

**INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT**



*BETWEEN*

**INTERSTATE BATTERY FRANCHISING &  
DEVELOPMENT, INC.**

*AND*

**{FRANCHISEE NAME}**

**{ABC Location Name}**

## SUMMARY PAGES

Effective Date: **{Date}**

Term: 10 years from the Effective Date

Franchisee: **{FRANCHISEE NAME}**

Franchisee Corporate Address: **{Address}**

Center Business Address (if different): \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

License Fee: \$37,500

Transfer Fee: \$5,000

Royalty Fee: 5% of Gross Sales

~~Existing Account Fee:~~

Telesales Fee: then current hourly rate

~~Grand Opening~~Ramp Up Marketing Campaign: An amount determined by Franchisor between \$10,000 to \$15,000 in the first 120 days of Center operations and a total of \$20,000 to \$30,000 during the first Operating Year

Initial Marketing Materials Expenditure: up to \$5,000

Monthly Advertising Fee: 1.5% of Gross Sales

LSM: (a) not less than \$10,000 during the first 120 days after the Center opens for business and not less than \$20,000 in total during the first Operating Year (defined below) of the Center spent in accordance with the ramp up marketing campaign; and (b) a minimum of 4% of Gross Sales (as defined in Section 5.B.) during the first Operating Year ~~(defined below)~~ and, for each subsequent Operating Year the greater of the following: (i) a percentage of Gross Sales specified by Franchisor, which shall not exceed 6.5% of Gross Sales (provided, further that Franchisor shall not increase such required LSM expenditure by more than 1% of Gross Sales for any calendar year); and (ii) \$15,000, increased for inflation annually in accordance with the Consumer Price Index using the calendar year that includes the first day of the third Operating Year as the base year

Ad Fund Contribution: 0.5% of Gross Sales (subject to increase up to 2% of Gross Sales)

Software and License and Support Fees: \$1,200 per year (first payment pro-rated) for up to 6 hardware devices; \$500 for each additional hardware device

Set Up Fee: \$5,000

Rescheduling Fee: then current hourly rate

Existing Accounting Fee: \$ \_\_\_\_\_

Cumulative Existing Account Fee (Section 5.C.) \$ \_\_\_\_\_

~~First installment:~~ \$ \_\_\_\_\_

~~Second installment:~~ \$ \_\_\_\_\_

~~Third installment:~~ \$ \_\_\_\_\_

Addresses for Notices:

Franchisor:  
Interstate Battery Franchising & Development, Inc.  
4301 121st Street  
Urbandale, IA 50323  
Attn: Franchise Department)  
Facsimile: 800-246-1024

with a copy to Franchisor's Legal Department  
Interstate Battery Franchising & Development, Inc.  
12770 Merit Dr.  
Dallas, TX 75251  
Attn: Legal Dept.

Franchisee: Mailing address for Franchisee Corporate Office shown above.

Insurance Requirements:

(1) General liability insurance, in occurrence form, including Bodily Injury, Contractual Liability, Products & Completed Operations, Broad Form Property Damage, Personal and Advertising Injury, with limits not less than \$1,000,000 Per occurrence and \$2,000,000 General Aggregate.

(2) Property insurance for All Risks of Direct Physical Loss (Special Form) covering the building (where applicable), improvements and betterments, personal property and inventory at the store premises on a replacement cost basis. Policy must not exclude theft, vandalism or malicious mischief.

(3) Business Interruption insurance to cover loss of revenues and extra expense, including any insurable ongoing amounts due and owing under this Franchise Agreement or any other agreement between Franchisor and Franchisee and their affiliates (where insurable). Coverage must be no less than \$30,000 per month for a minimum of three months.

(4) Auto Liability Insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage, per occurrence, for all owned, hired and nonowned vehicles.

(5) Workers Compensation insurance with statutory limits and Employers Liability insurance of not less than \$1,000,000 per occurrence.

(6) Comprehensive Crime Insurance or Fidelity Bond insuring against dishonest or fraudulent acts committed by any employees or agents with limits no less than \$15,000 per occurrence.

Disclosure Law Compliance:

Delivery Date of Franchise Disclosure Document: \_\_\_\_\_, 201\_\_.

Delivery Date of completed Franchise Agreement: \_\_\_\_\_, 201\_\_.

Terms under Distributor Addendum (if applicable):

Approved Warehouse Location (Distributor Addendum). {Address}

Marketing Area (Recital C). That portion of the Interstate Distributor Territory of “{Distributor Name}” which is comprised of the area within the following zip codes, as such zip codes are configured on the Effective Date:

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

; provided, however that (a) Franchisor may redefine or reduce the size of the Market Area, effective immediately upon written notice to Franchisee if, for any two consecutive Calculation Years following the conclusion of the first Calculation Year or portion thereof to occur after the opening of Franchisee’s Center, franchisee’s Center’s gross sales do not equal or exceed 75% of the System Average Gross Sales for that Calculation Year, and (b) in no event shall the Market Area consist of or be reduced to an area of less than three a (3) mile radius surrounding {Address}.

CDA Territory (Section 16.H.). That portion of the Interstate Distributor Territory of “{Distributor Name}” comprised of the territory which is coextensive with Distributor’s Primary Area (as defined in the CDA) and as described and highlighted in Appendix B.

Any political boundaries (including, without limitation, zip codes) contained in the two descriptions above shall be considered fixed as of the date of this Agreement and shall not change notwithstanding a political reorganization or a change in those boundaries. Unless otherwise specified, all street boundaries shall be deemed to end at the center line.

Franchisee Ownership:

Franchisee’s Operating Principal is: {FRANCHISEE NAME}

**CORPORATE OWNERSHIP**

The number of authorized shares of Franchisee that have been issued is \_\_\_\_\_ and the name, address, number of shares owned (legally or beneficially) and office held by each shareholder is as follows:

<u>Name</u>	<u>Address</u>	<u>No. of shares</u>	<u>Office Held</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**LIMITED LIABILITY COMPANY FRANCHISEE**

If Franchisee is a limited liability company, the name, address and percentage interest of each member is as follows:

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**PARTNERSHIP INTERESTS**

If Franchisee is a partnership, the name, address and partnership interest of each partner, whether general or limited, is as follows:

<u>Name</u>	<u>Address</u>	<u>Partnership Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT**

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## INTERSTATE ALL BATTERY CENTER FRANCHISE AGREEMENT

This Interstate All Batter Center Franchise Agreement is made and entered into as of the Effective Date between the Franchisor and Franchisee set forth in the Summary Pages. Capitalized terms in this Agreement are used with the meanings assigned in the definitions included herein and as attached as Appendix A this Agreement, which Definitions are incorporated into this Agreement by reference. The Summary Pages are made a part of this Agreement for all purposes.

### RECITALS:

**A.** As a result of the expenditure of time, skill, effort and money, Franchisor has developed and owns a system (the “System”) relating to the development, establishment and operation of retail stores for the sale of batteries and related products and services to consumers and business customers, including products marketed by Franchisor’s affiliate, Interstate Batteries, Inc.

**B.** Franchisor identifies the System and the retail stores operating under the System by means of the Interstate® mark and the “Interstate All Battery Center” trade name, as well as other trade names, service marks, trademarks, logos, insignias, slogans, emblems, symbols and designs which Franchisor has designated or may in the future designate for use with the System (collectively, the “Proprietary Marks”).

**C.** Franchisee desires to obtain the right to operate an Interstate All Battery Center (the “Center”) at a location to be approved by Franchisor within the geographic territory designated in the Summary Pages (the “Marketing Area”).

**D.** Franchisee understands and acknowledges the importance of Franchisor’s standards of quality, operations and service and the necessity of Franchisee’s developing and operating the Center in strict conformity with this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, agreements and obligations set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. Grant.**

**A. Grant of Rights.** Subject to the provisions of this Agreement, Franchisor hereby grants to Franchisee the right, and Franchisee hereby undertakes the obligation, to develop a Center under the System within the Marketing Area defined in the Summary Pages at a site approved by Franchisor as hereinafter provided, and thereafter to operate the Center for the Term, as hereinafter defined.

### **B. Limited Territorial Protection.**

**(1)** While this Agreement is in effect, subject to Section 17, and unless Franchisor reduces or otherwise alters this limited exclusivity pursuant to this Section 1.B, Franchisor shall not (i) establish or operate, or license others to establish or operate, ~~full~~certified Interstate All Battery Centers at locations within the Marketing Area, (ii) directly solicit customers, advertise or authorize any other franchisee to directly solicit customers or advertise any Authorized Product, in any medium whose audience is located principally within the Marketing Area or where the intent or reasonable likely effect is to solicit customers located principally within the Marketing Area; provided, however, that Franchisor’s affiliates and Franchisor’s independent distributors (which shall consist of individuals and entities which have signed or shall in the future sign a Confidential Distributor Agreement with Franchisor’s affiliate Interstate Batteries, Inc. or such affiliates successor) shall have the right to (x) sell

any Additional Product, (y) directly solicit customers for any Additional Product, and (z) advertise in any medium any Additional Product, within the Marketing Area.

(A) After the end of each fiscal year of Franchisor that commences on or after the first anniversary of the Center's opening, Franchisor will calculate the System Average Gross Sales (as defined below) for the 12-month period coinciding with Franchisor's fiscal year then most recently ended (each such 12-month period, "Calculation Year"). "System Average Gross Sales" means the mean average gross sales for the Calculation Year of all company-owned and franchised [full-sizecertified](#) Interstate All Battery Centers that were open and operating throughout the Calculation Year.

(B) Franchisor may redefine or reduce the size of the Marketing Area effectively immediately upon written notice to Franchisee if, for any two consecutive Calculation Years following the conclusion of the first Calculation Year or portion thereof to occur after the opening of Franchisee's Center, Franchisee's Center's gross sales do not equal or exceed 75% of the System Average Gross Sales for that Calculation Year; provided, however that in no event shall the Marketing Area consist of or be reduced to an area of less than a 3 mile radius surrounding Center premises.

(C) If Franchisor decides at its sole discretion that there is a need for 1 or more additional Interstate All Battery Center locations within the Marketing Area, Franchisor shall notify Franchisee of such decision, and Franchisee shall have the "first option" to apply to enter into Franchisor's then-current form of Franchise Agreement for each of such additional Interstate All Battery Center locations. If Franchisor elects to present more than 1 All Battery Center location to Franchisee with respect to such first option, Franchisee shall have the right to apply to enter into Franchisee Agreements only as to all such locations (and not as to less than all such locations). In the event (1) Franchisee fails to submit a completed franchise agreement application to Franchisor within 10 days of notice of the option by Franchisor, (2) Franchisee fails to meet Franchisor's then-current standards and qualifications for new franchise rights (which standards and qualifications may pertain to, among other things, financial ability, and performance under and compliance with existing franchise agreements with Franchisor), or (3) fails to execute Franchisor's then-current form of Franchise Agreement within 20 days of delivery of such agreement to Franchisee, then Franchisee's "first option" granted under this Agreement shall terminate and Franchisor may at its sole discretion (i) establish, operate or license others to establish or operate such additional Interstate All Battery Center location(s), (ii) redefine or reduce the Marketing Area to exclude certain Zip Codes that may be contained in the Marketing Area associated with such additional Interstate All Battery Center location(s) or a comparable area to be allocated to such additional Interstate All Battery Center location(s) owned or operated by Franchisor, and (iii) redefine or reduce the Marketing Area to exclude certain Zip Codes that may be contained in the Marketing Area associated with such additional Interstate All Battery Center location(s) or a comparable area to be allocated to such additional Interstate All Battery Center location(s) owned or operated by Franchisor. Such reduction or termination of the Marketing Area and the Marketing Area will take effect immediately upon the opening of the additional Interstate All Battery Center location(s).

C. Rights Reserved. Franchisor reserves all rights not expressly granted hereunder. Except as expressly provided in Section 1.B., Franchisor and its affiliates may, among other things, engage in, and may license others to engage in, any business activities, under any name, in any geographic area and at any location, without regard to any adverse effects of such activities on the business of Franchisee and without any obligation or liability to Franchisee. Among other things, Franchisor and its affiliates may, within the Marketing Area: (1) market, sell, and distribute batteries through any means other than [full-sizecertified](#) Interstate All Battery Centers, such as, without limitation, the Internet and "Interstate All Battery Center" kiosks, vending machines, stores-within-stores, and outlets at airports, universities, seasonal mall locations, fairs and trade shows; (2) establish and operate, and license others to establish and operate, retail stores and/or telesales operations that operate under marks other than "Interstate All Battery Centers"; (3) sell batteries under any name or mark to distributors and dealers in the Marketing Area, and recruit distributors and dealers in the Marketing Area, and (4) themselves, and authorize

independent distributors (as defined in Section 1.B) to, sell any Additional Product and advertise in any medium any Additional Product. As used in this Agreement, an “affiliate” or “affiliates” of an entity means and includes all entities controlling, controlled by, or under common control with the entity referred to.

## **2. Development Schedule.**

Franchisee shall obtain Franchisor’s written acceptance of a site for the Center within 6 months after the Effective Date, and shall obtain Franchisor’s written approval to open the Center for business and shall open the Center for business within 9 months after the Effective Date; provided, however, that if Franchisee has executed, contemporaneous with the execution of this Agreement, 1 or 2 additional franchise agreements with Franchisor for the establishment and operation of a total of 1 or 2 additional Centers (all such franchise agreements, including this Agreement, are referred to herein as the “Multiple Agreements”), Franchisee shall (i) open the second Center to be established under the Multiple Agreements for business not later than 18 months after the Effective Date, and (ii) if applicable, open the third Center to be established under the Multiple Agreements for business not later than 27 months after the Effective Date. Strict compliance by Franchisee with the foregoing schedule is essential to this Agreement. Any failure by Franchisee to fulfill its obligation to develop and open the Center pursuant to the foregoing schedule, or to obtain site acceptance pursuant to the foregoing schedule, unless such failure is caused by force majeure, shall constitute a non-curable breach of this Agreement permitting Franchisor to terminate this Agreement immediately by giving written notice of termination to Franchisee.

Franchisee shall not engage in business with customers until the opening of the Center with Franchisor’s express written authorization. However, in response to Franchisee’s request, Franchisor may authorize Franchisee to engage in specified limited business activities with customers before the Center has opened, in which event Franchisee shall comply with the limitations, terms and other requirements of Franchisor’s authorization.

## **3. Development Procedures.**

**A. Franchisee’s Responsibility.** Franchisee assumes all cost, liability, risk and expense for selecting and developing a site for the Center and constructing or remodeling and equipping the Center at the approved site. Franchisee shall not make any binding commitments to purchase or lease any site until the site has been approved by Franchisor.

**B. Site Selection Assistance.** Franchisor shall provide Franchisee, at no cost to Franchisee, with: (1) Franchisor’s site selection guidelines and such consultation with respect thereto as we deem advisable; and (2) one on-site evaluation, if deemed advisable by Franchisor as part of its evaluation of Franchisee’s request for site acceptance. If Franchisee requests additional site visits or assistance, or if Franchisor believes additional site visits or assistance are necessary, Franchisor will pay to Franchisor the then current additional site visit fee and pay or reimburse to Franchisor its out-of-pocket expenses incurred in providing the assistance, including costs of transportation, lodging, and meals.

**C. Site Application.** For each proposed site for a Center, Franchisee shall, if requested by Franchisor, submit to Franchisor a Site Application, a current profit and loss statement and balance sheet, and a personal financial statement for each Guarantor of this Agreement. In addition, Franchisee shall submit a complete real estate package (containing such information as Franchisor may reasonably require) for a proposed site which Franchisee reasonably believes to conform to site selection criteria Franchisor establishes from time to time for demographic characteristics, traffic patterns, parking, character of the neighborhood, competition from other businesses in the area, the nature of other businesses in proximity to the site, other commercial characteristics of the site (including the purchase price, rental obligations and other lease terms for the proposed site), and the size, appearance, other physical characteristics, and a site plan of the premises.

**D. Site Acceptance.** Within 30 days after Franchisor's receipt of the complete Site Application for a proposed site, Franchisor shall advise Franchisee in writing whether Franchisor has accepted the site. If Franchisor does not respond to a completed real estate package within 30 days, Franchisor shall be deemed to have denied acceptance of the site. Franchisor's acceptance or denial of acceptance of a site may be subject to reasonable conditions as determined in its sole discretion. Franchisor's approval of a site is not an assurance that the Center will achieve a certain sales volume or level of profitability; it means only that the proposed site meets Franchisor's minimum criteria for All Battery Center Centers. Once your site is approved, Franchisor is not responsible for any construction delays due to change orders, acts of God, disputes with landlords, architects, contractors, subcontractors, or any other vendor or due to any other action or reason occurring under your management of the build out.

#### **4. Term.**

**A. Term.** The term of this Agreement ("Term") shall begin on the Effective Date and, unless this Agreement is terminated sooner, shall end at 12:01 a.m. C.S.T. on the 10<sup>th</sup> anniversary of the Effective Date.

#### **B. Renewal Terms.**

**(1)** Subject to the provisions of this Section 4.B. and provided Franchisor is then offering franchises for the establishment and operation of Interstate All Battery Centers, at the expiration of the Term, Franchisee shall have an option to remain a franchisee for 3 consecutive terms ("Renewal Terms") of 5 years each. Franchisee shall give Franchisor written notice of whether or not Franchisee intends to exercise its renewal option not less than 12 months nor more than 24 months before the expiration of the Term or the applicable Renewal Term. Franchisee's failure to provide Franchisor the required notice in a timely manner constitutes a waiver by Franchisee of its option to remain a franchisee beyond the expiration of the Term or the applicable Renewal Term.

**(2)** If Franchisee desires to continue as a franchisee for one or more Renewal Terms, Franchisee must comply with all of the following conditions prior to the end of the Term or the applicable Renewal Term:

**(A)** Franchisee shall not be in default under this Agreement or any other agreement between Franchisee and Franchisor or Franchisor's affiliates, and, at any time during the 12 months before the date of Franchisee's notice and the 12 months before the expiration of the Term or first Renewal Term, Franchisee shall not have been in default beyond the applicable cure period, if any, under this Agreement or any other agreement between Franchisee and Franchisor or Franchisor's affiliates.

**(B)** Franchisee shall make the capital expenditures required to renovate and modernize the Center to conform to the interior and exterior designs, decor, color schemes, furnishings and equipment and presentation of the Proprietary Marks consistent with the image for new Interstate All Battery Centers at the time Franchisee provides Franchisor the renewal notice, including such structural changes, remodeling, redecoration and modifications to existing improvements as may be necessary to do so.

**(C)** Franchisee and its employees shall be in compliance with Franchisor's then-current training requirements.

**(D)** Franchisee shall submit proof reasonably acceptable to Franchisor that Franchisee has the right to remain in possession of the Center site, or other premises acceptable to Franchisor, for the relevant Renewal Term, and shall be current on all monetary obligations owed by Franchisee to Franchisee's landlord.

(E) Franchisee shall execute a general release and a covenant not to sue, in a form satisfactory to Franchisor, of and with respect to any and all claims against Franchisor, its affiliates, and their respective then-past and then-present officers, directors, shareholders, agents and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances, and claims arising out of, or relating to, this Agreement, any other agreements between Franchisee and Franchisor or its affiliates, and Franchisee's operation of the Center.

(F) As determined by Franchisor in its reasonable discretion, Franchisee shall have operated the Center in accordance with this Agreement and with the System (as set forth in the Manuals or otherwise and as revised from time to time by Franchisor).

(3) Within 4 months after Franchisor's receipt of Franchisee's written notice of its intent to renew, Franchisor shall advise Franchisee whether or not Franchisee is entitled to remain a franchisee for the relevant Renewal Term. If Franchisor intends to permit Franchisee to remain a franchisee for the relevant Renewal Term, Franchisor's notice will contain preliminary information regarding actions Franchisee must take to satisfy Sections 4.B.(2)(B) and (C). If Franchisor does not intend to permit Franchisee to remain a franchisee for the relevant Renewal Term, Franchisor's notice shall specify the reasons for non-renewal. If Franchisor chooses not to permit Franchisee to remain a franchisee for the relevant Renewal Term, Franchisor shall have the right to unilaterally extend the Term or first Renewal Term of this Agreement as necessary to comply with any applicable laws.

(4) If Franchisee will remain a franchisee for the Renewal Term, Franchisor shall forward to Franchisee a renewal addendum for the Renewal Term for Franchisee's signature at least 4 months prior to the expiration of the Term or first Renewal Term. The terms and provisions of the renewal addendum may differ from, and may modify, the terms and provisions of this Agreement. If Franchisee exercises its renewal option pursuant to this Section 4, Franchisee shall continue to operate the Center throughout the Renewal Term.

(5) Franchisee shall execute Franchisor's then-current form of franchise agreement, which agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement, including, without limitation the imposition of a different fee structure, except that Franchisee shall not be required to pay any additional initial license fee and the length of the term (and, if applicable, the renewal term) thereof shall be equal to then-unexercised renewal term(s) as specified in Section 4.B (1) hereof.

## **5. Fees.**

**A. License Fee.** Franchisee shall pay Franchisor, at the time this Agreement is signed by Franchisee, the sum of \$37,500 ("License Fee"). The License Fee is fully earned by Franchisor when paid, is not refundable, and is not credited against any other fees to be paid to Franchisor.

**B. Royalty Fee.** On or before the 10<sup>th</sup> day of each calendar month, Franchisee shall pay Franchisor a nonrefundable royalty fee in an amount equal to 5% of Franchisee's Gross Sales (as defined below) for the preceding month.

"Gross Sales" shall include all revenue from the sale of all services and products and all other income of every kind and nature related to the business conducted by Franchisee under this Agreement (the "Franchised Business"), whether for cash or credit and regardless of collection in the case of credit; provided, however, that Gross Sales shall not include any sales taxes or other taxes collected from customers by Franchisee for transmittal to the appropriate taxing authority. Sales or transfers by the Franchised Business to any affiliate of Franchisee or to any party related to Franchisee shall be included in, and reported as, Gross Sales as if made at prices not less than the Franchised Business' regular prices. If Franchisee sells services or products which then are returned to Franchisee by the purchaser, the sale price shall be included in Gross Sales in the accounting period in which the sale is made, and the amount

refunded to the customer shall be subtracted from Gross Sales in the accounting period in which the return is accepted. Revenues from gift certificates shall be included in Gross Sales in the accounting period when redeemed but not when purchased.

**C. Existing Account Fee.** Franchisee shall pay Franchisor the existing account fee specified in the Summary Pages with respect to the telesales customer accounts of Franchisor's affiliate Retail Acquisition & Development, Inc. ("RAD") as of the Effective Date that have a billing address in the Marketing Area (as defined in the Summary Pages) ("Existing Accounts"). The ~~initial installment of the fee shall be paid to Franchisor on or before the date on which the computer system is installed at Franchisee's site pursuant to Appendix F hereof; the subsequent installments are due on the first and second anniversaries, respectively, of the Effective Date.~~ Upon payment of the initial installment, and so long as Franchisee is not in default of this Agreement, Franchisee shall have the right to service the Existing Accounts. Unless Franchisee advises Franchisor that Franchisee elects to call on one or more of the Existing Accounts in person, Franchisor or its designee will continue to conduct telesales to the Existing Accounts pursuant to Section 10.

**D. Telesales Fee.** Franchisee shall pay Franchisor the telesales fees as set forth in Section 10. The telesales fee shall be paid monthly within 30 days after Franchisee's receipt of Franchisor's invoice therefore. Notwithstanding the above, Franchisor shall have the option to require the telesales fee to be paid at the same time and in the same manner as other monthly payments due hereunder, upon notice to Franchisee.

**E. Advertising Fee.** Franchisee shall pay Franchisor the advertising fees set forth in Section 11.

**F. Software License and Support Fees.** Franchisee shall pay Franchisor or its designee all software license and support fees as described in Section 16.E. and the software license agreement(s) to be executed by Franchisee.

**G. Set Up Fee.** Upon execution of this Agreement, Franchisee shall pay Franchisor or its designee a fee of \$5,000, to reimburse Franchisor for its costs and expenses associated with Franchisor's installation, configuration and/or set up of the Center's fixtures, graphics, computer system, B2B system and such other elements of the Center as Franchisor deems appropriate (the "Set Up Fee").

**H. Rescheduling Fee.** If Franchisee seeks to reschedule the final inspection described in Section 8.E. hereof or the Center set up described in Section 15.C. hereof, after a date therefor has been determined by Franchisor and communicated to Franchisee, Franchisor may condition its approval thereof upon payment by Franchisee of a rescheduling fee of \$500.

**I. Remittance Reports.** On or before the 10<sup>th</sup> day of each calendar month, Franchisee shall report to Franchisor in writing (or, at Franchisor's election, by electronic mail, polling by computer or such other form or method as Franchisor may designate) the amount of Gross Sales of the Franchised Business during the preceding calendar month, and shall submit such other data and information as Franchisor may require.

**J. Method of Payment.** Except as otherwise described above, on or before the 10<sup>th</sup> day of each calendar month, Franchisee shall pay Franchisor (by check or by such other form or method as Franchisor may designate) all monthly payments due from Franchisee to Franchisor under this Agreement, including royalty fees, advertising fees and interest charges.

Upon receipt of written notice from Franchisor, Franchisee shall designate an account at a commercial bank acceptable to Franchisor (the "Account") for payment of all amounts due from Franchisee to Franchisor and its affiliates by electronic funds transfer. In connection with payment of these fees by electronic funds transfer, Franchisor may designate a day for payment ("Due Date")

different than that provided in the preceding paragraph. On each Due Date, Franchisor will transfer from the Account the amount due as reported to Franchisor in Franchisee's remittance report or as determined by Franchisor from the records contained in the cash registers/computer terminals of the Center. If Franchisee fails to report Gross Sales to Franchisor for a reporting period, Franchisor will transfer from the Account an amount calculated in accordance with Franchisor's estimate of the Gross Sales during the period. If, at any time, Franchisor determines that Franchisee has underreported Gross Sales or has underpaid the royalty fee or other amounts due to Franchisor and its affiliates under this Agreement or any other agreement, Franchisor shall initiate an immediate transfer from the Account in the appropriate amount in accordance with the foregoing procedure, including interest as provided in this Agreement. Any overpayment will be credited to the Account effective as of the first reporting date after Franchisor and Franchisee determine that such credit is due.

In connection with payment of fees by electronic funds transfer, Franchisee shall: (1) comply with procedures specified by Franchisor in the Manuals; (2) perform those acts and sign and deliver those documents as may be necessary to accomplish payment by electronic funds transfer as described in this Section 5.J.; (3) give Franchisor an authorization in the form designated by Franchisor to initiate debit entries and/or credit correction entries to the Account; and (4) make sufficient funds available in the Account for withdrawal by electronic funds transfer no later than the Due Date for payment thereof.

Franchisee shall not be entitled to set off, deduct or otherwise withhold any monies payable by Franchisee under this Agreement on grounds of any alleged non-performance by Franchisor of any of its obligations or for any other reason.

**K. Interest.** If any payments by Franchisee due to Franchisor or its affiliates are not received by Franchisor or the affiliate by the date due, Franchisee, in addition to paying the amount owed, shall pay Franchisor or the affiliate interest on the amount owed from the date due until paid at the lesser of the maximum lawful rate permitted or 1.5% per calendar month (or portion of a calendar month). The foregoing remedy shall be in addition to Franchisor's and its affiliates' other remedies and rights under this Agreement or applicable law. Franchisee need not pay interest hereunder if Franchisor, having implemented payment by electronic funds transfer, fails to transfer the amount due in a timely manner from a properly funded Account through no fault of Franchisee.

**L. Partial Payments.** No payment by Franchisee or acceptance by Franchisor of any monies under this Agreement for a lesser amount than due shall be treated as anything other than a partial payment on account. Any endorsement, statement or communication by Franchisee to the effect that Franchisee's payment of a lesser amount than due constitutes full payment shall be given no effect and Franchisor may accept the partial payment without prejudice to any rights or remedies it may have against Franchisee. Franchisor's acceptance of payments by Franchisee other than as set forth in this Agreement shall not constitute a waiver of Franchisor's right to demand payment in accordance with the requirements of this Agreement. Notwithstanding any designation by Franchisee, Franchisor shall have sole discretion to apply any payments by Franchisee to any of its past due indebtedness for royalty fees, advertising contributions, existing account fees, telesales fees, purchases from Franchisor or its affiliates, interest, or any other indebtedness. Franchisor's acceptance of payment from any entity other than the named Franchisee shall be deemed to be payment by the named Franchisee and shall not be deemed to be recognition or substitution of the paying entity for the named Franchisee.

**M. Collection Costs and Taxes.** Franchisee agrees to pay to Franchisor or its affiliates on demand any and all costs and expenses incurred by Franchisor or its affiliates in collecting any monies owed by Franchisee to Franchisor or its affiliates. These costs and expenses include, but are not limited to, costs and commissions due a collection agency, reasonable attorneys' fees (including any attorneys' fees incurred by Franchisor or its affiliates in bankruptcy proceedings), court costs, expert witness fees, discovery costs and reasonable attorneys' fees and costs on appeal, together with interest charges on all of the foregoing. If any sales tax, gross receipts tax, or similar tax (other than income tax) is imposed on

Franchisor by reason of its performing its obligations under this Agreement, Franchisee shall reimburse Franchisor the amount of those taxes within 30 days after receipt of an invoice from Franchisor.

## **6. Recordkeeping and Reports.**

**A. Recordkeeping.** Franchisee agrees to use the computerized cash and data capture and retrieval systems specified by Franchisor in the Manuals from time to time. Franchisee shall keep and maintain, using generally accepted accounting principles and in accordance with any procedures set forth in the Manuals, complete and accurate books and records of its business operations under this Agreement sufficient to fully report to Franchisor, and shall preserve all of its books, records and state and federal tax returns for at least 5 years after the later of preparation or filing (or such longer period as may be required by any governmental entity) and make them available and provide duplicate copies to Franchisor within 5 days after Franchisor's written request.

**B. Monthly Reports.** Franchisee shall, at Franchisee's expense, submit to Franchisor, in the form prescribed by Franchisor, a monthly income statement, balance sheet, and aged trial balance, all prepared in accordance with generally accepted accounting principles (the "Monthly Financials"). The Monthly Financials shall be submitted within 20 days after the end of the month to which they relate, and shall be signed by Franchisee or by Franchisee's treasurer or chief financial officer attesting that the Monthly Financials are true and correct.

**C. Annual Reports.** At Franchisor's request, Franchisee shall, at its expense, provide to Franchisor either a reviewed or audited profit and loss statement and balance sheet within 60 days after the end of each fiscal year of Franchisee, signed by Franchisee or by Franchisee's treasurer or chief financial officer attesting that the financial statements present fairly the financial position of Franchisee and the results of operations of the Center during the period covered. Franchisor shall have the right, in its reasonable discretion, to require that Franchisee submit audited statements for any fiscal year.

**D. Other Reports.** Franchisee shall submit to Franchisor, for review or auditing, such other forms, reports, records, information and data as Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, upon request or as specified by Franchisor from time to time in the Manuals or otherwise in writing.

**E. Franchisor's Audit Rights.** Franchisor or its designee shall have the right at all reasonable times, both during and after the term of this Agreement, to inspect, copy and audit Franchisee's books, records and federal and state tax returns, and such other forms, reports, information and data as Franchisor reasonably may designate. If an inspection or audit discloses an understatement of Gross Sales, Franchisee shall pay Franchisor, within 10 days after Franchisee's receipt of the inspection or audit report, the deficiency in the royalty fees and other fees plus interest (at the rate and on the terms provided in Section 5.K.) from the date originally due until the date of payment. If an inspection or audit is made necessary by Franchisee's failure to furnish reports or supporting records as required under this Agreement, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales for any month during the period of any audit is determined by any audit or inspection to be greater than 2%, Franchisee also shall reimburse Franchisor for the reasonable cost of the audit or inspection, including, without limitation, the charges of attorneys and independent accountants, and the travel expenses, room and board and compensation of Franchisor's employees or designees involved in the audit or inspection. The foregoing remedies shall be in addition to Franchisor's other remedies and rights under this Agreement or applicable law.

## **7. Lease Provisions.**

**A.** Franchisee shall submit the proposed lease for the Center to Franchisor for approval before the lease is executed. Any lease, sublease, letter of intent or lease memorandum for the Center shall contain provisions that satisfy the following requirements during the entire term of the lease, including any renewal terms:

(1) The landlord consents to Franchisee's use of the proprietary signs, distinctive exterior and interior designs and layouts, and the Proprietary Marks prescribed by Franchisor, and, upon expiration or the earlier termination of the lease, consents to permit Franchisee, at Franchisee's expense, to remove all such items and other trade fixtures, so long as Franchisee makes repairs to the building made necessary by such removal.

(2) The landlord agrees to provide Franchisor (at the same time they are sent to Franchisee) a copy of all amendments and assignments and of all letters and notices sent to Franchisee pertaining to the lease or the leased premises.

(3) Franchisor shall have the right to enter the leased premises to make any modifications or alterations, at its own cost, necessary to protect the System and the Proprietary Marks and to cure, within the time periods provided by the lease, any default under the lease, all without being guilty of trespass or other tort.

(4) Franchisee may assign the lease to Franchisor or Franchisor's designee with landlord's consent (which consent shall not be unreasonably withheld) and without payment of any assignment fee or similar charge or increase in any rentals payable to the landlord.

(5) The landlord agrees to consent to Franchisee collaterally assigning the lease to Franchisor or its designee, granting Franchisor the option, but not the obligation, to assume the lease from the date Franchisor takes possession of the leased premises, without payment of any assignment fee or similar charge or increase in any rentals payable to the landlord.

(6) The landlord agrees that, prior to any assignment of the lease to Franchisor or its designee, Franchisee shall be solely responsible for all obligations, debts and payments under the lease.

(7) The landlord agrees that, following the expiration or earlier termination of this Agreement, Franchisee shall have the right to make those alterations and modifications to the leased premises as may be necessary to clearly distinguish to the public the leased premises from an Interstate All Battery Center and also to make such specific additional changes as Franchisor may reasonably request for that purpose. The landlord also agrees that, if Franchisee fails to make these alterations and modifications promptly, Franchisor shall have the right to do so without being guilty of trespass or other tort so long as Franchisor makes repairs to the building made necessary by such activity.

(8) The landlord agrees not to amend or otherwise modify the lease in any manner that would affect any of the foregoing requirements without Franchisor's prior written consent, which consent shall not be unreasonably withheld.

(9) If the Center is to be located in a shopping center, the landlord agrees not to permit any other store which principally sells batteries to be located in the shopping center and agrees that Franchisor shall be a third party beneficiary of this covenant.

(10) [Landlord must permit battery service/installation performed in the parking lot.](#)

**B.** Franchisee shall provide Franchisor with a copy of the fully-executed lease or sublease (which shall be for at least the Term) for the Center within 30 days after receiving Franchisor's written acceptance of a site for the Center but in any event prior to the commencement of construction or remodeling of the Center.

## **8. Construction and Remodeling.**

**A. Center Development.** Franchisee assumes all cost, liability and expense for developing, constructing and equipping the Center. Franchisor shall furnish to Franchisee one copy of prototypical plans and specifications for an Interstate All Battery Center, including requirements for dimensions, design, image, interior layout, decor, fixtures, equipment, signs, furnishings, mechanical, electrical, plumbing, elevations, storefront and color scheme. It shall be Franchisee's responsibility to have prepared all required construction or remodeling plans and specifications to suit the shape and dimensions of the site approved by Franchisor, and Franchisee shall ensure that these plans and specifications comply with applicable laws, ordinances, building codes and permit requirements and with lease requirements and restrictions. Franchisee shall use only registered architects, registered engineers, and professional and licensed contractors that are approved by Franchisor.

Franchisee shall submit proposed construction or remodeling plans, specifications and drawings prepared in accordance with Section 8 of this Agreement ("Plans") to Franchisor within 30 days after receiving Franchisor's written acceptance of a site for the Center and shall submit all revised or "as built" Plans during the course of such construction or remodeling. Franchisor shall review the Plans for conformance with the standards of the System, but not for compliance with legal requirements or any other purpose. Franchisor shall approve or refuse to approve the Plans for the proposed Center and notify Franchisee within 30 days after Franchisor receives the Plans. (Franchisor's approval shall not be unreasonably withheld.) Once Franchisor has approved the Plans, no substantial change shall be made to the Plans without the prior approval of Franchisor, which shall not be unreasonably withheld. If, in the course of construction or remodeling, any such change in the Plans is contemplated, Franchisor's approval must first be obtained before proceeding.

Franchisee shall not begin site preparation or construction or remodeling before receiving written notification from Franchisor that Franchisor has approved the Plans. All construction or remodeling must be in accordance with Plans approved by Franchisor and must comply in all respects with applicable laws, ordinances and local rules and regulations. The Center may not open if construction or remodeling has not been performed in substantial compliance with Plans approved by Franchisor, and this Agreement may be terminated if such non-compliance is not timely cured within a commercially reasonable amount of time. Franchisor may furnish guidance to Franchisee in developing the Center and may periodically inspect the premises during its development.

**B. Commencement and Completion of Construction or Remodeling.** Construction or remodeling of the Center shall commence within 30 days after Franchisee receives Franchisor's written acceptance of a site for the Center. Construction shall be deemed to have commenced only after Franchisee has obtained all required permits and: (a) with respect to a free-standing Center, Franchisee has begun the installation of building footings with the intent to maintain continuous construction thereafter; or (b) with respect to a non-free-standing Center or a Center being converted from a prior use, Franchisee has begun the installation of electrical wiring with the intent to maintain continuous construction thereafter. Once construction or remodeling has commenced, it shall continue uninterrupted until completed.

**C. Acquisition of Necessary Furnishings, Fixtures and Equipment.** Franchisee agrees to use in the development and operation of the Center only those fixtures, furnishings, equipment and signs that Franchisor has approved in accordance with Section 16.D.

If Franchisee builds any portion of the Center not in compliance with Franchisor's specifications without receiving Franchisor's prior written consent, Franchisor shall have the right to delay the opening of the Center until Franchisee, at its sole expense, brings the Center's development into full compliance with Franchisor's specifications.

**D. Inspection, Cooperation.** During the course of construction or remodeling, Franchisee shall (and shall cause Franchisee's architect, engineer, contractors, subcontractors and other representatives and agents to) cooperate fully with Franchisor for the purpose of permitting Franchisor to inspect the premises and the course of construction or remodeling of the Center in order to determine whether construction or remodeling is proceeding according to the Plans. Without limiting the generality of the foregoing, Franchisee and Franchisee's architect, engineer, contractors, subcontractors and other representatives and agents shall: (1) supply Franchisor with samples of materials, test borings, corings, due diligence environmental studies, supplies, equipment and other material and reports, if any such tests, studies or reports indicate there may be material problems or as Franchisor may request; and (2) afford Franchisor's representatives access to the site and to the construction or remodeling work in order to permit Franchisor to carry out its inspections. Franchisee also shall submit to Franchisor, progress reports as requested by Franchisor fulfilling the terms of this Section 8 regarding the course of construction or remodeling.

**E. Final Inspection and Opening Date.** Franchisee shall notify Franchisor in writing at least 30 days prior to the date Franchisee expects construction or remodeling to be completed and a certificate of occupancy issued. If requested by Franchisor, Franchisee shall submit a copy of the certificate of occupancy to Franchisor. Franchisor reserves the right to conduct a final inspection of the Center and its premises to determine whether Franchisee has complied with this Agreement.

**F. No Franchisor Liability.** Notwithstanding the right of Franchisor to approve the Plans and to inspect the construction or remodeling work and the Center, and notwithstanding any information or advice Franchisor may furnish, Franchisor shall have no liability or obligation with respect to the design, construction or remodeling of the Center, Franchisor's rights being exercised solely for the purpose of ensuring compliance with the terms and conditions of this Agreement.

## **9. Approval to Open Center.**

Franchisee shall not open the Center for business without Franchisor's express written authorization. Franchisor will not authorize the opening of the Center unless all of the following conditions have been met:

**A.** Franchisee is not in default under this Agreement or any other agreements with Franchisor or its affiliates and, for the previous 6 months, Franchisee has not been in default beyond the applicable cure period, if any, under any agreement with Franchisor or its affiliates.

**B.** Franchisee is current on all obligations due Franchisor and its affiliates.

**C.** Franchisee has certified to Franchisor in writing that the Center was constructed or remodeled in accordance with the Plans approved by Franchisor and in compliance with all applicable federal, state and local law and codes.

**D.** If the site is leased, the lease complies fully with the requirements of Section 7 hereof and Franchisor has received a copy of the fully-executed lease.

**E.** Franchisee has obtained a certificate of occupancy and all other required health, safety or fire department certificates, if any.

**F.** Franchisee has certified to Franchisor in writing that the installation of all items of furnishings, fixtures, equipment, signs, computer terminals and related equipment, supplies and other items has been accomplished and that Franchisee has hired and trained a staff, all in accordance with the requirements of this Agreement and the Manuals.

**G.** Franchisor has determined that the Center has been constructed or remodeled and equipped, and that Franchisee has hired and trained a staff, all in accordance with the requirements of this Agreement and the Manuals.

**H.** Franchisor has been furnished with copies of all insurance policies required by Section 19 or such other evidence of insurance coverage and payment of premiums as Franchisor reasonably may request.

**I.** All required and Franchisor approved interior and exterior signage is installed and operating properly.

Notwithstanding the above, Franchisee shall have the right to engage in commercial sales (including, without limitation, telesales as provided in Section 10, below) before the Center is opened for business, provided; (a) Franchisee and Franchisee's general manager and/or dedicated sales person have successfully completed the management training program described in Section 14.A of this Agreement, (b) Franchisee has installed all computer hardware and software, in accordance with Section 16.E hereof, and (c) Franchisee has furnished Franchisor with copies of all insurance policies required by Section 19 or such other evidence of insurance coverage and payment of premiums as Franchisor reasonably may request. If Franchisee has entered into Multiple Agreements as described in Section 2 hereof, Franchisee shall have the right to engage in commercial sales (including, without limitation, telesales as provided in Section 10, below) to customers and potential customers whose billing addresses are in the Marketing Area (as defined in the Summary Pages) before the Center is opened for business, provided the conditions described above in subsections (a)-(c) of this paragraph are satisfied and Franchisee has paid to Franchisor the telesales fee described in any one of the Multiple Agreements. However, this paragraph shall not be deemed to constitute a waiver of any telesales fees described in the Multiple Agreements, and unless sooner paid in accordance with this paragraph, all such telesales fees shall otherwise be paid upon opening of the applicable Center.

## **10. Telesales.**

Franchisor or its designee shall conduct telesales on behalf of Franchisee to customers and potential customers whose billing addresses are in the Marketing Area (as defined in the Summary Pages), on the following terms:

**A.** Franchisee must have a dedicated sales person actively marketing the Franchised Business in the Marketing Area, and must be eligible to receive the list of Existing Accounts pursuant to Section 5.C.

**B.** Franchisee must not be in material default under this Agreement or any other agreements with Franchisor or its affiliates.

**C.** Franchisee must be current on all payments due Franchisor and its affiliates.

**D.** Franchisor shall offer products to telesales customers at the prices and on the terms established by Franchisee from time to time. Franchisee shall keep Franchisor informed of changes in prices and terms of sale. All orders received by Franchisor as a result of telesales in the Marketing Area shall be referred to Franchisee and, if accepted by Franchisee, shall be fulfilled by Franchisee within the time stated by Franchisor to the customer.

**E.** Franchisee shall pay Franchisor a telesales fee in the amount established by Franchisor from time to time in the Manuals (as defined in Section 12 hereof) or otherwise in writing.

**F.** Franchisor shall have the right, but not the obligation, to offer to franchisee more than one (1) package of telesales services and to alter, amend, modify and discontinue any such packages

upon notice to Franchisee. In the event Franchisor offers to Franchisee more than one (1) package of telesales services, Franchisee shall select one (1) such package and shall execute and return such election and order forms, and contracts applicable thereto as Franchisor may designate from time to time. Franchisee shall pay the telesales fee applicable thereto.

**G.** Franchisee shall not itself perform, nor shall Franchisee engage a party other than Franchisor or Franchisor's designee to perform telesales on behalf of the Center.

Franchisor reserves the right to cease conducting, and to have its designee cease conducting, telesales on behalf of Franchisee. If Franchisor exercises that right, Franchisee shall not thereafter be required to pay a telesales fee to Franchisor.

## **11. Advertising and Promotion.**

**A. Fund.** Franchisor shall establish, maintain and administer a fund for the creation and development of such advertising, marketing and/or public relations, research and related programs, activities and/or materials concerning or relating to Interstate All Battery Centers as Franchisor may, in its sole discretion, deem appropriate ("Fund"). Franchisee shall contribute to the Fund a monthly advertising fee in an amount equal to 1.5% of Gross Sales, at the same time and in the same manner as the royalty fee. Any Centers owned by Franchisor or its affiliates shall contribute to the Fund, and to any cooperatives established pursuant to Section 11.D. of which those Centers are members, on the same basis as franchisees.

Franchisor shall direct all advertising, marketing, and public relations programs and activities financed by the Fund, with sole discretion over the creative concepts, materials and endorsements used in those programs and activities, and the geographic, market and media placement and allocation of advertising and marketing materials. Franchisee agrees that the Fund may be used to pay the costs of preparing and producing such associated materials and programs as Franchisor may determine, including video, audio and written advertising materials; employing advertising agencies; sponsorship of sporting, charitable or similar events; administering regional and multi-regional advertising programs, including, without limitation, purchasing direct mail, product and other media advertising and employing advertising agencies to assist with these efforts; and supporting public relations, market research, test programs and initiatives and other advertising, promotional and marketing activities. Franchisee agrees to participate in all advertising, marketing, promotions, research and public relations programs instituted by the Fund.

**B. Treatment of Fund.** Franchisor may be reimbursed by the Fund for expenses directly related to maintaining and administering the Fund and the Fund's marketing programs, including, without limitation, conducting market research, preparing advertising and marketing materials, and collecting and accounting for contributions to the Fund. Franchisor may hire employees, either full-time or part-time, for the administration of the Fund. No monies of the Fund shall be used to defray any of Franchisor's general operating expenses. Franchisor shall separately account for the Fund, but the monies of the Fund shall not be required to be segregated from Franchisor's other monies. Franchisor may spend in any fiscal year an amount greater or less than the aggregate contributions to the Fund during that year or cause the Fund to invest any surplus for future use by the Fund. A statement of monies collected and costs incurred by the Fund shall be prepared annually by Franchisor and shall be furnished to Franchisee within a reasonable period of time following a written request. If it deems it appropriate, Franchisor may incorporate the Fund or operate the Fund through a separate entity, and such successor entity shall have all rights and duties of Franchisor pursuant to this Section 11.

**C. Local Store Marketing.** Franchisee agrees to spend for local store marketing ("LSM") not less than \$10,000 during the first 120 days after the Center opens for business and not less than \$20,000 in total during the first Operating Year (defined below) in accordance with the ramp up campaign marketing campaign described below in Section 11.E. In addition to the above-described ramp up

[marketing campaign](#) expenditure, Franchisee agrees to spend for LSM a minimum of 4% of Gross Sales (as defined in Section 5.B.) during the first Operating Year ~~(defined below)~~ and, for each subsequent Operating Year the greater of the following: (i) a percentage of Gross Sales specified by Franchisor, which shall not exceed 6.5% of Gross Sales (provided, further that Franchisor shall not increase such required LSM expenditure by more than 1% of Gross Sales for any calendar year); and (ii) \$15,000, increased for inflation annually in accordance with the Consumer Price Index using the calendar year that includes the first day of the third Operating Year as the base year. "Operating Year" means the twelve-month period beginning the first day of the first month in which the Center opens for business, and each twelve-month period thereafter. Franchisor periodically shall advise Franchisee of the kinds of advertising and sales promotions authorized by Franchisor as qualified LSM expenditures.

(1) On or before the 10<sup>th</sup> day of each calendar month, Franchisee shall (a) pay Franchisor as an LSM deposit the amount representing the percentage specified pursuant to 11.C.(i) above multiplied by Franchisee's Gross Sales for the preceding month and (b) provide Franchisor copies of all documentation demonstrating the amount and types of LSM expenditures made by Franchisee in the preceding month. Franchisor will reimburse Franchisee for qualified LSM expenditures approved by Franchisor up to the amount of Franchisee's LSM deposits then available for reimbursement. (The amount available for reimbursement may be reduced pursuant to Section 11.D.) If, by the 10th day of the second month following the end of a calendar quarter, Franchisee has failed to submit documentation of qualified LSM expenditures during the calendar quarter then ended equal to the LSM deposits paid by Franchisee with respect to Franchisee's Gross Sales during that calendar quarter, Franchisor may in its sole discretion spend such remaining LSM deposits for advertising in Franchisee's Marketing Area.

(2) Local advertising and promotion materials may be purchased by Franchisee from any source. If purchased from a source other than Franchisor, those materials shall comply with federal and local laws and regulations and with such guidelines for advertising and promotions as may be promulgated from time to time by Franchisor, and shall be submitted to Franchisor for its approval prior to first use. Franchisor shall be deemed to have disapproved such advertising materials if it does not otherwise advise Franchisee in writing within 30 days after its receipt of the advertising. In no event shall Franchisee's advertising contain any statement or material which may be considered: (1) in bad taste or offensive to the public or to any group of persons; (2) defamatory of any person or an attack on any competitor; (3) to infringe upon the use, without permission, of any other person's trade name, trademark, service mark or identification; or (4) inconsistent with the public image of Franchisor or the System.

(3) Franchisor may limit the media and/or the geographic areas in which Franchisee advertises. Franchisee may not launch an independent Web site on the Internet. Any listing of the Center by Franchisee must first have received Franchisor's written approval.

**D. Local and Regional Marketing Cooperatives.** Franchisor may establish local and/or regional marketing cooperatives for the area and/or region in which the Center is located. Any cooperative established by Franchisor may be incorporated by Franchisor and shall be operated in accordance with rules promulgated by Franchisor from time to time.

(1) If Franchisor establishes one or more cooperatives for the area and/or region in which the Center is located, Franchisee shall become a member of such cooperatives as Franchisor may designate in such manner as Franchisor may direct, and Franchisor may allocate all or part of Franchisee's LSM deposits among any cooperatives of which Franchisee is a member and may revise the allocation from time to time. Monies of a cooperative may be used for the same purposes as the monies of the Fund may be used pursuant to Sections 11.A. and 11.B. Any amounts paid by Franchisee and allocated to a cooperative shall be credited toward Franchisee's minimum required LSM expenditure for that Operating Year, and shall not be available for reimbursement of Franchisee's LSM expenditures.

(2) Franchisor shall have the right to terminate (and subsequently restart) any marketing cooperative. Upon termination, all monies in the cooperative shall be spent for advertising and/or promotional purposes. Franchisor shall have the sole right, but not the obligation, to enforce the obligations of franchisees who are members of any cooperative to contribute to the cooperative. Neither Franchisee nor any other franchisee who contributes to the cooperative shall be deemed a third-party beneficiary with respect to the cooperative obligations of other franchisees or have any right to enforce the obligation of any franchisee to contribute to the cooperative.

E. ~~Grand Opening~~Ramp Up Marketing Campaign. Franchisor or its designee shall consult with Franchisee, as Franchisor deems advisable, regarding the development of ~~a grand opening~~an initial ramp up marketing campaign. Franchisee will conduct the ~~grand opening~~ramp up marketing campaign that Franchisor approves, in connection with the opening and the first twelve months of operation of the Center and at Franchisee's expense. Franchisor shall solicit Franchisee's suggestions (which shall be advisory only) with respect to the plan for the ~~grand opening~~ramp up marketing campaign (the "Plan"). Notwithstanding the above, Franchisor reserves the right to implement the Plan, and Franchisee shall pay Franchisor's invoice for the costs of developing and implementing the Plan within 14 days after it is sent; the invoice may include an administrative fee to Franchisor. Franchisee understands that the ~~grand opening~~ramp up marketing campaign may not result in the securing of any customers. Amounts paid by Franchisee for the Plan do qualify as LSM expenditures.

## 12. Operating Manuals.

Franchisor will loan Franchisee a copy of the confidential and proprietary Pre-Opening Manual upon execution of this Agreement, and copies of all other confidential and proprietary Manuals upon Franchisee's successful completion of training. (All manuals provided by Franchisor are referred to as the "Manuals.") The Manuals contain information and knowledge that is necessary and material to the System. (As used in this Agreement, the term "Manuals" also includes other publications, materials, drawings, memoranda, videotapes and audio tapes that Franchisor may give or lend to Franchisee from time to time.) Franchisor may, at its option, furnish all or part of the Manuals online or in electronic form, and may supplement or amend the Manuals from time to time by letter, electronic mail, bulletin, videotapes, audio tapes, software or other communications to reflect changes in the image, specifications and standards relating to equipping, furnishing and operating Interstate All Battery Centers. Franchisee shall keep all copies of the Manuals up-to-date with all additions and deletions provided by Franchisor, and shall purchase whatever equipment (including, without limitation, a video cassette recorder, computer system, dedicated phone line, facsimile machine, etc.) may be necessary to receive these communications. If a dispute relating to the contents of the Manuals develops, the master copy maintained by Franchisor at its principal offices shall control.

The Manuals contain detailed standards, specifications, instructions, requirements, methods and procedures for management and operation of Interstate All Battery Centers. The Manuals also may relate to the selection, purchase, storage, preparation, packaging, service and sale of all products and services sold by Interstate All Battery Centers; management and employee training; marketing, advertising and sales promotions; maintenance and repair of buildings, grounds, equipment, graphics, signs, interior and exterior decor items, fixtures and furnishings; employee dress and appearance standards; and accounting, bookkeeping, records retention and other business systems, procedures and operations. Franchisee agrees at all times to operate the Center in strict conformity with the Manuals; to keep one copy of the Manuals available at the Center; not to reproduce the Manuals or any part of them except as expressly authorized by this Agreement; and to treat the Manuals as confidential and proprietary and to disclose the contents of the Manuals only to those employees of Franchisee who have a need to know because of their job responsibilities. If Franchisee loses its copy of the Manuals, Franchisor may charge Franchisee a fee for providing a replacement copy.

## 13. Modifications of the System.

**A.** Franchisor, in its sole discretion, shall be entitled to change or modify the System from time to time, including modifications to the Manuals, the required equipment, the signage, the building and premises of the Interstate All Battery Centers (including the trade dress, decor and color schemes), the presentation of the Proprietary Marks, the adoption of new administrative forms and methods of reporting and of payment of any monies owed to Franchisor (including electronic means of reporting and payment), and the adoption and use of new or modified Proprietary Marks or copyrighted materials. Franchisee shall accept and use or display in the Center any such changes or modifications in the System as if they were a part of the System at the time this Agreement was executed, and Franchisee will make such expenditures (subject to Section 13.B below) as the changes or modifications in the System may require.

**B.** From time to time (but not more often than once every 5 years), Franchisor may require Franchisee to make, at Franchisee's expense, extensive structural changes, major remodeling and renovations and substantial modifications to existing equipment and improvements to modernize and conform the Center to the then-current image of new Interstate All Battery Centers. Capital expenses necessary for the repair and maintenance of the Center and their contents are not subject to the frequency limitations described in the preceding sentence. Within 60 days after receipt of Franchisor's written notice regarding the required modernization, Franchisee shall prepare and complete drawings and plans for the required modernization. Those drawings and plans must be submitted to, and their use approved by, Franchisor prior to the commencement of work. Franchisee shall complete the required modernization within the time reasonably specified by Franchisor in its written notice.

**C.** Franchisor shall have the right, in its sole discretion, to waive, defer or permit variations from the standards of the System or this Agreement for any franchisee or prospective franchisee based on the peculiarities of a particular site, existing building configuration or circumstance, density of population, business potential, trade area population or any other condition or circumstance. Franchisor shall have the right, in its sole discretion, to deny any such requests Franchisor believes would not be in the best interests of the System.

**D.** If Franchisee develops any new concepts, processes or improvements relating to the System, whether or not pursuant to a Franchisor-authorized test, Franchisee shall notify Franchisor and provide Franchisor promptly with all information regarding the new concept, process or improvement, all of which shall become the property of Franchisor and which may be incorporated into the System without any payment to Franchisee.

#### **14. Training.**

**A. Management Training Program.** Franchisor shall provide Franchisee ~~and certain designated employees of Franchisee~~ (or, if Franchisee is owned by more than one individual, Franchisee's Operating Principal, defined in Section 20.E.) a management training program in the operation of Interstate All Battery Centers at the times and places designated by Franchisor. The management training program will include classroom instruction and training at training facilities and at an Interstate All Battery Center designated by Franchisor. Franchisee ~~(or, if Franchisee is owned by more than one individual, Franchisee's Operating Principal, defined in Section 20.E.), Franchisee's general manager and any other person designated by Franchisor~~ or Franchisee's Operating Principal shall attend and successfully complete the management training program.

Franchisor shall charge no tuition fee for attendance at regularly scheduled management training at Franchisor's location. If Franchisor schedules a special training session at Franchisee's request, Franchisee shall pay Franchisor, for each trainee, a tuition fee as established by Franchisor from time to time. Franchisee shall pay all travel, living and other expenses incurred by Franchisee and by Franchisee's trainees while attending the training. Franchisor reserves the right to require Franchisee to replace any trainee whom Franchisor determines not to be successfully completing the training program, and to designate additional persons to attend and successfully complete the training program if

Franchisor determines that one or more of Franchisee's trainees has failed successfully to complete the training program.

**B. Additional Training.** Franchisor shall have the right to require that Franchisee, the Operating Principal, Franchisee's general manager and any other employees of Franchisee designated by Franchisor take and successfully complete other training courses in addition to the management training program. Franchisor reserves the right to require Franchisee to pay a tuition fee for these additional training programs as established by Franchisor from time to time. Franchisee shall pay all travel, living and other expenses incurred by Franchisee and by Franchisee's employees while attending the training or Franchisor's training personnel that travel to Franchisee's location or place of business. At Franchisor's request, Franchisee shall require the manager of the Center to attend, at Franchisee's expense, such meetings, conferences and conventions as Franchisor may specify.

**C. Training by Franchisee.** Franchisee shall conduct such initial and continuing training programs for its employees relating to the System and/or the requirements of this Agreement as Franchisor may require.

## **15. Additional Services by Franchisor.**

In addition to the services described elsewhere in this Agreement, during the Term, Franchisor shall make the following services available to Franchisee:

**A. Pre-Opening Assistance.** Franchisor shall provide consultation and advice to Franchisee as Franchisor deems appropriate with regard to construction and operation of Centers, building layout, furnishings, fixtures and equipment plans and specifications for Centers, purchasing and inventory control, and such other matters as Franchisor deems appropriate. If Franchisee requests additional pre-opening site visits or assistance, or if Franchisor believes additional pre-opening site visits or assistance are necessary, Franchisee will pay to Franchisor the then current additional preopening assistance and site visit fee and pay or reimburse to Franchisor its out-of-pocket expenses incurred in providing the assistance, including costs of transportation, lodging, and meals.

**B. Opening Assistance.** Upon Franchisee's reasonable request, Franchisor shall provide assistance in opening the Center, as Franchisor deems appropriate in light of Franchisee's needs and the availability of Franchisor personnel. Franchisee will pay or reimburse to Franchisor its out-of-pocket expenses incurred in providing such opening assistance, including costs of transportation, lodging, and meals.

**C. Center Set-Up.** Prior to the Center's Opening, Franchisor shall provide to Franchisee such assistance as Franchisor deems necessary in connection with the installation, configuration and/or set up of the Center's fixtures, graphics, computer system, and other elements of the Center.

**D. Use of Franchisor Customer List.** If Franchisor's affiliate RAD has any established customers whose billing addresses are in the Marketing Area (as defined in the Summary Pages), Franchisor will share the identity of and information regarding those customers with Franchisee on the terms provided in Section 5.C. Franchisee understands that RAD may not have any such customers in the Marketing Area. RAD's customer list, as in existence prior to this Agreement and as supplemented by Franchisee during the Term, is and shall remain confidential information owned by RAD and Franchisor.

**E. Post-Opening Assistance.** Franchisor shall make available to Franchisee, as Franchisor deems appropriate, its knowledge and expertise regarding the System and pertinent new developments, techniques and improvements in the areas of retail store design, management, sales promotion, service concepts and other areas. Franchisor may fulfill its obligation in this section through visits by Franchisor's representatives to the Center or Franchisee's offices, the distribution of printed or filmed

material, an Intranet or other electronic forum, meetings or seminars, telephone communications, or other forms of communication.

**F. Franchisor's Right to Inspect.** Franchisor shall have the right, free of charge, at any reasonable time and (except as otherwise specified herein) without prior notice to Franchisee to: (1) observe and inspect the Center; (2) photograph and videotape the operations of the Center on reasonable notice for such consecutive or intermittent periods as Franchisor deems necessary; (3) interview Franchisee's personnel; (4) interview Franchisee's customers; (5) remove any product from the Center for inspection; and (6) inspect and copy any books, records and documents relating to the operation of the Center or, upon the request of Franchisor, require Franchisee to send copies thereof to Franchisor. Franchisee agrees to cooperate fully with Franchisor in connection with any such inspections, observations, videotaping, product removal and interviews. Franchisee shall present to its customers such evaluation forms as may be periodically prescribed by Franchisor and shall participate and/or request its customers to participate in any surveys performed by or on behalf of Franchisor. Franchisee shall take all necessary steps to immediately correct any deficiencies detected during these inspections, including ceasing further sale of unauthorized products and ceasing further use of any equipment, advertising materials or supplies that do not conform with Franchisor's standards and requirements.

**G. Delegation.** Franchisor may, from time to time, delegate the performance of any portion or all of its obligations and duties under this Agreement to designees, whether agents of Franchisor or independent contractors with which Franchisor has contracted to provide the service.

## **16. Performance Standards.**

Products sold and services performed under the Proprietary Marks have a reputation for quality. This reputation has been developed and maintained by Franchisor, and it is of the utmost importance to Franchisor, Franchisee and all other franchisees of Franchisor that this reputation be maintained. In recognition of the mutual benefits that come from maintaining the reputation for quality enjoyed by the System, Franchisee covenants and agrees, with respect to its conducting of the Franchised Business, that Franchisee and its employees shall comply with all of the requirements of the System as set forth in this Agreement and the Manuals or otherwise, and Franchisee additionally shall comply with the following:

**A. Standards, Specifications and Procedures.** Franchisee acknowledges that each and every detail of the appearance, layout, decor, services and operation of the Center is important to Franchisor and other Interstate All Battery Center franchisees. Franchisee agrees to cooperate with Franchisor by maintaining these high standards in connection with the Center. Franchisee further agrees to comply with all System specifications, standards and operating procedures (whether contained in the Manuals or any other written communication to Franchisee) relating to the appearance, function, cleanliness and operation of the Center, including, but not limited to: (1) sales and marketing procedures and customer service; (2) advertising and promotional programs; (3) layout, decor and color scheme of the Center; (4) appearance and dress of employees; (5) safety, maintenance, appearance, cleanliness, standards of service, and operation of the Center; (6) submission of requests for approval of brands and types of products, supplies and suppliers; (7) use and illumination of signs, posters, displays, standard formats and similar items; (8) identification of Franchisee as the owner of the Center operating it as a licensee of Franchisor; and (9) brands and types of fixtures, furnishings, equipment and packaging. Franchisee shall comply with mandatory specifications, standards and operating procedures, including installation of upgraded or additional equipment, that Franchisor prescribes from time to time in the Manuals or otherwise.

**B. Authorized Products and Services.** Franchisee acknowledges that the reputation and goodwill of Interstate All Battery Centers are based upon, and can only be maintained by, the sale of high quality products, and the presentation, packaging and service of such products in an efficient and appealing manner.

As used in this Agreement, the terms “Basic Products,” “Additional Products” and “Auxiliary Products” (collectively, “Authorized Products”) shall have the meanings given them in Appendix A hereto. Franchisor may revise the contents of these categories and may add products to, and remove products from, the list of Authorized Products from time to time. Franchisor may specify types and brands of products that constitute Authorized Products. Franchisee shall at all times sell all Basic Products and those Additional Products which Franchisor may from time to time specify as mandatory, including products marketed by Franchisor or its affiliates; and Franchisee shall not sell any product that is not an Authorized Product. Franchisee shall purchase Authorized Products only from sources designated or approved by Franchisor.

Franchisee shall at all times maintain for the Center an inventory of all mandatory Authorized Products, and only of Authorized Products, sufficient in Franchisor’s judgment for Franchisee to meet reasonably anticipated customer demand. If, in Franchisor’s judgment, Franchisee is not maintaining a sufficient inventory of all mandatory Authorized Products, Franchisor may, at Franchisee’s expense, supply to and stock the Center with sufficient product to meet Franchisee’s inventory requirements. Franchisor may, from time to time, conduct market research and testing to determine consumer trends and the salability of new products and services. Franchisee shall cooperate in these efforts by participating in Franchisor’s customer surveys and market research programs if requested by Franchisor. All customer surveys and market research programs shall be at Franchisor’s sole cost and expense, unless such survey or program has been approved by Franchisee and Franchisee has approved its proportionate cost. Franchisee shall not test any products or services publicly without first being requested to by Franchisor and signing a test letter agreement in a form satisfactory to Franchisor.

**C. Credit and Security Agreement.** Concurrently with the execution of this Agreement, Franchisee shall execute a Credit and Security Agreement in the form prescribed by Franchisor to secure payment of all monetary obligations of Franchisee to Franchisor and its affiliates, including but not limited to obligations arising from product purchases.

**D. Approved Suppliers.** Franchisee shall purchase all products, equipment, signs, fixtures, furnishings, and supplies (other than hardware and software as described in Section 16.E.) only from distributors and suppliers approved for Franchisee by Franchisor. Franchisor may approve one or more distributors or other suppliers for their full range of products or only as to certain products and may approve a distributor or other supplier only as to certain products. In determining the number and identity of suppliers to be approved, Franchisor may consider, among other factors, the ability to obtain favorable pricing and/or advertising support and/or services for any group of Interstate All Battery Centers franchised or operated by Franchisor or its affiliates and the number and concentration of existing approved suppliers and distributors. Approval of a distributor or other supplier may be conditioned on requirements relating to the frequency of delivery, reporting capabilities, standards of service, including prompt attention to complaints, and other criteria, and concentration of purchases, as set forth above, and may be temporary pending a further evaluation of such distributor or other supplier by Franchisor. Franchisor may establish distribution facilities owned and operated by Franchisor or an affiliate and designate such facilities as an approved distributor or supplier.

If Franchisee proposes to purchase any item from a manufacturer, distributor, vendor or other supplier that Franchisor has not previously approved, Franchisee shall first notify Franchisor and submit to Franchisor or, at Franchisor’s direction, to an independent testing laboratory, at Franchisee’s expense, such information, specifications and samples as Franchisor reasonably requests. A charge not to exceed the actual cost of the test may be made by Franchisor or by an independent testing laboratory designated by Franchisor and shall be paid by Franchisee, whether or not Franchisor approves the proposed supplier. Franchisor shall notify Franchisee, within 60 days of Franchisor’s receipt of all requested information and samples and of payment of test charges, as to whether Franchisee is authorized to purchase such products from such manufacturer, distributor, vendor or other supplier. Authorization shall be deemed denied if Franchisor has not given its approval within 60 days. Franchisor may periodically require that

the testing be performed again at Franchisee's expense to ensure that the supplier continues to meet Franchisor's specifications.

**FRANCHISOR AND ITS AFFILIATES DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY PRODUCTS OR SERVICES PROVIDED BY APPROVED SUPPLIERS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, QUALITY, PRICING OR PROFITABILITY.** Franchisee acknowledges that Franchisor may, under appropriate circumstances, receive fees, commissions, field-of-use license royalties, or other consideration from approved suppliers based on sales to franchisees, which consideration either shall be received directly by the Fund described in Section 11.A or be contributed by Franchisor to the Fund. Franchisee acknowledges that Franchisor may charge suppliers reasonable testing or inspection fees in connection with their requests for approval or their continued status as approved suppliers.

**E. Hardware and Software.** Franchisee understands that the computer system to be used in the Center is highly customized and that the computer system cannot be modified, efficiently and without degradation to the operation of the software programs, to work with such computer hardware as Franchisee may have. Accordingly, Franchisee agrees to purchase the computer system to be used in the Center from Franchisor or a supplier designated by Franchisor. Franchisor shall install the computer hardware (fully configured and loaded with Franchisor's designated software programs) at the Center. Franchisee shall procure and install required dedicated telephone and power lines, modems, printers and other computer-related accessory or peripheral equipment as Franchisor specifies in the Manuals or otherwise. Franchisee shall provide all assistance required by Franchisor to bring Franchisee's computer system on-line with Franchisor's computers at Franchisor's offices at the earliest possible time. Franchisee agrees that Franchisor shall have the free and unfettered right to retrieve, copy, store, and use any data, customer information and other information from Franchisee's computers as Franchisor, in its sole discretion, deems appropriate, with the telephonic cost of the retrieval to be borne by Franchisor, including electronically polling the daily sales, customer information and other data of the Center. All of the hardware and software specified to be installed or purchased, or activities Franchisee is to accomplish, and the delivery cost of all hardware and software, shall be at Franchisee's expense.

Franchisee shall: (1) use the proprietary software program prescribed by Franchisor, including system documentation manuals and other proprietary materials now and hereafter developed by Franchisor, in connection with the operation of the Center; (2) execute Franchisor's standard software license agreement; (3) input and maintain in Franchisee's computer such data and information as Franchisor prescribes in the Manuals, software programs, documentation or otherwise; and (4) purchase new, different or upgraded software programs, system documentation manuals and other proprietary materials at then-current prices (except as provided in this Section), whenever Franchisor adopts such new, different or upgraded programs, manuals and materials system-wide; provided that, with respect to any required purchase of new, different or upgraded software programs: (i) Franchisee shall be required to purchase any such program only after it has been tested and implemented in Franchisor-owned Centers, if any such Centers then exist, and (ii) Franchisee shall be notified of the required purchase no less than 90 days before Franchisee is required to implement the program. Franchisee shall purchase from a vendor other than Franchisor and install (or, at Franchisor's option, deliver to Franchisor for installation by Franchisor) such other software, including, without limitation, a financial accounting system, as Franchisor may specify from time to time in the Manuals or otherwise in writing. In the event Franchisor installs such software, Franchisee shall reimburse Franchisor for its reasonable costs and expenses incurred in connection with such installation.

Franchisee acknowledges that computer systems are designed to accommodate a finite amount of data and terminals, and that, as these limits are reached, or as technology or software is developed in the future, Franchisor may, in its sole discretion, mandate that Franchisee: (A) add memory, ports and other accessories or peripheral equipment or additional, new or substitute software to the original computer system purchased by Franchisee; and (B) replace or upgrade the entire computer system with a larger

system capable of assuming and discharging the computer-related tasks and functions specified by Franchisor. Franchisee acknowledges that computer designs and functions change periodically and that Franchisor may desire to make substantial modifications to its computer specifications or to require installation of entirely different systems during the Term and any Renewal Term of this Agreement.

To ensure full operational efficiency and communication capability between Franchisor's computers and those of all Centers, Franchisee agrees, at its expense, to keep its computer systems in good maintenance and repair and to make additions, changes, modifications, substitutions and replacements to its computer hardware, software, telephone and power lines and other computer-related facilities as directed by Franchisor, and on the dates and within the times specified by Franchisor in its sole discretion. Upon termination or expiration of this Agreement, all computer software, disks, tapes and other magnetic storage media used in the Franchised Business shall be returned to Franchisor in good condition, excepting normal wear and tear.

Franchisee shall at all times maintain, separate from the computer system to be used in the Franchised Business, an e-mail address so as to permit communication between Franchisor and Franchisee over the Internet.

**F. Upkeep of the Center.** Franchisee shall, at its expense, constantly maintain and continuously operate the Center and all furniture, fixtures, equipment, furnishings, floor coverings, interior and exterior signage, the building interior and exterior, interior and exterior lighting, landscaping and parking lot surfaces in first-class condition and repair in accordance with the requirements specified in the Manuals, including all ongoing necessary remodeling, redecorating, refurbishing and repairs. Franchisee shall promptly and diligently perform all necessary maintenance, repairs and replacements to the Center and its premises as Franchisor may prescribe from time to time, including periodic interior and exterior painting; resurfacing of the parking lot; roof repairs; and replacement of obsolete or worn out signage, floor coverings, furnishings, equipment and decor.

Franchisee shall not make any material alterations to the Center or its premises that affect operations or the image of the Center without Franchisor's prior written approval. Franchisee acknowledges and agrees that the requirements of this Section are reasonable and necessary to promote public acceptance and patronage of Interstate All Battery Centers, to assist Franchisee to compete effectively in the marketplace, and to avoid deterioration or obsolescence of the operation of the Center.

**G. Operation of the Center.** During the Term and any Renewal Term of this Agreement, Franchisee shall use the approved site solely for the operation of the Center and shall maintain sufficient inventories, adequately staff each shift with qualified employees and continuously operate the Center at its maximum capacity and efficiency for the minimum number of days and hours set forth in the Manuals (subject to the requirements of local laws and licensing requirements).

Franchisee shall immediately resolve any customer complaints regarding the quality of products, service and/or cleanliness of the Center or any similar complaints. When any customer complaints cannot be immediately resolved, Franchisee shall use best efforts to resolve the customer complaints as soon as practicable and shall, whenever feasible, give the customer the benefit of the doubt. If Franchisor, in its sole discretion, determines that its intervention is necessary or desirable to protect the System or the goodwill associated with the System, or if Franchisor, in its sole discretion, believes that Franchisee has failed adequately to address or resolve any customer complaints, Franchisor may, without Franchisee's consent, resolve any complaints and charge Franchisee an amount sufficient to cover Franchisor's reasonable costs and expenses in resolving the customer complaints, which amount Franchisee shall pay to Franchisor immediately on demand. Franchisor may require Franchisee to accept returns of warrantied products purchased by customers at other Interstate All Battery Centers without reimbursement from Franchisor or from the Interstate All Battery Center which sold the product.

**H. Customers.** Except with Franchisor's prior written consent, Franchisee shall not sell or deliver any (i) product or service, including without limitation, Basic Products, Additional Products and Auxiliary Products, where such sale or delivery would be reasonably expected to introduce such products or services into commerce in a country other than the United States of America (including its territories and protectorates) (For purposes of this Section 16.H, among other things, the direct sale of any product or service by Franchisee or its agent to a customer or an agent thereof located outside of the United States of America shall be deemed to constitute a breach hereof), (ii) Additional Product outside of the Marketing Area, or (iii) Additional Product to any customer of Franchisor's affiliate's distributors (as further described in Section 1.B.(1) hereof), nor shall Franchisee (a) advertise any Authorized Product or the Center in any advertising medium (1) whose audience is located principally outside the border of the Marketing Area (as defined in the Summary Pages) or (2) where the intent or reasonably likely effect is to solicit customers located principally outside the border of the Marketing Area or (b) directly solicit customers within another System franchisee's Marketing Area for the sale of any Authorized Product or advertise any Authorized Product within another System franchisee's Marketing Area. Franchisee shall add all customers to whom it sells batteries in or from the Center to the customer list owned by Franchisor and shall continually update the customer list as additional information concerning those customers is obtained. Franchisor may discuss with any customer or prospective customer of Franchisee, at any time, the possibility of that customer's becoming a National Customer (as that term is defined in Section 17), and may utilize in that regard information from whatever source derived, including information derived from Franchisee.

**I. Recycling Program.** Franchisee shall participate in Franchisor's recycling program as set forth in the Manuals and shall not participate in any other recycling program or otherwise purchase, acquire or accept possession of previously used batteries or other recyclable products (including, without limitation, any product containing lead or a lead-based component) without Franchisor's prior written consent. Franchisor may, in its discretion, require Franchisee to accept and to recycle batteries which Franchisee did not sell. Franchisee shall be responsible for the expense of operating the recycling program. Revenue received by Franchisee from the recycling program shall be included in Gross Sales.

**J. Management and Personnel.** The Center shall at all times be under the direct, on-premises supervision of a manager who has successfully completed Franchisor's management training program. If the Center employs at any time fewer than 2 managers who have successfully completed Franchisor's management training program, Franchisee shall hire a new manager within 60 days and enroll him in Franchisor's management training program. Franchisee (or, if Franchisee is owned by more than one individual, the Operating Principal) shall remain active in overseeing the operations of the Center. At all times after the Center opens, Franchisee shall have a dedicated sales person actively marketing the Franchised Business in the Marketing Area. Franchisee shall be solely responsible for all employment matters with respect to employees of the Center, including their hiring and the terms of their employment and compensation, and for the proper training of such employees in the operation of the Center.

**K. Signs and Logos.** Franchisee shall prominently display in and upon the land and buildings of the Center interior and exterior signs and logos using the name "Interstate All Battery Center," without any prefix or suffix, and/or other advertising signs and logos, of such nature, form, color, number, location and size, and containing such material, as Franchisor may from time to time direct. Franchisee shall not display in or upon the Center any sign, logo or advertising media of any kind not approved by Franchisor. Except if otherwise directed by Franchisor, Franchisee shall identify and conduct the Franchised Business under the name "Interstate All Battery Center," without prefix or suffix.

**L. Compliance with Laws and Good Business Practices.** Franchisee shall secure and maintain in force in its name all required licenses, permits and certificates relating to the operation of the Center. Franchisee shall operate the Franchised Business in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all laws and regulations governing or relating

to immigration and discrimination, access by persons with disabilities, occupational hazards and health insurance, employment laws, including, without limitation, worker's compensation insurance, unemployment insurance, and the withholding and payment of federal and state income taxes, social security taxes and sales taxes. All advertising and promotion by Franchisee shall be completely factual and shall conform to the highest standards of ethical advertising. Franchisee shall, in all dealings with Franchisee's customers, suppliers and the public, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. Franchisee agrees to refrain from any business or advertising practice that may be injurious to the business of Franchisor, Interstate All Battery Centers or the goodwill associated with the Proprietary Marks.

Franchisee shall notify Franchisor in writing within 5 days: (1) after the commencement of any action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of Franchisee, the Center or the Franchised Business; and (2) of any notice of violation of any law, ordinance or regulation relating to health, the environment or sanitation at the Center.

## **17. National Accounts.**

The term "National Account" as used in this Agreement refers to agreements between Franchisor and certain customers ("National Customers") pursuant to which Franchisor and participating franchisees agree to sell batteries and/or related products at specified rates ("National Account Rates") or in accordance with certain delivery procedures or other services. Franchisor has sole discretion as to whether to designate a particular customer as a National Customer, when to execute a National Account agreement with a particular customer, the manner of negotiation of that agreement, and the terms and conditions of that agreement. Franchisee acknowledges and agrees that the availability of National Account Rates and services to National Customers enhances the value of the National Account agreements and inures to the benefit of Franchisee, other franchisees under the System, and Franchisor.

**A. Election to Service National Accounts.** Upon request by Franchisor, Franchisee shall notify Franchisor in writing whether or not Franchisee wishes and intends to service National Customers in its Marketing Area pursuant to National Account agreements which have been and may be negotiated by Franchisor. If Franchisee informs Franchisor that it will participate in Franchisor's National Account program, Franchisee shall be obligated to participate in each and every National Account agreement signed by Franchisor under the terms of each agreement and for the duration of each agreement unless Franchisee terminates its participation as provided in Section 17.B.

**B. Voluntary Termination of National Account Participation.** Franchisee may terminate its participation in the National Account program by giving Franchisor at least 30 days' prior written notice of its intention. Franchisee shall have no obligation to provide service under any National Account agreement signed after Franchisee gives notice of its intention to terminate participation in the National Account program. However, Franchisee must continue to honor each National Account agreement that was in effect before Franchisee terminated its participation until that agreement expires. If any National Account agreement does not have a defined term, Franchisee must continue to honor the agreement for a period of one year following the date on which Franchisee gives notice of its intention to terminate its participation in the National Accounts program.

**C. Service of National Accounts by Franchisee.** If Franchisee undertakes to service National Customers in its Marketing Area, Franchisee shall comply with all terms and conditions specified by Franchisor pertaining to the National Account agreements and with all rules and regulations specified by Franchisor pertaining to the National Account program.

**D. Service of National Accounts by Franchisor.** Service of National Customers by Franchisor or its designee in accordance with this Section 17.D. shall not be deemed to violate Section 1.B.

(1) If, at any time, Franchisee elects not to service National Accounts, or if Franchisee elects to service National Accounts but fails to satisfy the conditions and obligations of any National Account agreement, Franchisor may, in its sole discretion, service or authorize others to service the National Customers anywhere within Franchisee's Marketing Area without providing any compensation to Franchisee.

(2) If Franchisee has elected to participate in the National Accounts program, but a National Customer prefers (or the agreement with the National Customer requires) centralized ordering, centralized shipping, centralized billing and account management, or specialized packaging or branding, Franchisor may service or authorize others to service such National Customers anywhere within Franchisee's Marketing Area. If Franchisee is not in default and Franchisee agrees to and does provide the National Customer various services required by Franchisor, including, but not limited to, accepting batteries for recycling, Franchisor (or the designee who services the account in Franchisee's Marketing Area) shall pay Franchisee, on a monthly basis, 5% of the dollar amount (if any) paid to Franchisor or its designee during the previous month for purchases of batteries and related products by a National Customer to which delivery is made to a National Customer facility located in Franchisee's Marketing Area.

## **18. Proprietary Marks.**

Franchisee's right to use the Proprietary Marks is limited to its use of the Proprietary Marks in the operation of the Franchised Business as expressly provided in this Agreement and the Manuals. Franchisee shall not use any of the Proprietary Marks except those which Franchisee is expressly authorized in the Manuals to use, and then only in the manner authorized in the Manuals. Franchisee shall display such decals or other identification as Franchisor may require on delivery vehicles used by Franchisee in the business franchised hereunder, but Franchisee shall not otherwise use the Proprietary Marks on any vehicles without Franchisor's prior written approval. Franchisee shall not otherwise use the Proprietary Marks, or any variations of the Proprietary Marks, or any marks or names confusingly similar to the Proprietary Marks, in any manner not authorized by Franchisor or in any corporate or partnership name, and shall not use any other trade names, service marks or trademarks in conjunction with the Center or the Franchised Business. If local laws or ordinances require that Franchisee file an affidavit of doing business under an assumed name or otherwise make a filing indicating that the Proprietary Marks are being used as a fictitious or assumed name, Franchisee shall include in such filing or application an indication that the filing is made "as a Franchisee of Interstate Battery Franchising & Development, Inc." Franchisor shall, from time to time, advise Franchisee as to which Proprietary Marks have been registered, and Franchisee shall use the symbol ® with all registered trademarks and the symbols ™ or ℠ with all pending registrations or other trademarks or service marks so as to protect same.

If Franchisor should elect to use a name other than "Interstate All Battery Center" to identify the retail stores operating under the System, Franchisor may select another name and notify Franchisee to change all or some items bearing the Proprietary Marks and the identification of the Center to the new name within a reasonable period of time (which shall not be less than 90 days) as determined by Franchisor, without any liability to Franchisee, and the System and this Agreement shall be deemed amended to substitute that name. Franchisee agrees that nothing in this Agreement gives it any right, title or interest in the Proprietary Marks (except the right to use the Proprietary Marks in accordance with the terms of this Agreement), that the Proprietary Marks are the sole property of Franchisor and its affiliates, that Franchisee shall not directly or indirectly contest the validity or ownership of the Proprietary Marks or Franchisor's right to license the Proprietary Marks, and that any and all uses by Franchisee of the Proprietary Marks and the goodwill arising therefrom shall inure exclusively to the benefit of Franchisor and its affiliates. Franchisee will not seek to register, reregister, assert claim to ownership of, license or allow others to use, or otherwise appropriate to itself any of the Proprietary Marks or any mark or name confusingly similar thereto, or the goodwill symbolized by any of the foregoing, except to the extent such action inures to the benefit of, and has the prior written approval of, Franchisor. Any unauthorized use of

the Proprietary Marks by Franchisee or attempt by Franchisee, directly or indirectly, to register the Proprietary Marks in any jurisdiction shall constitute a breach of this Agreement and an infringement of Franchisor's rights in and to the Proprietary Marks.

Franchisee shall inform Franchisor promptly in writing as to any infringement of the Proprietary Marks of which it has knowledge. Franchisee shall not make any demand or serve any notice, orally or in writing, or institute any legal action or negotiate, compromise or settle any controversy with respect to any such infringement without first obtaining Franchisor's written approval. Franchisor shall have the right, but not the obligation, to bring such action or take such steps as it may deem advisable to prevent any such infringement and to join Franchisee as a party to any action in which Franchisor is or may be a party and as to which Franchisee is or would be a necessary or proper party. Franchisee also shall promptly notify Franchisor of any litigation (including administrative or arbitration proceedings) instituted against Franchisor or Franchisee relating to the Proprietary Marks. Franchisee shall execute any and all instruments and documents, render such other assistance and do any acts and things as may, in the opinion of Franchisor's counsel, be necessary or advisable to protect and maintain Franchisor's interests in the Proprietary Marks, including Franchisor's interests in litigation or proceeding before the U.S. Patent and Trademark Office or other tribunal relating to the Proprietary Marks.

## **19. Insurance.**

**A.** Franchisee agrees to purchase and maintain in force, at its expense, throughout the term of this Agreement insurance policies of the kinds, and in the amounts, specified by Franchisor in the Manuals from time to time, including, without limitation, the following insurance, unless and to the extent that the Manuals shall provide for additional insurance or insurance in greater amounts:

(1) Comprehensive general liability insurance, including products liability, property damage, and personal injury coverage with a combined single limit of at least \$2,000,000;

(2) Worker's compensation, employer's liability and other insurance to meet statutory requirements;

(3) Fire, vandalism, theft, burglary and extended coverage insurance with primary and excess limits of not less than 100% replacement value of the Center and fixtures, equipment and inventory; and

(4) Automobile liability insurance for owned and non-owned business vehicles including personal injury, wrongful death and property damage with coverage of at least \$1,000,000 per occurrence.

**B.** Franchisee shall be responsible for all loss or damage arising from or related to Franchisee's conduct of the Franchised Business or its development and operation of the Center, and for all demands or claims with respect to any loss, liability, personal injury, death, property damage, or expense whatsoever occurring upon the premises of, or in connection with the development or operation of, the Center. Franchisor, and any other entity with an insurable interest designated by Franchisor, shall be an additional insured in such policies to the extent each has an insurable interest. All insurance policies shall be written by an insurance company or companies satisfactory to Franchisor, in compliance with the standards, specifications, coverages and limits set forth in the Manuals or otherwise provided to Franchisee in writing. Franchisor may reasonably increase the minimum coverage required and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards or other relevant changes in circumstances. Franchisee shall be given written notice of such modifications and shall take prompt action to secure the additional coverage or higher policy limits.

**C.** No later than 30 days after Franchisee receives Franchisor's written acceptance of a site for the Center, and on each policy renewal date thereafter, Franchisee shall submit to Franchisor

evidence of insurance for the Center meeting the requirements set forth in the Manuals and proof of payment therefor. The evidence of insurance shall include a statement by the insurer that the policy or policies will not be canceled or materially altered without at least 30 days' prior written notice to Franchisor. Upon request, Franchisee also shall provide to Franchisor copies of all or any policies and policy amendments and riders.

**D.** Franchisee acknowledges that no requirement for insurance contained in this Agreement constitutes advice or a representation by Franchisor that only such policies, in such amounts, are necessary to protect Franchisee from losses in connection with the Franchised Business. Maintenance of this insurance, and the performance by Franchisee of its obligations under this Section, shall not relieve Franchisee of liability under the indemnification provisions of this Agreement.

**E.** Should Franchisee, for any reason, fail to procure or maintain the insurance required by this Agreement, as those requirements may be revised from time to time through the Manuals or otherwise in writing, Franchisor shall have the immediate right and authority, but not the obligation, to procure such insurance and charge its cost to Franchisee. All out-of-pocket costs incurred by Franchisor in obtaining such insurance on behalf of Franchisee shall be reimbursed to Franchisor by Franchisee immediately upon its receipt of an invoice therefor.

## **20. Organization of Franchisee.**

**A. Representations.** If Franchisee is a corporation, a limited liability company or a partnership, Franchisee makes the following representations and warranties: (1) it is duly organized and validly existing under the laws of the state of its formation; (2) it is qualified to do business in the state(s) in which the Territory is located; (3) execution of this Agreement and the development and operation of the Center are permitted by its governing documents; and (4) Franchisee's Articles of Incorporation, Articles of Organization or written partnership agreement shall at all times provide that the activities of Franchisee are limited exclusively to the development and operation of the Center and such other Centers (if any) as Franchisor may authorize Franchisee to develop and operate.

**B. Governing Documents.** If Franchisee is a corporation, Franchisee represents and warrants that copies of Franchisee's Articles of Incorporation, bylaws, other governing documents and any amendments, including the resolution of the Board of Directors authorizing entry into and performance of this Agreement, have been furnished to Franchisor. If Franchisee is a limited liability company, Franchisee represents and warrants that copies of Franchisee's Articles of Organization, other governing documents and any amendments, including the resolution of the Members or Managers authorizing entry into and performance of this Agreement, have been furnished to Franchisor. If Franchisee is a partnership, Franchisee represents and warrants that copies of Franchisee's written partnership agreement, other governing documents and any amendments, have been furnished to Franchisor, in addition to evidence of consent or approval of the entry into and performance of this Agreement by the requisite number or percentage of partners, if that approval or consent is required by Franchisee's written partnership agreement. When any of these governing documents are modified or changed, Franchisee shall provide copies to Franchisor promptly.

**C. Ownership Interests.** If Franchisee is a corporation, a limited liability company or a partnership, Franchisee represents and warrants that all interests in Franchisee are owned as set forth in the Summary Pages. In addition, if Franchisee is a corporation, Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting securities of the corporation (and the number of shares owned by each). If Franchisee is a limited liability company, Franchisee shall maintain a current list of all members (and the percentage membership interest of each member). If Franchisee is a partnership, Franchisee shall maintain a current list of all owners of an interest in the partnership (and the percentage ownership of each owner). Franchisee shall comply with Section 22 prior to any change in ownership interests and shall execute and deliver to Franchisor addenda in the Summary Pages as

changes occur in order to ensure the information contained in in the Summary Pages is true, accurate and complete at all times.

**D. Guarantees.** All of Franchisee's officers and directors and all holders of a legal or a beneficial interest in Franchisee of 10% or more ("10% Owners") shall jointly and severally guarantee Franchisee's performance under this Agreement and shall bind themselves to the terms of this Agreement pursuant to the attached Guarantee and Assumption of Franchisee's Obligations. If Franchisee, any officer or director of Franchisee, any 10% Owner, or any parent, subsidiary or affiliate of Franchisee holds any interest in one or more Interstate All Battery Center franchises, the party that owns that interest shall execute, concurrently with this Agreement, a cross-guarantee to Franchisor and its affiliates of the performance of all obligations of the franchisee under each such Interstate All Battery Center franchise agreement.

**E. Operating Principal.** Franchisee shall designate and retain an individual to serve as the Operating Principal. The Operating Principal as of the date of this Agreement is identified in the Summary Pages. The Operating Principal shall meet all of the following requirements:

(1) The Operating Principal shall, at a minimum, have full control over the day-to-day activities of the Center, including control over the standards of operation and financial performance.

(2) The Operating Principal shall devote full time and best efforts to supervising the development and operation of the Center and shall not engage in any other business or activity, directly or indirectly, that requires substantial management responsibility.

(3) The Operating Principal shall successfully complete Franchisor's management training program and any additional training required by Franchisor.

(4) Franchisor shall have approved the Operating Principal, and not have later withdrawn that approval.

If the Operating Principal no longer qualifies as such, Franchisee shall designate in writing to Franchisor another person to act as Operating Principal within 60 days, which designee shall meet all of the requirements of Section 20.E.

## **21. Transfers by Franchisor.**

Franchisor shall have the absolute, unrestricted right, exercisable at any time, to transfer and assign this Agreement or all or any part of its rights and obligations under this Agreement to any person or legal entity whatsoever. Upon notification to Franchisee of assignment of this Agreement by Franchisor, Franchisee shall look solely to the assignee for performance of this Agreement. Franchisor shall remain liable for obligations to Franchisee incurred before the date of assignment, but Franchisor shall have no liability to Franchisee for subsequent performance hereunder.

## **22. Transfers by Franchisee.**

**A.** Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee and that Franchisor has entered into this Agreement in reliance on Franchisee's (or its owners') business skill, financial capacity, personal character, experience and demonstrated or purported ability in developing and operating high quality retail store operations. Accordingly, neither Franchisee nor any immediate or remote successor to any part of Franchisee's interest in this Agreement, nor any individual, partnership, corporation or other legal entity which directly or indirectly controls Franchisee, shall sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber any interest in Franchisee, this Agreement, or the Center (collectively

“Transfer”) without the prior written consent of Franchisor. Franchisee may only transfer its interest in this Agreement along with its interest in the Center operated pursuant to this Agreement.

Except as otherwise provided in this Agreement, any purported Transfer, by operation of law or otherwise, not having the prior written consent of Franchisor shall be null and void and shall constitute a breach of this Agreement, for which Franchisor may terminate this Agreement without providing Franchisee an opportunity to cure the breach.

**B.** If Franchisee desires to transfer this Agreement and the Center, Franchisee shall advise Franchisor in writing of the proposed Transfer, submit (or cause the proposed transferee to submit) a franchise application for the proposed transferee, and submit a copy of all contracts and all other agreements or proposals, and all other information requested by Franchisor, relating to the proposed Transfer. If Franchisor does not exercise its right of first refusal pursuant to Section 22.F, the decision as to whether or not to approve a proposed Transfer shall be made by Franchisor in its sole discretion and shall take into account such factors as may be deemed relevant by Franchisor. These factors may include, but need not be limited to, the following:

(1) The proposed transferee (and, if the proposed transferee is other than an individual, such owners of an interest in the transferee as Franchisor may request) must demonstrate that it has extensive experience in high quality retail store operations of a character and complexity similar to Interstate All Battery Centers; meets Franchisor’s managerial, operational, experience, quality, character and business standards for a franchisee; possesses a good character, business reputation and credit rating; has an organization whose management culture is compatible with Franchisor’s management culture; and has adequate financial resources and working capital to meet Franchisee’s obligations under this Agreement.

(2) The sales price shall not be so high, in Franchisor’s reasonable judgment, as to jeopardize the ability of the transferee to develop, maintain, operate and promote the Center and meet financial obligations to Franchisor, third parties and creditors. Franchisor’s decision with respect to a proposed Transfer shall not create any liability on the part of Franchisor: (A) to the transferee, if Franchisor approves the Transfer and the transferee experiences financial difficulties; or (B) to Franchisee or the proposed transferee, if Franchisor disapproves the Transfer pursuant to this Section 22 or for other legitimate business reasons. Franchisor, without any liability to Franchisee or the proposed transferee, has the right, in its sole discretion, to communicate and counsel with Franchisee and the proposed transferee regarding any aspect of the proposed Transfer.

(3) All of Franchisee’s accrued monetary obligations to Franchisor and its affiliates (whether arising under this Agreement or otherwise) and all other outstanding obligations related to the Franchised Business (including, but not limited to, bills from suppliers, taxes, judgments and any required governmental reports, returns, affidavits or bonds) have been satisfied or, in the reasonable judgment of Franchisor, adequately provided for. Franchisor reserves the right to require that a reasonable sum of money be placed in escrow to ensure that all of these obligations are satisfied.

(4) Franchisee is not then in default of any provision of this Agreement or any other agreement between Franchisee and Franchisor or its affiliates.

(5) Franchisee, all owners of an interest in Franchisee, and all guarantors of Franchisee’s obligations shall execute a general release and covenant not to sue, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their past and present officers, directors, shareholders, agents and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances, and claims arising out of, or relating to, this Agreement, any other agreements between Franchisee and Franchisor or its affiliates and Franchisee’s operation of the Franchised Business and of such other Interstate All

Battery Centers as Franchisee may operate pursuant to other franchise agreements. Franchisor may require similar releases from the proposed transferee and its owners.

(6) Unless waived by Franchisor in its sole discretion, the transferee and employees of the transferee designated by Franchisor shall complete satisfactorily the training specified in Sections 14.A.-B.

C. If Franchisor approves a proposed Transfer, then before the Transfer becomes effective:

(1) The transferor shall pay Franchisor a nonrefundable Transfer fee of \$5,000 to compensate Franchisor for its costs and expenses, including legal and accounting expenses, in connection with review of the Transfer application, but such fee shall not be in compensation for any services Franchisor may provide to Franchisee related to identifying or evaluating the Center or Franchisee's assets or to otherwise facilitate the Transfer.

(2) Franchisee and the proposed transferee shall execute Franchisor's then-current standard form franchise agreement (or, if Franchisor is not then issuing new franchises, the form of most then-recently issued franchise agreement) for an initial and/or renewal term beginning on the date of effectiveness of the Transfer. All of the transferee's officers, directors and 10% Owners shall execute guarantees of the type required by Section 20.D., and Franchisor shall release Franchisee's guarantors of all future obligations under their respective guarantees, except with respect to obligations incurred prior to the effective date of the Transfer and with respect to the performance of the covenants contained in Sections 23.C. and D. of this Agreement.

(3) The transferor shall remain liable for all obligations to Franchisor incurred before the effective date of the Transfer and shall execute any and all instruments reasonably requested by Franchisor to evidence that liability.

D. If Franchisee is an individual or a partnership and desires to Transfer this Agreement to a corporation (or limited liability company) formed for the convenience of ownership, the requirements of Sections 22.A., B. and C. shall apply to such a Transfer; however, Franchisee will not be required to pay a Transfer fee. Franchisor's approval also will be conditioned on the following: (1) the corporation (or limited liability company) must be newly organized; (2) prior to the Transfer, Franchisor must receive a copy of the documents specified in Section 20.B. and the transferee shall comply with the remaining provisions of Section 20; and (3) Franchisee must own all voting securities of the corporation (or membership interests of the limited liability company) or, if Franchisee is owned by more than one individual, each person shall have the same proportionate ownership interest in the corporation (or the limited liability company) as prior to the Transfer.

E. If Franchisee or any 10% Owner dies, becomes incapacitated, or enters bankruptcy proceedings, that person's executor, administrator, personal representative or trustee must apply to Franchisor in writing within six months after the event (death, declaration of incapacity, or filing of a bankruptcy petition) for consent to Transfer the person's interest. The Transfer will be subject to the provisions of this Section 22. In addition, if the deceased or incapacitated person is Franchisee or the Operating Principal, Franchisor shall have the right (but not the obligation) to take over operation of the Center until the Transfer is completed, and to charge a reasonable management fee for its services. For purposes of this Section 22.E., "incapacity" means any physical or mental infirmity that will prevent the person from performing his or her obligations under this Agreement (i) for a period of 30 or more consecutive days or (ii) for 60 or more total days during a calendar year. In the case of Transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of Sections 22.B. and 22.C. above, the executor may transfer the decedent's interest to another transferee that Franchisor has approved, subject to all the terms and conditions for Transfers contained in this Agreement. If an interest is not disposed of under this Section 22.E. within a reasonable time after the

date of death or appointment of a personal representative or trustee, Franchisor may terminate this Agreement under Section 24.A.

**F.** Franchisee shall not grant any security interest in this Agreement, the Franchised Business, the Center, the approved site, or related assets without Franchisor's prior written approval, which will not be unreasonably withheld. Franchisor's approval may be conditioned, in its sole discretion, on the written agreement of the secured party that, in the event of a default by Franchisee under any agreement related to the security interest, Franchisor shall have the right and option (but not the obligation) to purchase the rights of the secured party upon payment of all sums then due to the secured party.

**G.** If any party holding any interest in Franchisee or in this Agreement receives a bona fide offer from a third party or otherwise desires to undertake any Transfer that would require Franchisor's approval (other than a Transfer for convenience of ownership pursuant to Section 22.D.), the party shall notify Franchisor in writing of the terms of the proposed Transfer, and shall provide such information and documentation relating to the proposed Transfer as Franchisor may reasonably require. Franchisor may elect to purchase the interest that the seller proposes to Transfer any time within 30 days after receipt of written notification and all documents and other information required by Section 22.B., by sending written notice to the seller that Franchisor intends to purchase the seller's interest on the same economic terms and conditions offered by the third party (except that Franchisor shall not be obligated to pay any finder's or broker's fees). Franchisor shall have the right to conduct customary due diligence and to propose appropriate documentation for the transaction. In purchasing the interest, Franchisor shall be entitled to set off any monies owed to Franchisor by Franchisee. If the offer to Franchisee involves assets in addition to this Agreement and the Center, the seller's notice to Franchisor shall state the cash value of that portion of the offer received by the seller relating to this Agreement and the Center.

If the proposed Transfer provides for payment of consideration other than cash or if it involves intangible benefits, Franchisor may elect to purchase the interest proposed to be sold for the reasonable cash equivalent. If the parties are unable to agree within 30 days on the reasonable cash equivalent of the non-cash part of the offer received by the seller, this amount shall be determined by 2 professionally certified appraisers, the seller selecting one and Franchisor selecting one. If the amounts set by the 2 appraisers differ by more than 10% of the higher amount, the 2 appraisers shall select a 3<sup>rd</sup> professionally certified appraiser who also shall determine the reasonable equivalent in cash of the non-cash part of the offer received by the seller. The average value set by the appraisers (whether 2 or 3 appraisers as the case may be) shall be conclusive, and Franchisor may exercise its right of first refusal within 30 days after being advised in writing of the decision of the appraisers. If, within a reasonable time, the seller fails to select a professionally certified appraiser, or the appraiser selected by the seller fails to set an amount, or the 2 appraisers do not agree on a 3<sup>rd</sup> third appraiser when such an appraiser is required, then in any of those events the amount determined by the appraiser selected by Franchisor shall be conclusive. In any case, the fees and costs of the appraiser or appraisers shall be borne equally by the parties.

Franchisor's failure to exercise its right of first refusal shall not constitute approval of the proposed Transfer nor a waiver of any other provision of this Section 22 with respect to a proposed Transfer. If Franchisor does not exercise its right of first refusal, Franchisee or the seller may not thereafter Transfer the interest at a lower price or on more favorable terms than those that have been offered to Franchisor. Franchisor shall again be given a right of first refusal if a transaction does not close within 6 months after Franchisor elected not to exercise its right of first refusal. In no event shall Franchisee or the seller offer the interest for sale or transfer at public auction, nor at any time shall an offer be made to the public to sell, transfer or assign, through any advertisement, either in the newspapers or otherwise, without first having obtained the written approval of Franchisor to the auction or advertisement.

**H.** Franchisee acknowledges that Franchisor has legitimate reasons to evaluate the qualifications of potential transferees and to analyze and critique the terms of their purchase contracts

with Franchisee. Franchisee also acknowledges that Franchisor's contact with potential transferees for the purpose of protecting its business interests shall not constitute improper or unlawful conduct. Franchisee expressly authorizes Franchisor to investigate any potential transferee's qualifications, to analyze and critique the proposed purchase terms with the transferee, and to withhold consent to economically questionable transactions. Franchisee waives any claim that action Franchisor takes in relation to a proposed transfer to protect its business interests constitutes tortious interference with contractual or business relationships.

**I.** Franchisor's consent to any Transfer shall not constitute a waiver of any claims Franchisor may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferee, nor will it be deemed a waiver of Franchisor's right to give or withhold approval to future Transfers.

### **23. Covenants.**

**A. Best Efforts.** During the term of this Agreement, Franchisee and the Operating Principal, if any, shall devote their best efforts to the development, management and operation of the Center.

**B. Confidentiality.** Franchisee acknowledges and agrees that: (1) Franchisor owns all right, title and interest in and to the System. Franchisee further acknowledges that the System includes trade secrets and confidential and proprietary information and know-how, including customer lists and customer information, that gives Franchisor a competitive advantage; (2) Franchisor has taken all measures appropriate to protect the trade secrets and the confidentiality of the proprietary information and know-how of the System; (3) all materials and other information now or hereafter provided or disclosed to Franchisee regarding the System is disclosed in confidence; (4) Franchisee has no right to disclose any part of the System to anyone who is not an employee of Franchisee; (5) Franchisee may disclose to its employees only those parts of the System that an employee needs to know because of the employee's job responsibilities; and (6) Franchisee will have a system in place to ensure that its employees keep confidential Franchisor's trade secrets and confidential and proprietary information, and, if requested by Franchisor, Franchisee shall obtain from those of its employees designated by Franchisor an executed Confidential Disclosure Agreement in the form prescribed by Franchisor. Franchisee further acknowledges that, by entering into this Agreement, Franchisee does not acquire any ownership interest in the System, and that Franchisee's use or duplication of the System or any part of the System in any other business or disclosure of same to others for such use would constitute an unfair method of competition, for which Franchisor would be entitled to all legal and equitable remedies, including injunctive relief, without posting a bond.

Franchisee shall not, during the term of this Agreement or at any time thereafter, communicate or disclose any trade secrets or confidential or proprietary information or know-how of the System to any unauthorized person, or do or perform, directly or indirectly, any other acts injurious or prejudicial to any of the Proprietary Marks or the System. Any and all information, knowledge, know-how and techniques, including the Manuals, and all drawings, materials, equipment, specifications, techniques and other data that Franchisor or its affiliates designates as confidential shall be deemed confidential for purposes of this Agreement.

**C. Restrictions.** Franchisee acknowledges and agrees that: (1) pursuant to this Agreement, Franchisee will have access to valuable trade secrets, customer lists and customer information, specialized training and confidential information from Franchisor and/or its affiliates regarding the development, operation, purchasing, sales and marketing methods, plans, strategies and techniques of Franchisor and the System; (2) the know-how regarding the System and the opportunities, associations and experience acquired by Franchisee pursuant to this Agreement are of substantial value; (3) in developing the System, Franchisor and its affiliates have made substantial investments of time, effort and money; (4) Franchisor would be unable adequately to protect the System and its trade secrets and confidential and proprietary information against unauthorized use or disclosure and would be unable

adequately to encourage a free exchange of ideas and information among the operators of Interstate All Battery Centers if franchisees were permitted to engage in the activity described in Section 23.C.(1) or to hold interests in the businesses described in Section 23.C.(2); and (5) restrictions on Franchisee's right to hold interests in, or perform services for, the businesses described in Section 23.C.(2) will not unduly limit its activities.

Accordingly, Franchisee covenants and agrees that during the Term of this Agreement, and for a continuous uninterrupted period of 2 years following its expiration, termination, or an approved Transfer to a new Franchisee, Franchisee shall not, without Franchisor's prior written consent, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with, any person, firm, partnership, corporation, or other entity:

(1) Divert or attempt to divert any actual or prospective business or customer of the Center to any other person or entity, by direct or indirect inducement or otherwise.

(2) Hire, attempt to hire or induce any employee to leave the employment of Franchisor or any of Franchisor's affiliates, including but not limited to the following of Franchisor's affiliates: Retail Acquisition & Development, Inc. and All Battery Centers, Inc.

(3) Own, maintain, operate, be employed by, engage in, franchise, lease property to, advise, help, make loans to, or have any interest in, either directly or indirectly, any business (a) that has batteries as a primary sales item (*i.e.*, a sales item that comprises at least 20% of monthly sales by dollar volume) or (b) that sells batteries and whose method of operation is similar to that employed in the System. During the Term, there is no geographical limitation on this restriction. Following the expiration of the Term, earlier termination of this Agreement, or an approved Transfer of this Agreement, this restriction shall apply to any business located (i) within the Marketing Area; (ii) at or within 3 miles of the Center; or (iii) within 3 miles of any then-existing Interstate All Battery Center, except as otherwise approved in writing by Franchisor.

If any part of these restrictions is found to be unreasonable in time or distance, each month of time or mile of distance may be deemed a separate unit so that the time or distance may be reduced by appropriate order of the court to that deemed reasonable. If, at any time during the 2-year period following the expiration, termination or approved Transfer of this Agreement, Franchisee fails to comply with its obligations under this Section 23.C.(2), that period of non-compliance shall not be credited toward Franchisee's satisfaction of the 2-year obligation.

**D. Applicability.** The restrictions contained in this Section 23 shall apply to Franchisee and to all guarantors of Franchisee's obligations, and, with respect to guarantors, shall apply until 2 years after the earlier of (i) the expiration, termination or approved Transfer of this Agreement and (ii) the time when the guarantor ceases to be the Operating Principal or an officer, director, or a 10% Owner. At Franchisor's request, and unless otherwise prohibited by law, Franchisee shall obtain (and provide copies to Franchisor) covenants similar in substance to those contained in Sections 23.B and C, in a form prescribed by Franchisor from time to time in the Manuals, from all employees of Franchisee designated by Franchisor and from such family members of guarantors as may be designated by Franchisor, which covenants shall name Franchisor as a third-party beneficiary of the covenants with the independent right to enforce them. The restrictions contained in this Section 23 shall not apply to ownership of less than a 5% legal or beneficial ownership in the outstanding equity securities of any publicly held corporation. The existence of any claim Franchisee, the Operating Principal, any guarantor, Franchisee's officers, directors, or 10% Owners may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 23.

## **24. Termination.**

**A. Termination Without Cure Period.** In addition to the grounds for termination stated elsewhere in this Agreement, Franchisor may terminate this Agreement, and the rights granted by this Agreement, upon written notice to Franchisee, without affording Franchisee an opportunity to cure, upon the occurrence of any of the following events:

(1) Franchisee ceases to continuously operate the Center for a period in excess of 5 consecutive days, unless the closing is due to force majeure or is approved in writing in advance by Franchisor.

(2) Franchisee is insolvent or is unable to pay its creditors; files a petition in bankruptcy, an arrangement for the benefit of creditors or a petition for reorganization; there is filed against Franchisee a petition in bankruptcy, an arrangement for the benefit of creditors or petition for reorganization, which is not dismissed within 60 days of the filing; Franchisee makes an assignment for the benefit of creditors; or a receiver or trustee is appointed for Franchisee and not dismissed within 60 days of the appointment.

(3) Execution is levied against Franchisee's business or property; suit to foreclose any lien or mortgage against the premises or equipment of the Center is instituted against Franchisee and is not dismissed within 60 days; or the real or personal property of the Center is sold after levy thereupon by any sheriff, marshal or constable.

(4) There is a breach of any obligation under Section 23.

(5) Any Transfer that requires Franchisor's prior written approval occurs without Franchisee having obtained Franchisor's prior written approval.

(6) Franchisor discovers that Franchisee made a material misrepresentation or omitted a material fact in the information that was furnished to Franchisor in connection with Franchisor's decision to enter into this Agreement.

(7) Franchisee or any affiliate of Franchisee knowingly falsifies any report required to be furnished to Franchisor or its affiliates or makes any material misrepresentation in its dealings with any of them, whether under this Agreement or otherwise, or Franchisee fails to disclose any material facts to Franchisor.

(8) Franchisee fails to open the Center within the time required by this Agreement.

(9) Franchisor makes a reasonable determination that continued operation of the Center by Franchisee will result in an imminent danger to public health or safety.

(10) Franchisee loses possession of the site of the Center. If the loss of possession is through no act, or failure to act, on Franchisee's part, Franchisee may relocate the Center (without paying any initial license fee or transfer fee) at its expense if: (1) Franchisor approves the new location; (2) Franchisee constructs and equips a Center at the new location in accordance with the then-current System standards and specifications; (3) a Center at the new location is open to the public for business within 6 months after the loss of possession of the original Center location; and (4) Franchisee reimburses Franchisor for all reasonable expenses actually incurred by Franchisor in connection with the acceptance of the new location.

(11) Franchisee, the Operating Principal, any director or officer of Franchisee, or any 10% Owner is convicted of, or pleads no contest to, a felony charge; a crime involving moral turpitude; or any other crime or offense that is reasonably likely, in the sole opinion of Franchisor, to adversely affect the goodwill of Franchisor or the System.

(12) There is a material breach of any representation or warranty by Franchisee set forth in Section 45.

(13) Franchisee, the Operating Principal, or any 10% Owner remains in default beyond the applicable cure period (if any) under any other agreement with Franchisor or its affiliates, or Franchisee remains in default beyond the applicable cure period (if any) under any real estate lease, equipment lease, or financing instrument relating to the Center, or Franchisee remains in default beyond the applicable cure period (if any) with any vendor or supplier to the Center, or Franchisee fails to pay when due any taxes or assessments relating to the Center or its employees, unless Franchisee is actively prosecuting or defending the claim or suit in a court of competent jurisdiction or by appropriate government administrative procedure or by arbitration or mediation conducted by a recognized alternative dispute resolution organization.

(14) The software license agreement with Franchisor is terminated in accordance with the provisions of that agreement.

(15) Franchisee receives 3 or more notices of default under Section 24.B. within a 12-month period.

(16) If, on the Effective Date, Franchisee or an affiliate of Franchisee is party to a Confidential Distributor Agreement with Interstate Batteries, Inc., an affiliate of Franchisor, and that agreement is terminated thereafter for any reason by any party.

(17) Franchisee sells or offers to sell any counterfeit product.

(18) Franchisee uses any of the Proprietary Marks in any manner not authorized by or under this Agreement, or engages in any conduct which in Franchisor's judgment is reasonably likely to cause injury to any of the Proprietary Marks or to the goodwill associated with them.

**B. Termination Following Expiration of Cure Period.**

(1) Franchisee will be in default under this Agreement for any failure to comply with any of its obligations under or pursuant to this Agreement, or to carry out the terms of this Agreement in good faith. Except for those events listed in Sections 24.A., B.(2) and C., Franchisee shall have 45 days after written notice of default from Franchisor within which to remedy the default and provide evidence of that remedy to Franchisor. If any such default is not cured within that time, this Agreement shall terminate without further notice to Franchisee effective immediately upon expiration of that time, unless Franchisor notifies Franchisee otherwise in writing. Notwithstanding the foregoing, if in Franchisor's judgment the default cannot be corrected within 45 days, Franchisee shall have such additional time to correct the default as Franchisor may reasonably allow (not to exceed 105 days), provided that (a) Franchisee begins taking the actions necessary to correct the default during the 45 day cure period and diligently and in good faith pursues those actions to completion, and (b) before expiration of the 45 day cure period Franchisee has timely requested and received an extension of the cure period from Franchisor in writing.

(2) Notwithstanding the provisions of Section 24.B.(1), if Franchisee defaults in the payment of any monies owed to Franchisor or its affiliates when such monies become due and payable and Franchisee fails to pay such monies within 15 days after receiving written notice of default, then this Agreement will terminate effective immediately upon expiration of that time, unless Franchisor notifies Franchisee otherwise in writing.

**C. Termination Following Inspection.** Franchisor intends to conduct from time to time inspections of the Center to evaluate Franchisee's compliance with the System and this Agreement. Following each inspection, Franchisor will provide Franchisee an inspection report listing Franchisee's

score on the inspection and those conditions at the Center that must be rectified. If Franchisee fails to achieve a passing score on an inspection, the inspection report shall constitute a notice of default. If Franchisee fails to achieve a passing score on the next inspection (which shall be conducted not sooner than 30 days after Franchisee's receipt of the inspection report for the prior inspection), Franchisor may terminate this Agreement, without opportunity to cure, by providing Franchisee written notice of termination along with the inspection report.

**D. Termination by Franchisee.** If Franchisee is not in default and Franchisor breaches a material provision of this Agreement, Franchisor shall have 45 days after written notice of default from Franchisee (or up to 105 days if, in Franchisor's judgment the default cannot be remedied within 45 days) within which to remedy the default and provide evidence of that remedy to Franchisee. If any such default is not cured within that time, Franchisee may terminate this Agreement. The termination shall be effective 10 days after Franchisor receives written notice of termination from Franchisee.

**E. Statutory Limitations.** If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this Section, this Agreement will be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation.

## **25. Obligations on Termination or Expiration.**

Upon termination or expiration of this Agreement:

**A.** Franchisee shall immediately pay Franchisor and its affiliates all sums due and owing Franchisor or its affiliates pursuant to this Agreement and any other agreement to which Franchisee is a party.

**B.** Franchisee shall promptly return to Franchisor all copies of the Manuals and all other materials and information furnished by Franchisor, and shall promptly return to Franchisor, in good condition and repair excepting normal wear and tear, all computer software, disks, tapes and other magnetic storage media, used by Franchisee in the Franchised Business.

**C.** Franchisee and all persons subject to the covenants contained in Section 23 shall continue to abide by those covenants, pursuant to the terms set out therein, and shall not, directly or indirectly, take any action that violates those covenants.

**D.** Franchisee shall immediately discontinue all use of the Proprietary Marks and of any and all items bearing the Proprietary Marks; remove the Proprietary Marks from clothing, signs, materials, motor vehicles and other items owned or used by Franchisee; cancel all advertising that contains the Proprietary Marks (including web sites and telephone directory listings); assign to Franchisor or its designee all telephone numbers, domain names, and email addresses which have been used by the Franchised Business or the Center; and take such action as may be necessary to cancel any filings or registrations for the Franchised Business or the Center that contain any Proprietary Marks.

**E.** Franchisee shall promptly make such alterations and modifications to the Center as may be necessary to clearly distinguish to the public the facility from its former appearance and also make those specific additional changes as Franchisor may request for that purpose. If Franchisee fails to promptly make these alterations and modifications, Franchisor shall have the right to do so at Franchisee's expense without being guilty of trespass or other tort.

**F.** Upon termination of this Agreement by Franchisor due to an event of default of Franchisee, Franchisor may immediately instruct the telephone company to transfer use and control of the Center's telephone number(s) to Franchisor or its designee. Franchisee irrevocably constitutes and appoints Franchisor and its designees as Franchisee's agent and attorney-in-fact to effect the transfer of

the Center's telephone number(s), including authority to execute and deliver on Franchisee's behalf any "Transfer of Service Agreement" the telephone company requires, and to revoke any call-forwarding or similar instructions Franchisee has given the telephone company. In connection therewith, Franchisee shall execute an Assignment of Telephone Number(s) in the form of Appendix J attached hereto. Company shall have no liability to Franchisee on account of or arising from any action it authorizes or takes to effect the transfer of the Center's telephone number(s) in accordance with this Section 25.F. In addition, Franchisor shall be entitled to injunctive or similar relief, without bond, against Franchisee and any other person bound under Article 25 to enforce compliance with these requirements.

**G.** Franchisee shall furnish to Franchisor, within 30 days after the effective date of termination or expiration, evidence reasonably satisfactory to Franchisor of Franchisee's compliance with Sections 25.A. through 25.E.

**H.** After termination or expiration of this Agreement, Franchisee shall not, except with respect to a franchised Interstate All Battery Center which is then open and operating pursuant to an effective franchise agreement: (1) operate or do business under any name or in any manner that might tend to give the public the impression that Franchisee is connected in any way with Franchisor or has any right to use the System or the Proprietary Marks; or (2) make use or avail itself of any of the materials or information, deemed confidential or proprietary in nature, furnished or disclosed by Franchisor under this Agreement, or disclose or reveal any such materials or information, deemed confidential or proprietary in nature, or any portion thereof to anyone else; or (3) assist anyone not licensed by Franchisor to construct or equip a retail store substantially similar to an Interstate All Battery Center.

## **26. Option to Purchase.**

**A.** Upon the termination or expiration of this Agreement for any reason, Franchisor shall give written notice to Franchisee, within 30 days from the date of such termination or expiration, whether Franchisor intends to exercise the option to purchase from Franchisee some or all of the assets used in the Center ("Assets"), subject to agreement on price or Franchisor's satisfaction with the Purchase Price determined as hereafter provided. As used in this Section 26, "Assets" shall mean and include, without limitation, leasehold improvements, equipment, vehicles, furnishings, fixtures, signs and inventory (non-perishable products, materials and supplies) used in the Franchised Business. Franchisor shall have the unrestricted right to assign this option to purchase the Assets. Franchisor or its assignee shall be entitled to all customary representations and warranties that the Assets are free and clear (or, if not, accurate and complete disclosure) as to: (1) ownership, condition and title; (2) liens and encumbrances; (3) environmental and hazardous substances; and (4) validity of contracts and liabilities inuring to Franchisor or affecting the Assets, whether contingent or otherwise.

**B.** The purchase price for the Assets ("Purchase Price") shall be their fair market value, determined as of the effective date of purchase in a manner that accounts for reasonable depreciation and condition of the Assets; provided, however, that the Purchase Price for the Assets shall not contain any factor or increment for any trademark, service mark or other commercial symbol used in connection with the operation of the Franchised Business nor any goodwill or "going concern" value for the Franchised Business. Franchisor may exclude from the Assets purchased in accordance with this Section any equipment, vehicles, furnishings, fixtures, signs, and inventory that are not approved as meeting then-current standards for an Interstate All Battery Center or for which Franchisee cannot deliver a Bill of Sale in a form satisfactory to Franchisor.

**C.** If Franchisor and Franchisee are unable to agree on the fair market value of the Assets within 30 days after Franchisee's receipt of Franchisor's notice of its intent to exercise its option to purchase the Assets, the fair market value shall be determined by 2 professionally certified appraisers, Franchisee selecting one and Franchisor selecting one. If the valuations set by the 2 appraisers differ by more than 10% of the higher amount, the 2 appraisers shall select a 3<sup>rd</sup> professionally certified appraiser who also shall appraise the fair market value of the Assets. The average value set by the appraisers

(whether 2 or 3 appraisers as the case may be) shall be conclusive and shall be the Purchase Price. If, within a reasonable time, Franchisee fails to select a professionally certified appraiser, or the appraiser selected by Franchisee fails to set a value, or the 2 appraisers do not agree on a 3<sup>rd</sup> appraiser when such an appraiser is required, then in any of those events the value set by the appraiser selected by Franchisor shall be conclusive.

**D.** The appraisers shall be given full access to the Center and Franchisee's books and records during customary business hours to conduct the appraisal, and shall value the leasehold improvements, equipment, furnishings, fixtures, signs and inventory in accordance with the standards of this Section 26. The fees and costs of the appraiser or appraisers shall be borne equally by Franchisor and Franchisee.

**E.** Within 3 days after the Purchase Price has been determined, Franchisor may exercise its option to purchase the Assets by so notifying Franchisee. The Purchase Price shall be paid in cash or cash equivalents at the closing of the purchase ("Closing"), which shall take place no later than 60 days after Franchisor's receipt of the valuations set by the appraisers. At the Closing, Franchisee shall deliver instruments transferring to Franchisor or its assignee: (1) good and merchantable title to the Assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to Franchisor or its assignee), with all sales and other transfer taxes paid by Franchisee; (2) all licenses and permits for the Franchised Business that may be assigned or transferred, with appropriate consents if required; and (3) the lease or sublease for the Center, with appropriate consents if required. If Franchisee cannot deliver clear title to all of the purchased Assets as indicated in this Section, or if there are other unresolved issues, the Closing shall be accomplished through an escrow.

**F.** Prior to Closing, Franchisee and Franchisor shall comply with all applicable legal requirements, including the bulk sales provisions of the Uniform Commercial Code of the state in which the Center is located and the bulk sales provisions of any applicable tax laws and regulations. Franchisee shall, prior to or simultaneously with the Closing, pay all tax liabilities incurred in connection with the operation of the Center prior to Closing. Franchisor shall have the right to set off against and reduce the Purchase Price by any and all amounts owed by Franchisee to Franchisor and its affiliates, and the amount of any encumbrances or liens against the Assets or any obligations assumed by Franchisor.

**G.** If Franchisor or its assignee exercises the option to purchase, then Franchisee shall maintain in force all insurance policies required under this Agreement until the Closing. If the Center is leased, Franchisor agrees to use reasonable efforts to effect a termination of the existing lease for the Center. If the lease for the Center is assigned to Franchisor or if Franchisor subleases the Center from Franchisee, Franchisor shall indemnify and hold Franchisee harmless from any ongoing liability under the lease from the date Franchisor assumes possession of the Center. If Franchisee owns the Center, Franchisor, at its option, will either purchase the fee simple interest or, upon purchase of the other Assets, enter into a standard lease with Franchisee on terms comparable to those for which similar commercial properties in the area are then being leased. The initial term of this lease with Franchisee shall be at least 10 years and the rent shall be the fair market rental value of the Franchised Location. If Franchisee and Franchisor cannot agree on the fair market rental value of any Franchised Location, then the rental value shall be determined by an appraiser or appraisers selected and paid in the manner described in Sections 26.C. and D.

## **27. Relationship of the Parties.**

This Agreement does not create a fiduciary or other special relationship between the parties. Franchisee is an independent contractor with entire control and direction of the development and operation of the Center, and the Franchised Business subject only to the conditions and covenants established by this Agreement. No agency, employment, or partnership is created or implied by the terms of this Agreement, and Franchisee is not and shall not hold itself out as agent, legal representative, partner, subsidiary, joint venturer or employee of Franchisor. Franchisee shall have no right or power to, and shall not, bind or obligate Franchisor in any way or manner, nor represent that Franchisee has any right to do so. Franchisee shall not issue any press releases without the prior written approval of Franchisor.

The sole relationship between Franchisee and Franchisor is a commercial, arms' length business relationship and, except as provided in Section 28, there are no third party beneficiaries to this Agreement. In all public records, in dealings with other persons, and on letterheads and business forms, Franchisee shall indicate its independent ownership of the Center and the Franchised Business and that Franchisee is solely a franchisee of Franchisor. Franchisee shall post a sign in a conspicuous location in the Center which will contain Franchisee's name and state that the Center is independently owned and operated by Franchisee under a franchise agreement with Franchisor.

## **28. Indemnification.**

**A.** Franchisee and all guarantors of Franchisee's obligations under this Agreement (except as the guarantors' obligations are limited by the attached Guarantee) shall, at all times, indemnify, defend (with counsel selected by Franchisor and approved by Franchisee), and hold harmless (to the fullest extent permitted by law) Franchisor and its affiliates, and their respective successors, assigns, past and present directors, officers, employees, agents and representatives (collectively "Franchisor's Indemnitees") from and against all "losses and expenses" (as defined below) incurred in connection with any action, suit, proceeding, claim, judgment or appeal thereof by or against Franchisor's Indemnitees or any settlement thereof (whether or not a formal proceeding or action had been instituted), arising out of or resulting from or connected with Franchisee's activities under or pursuant to this Agreement, unless such loss, liability or damage is solely due to the gross negligence or willful misconduct of Franchisor. Franchisee shall give Franchisor prompt notice of any such action, suit, proceeding, claim, demand, inquiry or investigation filed or instituted against Franchisee and, upon request, shall furnish Franchisor with copies of any documents pertaining to such matters as Franchisor may request.

At Franchisee's expense and risk, Franchisor may elect to assume, by agreement with Franchisee (but under no circumstances will Franchisor be obligated to undertake), the defense and/or settlement of any action, suit, proceeding, claim, judgment or appeal thereof subject to this indemnification. Such an undertaking shall in no manner or form diminish Franchisee's obligation to indemnify and hold harmless Franchisor.

**B.** As used in this Section, the phrase "losses and expenses" shall include, but not be limited to, all losses; compensatory, exemplary and punitive damages; fines; charges; costs; expenses; settlement amounts; judgments; compensation for damages to Franchisor's reputation and goodwill; costs of advertising material and media time/space and the costs of changing, substituting or replacing the same; and any and all expenses of recall, refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

## **29. Consents, Approvals and Waivers.**

**A.** Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor; and any such approval or consent, in order to be effective and binding upon Franchisor, must be obtained in writing.

**B.** Franchisor makes no warranties or guarantees upon which Franchisee may rely by providing any waiver, approval, consent or suggestion to Franchisee in connection with this Agreement, and assumes no liability or obligation to Franchisee therefor, or by reason of any denial of any request therefor. Franchisor shall not, by virtue of any approvals, advice or services provided to Franchisee, assume responsibility or liability to Franchisee or to any third parties to which Franchisor would not otherwise be subject.

**C.** No failure of Franchisor to exercise any power reserved to it by this Agreement or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement. A waiver by Franchisor of any particular default by Franchisee shall not affect or impair Franchisor's rights with respect to any subsequent default of the same, similar or different nature, nor shall any delay, forbearance or omission of Franchisor to exercise any power or right arising out of any breach or default by Franchisee of any of the terms, provisions or covenants of this Agreement affect or impair Franchisor's right to exercise the same, nor shall such constitute a waiver by Franchisor of any right hereunder, or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of the Term. Subsequent acceptance by Franchisor of any payments due 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.

## **30. Notices.**

No notice, demand, request or other communication to the parties shall be binding upon the parties unless the notice is in writing, refers specifically to this Agreement, and: (A) if to Franchisee, is sent to Franchisee at the address, facsimile number or electronic mail address stated in the preamble to this Agreement, or to such other address as may be set forth in the Summary Pages; and (B) if to Franchisor, is sent to Franchisor and Franchisor's Legal Department at the addresses set forth in the Summary Pages. Any party may designate a new address for notices by giving written notice of the new address pursuant to this Section. Notices shall be immediately effective upon: (1) receipt of personal delivery; (2) transmission by facsimile or electronic mail via Internet or Intranet to the number(s) or electronic mail address set forth in the Summary Pages with electronic confirmation of receipt; (3) mailing in the United States mail, postage prepaid, certified mail, return receipt requested; or (4) mailing via overnight courier. Notice transmitted by facsimile or electronic mail as provided in this Section 30 shall be deemed to be written notice for purposes of this Agreement.

## **31. Entire Agreement.**

Franchisor and Franchisee acknowledge that each element of this Agreement is essential and material. This Agreement (including its attachments) constitutes the entire agreement between the parties concerning Franchisee's rights, and supersedes any and all prior or contemporaneous negotiations, discussions, understandings or agreements. There are no other representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement and in its attachments, except that nothing in this Agreement or in any related agreement is intended to disclaim the representations made in the Disclosure Document Franchisor provided to you. No obligations, restrictions or duties not explicitly provided for or set forth in, or that contradict or are inconsistent with the express terms of, this Agreement may be implied into this Agreement. Except for unilateral updates

to the Manuals and Appendices A or B, or as expressly set forth herein, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed in writing.

### **32. Force Majeure.**

As used in this Agreement, the term “force majeure” means any act of God, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, fire or other catastrophe, act of any government or other third party and any other cause not within the control of the party affected thereby. Franchisee’s inability to obtain financing (regardless of the reason) shall not constitute force majeure.

If the performance of any obligation by any party under this Agreement is prevented, hindered or delayed by reason of force majeure, which cannot be overcome by reasonable commercial measures, the parties shall be relieved of their respective obligations (to the extent that the parties, having exercised best efforts, are prevented, hindered or delayed in such performance) during the period of such force majeure. The party whose performance is affected by an event of force majeure shall give prompt written notice of such force majeure event to the other party by setting forth the nature thereof and an estimate as to its duration.

### **33. Severability and Construction.**

**A.** Each article, paragraph, subparagraph, term and condition of this Agreement, and any portions thereof, will be considered severable. If, for any reason, any portion of this Agreement is determined to be invalid, contrary to, or in conflict with, any applicable present or future law, rule or regulation in a final, unappealable ruling issued by any court, agency or tribunal with valid jurisdiction in a proceeding to which Franchisor is a party, that ruling will not impair the operation of, or have any other effect upon, any other portions of this Agreement, all of which will remain binding on the parties and continue to be given full force and effect.

**B.** Except as otherwise provided in Section 28, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their heirs, successors and assigns, any rights or remedies under or by reason of this Agreement.

**C.** Franchisee and Franchisor expressly agree to be bound by any promise or covenant imposing the maximum duty permitted by law that is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement 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.

**D.** No provision of this Agreement shall be interpreted in favor of, or against, any party because of the party who drafted this Agreement.

### **34. Effectiveness and Governing Law.**

This Agreement shall become effective only upon its approval by Franchisor’s Chief Executive Officer in Dallas, Texas. This Agreement and any claim or controversy arising out of, or relating to, rights and obligations of the parties under this Agreement, and any other claim or controversy between the parties, shall be governed by, interpreted and construed under, and determined pursuant to the laws of the State of Texas, without regard to Texas conflict of laws principles.

### **35. Arbitration.**

**A. Claims Subject to Arbitration.** During the term of this Agreement, any claim or controversy between the parties hereto arising out of or related to this Agreement, the relationship between Franchisor and Franchisee, or Franchisee's operation of the franchised business shall be submitted to arbitration in accordance with Section 35.B. below, unless excepted from mandatory arbitration by Sections 35.C. or 35.D. below; and any claim or controversy subject to arbitration hereunder, except claims by Franchisor for payments owed by Franchisee under this Agreement, shall be barred unless arbitration is commenced within two years from the occurrence of the events or facts giving rise to the claim or controversy. Neither party shall be compelled to arbitrate any action or proceeding (1) commenced after the effective date of termination of this Agreement, or (2) commenced during the term of this Agreement but excepted under Sections 35.C. or 35.D. below.

**B. Rules Applicable in Arbitration.** Any arbitration between the parties shall be conducted pursuant to the then-prevailing Comprehensive Arbitration Rules and Procedures of J•A•M•S/ENDISPUTE or its successor ("JAMS"), except as such rules may be modified (to the extent permitted by federal law) by the following:

(1) Any demand for arbitration shall be filed with the office of JAMS in Dallas, Texas. Within 30 days of the filing of the demand, Franchisor and Franchisee shall each select one arbitrator. If either or both parties fail to select an arbitrator within that time period, then JAMS shall select such arbitrator(s). The two arbitrators selected by the parties shall jointly select a neutral third arbitrator. If the party-appointed arbitrators fail to select a neutral arbitrator within 30 days of the appointment of the second party-appointed arbitrator, the neutral arbitrator shall be selected by JAMS. The neutral third arbitrator shall be a retired federal or state district or state appellate judge. A party-selected arbitrator shall not be disqualified from service on the ground of bias or alleged bias. A party shall be free to communicate *ex parte* with the arbitrator selected by that party regarding any issue related to the arbitration. The arbitration shall be conducted in Dallas, Texas, at a location designated by Franchisor.

(2) The arbitrators shall follow law and judicial precedent. Notwithstanding the foregoing, the arbitrators shall not entertain or permit any class or consolidated proceeding. The arbitrators shall afford the parties such reasonable discovery as the arbitrators deem appropriate. Section 34 above shall apply in the arbitration proceeding; *provided, however*, that neither the Texas Arbitration Act nor Texas rules of arbitration shall apply in or to any arbitration proceeding governed by this Section 35.

(3) The neutral arbitrator's fees shall be borne equally by the parties. All other costs and expenses in connection with the arbitration shall be borne initially by the party who incurs such expense or who requests a service (such as, without limitation, a transcript of a deposition or of the arbitration proceeding). At the conclusion of the arbitration proceeding, all costs and expenses (including, without limitation, attorneys' and accountants' fees) of the prevailing party shall be reimbursed by the party that does not prevail; if a party prevails on some but not all issues, the arbitrators shall determine the manner in which such costs will be borne.

(4) The decision of a majority of the arbitrators shall be final and binding on the parties, and the arbitrators' award shall be the exclusive remedy between the parties with respect to all claims, counterclaims, disputes, and issues arising out of the transaction(s) or occurrence(s) at issue, whether or not presented or pled to the arbitrators, except claims of the kind described in Section 35.C. below. The arbitrators shall have no authority to award consequential, punitive or exemplary damages. Any award shall be paid promptly, without deduction or offset. Judgment upon the award may be entered by any court of competent jurisdiction. If the award is confirmed by a court of competent jurisdiction, a party challenging the award or resisting enforcement of a judgment entered upon the award

shall pay, to the extent permitted by law, all reasonable costs, attorneys' fees, and expenses incurred by the other party in defending the award or seeking enforcement of the judgment.

(5) The decision of the arbitrators shall have no collateral estoppel effect with respect to a controversy with any person or entity who is not a party to the arbitration proceeding.

(6) Any issue regarding arbitrability or the enforcement of Section 35.A. above or this Section 35.B. shall be governed by the Federal Arbitration Act and the federal common law of arbitration.

(7) The parties and their counsel, agents, and employees shall at all times maintain all aspects of any arbitration proceeding conducted under this Section 35 in confidence, and shall make no disclosure of the same except as required by law or with the consent of the other party.

**C. Claims Not Subject to Arbitration.** The following claims, disputes, and actions shall not be subject to mandatory arbitration under Section 35.A. above: (1) any claim or dispute involving the propriety of any termination of this Agreement; (2) any claim or dispute involving actual or threatened disclosure or misuse of Franchisor's confidential information or trade secrets; (3) any claim or dispute involving the ownership, validity or use of the Proprietary Marks; (4) any action to enjoin a transfer alleged to be in violation of Section 22 of this Agreement; or (5) any action by Franchisor to enforce the non-competition restrictions set forth in Section 23.C. of this Agreement.

**D. Availability of Injunctive Relief.** Nothing in this Agreement shall impair Franchisor's right to obtain injunctive relief from a court against actual or threatened conduct that will cause it loss or damage, including claims of the type described in Section 35.C. above, according to the usual equity rules (including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions), together with such damages as Franchisor may have suffered as a result of such conduct; and Franchisee agrees to pay all costs, including without limitation reasonable attorneys' fees, incurred by Franchisor in the event that Franchisor is successful in obtaining such relief.

### **36. Forum.**

Franchisee shall file any suit against Franchisor only in Dallas County, Texas, in the federal or state court having jurisdiction; and Franchisor hereby waives all questions of personal jurisdiction and venue for the purpose of carrying out this provision. Franchisor may file any suit against Franchisee (a) in Dallas County, Texas, in the federal or state court having jurisdiction, or (b) in any jurisdiction (i) where Franchisee resides or does business or (ii) where the Franchised Business is or was located or (iii) where the claim arose; and Franchisee hereby waives all questions of personal jurisdiction and venue for the purpose of carrying out this provision.

### **37. Limitations Period.**

Except for claims by Franchisor for payments owed by Franchisee under this Agreement, any proceeding, claim or action (including one relating to the offer and sale of a franchise to Franchisee) arising from or related to this Agreement shall be barred unless commenced within two years from the occurrence of the events or facts giving rise to such proceeding, claim or action.

### **38. Waiver of Class Action or Proceeding.**

Franchisee and Franchisor waive the right to bring, or be a class member in, any class action or class proceeding by either of them against the other.

**39. Waiver of Jury Trial.**

Franchisee and Franchisor waive trial by jury with respect to any action, proceeding or counterclaim brought by either of them against the other.

**40. Waiver of Consequential, Punitive, and Exemplary Damages.**

Franchisee and Franchisor waive any right to or claim for any consequential, punitive or exemplary damages against one another.

**41. Remedies Not Exclusive.**

Except as otherwise expressly provided in this Agreement, 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 cumulative of every other right or remedy.

**42. Injunctive Relief.**

Franchisee recognizes that its failure to comply with the terms of this Agreement is likely to cause irreparable harm to Franchisor and the System. Therefore, Franchisee agrees that, in the event of a breach or threatened breach of any of the terms of this Agreement by Franchisee, Franchisor shall be entitled to injunctive relief (both preliminary and permanent) restraining that breach and/or to specific performance, without posting a bond. Any equitable remedies sought by Franchisor shall be in addition to, and not in lieu of, all remedies and rights that Franchisor otherwise may have arising under applicable law or by virtue of any breach of this Agreement by Franchisee.

**43. Survival of Sections 35 Through 42.**

The provisions of Sections 35 through 42, and all other provisions of this Agreement which by their terms or by implication survive the expiration or termination of this Agreement, shall survive the expiration or earlier termination of this Agreement, except as expressly provided otherwise in Section 37.

**44. Miscellaneous.**

**A. Gender and Number.** All references to gender and number shall be construed to include such other gender and number as the context may require.

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

**C. Counterparts.** This Agreement may be executed in counterparts, and each copy so executed and delivered shall be deemed an original.

**D. Time.** Time is of the essence of this Agreement for each provision in which time is a factor. Whenever this Agreement refers to a period of days or months, the first day or month to be counted shall be the day or month of the designated action, event or notice. Days shall be measured by calendar days, except that if the last day of a period is a Saturday, Sunday or national holiday, the period shall automatically be extended to the next day that is not a Saturday, Sunday or national holiday.

#### **45. Representations by Franchisee.**

Franchisee represents, acknowledges and warrants to Franchisor, for now and all time, that:

**A.** This Agreement involves significant legal and business rights and risks. Franchisor does not guarantee Franchisee's success. Franchisee has read this Agreement and Franchisor's Franchise Disclosure Document in their entirety, conducted an independent investigation of the franchised business contemplated by this Agreement, has been thoroughly advised with regard to the terms and conditions of this Agreement by legal counsel or other advisors of Franchisee's choosing, recognizes that the nature of the business conducted by Interstate All Battery Centers may change over time, has had ample opportunity to investigate any and all representations made by or on behalf of Franchisor, and has had ample opportunity to consult with current and former Interstate All Battery Center franchisees (if any). The prospect for success of the business undertaken by Franchisee is speculative and depends to a material extent upon (among other things) Franchisee's personal commitment, capability and direct involvement in the day-to-day management of the business.

**B.** Franchisor makes no express or implied warranties or representations that Franchisee will achieve any degree of success in the conduct of the Franchised Business or in the development or operation of the Center, and Franchisee recognizes that its success depends ultimately on Franchisee's efforts and abilities and on other factors, including, but not limited to, market and other economic conditions, Franchisee's financial condition and competition.

**C.** All information which Franchisee has provided to Franchisor in connection with Franchisee's franchise application and Franchisor's grant of this Franchise is truthful and accurate.

**D.** The License Fee is not refundable.

**E.** Franchisor may change or modify the System from time to time, including the Manuals, and Franchisee will be required to make such expenditures as such changes or modifications in the System may require.

**F.** The persons signing this Agreement on behalf of Franchisee have full authority to enter into this Agreement and the other agreements contemplated by the parties. Execution of this Agreement or such other agreements by Franchisee does not and will not conflict with or interfere with, directly or indirectly, intentionally or otherwise, the terms of any other agreement with any other third party to which Franchisee or any person with an ownership interest in Franchisee is a party.

**G.** Franchisee acknowledges receipt of Franchisor's Franchise Disclosure Document at least 14 calendar days prior to the execution of this Agreement or the payment of any monies to Franchisor and that Franchisee received this Agreement in the form actually executed at least 7 calendar days prior to the date of its execution by Franchisee.

**H.** Franchisor assumes no liability or responsibility for: (1) evaluation of the soil of the Center site for hazardous substances; (2) inspection of any structure for asbestos or other toxic or hazardous materials; or (3) compliance with the Americans With Disabilities Act ("ADA"). It is Franchisee's sole responsibility to obtain satisfactory evidence and/or assurances that the Center site and any structures thereon are free from environmental contamination and in compliance with the requirements of the ADA.

**I.** Franchisee shall not rely upon any opinions that may be expressed by Franchisor or any of its employees or agents regarding structural integrity, safety or construction procedures, building codes or ordinances or other matters properly within the responsibility of Franchisee and its architect. Franchisor's construction representative's duties are limited solely to ensuring that development plans and other requirements under this Agreement are met. Franchisor and its employees do not act as an

architect or agent of Franchisee. Franchisor assumes no liability or responsibility for architectural or engineering plans or judgments outside the scope of the duties stated above. Franchisor's final inspection and authorization to open the Center is not a representation or a warranty that the Center has been constructed in accordance with any architectural, engineering or legal standards for design or workmanship. It merely means that Franchisor is satisfied that the minimum requirements which Franchisor has established for consistency of design and layout have been met. Franchisee agrees that Franchisor's final inspection and authorization to open the Center shall not impose any liability or responsibility on Franchisor.

**J.** Franchisee has not received from Franchisor or from anyone acting on its behalf any representation concerning Franchisee's potential sales, expenses, income, profit or loss and has not received from Franchisor or anyone acting on its behalf any representation, other than those which may be contained in Franchisor's Franchise Disclosure Document, as inducements to enter into this Agreement. No other franchisee of Franchisor with whom Franchisee may have spoken was acting on Franchisor's behalf.

**K.** Even though this Agreement contains provisions requiring Franchisee to operate the Center and the Franchised Business in compliance with the System: (1) Franchisor does not have authority to control the day-to-day conduct and operation of Franchisee's business or employment decisions; and (2) Franchisee and Franchisor do not intend for Franchisor to incur any liability to third parties in connection with or arising from any aspect of the System or Franchisee's use of the System, whether or not in accordance with the requirements of the Manuals.

[signature page to follow]

~~IN WITNESS WHEREOF, the~~**The** parties have duly executed, sealed and delivered this Agreement as of the day and year first above written.

~~WITNESS:~~

FRANCHISOR:  
Interstate Battery Franchising  
& Development, Inc.

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

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

~~WITNESS:~~

FRANCHISEE:  
{Franchisee Name}

~~Name:-~~

By: \_\_\_\_\_  
Name/Title: **Signor**

APPROVED:  
Interstate Battery Franchising  
& Development, Inc.

Date: \_\_\_\_\_  
Dallas, Texas

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

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

In consideration of, and as an inducement to, the execution of the Interstate All Battery Center Franchise Agreement dated as of {Date} ("Agreement") by Interstate Battery Franchising & Development, Inc. ("Franchisor"), entered into with {Franchisee Name} ("Franchisee"), the undersigned ("Guarantors"), each of whom is an officer, director or a holder of a legal or beneficial interest in Franchisee of 10% or more, hereby personally and unconditionally: (1) guarantees to Franchisor, its affiliates, and their successors and assigns, for the Term of the Agreement and thereafter as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and any other agreements with Franchisor and its affiliates, including any promissory notes made by Franchisee in favor of Franchisor or its affiliates; and (2) agree personally to be bound by, and personally liable for the breach of, each and every provision of the Agreement binding upon Franchisee, including, without limitation, the provisions of Sections 22, 23 and 25, and 34-42. Notwithstanding the above and foregoing, the undersigned Guarantors shall not be liable for exemplary and punitive damages or for lost profits and in no event shall any individual Guarantor's total liability hereunder exceed \$1,000,000; provided, however that such limitation on total liability shall not apply to any claims or liability relating to or arising out of Franchisee's indemnification obligations contained in Section 28 of the Agreement.

Each of the undersigned waives: (a) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (d) any right he may have to require that an action be brought against Franchisee or any other person as a condition of his own liability; and (e) any and all other notices and legal or equitable defenses to which he may be entitled.

Each of the undersigned consents and agrees that: (i) his direct and immediate liability under this guarantee shall be joint and several; (ii) he shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (iii) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (iv) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this guarantee, which shall be continuing and irrevocable during the term of the Agreement and for so long thereafter as there are monies or obligations owing from Franchisee to Franchisor under the Agreement or other agreements with Franchisor and its affiliates. In addition, if any of the undersigned ceases to be an officer or director of Franchisee or to own any interest in Franchisee prior to termination or expiration of the Agreement, that person agrees that his obligations under this guarantee with respect to the performance of the covenants contained in Section 23.C. shall remain in force and effect for an uninterrupted and continuous period of 1 year after he ceases to own an interest in Franchisee.

~~IN WITNESS WHEREOF, each~~Each of the undersigned has hereunto affixed his signature, under seal, as of the Effective Date of the Agreement.

GUARANTOR(S):

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

\_\_\_\_\_

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

\_\_\_\_\_

## APPENDIX A

Dated: {Date}

### **DEFINITIONS OF CERTAIN TERMS WITH SELECTED REFERENCES TO THE FRANCHISE AGREEMENT**

Basic Products (Section 16.B.). Those products that are generally described by Franchisor as “All Battery Products,” as further described in the Manuals. Basic Products includes such batteries as alkaline, household electronics, hearing aid, dry cell, security system, camera, laptop and cell phone batteries.

Additional Products (Section 16.B.). Those products that are generally described by Franchisor’s affiliate Interstate Batteries, Inc. as “1090NT Products,” as further described in the Manuals. Additional Products includes such batteries as original and replacement electric storage batteries for automotive, motorcycle, marine, golf cart and other equipment and/or machinery uses.

Auxiliary Products (Section 16.B.). Battery products supplied by vendors or sources other than Franchisor or its affiliates, as further described in the Manuals.

**APPENDIX B**

Dated: {Date}

**MAPS**

## APPENDIX C

{Date}

{Franchisee Name}  
{Address}

Re: Expansion of Marketing Area to {Distributor Name} CDA Territory  
Franchisee: {Franchisee Name}  
Franchisor: Interstate Battery Franchising & Development, Inc.

### LETTER AGREEMENT

Dear \_\_\_\_\_:

Please read the following recitals and terms and conditions and indicate your agreement by signing below. Upon execution by you, Interstate Battery Franchising and Development, Inc. (“Franchisor”) will temporarily expand {Franchisee Name}’s (“Franchisee”) “Marketing Area” as defined in the Summary Pages and Appendix B of the Interstate All Battery Franchise Agreement between Franchisor and Franchisee (“Franchise Agreement”) to include all Zip Codes and territory contained in the “CDA Territory” as defined in the Summary Pages of the Franchise Agreement.

#### History

On {CDA Date}, {Distributor Corp Name} (as “IBS of {Distributor Name}”), an affiliate of Franchisee, entered into a Confidential Distributor Agreement (“Distributor Agreement”) with Interstate Batteries, Inc. (“IBI”), an affiliate of Franchisor.

On {Date}, Franchisee entered into the Franchise Agreement with Franchisor for a franchise located at {Address}. The Summary Pages of the Franchise Agreement references the CDA Territory as coextensive with the Primary Area as defined in the Distributor Agreement.

In consideration of Franchisee’s request for the ability to utilize all sales opportunities available to Franchisee in the CDA Territory, Franchisor agrees to afford Franchisee all benefits associated with the expansion of the Franchisee’s Marketing Area to the size of the CDA Territory subject to the below terms and conditions.

#### Agreement

1. This Letter Agreement (this “Agreement”) memorializes the agreement between Franchisee and Franchisor whereby Franchisor grants Franchisee a temporarily expanded Marketing Area equal to the CDA Territory as defined in the Summary Pages of the Franchise Agreement. Specifically, Franchisee may conduct marketing and telesales into the temporarily expanded Marketing Area (“Expanded Marketing Area”) as is allowed pursuant to the terms of the Franchise Agreement. The Expanded Marketing Area includes all Zip Codes contained within Franchisee’s Marketing Area in addition to the following Zip Codes to the extent they are within the boundary of the CDA Territory:

2. In consideration of the grant of the Expanded Marketing Area by Franchisor, Franchisee agrees to pay Franchisor for the transfer of additional telesales accounts contained in the Expanded Marketing Area. Accordingly and subject to the immediately succeeding sentence, the telesales fees now owed pursuant to the Summary Pages of the Franchise Agreement (inclusive of Existing Account Fees owed under the Summary Pages of the Franchise Agreement) are as follows: Cumulative Existing Account Fee = \$ \_\_\_\_\_, ~~with the first installment being \$ \_\_\_\_\_, the second installment being \$ \_\_\_\_\_, and the third installment being \$ \_\_\_\_\_.~~ Upon Franchisor's installation of a computer system at Franchisee's site pursuant to an Interstate All Battery Center Software License Agreement, Franchisor shall calculate the actual value of the additional telesales accounts transferred prior to such installation and shall adjust the Existing Account Fee accordingly. Franchisee shall promptly pay any increase in the Existing Account Fee, and Franchisor shall promptly refund any decrease in the Existing Account Fee, resulting from the adjustment.

3. If Franchisor decides at its sole discretion that there is a need for an additional Interstate All Battery Center location(s) within the CDA Territory, Franchisor may at its sole discretion: (a) terminate the Expanded Marketing Area and reinstate the "Marketing Area" as defined in the Summary Pages and B-1 of the Franchise Agreement; or (b) alter the Expanded Marketing Area to exclude certain Zip Codes ("Excluded Zip Codes") that may be contained in the Marketing Area associated with such additional Interstate All Battery Center location(s). The Expanded Marketing Area may also be reduced in Franchisor's sole discretion if an Interstate All Battery Center is located adjacent to the CDA Territory. Such reduction or termination of the Expanded Marketing Area will take effect immediately upon the opening of the additional Interstate All Battery Center location(s). Further, prior to the opening of additional Interstate All Battery Center location(s), Franchisee may be required at Franchisor's sole discretion to turn over to Franchisor all telesales accounts with their primary contact originating within the Excluded Zip Codes ("Excluded Accounts"). Excluded Accounts will be defined and determined solely at the discretion of Franchisor. Franchisor will pay Franchisee for the transferred Excluded Accounts at the same rate of calculation which Franchisee paid to Franchisor for telesales accounts pursuant to the Franchise Agreement within 30 days of transfer to Franchisor.

4. In addition to, and not in lieu of, Franchisor's right to terminate the Franchise Agreement and any other rights and remedies available to Franchisor at law or in equity, Franchisor reserves the right to reduce or terminate the Expanded Marketing Area immediately upon notice to Franchisee if Franchisee fails to fully comply with all terms and provisions of the Franchise Agreement.

5. Franchisee expressly waives any financing offered by Franchisor by way of a Promissory Note or other instrument.

6. Except as stated above, this Agreement in no way expands or modifies any grant, rights, terms or provisions contained in the Franchise Agreement. Any capitalized terms used but not defined in this Agreement shall have the meaning assigned to such terms in the Franchise Agreement.

7. If this Agreement accurately reflects your understanding of our agreement, please sign where indicated below. If the above does not reflect your understanding, please contact me immediately so we can discuss this matter and get any outstanding issues resolved.

Yours truly,

**Interstate Battery Franchising & Development, Inc.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

Agreed by:

**{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: **Signor**

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

## APPENDIX D

### **DISTRIBUTOR ADDENDUM TO FRANCHISE AGREEMENT**

This Distributor Addendum (“Distributor Addendum”) to the Franchise Agreement dated **{Date}** (the “Agreement”) between Interstate Battery Franchising & Development, Inc. (“Franchisor”) and **{Franchisee Name}** (“Franchisee”) is entered into as of **{Date}** (the “Effective Date”), and contains modifications and additions to the terms and conditions of the Agreement. Any capitalized terms used but not defined in this Distributor Addendum shall have the meanings assigned in the Agreement. To the extent of any contradiction or inconsistency between the Agreement and this Distributor Addendum, the provisions of this Distributor Addendum will control. Notwithstanding the terms and conditions of the Agreement to the contrary, Franchisor and Franchisee hereby agree as follows:

WHEREAS, on **{CDA Date}**, Franchisor’s affiliate, Interstate Batteries, Inc. (“IBI”), and **{Distributor Corp Name}**, Franchisee’s affiliate, executed a Confidential Distributor Agreement pursuant to which Franchisee distributes Interstate Batteries and operates a warehouse located at **{Address}**, (the “Distribution Premises”).

WHEREAS, Franchisor and Franchisee have, contemporaneous with the execution of this Distributor Addendum, executed the Agreement; and

WHEREAS, Franchisor and Franchisee desire to amend the terms of the Agreement as set forth below in this Distributor Addendum.

NOW THEREFORE, in consideration of the mutual covenants, agreements and obligations set forth below and in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Approved Suppliers.** Section 16.D of the Agreement shall be amended by the addition of the following language at the conclusion thereof:

Notwithstanding the above, Franchisee shall purchase all Additional Products that Franchisee or its affiliate (as determined by Franchisor) sells or delivers into the primary area of responsibility of another distributor of Franchisor or its affiliate (or such other geographic area in which Franchisor or its affiliates have granted exclusive rights or assigned responsibilities to such distributor(s)), from such other distributor of Franchisor or its affiliate.

2. **Termination.** Section 24.B(2) of the Agreement is hereby deleted and replaced with the following:

**(2)** Notwithstanding the provisions of Section 24.B(1), if Franchisee defaults in the payment of any monies owed to Franchisor or its affiliates (whether owed under or in connection with this Agreement, a promissory note, a Confidential Distributor Agreement or other agreement of any kind) when such monies become due and payable and Franchisee fails to pay such monies within 15 days after receiving written notice of default, then this Agreement will terminate effective immediately upon expiration of that time, unless Franchisor notifies Franchisee otherwise in writing.

3. **Agreement Remains In Force.** Except as expressly modified by this Distributor Addendum, the Agreement remains unmodified and in full force and effect.

~~IN WITNESS WHEREOF, the~~The parties have duly executed, sealed and delivered this Distributor Addendum as of the Effective Date as set forth above.

**Interstate Battery Franchising & Development, Inc.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**FRANCHISEE:**

**{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: **Signor**

**APPENDIX E**

Dated: {Date}

**INTERSTATE ALL BATTERY CENTER  
STORE SYSTEM/TECHNOLOGY AGREEMENT**

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Schedule A – Specified Site

**INTERSTATE ALL BATTERY CENTER  
STORE SYSTEM/TECHNOLOGY AGREEMENT**

THIS STORE SYSTEM/TECHNOLOGY AGREEMENT (“Agreement”) is made on **{Date}** (“Effective Date”), by and between Interstate Battery Franchising & Development, Inc. a Delaware corporation, with its principal place of business at 4301 121st Street, Urbandale, IA 50323 (“IBFAD”), and **{Franchisee Name}**, a **{State of Inc}** corporation, with its principal place of business at **{Address}** (“Licensee”).

RECITALS:

A. IBFAD and Licensee have entered into a Franchise Agreement dated **{Date}** (“the Franchise Agreement”) pursuant to which Licensee has been granted the right to develop and operate an Interstate All Battery Center (the “Center”).

B. IBFAD has, by virtue of license, assignment or authorship, the right to distribute, to use and to license others to use certain proprietary software in the operation of Interstate All Battery Centers (the “Software”). The Software is highly customized to Interstate All Battery Centers and, among other things, records and processes sales data, accounts receivable, inventory data, financial information and new and updated customer profiles.

C. IBFAD has identified such other technology that it expects will improve the operations of the Interstate All Battery Centers.

D. Licensee requires use of the Software and such other technology in order to operate the Center.

NOW THEREFORE, in consideration of the mutual covenants, agreements and obligations set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Grant and Term.**

A. Grant. IBFAD hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive license to use the Software solely in conjunction with the operation by Licensee of the Center and solely for installation at the location now specified in, or later added to, Schedule A hereto (“Specified Site”). Licensee may use and IBFAD will install, in accordance with this Agreement, the Software at each computer terminal at the Specified Site. IBFAD shall provide Licensee one copy of the documentation manuals for the Software.

B. Term. The term of this license shall be co-extensive with the term of the Franchise Agreement. In the event that this Agreement is terminated by either party, for cause or otherwise, the Software license will immediately terminate and Licensee shall immediately return all Software. Licensee shall be required to purge and destroy all confidential and/or proprietary information owned by or assigned to IBFAD or its affiliates. Further, IBFAD shall have the right, at its sole discretion, to repurchase any Hardware originally purchased by Licensee from IBFAD. Such repurchase by IBFAD will be made at fair market value, as determined on the date of termination.

**2. Site License Fee.**

Licensee shall pay IBFAD a one-time site license fee of \$13,000 (the “Site License Fee”). The Site License Fee is due upon delivery of the Computer System (defined in Section 4 of this Agreement) to the Specified Site. The Site License Fee is applied to each Specified Site for use by Licensee of no

more than 6 hardware devices. To the extent Licensee requires or requests use of the Software for more than 6 hardware devices at a Specified Site, Licensee shall pay IBFAD a one-time additional \$500 for each additional hardware device in excess of 6 used at a Specified Site.

### **3. Ownership.**

Licensee understands, acknowledges and agrees that Licensee neither receives nor acquires any rights in the Software other than the right to use the Software pursuant to this Agreement.

### **4. Hardware and Computer System.**

**A. Licensee Obligations.** Pursuant to the Franchise Agreement, Licensee will purchase the hardware in which the Software is to be installed (“Hardware”) from IBFAD. IBFAD will, for each computer terminal at the Specified Site, configure the Hardware with the Software (the configured Hardware will be referred to as the “Computer System”) before installing the Computer System at the Specified Site.

**B. Installation.** IBFAD or IBFAD’s designee shall install the Computer System at the Specified Site and shall test the Computer System to ensure that the Computer System is in proper operating order. IBFAD shall not charge a separate fee for this installation and test.

### **5. Network Services.**

**A.** Licensee shall execute a Network Services Agreement with a Network Service Provider designated by IBFAD. IBFAD, at its sole discretion, shall endeavor to designate and engage a nationally recognized Network Service Provider employing commercially reasonable rates that Licensee will be obliged to use for its network connectivity needs. In the event IBFAD does not designate a Network Service Provider, Licensee, with prior approval from IBFAD, shall engage a network provider to provide its network connectivity services.

**B.** Licensee shall strictly adhere to all the provisions of the Network Services Agreement.

**C.** In the event IBFAD designates and engages a Network Service Provider, IBFAD will invoice Licensee monthly for Licensee’s network connectivity costs.

**D.** IBFAD reserves to right to modify the content of this paragraph, including, but not limited to the selection of a network service provider and the manner in which IBFAD charges and invoices the network services.

### **6. Payment Processing Services.**

**A.** Licensee shall execute a Payment Processing Services Agreement (“Processing Agreement”) with a payment processing provider (“Payment Processor”) designated by IBFAD. IBFAD, at its sole discretion, shall endeavor to designate a nationally recognized Payment Processor employing commercially reasonable rates that Licensee will be obliged to use for its payment processing services. In the event IBFAD does not designate a Payment Processor, Licensee, with prior approval from IBFAD, shall engage a Payment Processor.

**B.** Licensee shall strictly adhere to all the provisions of the Processing Agreement, including, but not limited to, compliance with the data security standards adopted by the PCI Security Standards Council, LLC, and all other applicable laws and regulations.

C. Licensee agrees to indemnify IBFAD and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, your costs, expenses and reasonable attorneys' fees) arising out of any claim or complaint resulting from any breach of the Processing Agreement.

D. IBFAD reserves to right to modify the content of this paragraph, including, but not limited to the selection of the Payment Processor.

## 7. **Maintenance, Support and Upgrades.**

A. Licensee Obligations. Licensee shall be responsible for maintaining the Computer System in proper operating condition in compliance with the specifications in the Franchise Agreement and in the Manuals provided to Licensee pursuant to the Franchise Agreement, and for instituting and following proper security procedures to protect the Computer System from damage or deterioration. From time to time, IBFAD may develop or acquire upgrades, modifications, new releases, or other improvements to the Software and Licensee shall be obligated to use the updated Software which IBFAD designates for use by, and provides to, Licensee immediately thereafter.

### B. Software Maintenance Fee.

(1) Licensee shall pay IBFAD an annual fee of \$1,200 for maintenance, support and upgrades to the Software ("Software Maintenance Fee"). The Software Maintenance Fee shall be payable in advance and is due on January 1 of each year. To extent Licensee utilizes more than 6 hardware devices at a Specified Site, Licensee shall pay, in addition to the Software Maintenance Fee described above, an additional annual fee of \$500 for each hardware device in excess of 6 that is used at a Specified Site. IBFAD reserves the right to make modification to the Software Maintenance Fee upon 30 days written notice.

(2) Provided that Licensee has paid the required Software Maintenance Fee, IBFAD shall provide and install all updates to the Software, as needed (which installation may be accomplished via remote communication or on-site methods).

### C. Help Desk & Hardware Maintenance Services.

(1) IBFAD Obligations. IBFAD shall provide Help Desk & Hardware Maintenance Services for all licensees that are current on their Help Desk Fee, as described in C.2. Licensee will be able to access the Help Desk & Hardware Maintenance Services by calling the designated U.S. toll free telephone number. IBFAD Help Desk representatives will provide Help Desk & Hardware Maintenance Services primarily in English; IBFAD will, however, strive to have Spanish speaking representatives available on a limited basis. Further, IBFAD will endeavor to make the Help Desk & Hardware Maintenance Support Services accessible 24 hours per day/7 days per week year-round. IBFAD, however, shall have the right, in its sole discretion and without prior notice, to modify the Help Desk & Hardware Maintenance Support Services hours.

(2) Licensee shall pay IBFAD a monthly fee of \$160 for the Help Desk & Hardware Maintenance Services ("Help Desk Fee"). The Help Desk Fee shall be payable in advance and is due on the 1<sup>st</sup> day of each month during the term of the Agreement.

a. Provided that Licensee is not in arrears with respect to the Help Desk Fee, IBFAD, through its Help Desk & Hardware Maintenance Services personnel, shall (i) provide Licensee with assistance involving software issues; (ii) provide Licensee with assistance involving hardware maintenance issues; and (iii) provide Licensee with

assistance involving network connectivity issues, if IBFAD has designated and engaged a Network Service Provider.

b. Licensee shall be assisted with hardware maintenance issues by IBFAD's designated service provider ("Hardware Servicer"). To the extent Hardware Servicer determines that Licensee requires a replacement device, Hardware Servicer will provide Licensee with replacement Hardware using expedited. Licensee is required to uninstall the faulty equipment and return the faulty equipment to Hardware Servicer using postage-paid label included in the replacement shipment. Any expense incurred to install the replacement Hardware is borne completely by Licensee.

(3) The Help Desk Fee shall entitle Licensee, during the first 3 months after installation (the "Initial Period"), to receive assistance for up to 15 support incidents at no additional charge. During the Initial Period, should Licensee utilize the Help Desk Services for more than 15 support incidents, Licensee shall be billed \$25 for each support incident in excess of 15 reported to the Help Desk.

(4) After the Initial Period, the Help Desk Fee shall entitle Licensee to 4 support incidents each month at no additional charge. To the extent Licensee utilizes the Help Desk Services for more than 4 support incidents during a month, Licensee shall be billed \$25 for each support incident in excess of four (4) reported to the Help Desk.

(5) A support incident represents one (5) more related events affecting the operability of the Software, Network or Hardware. The determination as to whether multiple events represent one or more incidents shall be made at IBFAD's sole discretion.

(6) IBFAD reserves the right to make modifications to the Help Desk Fee, upon 30 day written notice.

**D. Additional Support.** Licensee may obtain such additional computer support as IBFAD may offer, if any, at the fees as then prescribed at the sole discretion of IBFAD.

## **8. Taxes.**

**A.** IBFAD shall provide a table of applicable tax rates as produced by IBFAD's designee for use by Licensee for the sale of products from Licensee's franchise. IBFAD shall endeavor to ensure the tax rates are in accordance with the state and local rates promulgated by the respective state, county and municipal governing bodies.

**B.** Licensee assumes full responsibility for compliance with all state and local tax obligations. IBFAD makes no warranty, express or implied, as to the accuracy of the tax rates provided to Licensee.

**C.** Any federal, state, or municipal taxes or duties levied against items sold, leased, conveyed or otherwise transferred to Licensee by IBFAD or IBFAD's designees or imposed on transactions between Licensee and IBFAD or IBFAD's designees as a result of this Agreement will be fully borne by the Licensee.

## **9. Confidentiality.**

**A. Proprietary Information.** IBFAD represents and Licensee acknowledges that the Software and documentation manuals incorporate confidential and proprietary information and trade secrets owned by IBFAD and its affiliates. Further, IBFAD represents and Licensee acknowledges that Licensee will receive certain other confidential and proprietary information owned by IBFAD, its affiliates, its business partners and/or other such designees. Licensee accordingly agrees that it will not, directly or indirectly, do any of the following at any time, during or after the term of this Agreement, without IBFAD's prior written permission: (a) copy, modify, disclose or distribute the Software, documentation manuals, or other such confidential and proprietary information (electronically or otherwise); (b) reverse engineer, decompile, decrypt, or disassemble the Software or attempt to do so; or (c) transfer, rent, lease, lend or sublicense the Software or documentation manuals to anyone for any purpose.

**B. Personal Information.** Licensee shall implement and maintain commercially reasonable (taking into account the nature of the information) legal, organizational, physical, administrative and technical measures and security procedures to safeguard the confidentiality of Personal Information in its possession and to prevent unauthorized access, use, duplication, modification and destruction of any Personal Information in its possession. With respect to any Personal Information in its possession, Licensee shall comply with all applicable laws governing use, protection, and disclosure of Personal Information. "Personal Information" means information by which specific individuals can be identified or information or relating to an identified or identifiable natural person (including, without limitation, names, addresses, credit card numbers, account numbers, specific items ordered, and also denominations and quantities ordered by customers and aggregate customer and/or product information if any individual person can be identified from such information) that Licensee obtains through operation of the Center.

## **10. Access to Data.**

Licensee understands, acknowledges and agrees that IBFAD acquires and retains the sole right to any and all data obtained by Licensee involving the operation of the Center. Licensee agrees that IBFAD shall have the free and unfettered right to retrieve any data, customer information and other information from Licensee's computers as IBFAD, in its sole discretion, deems appropriate, including electronically polling the daily sales, computer information and other data of the Center. IBFAD will bear the telephonic cost of the retrieval; provided, however, that the costs of installing and maintaining the necessary dedicated telephone or data lines and service to the Specified Site shall be borne by Licensee. Licensee must backup all data on the Computer System daily and comply with any and all other operational requirements of the Franchise Agreement and the Manuals.

## **11. Non-Modification.**

The parties contemplate that Licensee shall input financial, customer and other data and information into the Computer System. Apart from the input of such data (which will be accomplished without causing any modification to the Software), Licensee shall not modify, alter, change or otherwise vary the Software, as modified from time to time by IBFAD, after its provision or installation by IBFAD. IBFAD shall own the copyrights in any modifications to, and derivative works from, the Software made in contravention to this provision.

## **12. Breach.**

**A. Termination.** Except as otherwise specified in this Section, Licensee shall have 30 days (10 days for monetary defaults) after written notice of default from IBFAD within which to remedy the default and provide evidence of that remedy to IBFAD. If any such default is not cured within that time,

this Agreement shall terminate without further notice to Licensee effective immediately upon expiration of that time, unless IBFAD notifies Licensee otherwise in writing. If Licensee breaches either Section 9, 10 or 11 of this Agreement, IBFAD may terminate this Agreement immediately without providing Licensee an opportunity to cure.

**B. Obligations Upon Termination or Expiration.** Upon termination or expiration of this Agreement, Licensee shall promptly return to IBFAD all Software, copies of Software, and operating manuals and all other materials and information relating to the Software furnished by IBFAD. In addition, Licensee shall promptly and permanently erase all Software from the computer system and certify to IBFAD that Licensee has complied with this obligation. Further, Licensee shall be required to purge and destroy all confidential and/or proprietary information owned, assigned, or made available for use to IBFAD or its affiliates that is maintained on any Hardware device owned or leased by Licensee.

**C. Injunctive Relief.** Licensee recognizes that its failure to comply with the terms of this Agreement, including the failure to fully comply with the post-termination obligations, is likely to cause irreparable harm to IBFAD and Interstate All Battery Centers. Therefore, Licensee agrees that, in the event of a breach or threatened breach of any of the terms of this Agreement by Licensee, IBFAD shall be entitled to injunctive relief (both preliminary and permanent) restraining that breach and/or to specific performance, without showing or proving actual damages and without posting any bond or security. Any equitable remedies sought by IBFAD shall be in addition to, and not in lieu of, all remedies and rights that IBFAD otherwise may have arising under applicable law or by virtue of any breach of this Agreement.

### **13. No Warranty.**

**IBFAD makes no warranty, express or implied, with respect to the Software.** In the event that the Software becomes defective or inoperative owing to no fault of Licensee, IBFAD's sole obligation will be to replace the same without charge. IBFAD will not be responsible for any loss of sales by Licensee during the period in which the Software is inoperative, nor will IBFAD be responsible for any loss or inaccuracy of data caused by the Software. **NEITHER IBFAD NOR ITS AFFILIATES WILL BE RESPONSIBLE TO LICENSEE OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER INCIDENTAL, PUNITIVE, OR ECONOMIC DAMAGES WHATSOEVER.**

### **14. Assignment.**

**A. No Assignment by Licensee.** Licensee may not directly or indirectly transfer, assign, sell, donate, lease, rent, loan, convey, translate, demonstrate, convert to another programming language (written or spoken), encumber, distribute or otherwise alienate this Agreement or the license granted herein or the Software, or any interest therein. If, with IBFAD's prior approval and consent, Licensee transfers the Center pursuant to the provisions of the Franchise Agreement, Licensee may transfer the Software and Computer System to the same transferee. IBFAD may require the transferee to enter into its then-current Store System/Technology Agreement, which may contain terms and provisions that differ from those contained in this Agreement.

**B. Assignment by IBFAD.** IBFAD shall have the absolute, unrestricted right, exercisable at any time, to transfer, assign, and delegate this Agreement or any part of its rights and obligations under this Agreement to any person or legal entity whatsoever.

**15. Center Relocation and Closure.**

In addition to all other rights and remedies available to IBFAD, Licensee shall promptly reimburse IBFAD for all costs and expenses IBFAD incurs as a result of the (i) closure of the Center and (ii) the relocation of the Center from the Specified Site prior to the expiration of the term of this Agreement.

**16. General Provision.**

Except as otherwise provided in this Agreement, the provisions of the Franchise Agreement concerning the Software, and governing approvals and waivers, severability and construction, applicable law and other miscellaneous provisions shall also be applicable to this Agreement, and such provisions are hereby incorporated by reference.

~~IN WITNESS WHEREOF, the~~The parties have duly executed, sealed and delivered this Agreement as of the day and year first above written.

**WITNESS:**

**Interstate Battery Franchising  
& Development, Inc.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**LICENSEE/FRANCHISEE:  
{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: **Signor**

**SCHEDULE A**  
**SPECIFIED SITE**

Address: **{Address}**

Approximate date on which Computer System will be installed: \_\_\_\_\_

IBFAD Initials: \_\_\_\_\_

Licensee Initials: \_\_\_\_\_

**APPENDIX F**

Dated: **{Date}**

**FRANCHISING ADDENDUM TO  
CONFIDENTIAL DISTRIBUTOR AGREEMENT**

This Franchising Addendum to the Confidential Distributor Agreement dated **{CDA Date}** (the “Agreement”) between Interstate Batteries, Inc. (“Interstate”) and **{Distributor Corp Name}** (“Distributor”) is entered into as of **{Date}**. Notwithstanding the terms and conditions of the Confidential Distributor Agreement (the “Agreement”) to the contrary, Interstate and Distributor hereby agree as follows:

1. **FRANCHISING ALLOWED.** Nothing in the Agreement shall be construed to prohibit Distributor or an individual or entity controlling, controlled by, or under common control with, Distributor from establishing or operating retail stores for the sale of batteries in the Primary Area pursuant to a written franchise agreement (“Franchise Agreement”) between Interstate Battery Franchising & Development, Inc. (“Franchisor”) and Distributor and/or any such individual or entity as referenced above (“Franchisee”).

2. **NO RIGHT TO USE FRANCHISE MARKS.** Nothing in the Agreement shall be construed to permit Distributor to use or display, in connection with Distributor’s activities under the Agreement, any of the trademarks, service marks or trade names licensed to Franchisee under the Franchise Agreement, except the mark “Interstate.”

3. **OVERRIDE.** Distributor acknowledges that nothing in the Agreement requires, or shall be construed to require, Franchisee, Franchisor or Interstate to pay to Distributor any override described in paragraph 6(A) of the Agreement for any sales made by Franchisee, Franchisor, or Retail Acquisition & Development, Inc. or any of their successors or transferees in the Primary Area.

4. **CROSS-DEFAULT.** Paragraph 15(B) of the Agreement is amended by deleting the period at the end of part 6, and by adding “; or” at the end of part 6. Paragraph 15(B) of the Agreement is further amended by adding the following at the end of such paragraph:

7) Franchisor terminates the Franchise Agreement on the grounds of Franchisee’s fraud or material misrepresentation or on the grounds of Franchisee’s material breach of any provision of the Franchise Agreement.

5. Except as expressly modified by this Franchising Addendum, the Agreement remains unmodified and in full force and effect.

**WITNESS:**

**Interstate Batteries, Inc.**

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

**WITNESS:**

**DISTRIBUTOR:**  
**{Distributor Corp Name}**

By: \_\_\_\_\_  
Name/Title: **Signor**

## APPENDIX G

Dated: {Date}

### CREDIT AND SECURITY AGREEMENT

THIS CREDIT AND SECURITY AGREEMENT is entered into on {Date} between **Retail Acquisition & Development, Inc.**, a Delaware corporation (“RAD”); **Interstate Battery Franchising & Development, Inc.**, a Delaware corporation (“IBFAD”); and {Franchisee Name}, a {State of Inc} corporation (“Franchisee”). In consideration of the Interstate All Battery Center franchise granted to Franchisee by IBFAD pursuant to that certain Interstate All Battery Center Franchise Agreement dated {Date} (the “Franchise Agreement”) and/or the extension of credit by RAD to Franchisee, and other good and valuable consideration, RAD, IBFAD, and Franchisee agree as follows:

**1. DEFINITIONS.** In this Agreement:

**A.** The term “**Obligations**” refers to the following obligations that are secured by this Agreement:

(1) all amounts owed by Franchisee to IBFAD and its affiliates from time to time under the Franchise Agreement or any other agreement between Franchisee and IBFAD or any of its affiliates;

(2) all amounts owed by Franchisee to RAD from time to time arising from the purchase of products and services by Franchisee from RAD;

(3) all costs incurred by RAD or IBFAD to obtain, preserve, perfect, and enforce this Agreement and the security interest granted herein, to collect the Obligations, and to maintain, preserve, collect, and secure the Collateral (as defined below), including, but not limited to, taxes, assessments, insurance premiums, repairs, reasonable attorneys’ fees and legal expenses, rent, storage costs, and expenses of sale;

(4) all other debts, obligations, liabilities, and agreements of Franchisee to RAD and IBFAD now or hereafter arising, absolute or contingent, joint or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect; and

(5) interest on the above amounts as agreed upon among the parties or, if not otherwise agreed, at a per annum rate of interest equal to the lesser of (i) 2% above the Prime Rate or (ii) the maximum rate of interest allowed under applicable law.

**B.** The term “**Collateral**” refers to the following property of Franchisee:

(1) all products sold by RAD to Franchisee;

(2) all other inventory of Franchisee whenever acquired, wherever located, and whether now or hereafter existing which is acquired by Franchisee pursuant to or in connection with the business conducted under the Franchise Agreement;

(3) all accessions, attachments, and other additions to, substitutes for, replacements for, and improvements to the foregoing;

(4) all documents, contract rights, accounts, and chattel paper, now existing or hereafter arising, with respect to the sale, lease, or consignment of any of the foregoing;

(5) all policies of insurance covering the foregoing; and

(6) all proceeds of any of the foregoing.

**C.** The term “**Prime Rate**” refers to the per annum rate of interest equal to the base rate of interest announced from time to time by First Wisconsin Bank of Milwaukee, Milwaukee, Wisconsin, as its prime rate of interest, which rate of interest may not be its lowest base rate of interest.

**D.** All other capitalized terms used herein but not defined above shall have the same meaning as in the Franchise Agreement.

## **2. SECURITY INTEREST.**

Subject to the terms of this Agreement, Franchisee assigns and grants to RAD and IBFAD a security interest and lien on the Collateral to secure the payment and the performance of the Obligations.

## **3. INVENTORY LOCATION.**

**A.** Franchisee represents and warrants to RAD and IBFAD as follows:

(1) Franchisee’s principal place(s) of business is/are: (include City, County, State) **{Address}, {County} County.**

(2) The Collateral will be kept at Franchisee’s principal place(s) of business.

(3) The office where Franchisee keeps the records concerning accounts and contract rights is in **{County} County, {State}.**

**B.** Franchisee will promptly notify RAD and IBFAD of any addition to, change in, or discontinuance of any address of Franchisee, place or places where Collateral is kept, Franchisee’s principal place of business, or location of the office where records concerning accounts and contract rights are kept.

## **4. RECORDS AND INSPECTIONS.**

Franchisee at all times will maintain reasonable, current and accurate books and records covering the Collateral. From time to time upon the request of RAD or IBFAD, Franchisee shall deliver detailed descriptions and lists of the items included in the Collateral, as well as such other reports and information deemed by RAD or IBFAD to be necessary or appropriate to enable RAD or IBFAD to determine the value and location of the Collateral. RAD, IBFAD and their agents and representatives may inspect the Collateral and Franchisee’s records with respect to the Collateral during normal business hours.

## **5. TITLE.**

At the time Franchisee grants to RAD and IBFAD a security interest in any Collateral, Franchisee shall be the absolute owner thereof and shall have the right to grant such security interest. Franchisee shall defend the Collateral against all claims and demands of all persons at any time claiming any interest in any of the Collateral that is adverse to RAD or IBFAD. Franchisee shall keep the

Collateral free from all liens, claims, and security interests, except as to any applicable personal property taxes not yet due and the security interest created hereby.

## **6. FINANCING STATEMENTS.**

**A.** Franchisee warrants that no financing statement covering the Collateral is or will be on file in any public office, except the financing statements relating to the security interest granted to RAD and IBFAD herein.

**B.** Franchisee shall sign all financing statements and any other papers furnished by RAD or IBFAD that are necessary in the judgment of RAD or IBFAD to obtain, maintain, and perfect the security interest granted herein and to enable RAD or IBFAD to comply with any federal or state law in order to obtain or perfect RAD or IBFAD's interest in the Collateral or to obtain the proceeds of any Collateral.

## **7. TAXES AND INSURANCE.**

**A.** Franchisee will pay when due all taxes and assessments on or with respect to the Collateral for its use, operation, and maintenance.

**B.** Franchisee shall insure the Collateral with companies acceptable to RAD and IBFAD against such casualties and in such amounts as RAD and IBFAD shall require. All insurance policies shall be written for the benefit of Franchisee, and RAD and IBFAD as their interests may appear, or in other form satisfactory to RAD and IBFAD, and such policies or certificates evidencing the same shall be furnished to RAD and IBFAD. All policies of insurance shall provide for written notice to RAD and IBFAD at least 30 days prior to cancellation. Risk of loss or damage is Franchisee's to the extent of any deficiency in any effective insurance coverage. RAD and IBFAD are each appointed Franchisee's attorney-in-fact to collect any returned or unearned premiums or the proceeds of such insurance and to endorse any draft or check payable to Franchisee therefor, and RAD and IBFAD may apply such sums to the Obligations secured herein in such order and in such manner as RAD and IBFAD in its sole discretion shall decide.

## **8. PROTECTION OF COLLATERAL.**

**A.** Franchisee will keep the Collateral in good order and repair and will not waste or destroy Collateral or any part or proceeds thereof.

**B.** Franchisee appoints each of RAD and IBFAD as Franchisee's attorney-in-fact with full power in Franchisee's name and on Franchisee's behalf to do every act that Franchisee is obligated or allowed to do hereunder, and to exercise all rights of Franchisee with regard to the Collateral and to make collections and to execute any and all papers and instruments and to do all other things necessary to preserve and protect the Collateral and to protect RAD's and IBFAD's security interest in the Collateral; provided, however, that nothing in this Section 8.B. shall be construed to obligate RAD or IBFAD to take any action hereunder. In its sole discretion, RAD or IBFAD may undertake to perform any covenants, warranties, or actions required of Franchisee hereunder, to make payments required of Franchisee hereunder, or to pay for the repair, maintenance, and preservation of the Collateral. All sums and costs so expended, including, but not limited to, attorneys' fees, court costs, agent's fees, and commissions, shall bear interest from the date of expenditure until paid at the maximum rate of interest allowed by applicable law. All amounts due under this Section 8.B. are secured by this Agreement and shall be payable to RAD or IBFAD at its address indicated in the Franchise Agreement.

## **9. PAYMENT.**

**A.** Franchisee shall make all payments required under the Note or any other agreement with RAD, IBFAD, and their affiliates in the manner and within the time period provided in the Note and such other agreements.

**B.** If RAD or IBFAD in its sole discretion makes any payments pursuant to Section 1.B.(4) or Section 8 hereof, or makes any payments on behalf of Franchisee to suppliers or any other parties, Franchisee agrees to pay to the order of RAD or IBFAD the amount so expended within 10 days after RAD or IBFAD gives notice of such expenditure to Franchisee.

**C.** Upon default hereunder or expiration or sooner termination of the Franchise Agreement, Franchisee agrees to pay to the order of RAD and IBFAD all amounts outstanding under the Obligations immediately upon the giving of notice by RAD and IBFAD to Franchisee.

## **10. DEFAULT.**

The following are events of default hereunder:

- A.** Default in the timely payment of the Obligations or any part thereof; or
- B.** Default in the timely performance or observance of the terms and conditions of this Agreement, the Franchise Agreement, or of any other agreement between Franchisee and RAD or IBFAD or their affiliates; or
- C.** The occurrence of any event or condition that results in the termination of, or constitutes grounds for the termination of, the Franchise Agreement, or would so result if not prevented by applicable law; or
- D.** Any warranty, representation, or statement made or furnished to RAD or IBFAD herein, heretofore, or hereafter proves to have been false in any material respect when made or furnished; or
- E.** Loss, theft, destruction, or encumbrance of any of the Collateral in violation hereof; or
- F.** Sale or transfer of any of the Collateral, except for the sale of inventory in the ordinary course of Franchisee's business; or
- G.** Belief by RAD or IBFAD that the prospect of payment of the Obligations or performance of this Agreement or of any of the Obligations is impaired; or
- H.** Death, incapacity, dissolution, merger, consolidation, termination of existence, insolvency, or business failure of Franchisee or of any other person or entity liable on any of the Obligations; or
- I.** Commencement of proceedings for the appointment of a receiver for any property of Franchisee; or
- J.** Commencement of any proceeding under any bankruptcy or insolvency law by or against Franchisee (or any corporate action shall be taken to effect same), or any partnership of which Franchisee is a partner, or by or against any person or entity liable upon the Obligations or any part thereof, or liable upon Collateral; or

- K.** Levy on, seizure, or attachment of any property of Franchisee; or
- L.** A judgment against Franchisee becomes final and remains unpaid for 30 days.

## **11. REMEDIES.**

**A.** When an event of default occurs, and at any time thereafter, RAD or IBFAD, without notice or demand, may exercise any one or more of the following remedies:

(1) Declare one or more of the Obligations, in whole or in part, immediately due and may enforce payment of the same.

(2) Exercise all rights and remedies provided by this Agreement, by the Franchise Agreement, by the Texas Business and Commerce Code, or by the Uniform Commercial Code or other law or regulation regulating secured transactions of any other applicable jurisdiction.

(3) Require Franchisee to assemble the Collateral and make it available at a place to be designated by RAD or IBFAD that is reasonably convenient to Franchisee.

**B.** Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be given by RAD and IBFAD to Franchisee. It is agreed that notice sent or given not less than 5 calendar days prior to the taking of the action to which the notice relates, or such longer period of time as is required by applicable law, is reasonable notification and notice for the purposes of this Section 11.B.

**C.** Expenses or retaking, holding, preparing for sale or lease, selling, leasing, and the like shall include RAD's and IBFAD's reasonable attorneys' fees and legal expenses.

**D.** RAD or IBFAD may surrender any insurance policies upon any of the Collateral and receive the unearned premium thereon. Franchisee shall be entitled to any surplus and shall be liable to RAD and IBFAD for any deficiency. The proceeds of any disposition after default available to satisfy the Obligations shall be applied to the Obligations in such order and in such manner as RAD and IBFAD in their joint discretion shall decide.

## **12. MISCELLANEOUS.**

**A.** RAD and IBFAD shall have the right at any time to execute and file this Agreement as a financing statement, but the failure to do so shall not impair the validity or enforceability of this Agreement.

**B.** The parties hereto do not intend to contract for, charge, or receive any interest or other charge that is usurious, and by execution of this Agreement Franchisee acknowledges that RAD and IBFAD have no such intent. In no event whatsoever, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to RAD and/or IBFAD for the use, forbearance, or detention of the money to be due hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing, or pertaining to any of the Obligations (all such other documents being hereinafter called the "Loan Documents"), exceed the maximum interest rate allowed by the laws of any applicable jurisdiction (hereinafter called the "Maximum Rate"). If, from any circumstance whatsoever, fulfillment of any provisions hereof or of the

Loan Documents, at the time performance of such provisions shall be due, shall result in the interest to be paid exceeding the Maximum Rate, then such provisions shall be modified so that the rate of interest shall be reduced to the Maximum Rate, and if from any such circumstance RAD or IBFAD ever shall receive as interest or otherwise an amount that would cause the Maximum Rate to be exceeded, the portion of such amount that would be excessive interest shall be applied to the reduction of the principal amount owing hereunder or on account of any other principal indebtedness of Franchisee to RAD or IBFAD and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof and such other indebtedness, such excess shall be refunded to Franchisee. All sums paid and agreed to be paid to RAD or IBFAD for the use, forbearance, or detention of the indebtedness of Franchisee shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the whole term of such indebtedness so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof. The terms and provisions of this paragraph shall control and supersede any other provision of this Agreement or the Loan Documents.

**C.** All rights and remedies of RAD and IBFAD hereunder are cumulative of each other and of every other right or remedy that RAD and IBFAD otherwise may have at law or in equity or under any other contract or document for the enforcement of the security interest granted herein or the collection of the Obligations, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

**D.** Should any part of the Obligations be payable in installments, the acceptance by RAD or IBFAD at any time and from time to time of part payment of the aggregate amount of all installments then matured shall not be deemed to be a waiver of the default then existing. No waiver by RAD or IBFAD of any default shall be deemed to be a waiver of any other subsequent default, nor shall any such waiver by RAD or IBFAD be deemed to be a continuing waiver. No delay or omission by RAD or IBFAD in exercising any right or power hereunder, or under any other documents executed by Franchisee as security for or in connection with the Obligations, shall impair any such right or power or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such right or power preclude other or further exercise thereof or the exercise of any other right or power of RAD or IBFAD hereunder or under such other document.

**E.** Except as otherwise provided herein, Franchisee waives notice of the creation, advance, increase, existence, extension, or renewal of, or of any indulgence with respect to, the Obligations; waives presentment, demand, notice of dishonor, and protest; waives notice of the amount of the Obligations outstanding at any time, notice of any change in financial condition of any person liable for the Obligations or any part thereof, notice of any event of default, notice of intent to accelerate and of acceleration, and all other notices with respect to the Obligations; and agrees that maturity of the Obligations and any part thereof may be accelerated, extended, or renewed one or more times by RAD or IBFAD in its discretion, without notice to Franchisee.

**F.** No renewal or extension of or any other indulgence with respect to the Obligations or any part thereof, no release of any security, no release of any person (including any maker, endorser, guarantor, or surety) liable on the Obligations, no delay in enforcement of payment, and no delay or omission or lack of diligence or care in exercising any right or power with respect to the Obligations or any security therefore or guaranty thereof or under this Agreement shall in any manner impair or affect the rights of RAD or IBFAD under the law, hereunder, or under any other agreement pertaining to the Collateral. RAD or IBFAD need not file suit or assert a claim for personal judgment against any person for any part of the Obligations or seek to realize upon any other security for the Obligations before foreclosing upon the Collateral for the purpose of paying the Obligations. Franchisee waives any right to the benefit of or to require or control application of any other security or proceeds thereof, and agrees that RAD or IBFAD shall have no duty or obligation to Franchisee to apply to the Obligations any such other security or proceeds thereof.

**G.** This Agreement shall be binding on Franchisee and Franchisee's heirs, executors, administrators, other legal representatives, successors, and assigns and shall inure to the benefit of RAD and IBFAD, their successors and assigns. If there be more than one operating principal of Franchisee, their obligations and agreements hereunder are joint and several and shall be binding upon their respective heirs, executors, administrators, other legal representatives, successors, and assigns, and delivery or other accounting of Collateral to any one or more of them shall discharge RAD and IBFAD of all liability therefor.

**H.** This Agreement shall not become effective until the Franchise Agreement is approved in writing by a corporate officer of IBFAD, and this Agreement is approved by a corporate officer of RAD, whereupon this Agreement shall be effective as of the day and year first above written.

**I.** All demands and notices required or permitted hereunder shall be given in the same manner as provided in the Franchise Agreement.

**J.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, such provision shall be fully severable, and this Credit and Security Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof and the remaining provisions of this Credit and Security Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or its severance from this Credit and Security Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Credit and Security Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, or enforceable.

**K. IN THE EVENT OF A DEFAULT HEREUNDER, IN ADDITION TO ALL OTHER REMEDIES AVAILABLE TO RAD OR IBFAD, EACH SHALL HAVE THE RIGHT TO ENTER UPON THE PREMISES WHERE THE COLLATERAL THAT IS INVENTORY IS LOCATED, TAKE POSSESSION OF SUCH COLLATERAL, AND REMOVE THE SAME WITH OR WITHOUT JUDICIAL PROCESS (IF SUCH TAKING WITHOUT JUDICIAL PROCESS CAN BE DONE REASONABLY AND WITHOUT BREACH OF THE PEACE), AND FRANCHISEE DOES HEREBY EXPRESSLY WAIVE ANY RIGHT TO ANY NOTICE, LEGAL PROCESS, OR JUDICIAL HEARING PRIOR TO SUCH TAKING OR POSSESSION BY RAD OR IBFAD. FRANCHISEE UNDERSTANDS THAT THE RIGHT TO PRIOR NOTICE AND HEARING IS A VALUABLE RIGHT AND AGREES TO THE WAIVER THEREOF AS A PART OF THE CONSIDERATION FOR AND AS AN INDUCEMENT TO RAD AND IBFAD TO EXTEND CREDIT NOW AND HEREAFTER TO FRANCHISEE. FRANCHISEE ACKNOWLEDGES RECEIPT OF A SIGNED COPY OF THIS AGREEMENT.**

**WITNESS:**

**Retail Acquisition & Development, Inc.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**Interstate Battery Franchising  
& Development, Inc.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:  
{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: **Signor**

## APPENDIX H

Dated: {Date}

### **INTERSTATE ALL BATTERY CENTER CONFIDENTIALITY AGREEMENT**

THIS AGREEMENT is made on {Date} (“Effective Date”), by and between Interstate Battery Franchising & Development, Inc., a Delaware corporation, with its principal place of business at 4301 121st Street, Urbandale, Iowa 50323 (“IBFAD”), and {Franchisee Name}, a {State of Inc} corporation, with its principal place of business at {Address} (“Applicant”).

#### **RECITALS:**

A. As a result of the expenditure of time, skill, effort and money, IBFAD has developed and owns a distinctive system (the “System”) relating to the development, establishment and operation of Interstate All Battery Centers (“Centers”).

B. In order to evaluate the possibility of entering into a franchise agreement with IBFAD to establish and operate a Center, Applicant and certain of its employees (“Employees”) desire to receive from IBFAD certain confidential business information including, but not limited to, the contents of the IBFAD operating and training manuals.

C. The parties desire that all confidential information concerning the Centers be kept in confidence, not be revealed to any third parties, and not be used by Applicant or its Employees other than as contemplated by this Agreement.

#### **1. Definition of Confidential Information**

As used in this Agreement, the term “Confidential Information” means any and all information that is disclosed to Applicant or Employees in connection with Applicant’s exploration of the Interstate All Battery Center franchise opportunity. Confidential Information includes, but is not limited to, information regarding the manner and methods of operating and promoting a Center, including the IBFAD operating and training manuals, information regarding the retail and commercial operations of IBFAD and its affiliates, and other information of a similar nature (whether or not reduced to writing or designated as confidential).

#### **2. Exclusion from Definition of Confidential Information**

The term “Confidential Information” does not include information that is now or hereafter becomes publicly known (other than by unauthorized disclosure, whether deliberate or inadvertent, by Applicant or Employees, or by any other person, firm or corporation affiliated with Applicant or Employees). As used in this Agreement, the phrase “publicly known” means readily accessible to the public in a written publication, and shall not include information which is available only by a substantial searching of the published literature, and information the substance of which must be pieced together from a number of different publications and sources. The burden of proving that information or skills and experience are not Confidential Information shall be on the party asserting such exclusion.

#### **3. Treatment of Confidential Information**

Applicant and Employees hereby acknowledge, understand and agree that the Confidential Information; (i) is the exclusive and confidential property of IBFAD or its affiliates and incorporates trade secrets and copyrights owned by them; (ii) gives IBFAD or its affiliates some competitive business

advantage or the opportunity of obtaining such advantage, the disclosure of which could be detrimental to the interests of IBFAD and its affiliates; and (iii) is not generally known by non-IBFAD personnel. Applicant and Employees shall at all times treat the Confidential Information in accordance with this Agreement.

#### 4. **Covenants of Applicant**

As a consequence of Applicant and Employees' acquisition or anticipated acquisition of Confidential Information, Applicant and Employees will occupy a position of trust and confidence with respect to IBFAD's affairs and business. In view of the foregoing, Applicant and Employees agree that it is reasonable and necessary that Applicant and Employees agree, while this Agreement is in effect:

**A. No Disclosure.** Not to disclose Confidential Information to any person or entity other than its accountant or attorney as necessary to evaluate the opportunity provided by IBFAD, and to protect the Confidential Information against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as Applicant and Employees use to protect Applicant's confidential information.

**B. No Use, Copying or Transfer.** Not to use, copy or transfer Confidential Information and to protect the Confidential Information against unauthorized use, copying or transfer using the same degree of care, but no less than a reasonable degree of care, as Applicant and Employees use to protect Applicant's confidential information. This prohibition against use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services which embody or are derived from Confidential Information.

These confidentiality provisions shall apply to all Confidential Information disclosed to Applicant or Employees by IBFAD prior to the date of this Agreement.

#### 5. **Return of Confidential Information**

Nothing in this Agreement obligates either party to enter into a franchise agreement for the operation of a Center. If, at any time, IBFAD determines that it does not wish for Applicant to become a franchisee, or Applicant determines that it does not wish to become a franchisee, or if IBFAD requests, at any time and for any reason, that Applicant and Employees do so, Applicant and Employees agree to return immediately any and all Confidential Information, including any copies made of those materials, to IBFAD at its principal place of business. Further, Applicant and Employees agree to remove and destroy any portion of the Confidential Information that has been incorporated into other materials.

#### 6. **Miscellaneous**

**A. Arbitration and Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Texas. Any dispute or controversy between the parties in connection with this Agreement shall be submitted for binding arbitration pursuant to the then-prevailing Comprehensive Arbitration Rules and Procedures of J•A•M•S/ENDISPUTE or its successor ("JAMS") and shall be conducted in Dallas, Texas at a location designated by IBFAD.

**B. Injunctive Relief.** Notwithstanding the foregoing, it is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by Applicant or Employees of this Agreement and that any such breach by Applicant or Employees will cause IBFAD and its affiliates irreparable injury. Accordingly, Applicant and Employees agree that IBFAD and its affiliates shall be entitled, without waiving any additional rights or remedies otherwise available to IBFAD at law or in equity or by statute, to injunctive and other equitable relief in the event of a breach or intended or threatened breach by Applicant or Employees.

C. Severability. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.

D. Waiver. No waiver by IBFAD of any breach by Applicant or Employees of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

E. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to Applicant and Employees' confidentiality, nondisclosure and non-competition obligations until such time as the parties enter into a Franchise Agreement.

~~IN WITNESS WHEREOF, the~~ The parties hereto have executed this Agreement as of the date set forth above.

**Interstate Battery Franchising  
& Development, Inc.**

**APPLICANT:  
{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

By: \_\_\_\_\_  
Name/Title: **Signor**

**{Address}**

**EMPLOYEES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

**APPENDIX I**

**ASSIGNMENT OF TELEPHONE NUMBER(S)**

This Assignment relates to:

Name of Franchisee: **{Franchisee Name}**, a \_\_\_\_\_

Address of Center: \_\_\_\_\_

Telephone Number(s): (\_\_\_\_) \_\_\_\_\_; (\_\_\_\_) \_\_\_\_\_; (\_\_\_\_) \_\_\_\_\_

For valuable consideration, the Franchisee identified above (“Franchisee”) assigns and transfers to Interstate Battery Franchising & Development, Inc. (“Franchisor”) all of Franchisee’s rights and interests in each and all of the telephone numbers listed above (the “Numbers”). Such assignment shall be effective upon any termination, expiration or transfer of the Franchise Agreement dated **{Date}**, between Franchisee and Franchisor (the “Franchise Agreement”).

Franchisee authorizes Franchisor to file this Assignment with the telephone company that issued the Numbers upon any termination, expiration or transfer of the Franchise Agreement for the purposes of establishing Franchisor’s claim to and right to designate the user of the Numbers.

Franchisee irrevocably constitutes and appoints Franchisor as Franchisee’s agent and attorney-in-fact for the purposes of (i) signing and delivering any Transfer of Service Agreement or comparable document the telephone company requires to transfer the rights in the Numbers from Franchisee to Franchisor or its designee, and (ii) canceling and revoking any call-forwarding or similar instructions Franchisee has issued to the telephone company with respect to any of the Numbers, with full power to sign Franchisee’s name and otherwise to act in Franchisee’s name, place and stead.

Franchisee agrees to reimburse Franchisor the full amount of any local service and long distance charges the telephone company requires that Franchisor paid to obtain the Numbers, together with interest as provided in the Franchise Agreement.

Franchisee represents and warrants to Franchisor that Franchisee obtained the Numbers in his own name, and that Franchisee is the person of record the telephone company shall recognize as registered user or “owner” of the Numbers.

**FRANCHISEE:**  
**{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: **Signor**

## APPENDIX J

### SBA ADDENDUM

THIS ADDENDUM (the “Addendum”) is made and entered into on **{Date}**, by Interstate Battery Franchising & Development, Inc., a Delaware corporation, located at 12770 Merit Drive, Suite 400, Dallas, Texas 75251 (“Franchisor”), and **{Franchisee Name}**, located at **{Address}** (“Franchisee”).

**Recitals.** Franchisor and Franchisee entered into a Franchise Agreement on **{Date}**, (“Franchise Agreement”). The Franchisee agreed among other things to operate and maintain a franchise located at \_\_\_\_\_ designated by Franchisor as Interstate All Battery Center of \_\_\_\_\_ (the “Center”). Franchisee has obtained from a lender a loan (“Loan”) in which funding is provided with the assistance of the United States Small Business Administration (“SBA”). SBA requires the execution of this Addendum as a condition for obtaining the SBA assisted financing.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

- Under Section 22.G. of the franchise agreement the franchisor will not become a partial owner of the business
- If the franchisor must operate the business under Section 22.E. of the Franchise Agreement, Franchisor will operate the business for a ninety (90) day renewable term, renewable as necessary for up to one year and the Franchisor will periodically discuss the status with the franchisee or its heirs.
- Franchisor will not unreasonably withhold, delay or condition its consent to any proposed transfer or assignment by Franchisee which requires Franchisor’s consent under Section 22.B. of the Franchise Agreement.
- Under Section 16.C. of the franchise agreement any SBA financed franchise will be granted a lien on the business assets of the franchisee as required in its loan authorization.
- Notwithstanding anything to the contrary in Section 10 of the Franchise Agreement, the franchisor may designate one or more vendors for the call center services, provided, however, that the franchisee has the right to select its own vendor to use in place of any vendor selected by the franchisor, so long as the franchisor determines whether the franchisee’s vendor meets its standards. The franchisor’s approval in this matter will not be unreasonably withheld.
- This Addendum automatically terminates on the earliest to occur of the following: (i) a Termination occurs under the Franchise Agreement; (ii) the Loan is paid; or (iii) SBA no longer has any interest in the Loan.

~~IN WITNESS WHEREOF, the~~ The parties hereto have duly signed and executed this Addendum as of the day and year first above written.

**FRANCHISOR:**  
**Interstate Battery Franchising**  
**& Development, Inc.**

**FRANCHISEE:**  
**{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

By: \_\_\_\_\_  
Name/Title: **Signor**

**AMENDMENT TO INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT  
REQUIRED FOR ILLINOIS FRANCHISEES**

This Amendment to the Interstate All Battery Center Franchise Agreement dated \_\_\_\_\_, 20\_\_ between Interstate Battery Franchising & Development, Inc. (“Franchisor”) and {Franchisee Name} (“Franchisee”) is entered into simultaneously with the execution of the Franchise Agreement.

1. The following sentence is added at the end of Sections 4.B.(2)(E) and 22.B.(5):

The foregoing release does not apply to any claims that the franchisee may have under the Illinois Franchise Disclosure Act.

2. The following paragraph is added at the end of Section 5.A.:

In the State of Illinois, the Illinois Attorney General has imposed an escrow condition on Franchisor. Franchisee shall pay this fee to an Escrow Agent that Franchisor designates. The Escrow Agent will hold the fee in escrow until the Center opens. Upon the opening of the Center, the Escrow Agent will release the escrowed funds to Franchisor. Franchisee agrees to execute all documentation reasonably requested by Franchisor or the Escrow Agent to disburse the escrowed funds as soon as practicable after the Center opens. Franchisee’s failure promptly to execute such documentation shall be a default under and a material breach of this Agreement.

3. The following sentence is added at the end of Sections 31, 38, 39, and 40:

Section 41 of the Illinois Franchise Disclosure Act states that any condition, stipulation, or provision purporting to bind any person to waive compliance with any provision of the Act is void.

4. The following sentence is added at the end of Section 34:

The second sentence of this Section 34 does not apply to any claim arising under the Illinois Franchise Disclosure Act of 1987.

5. The following sentence is added at the end of Section 36:

Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement which designates jurisdiction or venue for litigation in a forum outside of Illinois is void with respect to any cause of action which otherwise is enforceable in Illinois.

6. The following sentence is added at the end of Section 37:

Any claims arising under the Illinois Franchise Disclosure Act of 1987 shall be commenced within the periods of limitation established in Section 27 of the Act.

7. Section 45.G. is deleted and replaced with the following:

Franchisee acknowledges receipt of Franchisor’s Franchise Disclosure Document and a copy of all proposed agreements relating to the sale of the franchise at least 14 days prior to execution of this Agreement or payment of monies to Franchisor.

8. The Illinois Franchise Disclosure Act shall govern the Franchise Agreement with respect to Illinois franchisees. However, this statement shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this Addendum.
9. Except as expressly modified by this Amendment, the Interstate All Battery Center Franchise Agreement remains unmodified and in full force and effect.

~~IN WITNESS WHEREOF, the~~The parties have duly executed, sealed and delivered this Amendment as of the day and year first above written.

**WITNESS:**

**INTERSTATE BATTERY FRANCHISING  
& DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:  
{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**AMENDMENT TO INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT  
REQUIRED FOR MARYLAND FRANCHISEES**

This Amendment to the Interstate All Battery Center Franchise Agreement dated {Date}, between Interstate Battery Franchising & Development, Inc. (“Franchisor”) and {Franchisee Name} (“Franchisee”) is entered into simultaneously with the execution of the Franchise Agreement.

1. The following sentence is added to the end of Sections 4.B.(2)(E) and 22.B.(5):

According to COMAR 02.02.08.16L, the general release required as a condition of renewal, sale, or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

2. The following sentence is added to the end of Section 36:

Any choice of forum for litigation is subject to your right to bring an action under the Maryland Franchise Registration and Disclosure Law in Maryland.

3. The following sentence is added to the end of Section 37:

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.

4. The following sentence is added to the end of Section 45:

~~Notwithstanding anything to the contrary contained in this Agreement, the representations and acknowledgments~~ All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to, ~~and nor~~ shall ~~not, they~~ act as a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

5. Except as expressly modified by this Amendment, the Interstate All Battery Center Franchise Agreement remains unmodified and in full force and effect.

The parties have duly executed, sealed and delivered this Amendment as of the day and year first above written.

**WITNESS:**

**INTERSTATE BATTERY FRANCHISING  
& DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:  
{Franchisee Name}**

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_



**AMENDMENT TO INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT  
REQUIRED FOR MINNESOTA FRANCHISEES**

This Amendment to the Interstate All Battery Center Franchise Agreement dated {Date}, between Interstate Battery Franchising & Development, Inc. (“IBFAD”) and {Franchisee Name} (“Franchisee”) is entered into simultaneously with the execution of the Franchise Agreement.

1. The following is added to Sections 4.B.(2)(E) and 22.B.(5) of the Franchise Agreement:

This section does not apply to claims governed by Minnesota Statute §§ 80C.01 - 80C.22.

2. The following is added to Section 4.B.(3) of the Franchise Agreement:

With respect to franchises governed by Minnesota law, IBFAD 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 180 days’ notice for non-renewal of the franchise agreement.

3. The following paragraph is added to the end of Sections 5.A., 5.C. and 11.E. and inserted after the first paragraph of Section 16.E.:

In the State of Minnesota, the Minnesota Commissioner of Commerce has imposed an escrow condition on Franchisor. If Franchisee is required to pay this fee or invoice before the Center opens, Franchisee shall pay the funds to Franchisor’s Escrow Agent. The Escrow Agent will hold the funds in escrow until the Center opens. Upon the opening of the Center, the Escrow Agent will release the escrowed funds to Franchisor upon authorization from the Commissioner. Franchisee agrees to execute all documentation reasonably requested by Franchisor or the Escrow Agent to disburse the escrowed funds as soon as practicable after the Center opens. Franchisee’s failure promptly to execute such documentation shall be a default under and a material breach of this Agreement.

4. The following is added to the end of the third paragraph of Section 18 of the Franchise Agreement:

IBFAD agrees to protect Franchisee’s right to use the Proprietary Marks or indemnify Franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the Proprietary Marks.

5. The following is added to Section 24.B.(1) of the Franchise Agreement:

With respect to franchises governed by Minnesota law, IBFAD 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).

6. The following is added to Section 36 of the Franchise Agreement:

Minn. Stat. § 80C.21 and Minn. Rule 2860.4400J prohibit IBFAD from requiring litigation to be conducted outside Minnesota. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of Franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or Franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

7. The following sentence is added to the end of Section 37:  
  
Any claims arising under the Minnesota law must be brought within 3 years after the grant of the franchise.
8. Section 39 is deleted.
9. The words “shall be entitled to” in the second sentence of Section 42 of the Franchise Agreement are deleted and replaced with “may seek.”
10. Except as expressly modified by this Amendment, the IBFAD Franchise Agreement remains unmodified and in full force and effect.

The parties have duly executed, sealed and delivered this Amendment as of the day and year first above written.

**WITNESS:**

**INTERSTATE BATTERY FRANCHISING  
& DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:**  
~~{FRANCHISEE NAME}~~:  
{Franchisee Name}

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**AMENDMENT TO INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT  
REQUIRED FOR NORTH DAKOTA FRANCHISEES**

This Amendment to the Interstate All Battery Center Franchise Agreement dated {Date}, between Interstate Battery Franchising & Development, Inc. ("IBFAD") and {Franchisee Name} ("Franchisee") is entered into simultaneously with the execution of the Franchise Agreement.

1. The following sentence is added to the end of Section 4.B.(2)(E):  
The foregoing release does not apply to any claims that the franchisee may have under the North Dakota Franchise Investment Law.
2. The following sentence is added to the end of Section 23.C.:  
  
Covenants not to compete will be subject to Section 9-08-06, N.D.C.C.
3. Sections 34 and 36 of the Franchise Agreement are each amended to add the following sentence:  
  
Pursuant to the North Dakota Franchise Investment Law, any provision requiring Franchisee to consent to the jurisdiction of courts outside North Dakota or to consent to the application of laws of a state other than North Dakota is void.
4. The last sentence of Section 35.B.(1) of the Franchise Agreement shall be deleted and replaced with the following sentence:  
  
The location site of arbitration or mediation shall be agreeable to all parties and may not be remote from the franchisee's place of business.
5. The second sentence of Section 35.B.(4) is deleted.
6. Sections 39 and 40 of the Franchise Agreement are deleted.
7. Except as expressly modified by this Amendment, the Interstate All Battery Center Franchise Agreement remains unmodified and in full force and effect.

The parties have duly executed, sealed and delivered this Amendment as of the day and year first above written.

**WITNESS:**

**INTERSTATE BATTERY FRANCHISING  
& DEVELOPMENT, INC.**

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

Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:**  
~~{FRANCHISEE NAME}:~~  
{Franchisee Name}

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

Name/Title: \_\_\_\_\_



**AMENDMENT TO INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT  
REQUIRED FOR RHODE ISLAND FRANCHISEES**

This Amendment to the Interstate All Battery Center Franchise Agreement dated {Date}, between Interstate Battery Franchising & Development, Inc. ("IBFAD") and {Franchisee Name} ("Franchisee") is entered into simultaneously with the execution of the Franchise Agreement.

1. Any provision in the Franchise Agreement which designates the governing law as that of any state other than the State of Rhode Island is deleted from Franchise Agreements issued in the State of Rhode Island.
2. Pursuant to Section 19-28.1.-14 of the Rhode Island Franchise Investment Act, a provision restricting jurisdiction or venue for litigation to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under the Act.
3. To the extent this Amendment shall be deemed to be inconsistent with any terms or conditions of the Franchise Agreement or Exhibits or Attachments thereto, the terms of this Amendment shall govern.
4. Except as expressly modified by this Amendment, the Interstate All Battery Center Franchise Agreement remains unmodified and in full force and effect.

The parties have duly executed, sealed and delivered this Amendment as of the day and year first above written.

**WITNESS:**

**INTERSTATE BATTERY FRANCHISING  
& DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:**  
~~{FRANCHISEE NAME}:~~  
{Franchisee Name}

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**AMENDMENT TO INTERSTATE ALL BATTERY CENTER  
FRANCHISE AGREEMENT  
REQUIRED FOR WASHINGTON FRANCHISEES**

This Amendment to the Interstate All Battery Center Franchise Agreement dated {Date}, between Interstate Battery Franchising & Development, Inc. (“IBFAD”) and {Franchisee Name} (“Franchisee”) is entered into simultaneously with the execution of the Franchise Agreement.

1. The Washington Franchise Investment Protection Act, RCW 19.100.180 (“Act”), may supersede the Franchise Agreement in your relationship with IBFAD, including in the areas of termination and renewal of your Interstate All Battery Center Franchise Agreement. There also may be court decisions which may supersede the Franchise Agreement in your relationship with IBFAD, including in the areas of termination and renewal of your franchise.
2. In the event of a conflict of laws between the Act and the state law chosen in the Interstate All Battery Center Franchise Agreement, the provisions of the Act shall prevail.
3. A release or waiver of rights executed by Franchisee shall not include rights under the Act except when executed pursuant to a negotiated settlement after the Interstate All Battery Center Franchise Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.
4. Transfer fees are collectable to the extent that they reflect IBFAD’s reasonable estimated or actual costs in effecting a transfer.
5. Washington requires IBFAD to state that in any arbitration involving an Interstate All Battery Center purchased in Washington, the arbitration site will be either in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator. However, by including this statement, IBFAD does not waive its right to challenge this requirement of Washington law under the Federal Arbitration Act.

6. Except as expressly modified by this Amendment, the Interstate All Battery Franchise Agreement remains unmodified and in full force and effect.

The parties have duly executed, sealed and delivered this Amendment as of the day and year first above written.

**WITNESS:**

**INTERSTATE BATTERY FRANCHISING  
& DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Name/Title: Michael Tapp, President

**WITNESS:**

**FRANCHISEE:**  
**{FRANCHISEE-NAME};**  
{Franchisee Name}

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

Document comparison by Workshare Compare on Wednesday, July 02, 2014  
4:43:06 PM

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Description	#1641557v26<DAL> - IBF - 2014 Franchise Agreement - FINAL July 2, 2014
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