact.

NEW YORK ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement dated eveny herewith between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ amends and revises said Franchise Agreement as follows:

1. In recognition of the requirements of the General Business Laws of the State of New York, Article 33, §§ 680 through 695, the Franchise Agreement for NITELITES FRANCHISE SYSTEMS, INC. shall be amended as follows:

- Sections 4.B.7 and 19.B.2 of the Franchise Agreement require Franchisee to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under the General Business Law of the State of New York.
- Under Section 19.A of the Franchise Agreement, Franchisor will not transfer and assign its rights and obligations under the Franchise Agreement unless the transferee will be able to perform the Franchisor's obligations under the Franchise Agreement, in Franchisor's good faith judgment, so long as it remains subject to the General Business Laws of the State of New York.
- Section 23.A of the Franchise Agreement requires that the franchise be governed by the laws of the State of Ohio; such a requirement will not be considered a waiver of any right conferred upon the Franchisee by Article 33 of the General Business Law of the State of New York.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the New York Law applicable to the provisions are met independent of this Amendment. To the extent this addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

**NITELITES FRANCHISE SYSTEMS, INC.:**

**FRANCHISEE:**

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

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

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

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

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

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

VIRGINIA ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

ITEM 5 of the Disclosure Document is amended to add the following:

The Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

Our to unilaterally terminate the franchise agreement, the Option to Terminate, by refunding the franchise fee, is unlawful under Section 13.1-564 of the Virginia Retail Franchising Act, title "Unlawful cancellation franchise undue influence."

Additional Disclosure. The following statements are added to Item 17.h.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

VIRGINIA ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

- The Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.
- Section 16(C) of the Franchise Agreement, which allows us to unilaterally terminate the franchise agreement by refunding the franchise fee, is unlawful under Section 13.1-564 of the Virginia Retail Franchising Act, title "Unlawful cancellation franchise undue influence." Section 16(C) of the Franchise Agreement is deleted.
- Section 17.B.1.i of the Franchise Agreement, which terminates the Franchise Agreement upon the bankruptcy of the Franchisee, may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, *et seq.*).

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

NITELITES FRANCHISE SYSTEMS, INC.:

FRANCHISEE:

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

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

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

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

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

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

## WASHINGTON ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

ITEM 5 of the Disclosure Document is amended as follows: With respect to franchises governed by Washington law, the payment of all initial fees (described in Item 5 of the Disclosure Document) is deferred until we complete our pre-opening obligations to you and the franchise is open. At that time, you must pay all initial fees in full.

ITEM 17 of the Disclosure Document is amended to add the following:

- With respect to franchises governed by Washington law, the payment of all initial fees is deferred until the Franchisor has fulfilled its pre-opening obligations under the Franchise Agreement and the franchised business opens. At that time, you must pay all initial fees in full.
- In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
- A general release or waiver of rights executed by a Franchisee will not include rights under the Washington Franchise Investment Protection Act.
- Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, 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.
- The Franchise Agreement requires any litigation to be conducted in a state other than Washington; the requirement shall not limit any rights Franchisee may have under the Washington Franchise Investment Protection Act to bring suit in the State of Washington.

WASHINGTON ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement dated evenly herewith between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ amends and revises said Franchise Agreement as follows:

1. In recognition of the requirements of the Washington Franchise Investment Protection Act, Washington Rev. Code §§19.100.010 – 19.100.940, the Franchise Agreement for NITELITES FRANCHISE SYSTEMS, INC. shall be amended as follows:

- Notwithstanding any provision of the Franchise Agreement to the contrary, Franchisee is not obligated to pay Franchisor, and Franchisor shall not accept from Franchisee, any money or other consideration until Franchisor has fulfilled its pre-opening obligations under the Franchise Agreement and the Franchised Business opens. Section 3 is amended accordingly.
- The Washington Franchise Investment Protection Act provides rights to Franchisee concerning non-renewal and termination of the Franchise Agreement. If the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.
- Under Sections 4.B.7 and 19.B.2 of the Franchise Agreement, Franchisee is required to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under the Washington Franchise Investment Protection Act.
- Section 23.A of the Franchise Agreement requires that the franchise be governed by Ohio law, such a requirement may be unenforceable in the event of a conflict with the Washington Franchise Investment Protection Act. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
- Sections 23.B of the Franchise Agreement requires litigation to be conducted in the State of Ohio; the requirement shall not limit any rights Franchisee may have under the Washington Franchise Investment Protection Act to bring suit in the State of Washington.
- Provisions such as those, which unreasonably restrict or limit the statute of limitations period for claims under the Act, 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.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Washington law applicable to the provisions are met independent of this Amendment. To the extent this addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

NITELITES FRANCHISE SYSTEMS, INC.:

FRANCHISEE:

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

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

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

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

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

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

WISCONSIN ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

ITEM 17 of the Disclosure Document is amended to add the following:

The Wisconsin Fair Dealership Law Title XIV-A Ch. 135, Section 135.01-135.07 may affect the termination provision of the Franchise Agreement.

WISCONSIN ADDENDUM TO FRANCHISE AGREEMENT

This Amendment to the Franchise Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between NITELITES FRANCHISE SYSTEMS, INC. and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

1. The Wisconsin Fair Dealership Law Title XIV-A Ch. 135, Sec. 135.01-135.07 will supersede any conflicting terms of the Franchise Agreement.

2. This provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Wisconsin Fair Dealership Law applicable to the provisions are met independent of this Amendment. To the extent this addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and understands and consents to be bound by all of its terms.

NITELITES FRANCHISE SYSTEMS, INC.

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

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

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

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

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

Item 23. 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 NiteLites Franchise Systems, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law.

**[New York, Oklahoma and Rhode Island require that NiteLites Franchise Systems, Inc. gives you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

**[Iowa requires that NiteLites Franchise Systems, Inc. gives you this disclosure document at the earlier of the first personal meeting or 14 days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

**[Michigan and Oregon require that NiteLites Franchise Systems, Inc. gives you this disclosure document at least 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

If NiteLites Franchise Systems, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency listed on Exhibit H.

The name, principal business address and telephone number of each franchise seller offering the franchise is: Tom Frederick (CEO), at 6107 Market Avenue, Franklin, Ohio 45005, (513) 424-5510, and:

---

Issuance Date: April 1, 2017~~2018~~

Our registered agents authorized to receive service of process for us are listed in Exhibit H.

I have received a disclosure document dated April 1, 2017~~2018~~. This disclosure document included the following Exhibits:

- |  |  |
|--|--|
| A Franchise Agreement                        | I Table of Contents of Operations Manual     |
| B Promissory Note                            | J Initial Inventory Package and Start-Up Kit |
| C Guaranty and Assumption of Obligations     | K List of Current Franchisees                |
| D Nondisclosure and Noncompetition Agreement | L Franchisees Who Have Left the System       |
| E Supply Agreement                           | M Financial Statements                       |
| F Call Center Service Agreement              | N Successor Franchise Addendum               |
| G Franchisee Disclosure Questionnaire        | O Accounting Service Agreement               |
| H State Regulators and Agent for Service     | P State-Specific Addendum                    |

---

Date

---

Signature

---

Print Name

---

Date

---

Signature

---

Print Name

**KEEP THIS COPY FOR YOUR RECORDS**



Item 23. 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 NiteLites Franchise Systems, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law.

**[New York, Oklahoma and Rhode Island require that NiteLites Franchise Systems, Inc. gives you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

**[Iowa requires that NiteLites Franchise Systems, Inc. gives you this disclosure document at the earlier of the first personal meeting or 14 days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

**[Michigan and Oregon require that NiteLites Franchise Systems, Inc. gives you this disclosure document at least 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

If NiteLites Franchise Systems, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency listed on Exhibit H.

The name, principal business address and telephone number of each franchise seller offering the franchise is: Tom Frederick (CEO), at 6107 Market Avenue, Franklin, Ohio 45005, (513) 424-5510, and:

---

Issuance Date April 1, 20172018:

Our registered agents authorized to receive service of process for us are listed in Exhibit H.

I have received a disclosure document dated April 1, 20172018. This disclosure document included the following Exhibits:

- |  |  |
|--|--|
| A Franchise Agreement                        | I Table of Contents of Operations Manual     |
| B Promissory Note                            | J Initial Inventory Package and Start-Up Kit |
| C Guaranty and Assumption of Obligations     | K List of Current Franchisees                |
| D Nondisclosure and Noncompetition Agreement | L Franchisees Who Have Left the System       |
| E Supply Agreement                           | M Financial Statements                       |
| F Call Center Service Agreement              | N Successor Franchise Addendum               |
| G Franchisee Disclosure Questionnaire        | O Accounting Service Agreement               |
| H State Regulators and Agent for Service     | P State-Specific Addendum                    |

---

Date \_\_\_\_\_ Signature \_\_\_\_\_ Print Name \_\_\_\_\_

---

Date \_\_\_\_\_ Signature \_\_\_\_\_ Print Name \_\_\_\_\_

**Return to: NITELITES FRANCHISE SYSTEMS, INC., 6107 Market Avenue, Franklin, Ohio 45005**