

**VIRTUAL BRANDS, INC.**

**FRANCHISE DISCLOSURE DOCUMENT**

**WING BOSS**

## FRANCHISE DISCLOSURE DOCUMENT

### WING BOSS

VIRTUAL BRANDS, INC.  
A TEXAS CORPORATION  
18583 N. Dallas Parkway, Suite 120  
DALLAS, TEXAS 75287  
(972) 248-9899  
[WWW.WINGBOSS.COM](http://WWW.WINGBOSS.COM)

The franchise offered is to operate a business that, either virtually (from a ghost kitchen venue) or from a branded restaurant, offers chicken wings, chicken tenders and related menu items under the “Wing Boss” name.

The total investment necessary to begin operation of a Wing Boss franchised business ranges from: \$38,733 - \$97,224 for ghost kitchen venues that only offer delivery service virtually through third-party delivery vendors and catering services through one of our websites (“Ghost Kitchens”); \$102,033 - \$218,924 for delivery-carryout restaurants that only offer delivery and carry-out items (“Delivery-Carryout Restaurants”); \$117,483 to \$298,724 for restaurants built in non-traditional venues such as food courts and convenience stores (“Non-Traditional Restaurants”); and \$273,033 to \$464,124 for traditional restaurants built in a stand-alone buildings or retail centers (“Traditional Restaurants”). This includes \$27,475 to \$49,812 that must be paid to us or our affiliate. If you enter into a Development Agreement, you must pay us \$25,000 to \$80,000 as a development fee (which assumes, on the low end, 2 restaurants that are not Traditional Restaurants and, on the high end, 5 restaurants that are Traditional Restaurants).

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

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact our franchise development office at (972) 248-9899 or Franchise Development at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287.

The terms of your contract will govern your franchise relationship. Do not rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)", which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission ("FTC"). You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit a public library for other sources of information on franchising.

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

ISSUANCE DATE: October 4, 2021

## How to Use This Franchise Disclosure Document

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

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

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

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

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

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

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

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

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

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

### **Some States Require Registration**

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

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

## Special Risks to Consider About *This* Franchise

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

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

**Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.

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

**THE FOLLOWING PROVISIONS APPLY ONLY TO TRANSACTIONS GOVERNED BY THE  
MICHIGAN FRANCHISE INVESTMENT LAW**

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
  - (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
  - (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
  - (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, the franchisor shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENFORCEMENT BY THE ATTORNEY GENERAL.

Any questions regarding this notice should be directed to:

State of Michigan Consumer Protection Division  
Attn: Franchise  
670 G. Mennen Williams Building  
525 West Ottawa  
Lansing, Michigan 48933  
(517) 373-7117

Despite subparagraph (f) above, we intend to enforce fully the provisions of the arbitration section contained in our Franchise Agreement. We believe that subparagraph (f) is unconstitutional and cannot preclude us from enforcing our arbitration section. You acknowledge that we will seek to enforce that section as written.

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

The Franchisor is Virtual Brands, Inc. To simplify the language in this Disclosure Document we refer to the Franchisor as "we" and "our." We refer to the person or persons interested in buying the franchise as "you" or "your" and, if such person is a partnership, corporation, limited liability company or other entity, it includes persons that own equity interests in such entity.

**The Franchisor and its Affiliates**

We were formed on November 24, 2020 as a Texas corporation. Our principal place of business is 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287. We do business under our company name and the names "Wing Boss" and "Big Deal Burger." Our parent company is Dickey's Capital Group, Inc. ("DCG"), a Delaware corporation, whose principal business address is 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287. Other than DCG, we do not have any parent companies that are required to be disclosed in this Item. We have no predecessors. The names and addresses of our agents for service of process appear in **Exhibit E** to this Disclosure Document.

We began offering franchised restaurant businesses that offer food items under the "Wing Boss" name ("Restaurants") under this Disclosure Document in December 2020. We have offered franchised restaurant businesses that offer hamburgers, sandwiches and related menu items under the "Big Deal Burger" name ("Big Deal Burger Restaurants") under a separate disclosure document since December 2020. As of May 31, 2021, we had franchised 55 restaurants (38 of which were Restaurants and 17 of which were Big Deal Burger Restaurants).

Except for our affiliate, Dickey's Barbecue Pit, Inc. ("DBP"), which has operated 1 Big Deal Burger Restaurant in a single-brand format (located in Dallas, Texas) and 3 Restaurants in a co-brand format with Big Deal Burger Restaurants (located in Dallas, Texas, Corsicana, Texas and McKinney, Texas) since October 2020 and 1 Wing Boss Restaurant in a single-brand format (located in Addison, Texas) since September 2021, neither we nor any of our affiliates currently operate any Restaurants or Big Deal Burger Restaurants. The 1 single-brand Big Deal Burger Restaurant and 3 Restaurants that are co-branded with Big Deal Burger Restaurants DBP operates are Ghost Kitchens.

In March 2021, we entered into a restaurant services agreement (the "Restaurant Services Agreement") with Combo Kitchen LLC ("Combo Kitchen") under which we granted Combo Kitchen a license to offer and franchise to others the right to offer "Wing Boss," "Big Deal Burger" and "Dickey's Barbecue Pit" (see description below) menu items in restaurants operated under the "Combo Kitchen" brand. As of May 31, 2021, there were 4 restaurants franchised by Combo Kitchen that offer "Wing Boss" menu items (in each of Arizona, Indiana, New Jersey and Oklahoma) and 1 restaurant franchised by Combo Kitchen that offers Dickey's Barbecue Pit menu items in Georgia.

Other than as described above, we have neither conducted business in any other line of business nor offered franchises in any other line of business.

Our affiliate, Dickey's Barbecue Restaurants, Inc. ("DBRI"), has offered franchises for businesses that, either virtually (from a ghost kitchen venue) or from a branded restaurant, offer food items under the "Dickey's Barbecue Pit" name ("Dickey's Restaurants") under a separate disclosure document since March, 1994. As of May 31, 2021, there were 476 franchised Dickey's Restaurants and 548 Restaurants, Big Deal Burger Restaurants and Dickey's Restaurants in total. Although neither we nor DBRI operate any Dickey's Restaurants, DBP has operated Dickey's Restaurants since 1941, 2006, 2008, 2018, 2020 and 2021. Dickey's Love Field JV, LLC ("Love Field JV"), a joint venture between DBP and a franchisee, has

operated a Dickey's Restaurant since 2013. Dickey's DFW Terminal C, LLC ("DFW JV"), a joint venture between DBP and a franchisee, has operated a Dickey's Restaurant since 2019. Dickey's DFW E Satellite, LLC ("DFW E Satellite"), a joint venture between DBP and a franchisee, has operated a Dickey's Restaurant since 2021. As of the issuance date of this Disclosure Document, DBP, Love Field JV, DFW JV, and DFW E Satellite operate seven Dickey's Restaurants in the Dallas-Fort Worth, Texas metropolitan area, one Dickey's Restaurant in Corsicana, Texas and one Dickey's Restaurant in the Oklahoma City, Oklahoma area.

We require you to execute a Smokestack Customer Agreement (attached as **Exhibit O**) with our affiliate, Spark Intelligence, Inc., a Texas corporation ("Spark"), for a subscription which allows you to access the Smokestack sales data collection and reporting system. We also require you to execute a Spark Point-of-Sale Purchase and On-Line Services User Agreement (attached as **Exhibit P**) with Spark, which includes a purchase order and terms and conditions for use of the point of sale system, and a subscription which allows you to access the Spark Online Ordering System. Spark's principal place of business is 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287. Spark has never operated a business similar to a Restaurant or offered franchises in any line of business.

Our affiliate, Wycliff Douglas Foods, Inc., a Texas corporation ("Wycliff"), sells certain paper and food products that are utilized in the operation of Restaurants to suppliers who resell them to franchisees. Wycliff's principal place of business is 12770 Perimeter Road, Suite A-100, Dallas, Texas 75228. Wycliff has never operated a business similar to a Restaurant or offered franchises in any line of business.

Our affiliate, Stanford Sonoma Corp., a Texas corporation ("Stanford Sonoma"), is an approved supplier to franchisees of certain fixtures, furnishings, and interior design furnishings used in the operation of Restaurants. Stanford Sonoma's principal place of business is 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287. Stanford Sonoma has never operated a business similar to a Restaurant or offered franchises in any line of business.

Other than DBRI, Spark, Wycliff, and Stanford Sonoma, we do not have any affiliates which provide products or services to franchisees or offer franchises in any line of business.

### **The Business**

We offer the opportunity to operate a Restaurant using the comprehensive and unique business format system applicable to Restaurants (the "System") under the franchise agreement you sign with us. The Restaurant you will operate will be referred to in this Disclosure Document as your "Franchised Restaurant." A Restaurant specializes in offering chicken wings, chicken tenders, and related food and beverage items. The System includes rights to use certain trade names, service marks, trademarks, symbols, logos, names and emblems, and indicia of origin we may develop to identify for the public the source of services and products marketed under these marks and under the System and representing the System's high standards of quality, appearance, and service (collectively, the "Proprietary Marks"); as well as distinctive exterior and interior design, décor, color schemes, furnishings and equipment for Restaurant premises; confidential recipes, procedures, specifications and formulas for preparing food and beverage products and for operations; inventory and management control methods; initial and ongoing training and seminars; our Operations Manual and such other manuals, forms, written materials and directives as we designate for use in the Restaurant (the "Manuals"); and advertising and promotional services and assistance. We acquired our right to use and sublicense to franchisees the Proprietary Marks under a license agreement with DBP, our affiliate (see Item 13). Restaurants utilize modern cooking technology and several proprietary concepts and recipes. We believe that our distinctive offerings of freshly prepared food using high quality ingredients

and proprietary recipes, served quickly at affordable prices and in comfortable, friendly settings, differentiate the Restaurants from other similar restaurants.

We offer franchises for the following types of Restaurants: (i) Traditional Restaurants, (ii) Non-Traditional Restaurants, including Mobile Unit Franchises, (iii) Delivery-Carryout Restaurants, and (iv) Ghost Kitchens. Traditional Restaurants, Non-Traditional Restaurants and Delivery-Carryout Restaurants offer dining where the customer places and picks up his/her order at the register. Unless otherwise specified in this Disclosure Document, all references to “Restaurants” include Traditional Restaurants, Non-Traditional Restaurants, Delivery-Carryout Restaurants and Ghost Kitchens.

Traditional Restaurants are generally located in suburban shopping centers or stand-alone buildings located on busy streets and typically are 1,500 to 2,200 square feet, which includes a dining area for customers.

Non-Traditional Restaurants are located in "non-traditional" venues such as food courts, convenience stores, sports stadiums, airports, food trucks, large big-box retail outlets (such as a Walmart retail store) or within institutional settings where the Restaurant operator does not control access or hours of operation. Non-Traditional Restaurants are typically 400 to 1,000 square feet. Non-Traditional Restaurants can also operate from specially-designed motor vehicles containing both kitchen and serving facilities (“Mobile Unit Franchises”). Unless otherwise specified in this Disclosure Document, all references to “Non-Traditional Restaurants” include Mobile Unit Franchises.

Delivery-Carryout Restaurants are Restaurants that only offer delivery and carryout orders. Ghost Kitchens only offer delivery service virtually through third-party delivery vendors we authorize and catering services through one of our websites. Ghost Kitchens may operate from within commissary kitchens (“Commissary Ghost Kitchens”) or from within the kitchens of restaurants that operate under brands owned by us, one of our affiliates, or unrelated third-parties (“Restaurant Ghost Kitchens”). If you operate a Restaurant Ghost Kitchen from within the kitchen of a restaurant that operates under a brand owned by us or one of our affiliates, then in addition to the Franchise Agreement, you must enter into a franchise agreement for the restaurant in which the Restaurant Ghost Kitchen will operate. The franchise offer of the restaurant in which the Restaurant Ghost Kitchen will operate will be made under a separate disclosure document. All references to the term “Ghost Kitchens” in this Disclosure Document mean Commissary Ghost Kitchens and Restaurant Ghost Kitchens, unless we specify otherwise. Both Delivery-Carryout Restaurants and Commissary Ghost Kitchens are typically 1,000 to 1,300 square feet, while the square footage of Restaurant Ghost Kitchens varies depending on the size of the existing restaurants’ kitchens. Neither Delivery-Carryout Restaurants nor Ghost Kitchens have dining areas for customers.

Non-traditional franchises, including Non-Traditional Restaurants, Mobile Unit Franchises, Delivery-Carryout Restaurants and Ghost Kitchens operate under the Franchise Agreement, except as amended by the following: (i) for Non-Traditional Restaurants, the Non-Traditional Addendum attached as **Exhibit J**, (ii) for Mobile Unit Franchises, the Non-Traditional Addendum attached as **Exhibit J** and the Mobile Unit Rider attached as **Exhibit K**; (iii) for Delivery-Carryout Restaurants, the Delivery-Carryout Addendum attached as **Exhibit L**, and (iv) for Ghost Kitchens, the Ghost Kitchen Addendum attached as **Exhibit M**.

If you own and operate a Traditional Restaurant, we and our affiliates may operate, license, or grant a franchise to operate, a Non-Traditional Restaurant (including a Mobile Unit Franchise), Delivery-Carryout Restaurant or Ghost Kitchen within the Assigned Area or Primary Area. Additionally, if you own and operate a Non-Traditional Restaurant (including a Mobile Unit Franchise), Delivery Carry-Out Restaurant or Ghost Kitchen, we and our affiliates may operate, license, or grant a franchise to operate, a Traditional Restaurant within the Assigned Area or Primary Area (see Item 12).

You may operate a Restaurant as the only restaurant in a facility, or you may operate a Restaurant in the same facility as one or more other restaurant concepts that we or one of our affiliates franchises (“Co-Brand Restaurant”). The franchise offer of each of the other restaurant concepts will be made under a separate disclosure document. If you purchase a Co-Brand Restaurant, then in addition to the Franchise Agreement, you must enter into the Co-Brand Addendum attached as **Exhibit N** and a franchise agreement for each of the other restaurant concepts. Unless otherwise specified in this Disclosure Document, all references to “Restaurants,” “Traditional Restaurants,” “Non-Traditional Restaurants,” “Delivery-Carryout Restaurants” and “Ghost Kitchens” include the Restaurants operated as Co-Brand Restaurants.

If you are considering opening more than one Restaurant, we may offer you the opportunity to sign a Development Agreement covering a defined area for development and specifying the number of Restaurants to be developed and opened according to a specific development schedule. The "developer" must sign the then current form of Franchise Agreement, which may differ from the Franchise Agreement attached as **Exhibit A**, and pay an initial fee for each Restaurant opened under the development schedule. In each case the candidate must demonstrate to us that the resources necessary for Restaurant development in the desired geographic area are immediately available.

When you sign a Franchise Agreement you must also sign our then current form of Payment Services Agreement under which you authorize us to debit funds from your designated bank account to pay on your behalf any ongoing payments due to (i) your landlord for rent under a lease agreement for the premises of your Franchised Restaurant; and, (ii) your utility providers for utility services at your Franchised Restaurant, including electricity, natural gas, sewage and sanitation and water. The current form of Payment Services Agreement is attached as **Exhibit Q**.

The Franchise Agreement and Development Agreement are each referred to in this Disclosure Document as an "Agreement."

You may elect to purchase an existing Restaurant from a franchisee, a third party or one of our Affiliates, including in circumstances where the Restaurant has been closed for some period of time. The terms of purchase and the transition of asset ownership and management of the Restaurant will vary from the transactions described in this Disclosure Document. We may, in our sole discretion and when business circumstances warrant, facilitate such a transaction by modifying or waiving certain terms and conditions of the Franchise Agreement for the transaction. The seller of the Restaurant and not the franchisor is solely responsible for the terms, conditions, representations and warranties associated with the purchase and sale of the Restaurant, and we do not act as a broker or reseller of the Restaurant.

### **Market and Competition**

The market for restaurants featuring chicken wings, chicken tenders, and related items is highly competitive and well developed. There are many single location restaurants and restaurants that are a part of regional and national restaurant systems which feature menu items similar to the menu items we offer under the System, although we believe we have a unique format and presentation in the restaurant segment. You will also compete with other fast casual and quick service restaurants that serve customers at a counter. Competition for qualified management and supervisors, skilled labor and unskilled labor for the restaurant industry is significant, which may cause labor costs to be higher than average. The supply of suitable restaurant space for lease in suitable locations is limited and is subject to increasing demand from other restaurant concepts and non-restaurant retailers.

## **Industry Regulation**

The restaurant industry is heavily regulated. In addition to the laws, rules and regulations that apply to businesses generally, all Restaurants must comply with federal, state and local laws applicable to the operation and licensing of a restaurant business, including obtaining truth in menu and labeling laws, health and safety permits, restaurant inspections and approvals by municipal, county or state health departments that regulate food service preparation, handling, storage and sales, delivery, and food service operations generally. Your Franchised Restaurant must also meet applicable municipal, county, state and federal building codes and accessibility codes. You should consider these laws and regulations when evaluating your purchase of a franchise.

The U.S. Food and Drug Administration, the U.S. Department of Agriculture and state and local health departments administer and enforce regulations that govern food preparation and service and restaurant sanitary conditions. State and local agencies inspect restaurants to ensure that they comply with these laws and regulations.

Restaurants operate on-premises meat smokers to prepare certain protein menu items. The Federal Clean Air Act and various state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide and particulate matters, including caps on emissions from commercial food preparation. Franchisees may need to install and maintain emission control, scrubber, and ventilation equipment to comply with certain laws, comply with emission restrictions in space leases, or to prevent smoke infiltration to neighboring tenants.

Some state and local governments have adopted, or are considering, proposals that would regulate indoor air quality, including the limitation of smoking tobacco products in public places such as restaurants. All Restaurants are non-smoking under our System.

The Payment Card Industry Data Security Standard ("PCI") requires that all companies that process, store, or transmit credit or debit card information maintain a secure environment. PCI applies to all organizations or merchants, regardless of size or number of transactions, that accepts, transmits or stores any cardholder data. Franchisees must also be sure to comply with applicable state and federal laws regulating the privacy and security of sensitive consumer and employee information. You can contact the FTC at (202) 326-2222 or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

## **ITEM 2 BUSINESS EXPERIENCE**

### **Director/Chairman: Roland R. Dickey**

Roland R. Dickey has served as our Chairman of the Board and Director since our formation in November 2020. Mr. Dickey has also served as DBRI's Chairman of the Board and Director since March 1994, and DCG's Chairman of the Board and Director since May 2016. All of these positions are and were held in Dallas, Texas.

### **Director, President, Secretary, and Treasurer: Roland R. Dickey, Jr.**

Roland Dickey, Jr., son of Roland R. Dickey, has served as our President, Secretary, Treasurer and one of our Directors since our formation in November 2020. Mr. Dickey, Jr. has also served as one of DBRI's Directors since June 2016, and as DBRI's Secretary and Treasurer since May 2014. Mr. Dickey, Jr., has also served as Chief Executive Officer, President, and Secretary of DCG since May 2016. Since August 2017, Mr. Dickey, Jr. has served as Director, Vice President, and Secretary of Stanford Sonoma. From

May 2011 until November 2016, Mr. Dickey, Jr. served as DBRI's Chief Executive Officer, and he served as DBRI's President from February 2006 until November 2016. All of these positions are and were held in Dallas, Texas.

Director: Cullen Dickey

Cullen Dickey, son of Roland R. Dickey, has served as one of our Directors since our formation in November 2020. Mr. Dickey has also served as one of DBRI's Directors since June 2016. Since August 2017, Mr. Dickey has served as a Director of Stanford Sonoma. Mr. Dickey has served as a Director of DCG since May 2016. He has been a self-employed real estate agent since October 2002. All of these positions are held in Dallas, Texas.

Director: Maurine Dickey

Maurine Dickey, wife of Roland R. Dickey, has served as one of our Directors since our formation in November 2020. Ms. Dickey has also served as one of DBRI's Directors since June 2016. Ms. Dickey has served as a Director of DCG since May 2016. Since November 2014, she has served as Chairman of the Board for The Dickey Foundation (formerly known as the Barbecue, Boots, and Badges Foundation). All of these positions are held in Dallas, Texas.

Chief Executive Officer: Laura Rea Dickey

Ms. Dickey has served as our Chief Executive Officer since our formation in November 2020. Ms. Dickey has also served as DBRI's Chief Executive Officer since November 2016. From May 2010 until November 2016, Ms. Dickey served as DBRI's Chief Information Officer. All of these positions are and were held in Dallas, Texas.

Chief Administrative Officer: Renee Roozen

Ms. Roozen has served as our Chief Administrative Officer since our formation in November 2020. Ms. Roozen has also served as DBRI's Chief Administrative Officer since June 2018. From November 2016 to June 2018, she served as DBRI's President. From July 2015 until November 2016, Ms. Roozen served as DBRI's Vice President of Operations. All of these positions are and were held in Dallas, Texas.

Chief Financial Officer: Jay Rooney

Mr. Rooney has served as our Chief Financial Officer since our formation in November 2020. Mr. Rooney has also served as DBRI's Chief Financial Officer since March 2019. From December 2017 to March 2019, Mr. Rooney served as DBRI's Vice President of Accounting and Finance and from May 2017 to December 2017 he served as DBRI's Senior Director of Finance. From August 1997 to January 2017, Mr. Rooney worked at Brinker International, most recently as Director of Finance for the Chili's brand from January 2013 to January 2017. All of these positions are and were held in Dallas, Texas.

Chief Information Officer: Carissa De Santis

Ms. De Santis has served as our Chief Information Officer since December 2020. Ms. De Santis has also served as DBRI's Chief Information Officer since December 2020. From June 2019 to December 2020, Ms. De Santis served as our Vice President of Information Technology. From February 1999 to June 2019, Ms. De Santis served as Senior Director of Information Technology with TGI Friday's. All of these positions are and were held in Dallas, Texas.

Chief Marketing Officer: Kristin Peterson

Ms. Peterson has served as our Chief Marketing Officer since November 2020. Ms. Peterson has also served as DBRI's Chief Marketing Officer since November 2020. From February 2003 to November 2020, Ms. Peterson served as Brand Manager with The Richards Group. All of these positions are and were held in Dallas, Texas.

Senior Vice President of Business Development: Trinity Dawn Hall

Ms. Hall has served as our Senior Vice President of Business Development since our formation in November 2020. Ms. Hall has also served as DBRI's Senior Vice President of Business Development since June 2020. Ms. Hall has also served as Stanford Sonoma's President since March 2021. Ms. Hall was on leave from March 2020 to May 2020. From December 2014 to February 2020, Ms. Hall served as DBRI's Senior Vice President of Development. Since August 2017, Ms. Hall has served as a Director of Stanford Sonoma. From March 2014 to December 2014, Ms. Hall served as DBRI's Vice-President of Construction & Finance. Ms. Hall previously served as DBRI's Equipment Specialist from August 2011 to November 2011, then DBRI's Manager of Design from December 2011 to January 2013, and as DBRI's Director of Design from January 2013 to March 2014. All of these positions are and were held in Dallas, Texas.

Senior Vice President of Franchise Relations: Jeffrey Gruber

Mr. Gruber has served as our Senior Vice President of Franchise Relations since our formation in November 2020. Mr. Gruber has also served as DBRI's Senior Vice President of Franchise Relations since June 2018. From July 2016 to June 2018, Mr. Gruber served as DBRI's Senior Vice President of Franchise Administration. From October 2014 until July 2016, Mr. Gruber served as DBRI's Vice President of Communications. From May 2011 to September 2014, Mr. Gruber served as DBRI's Director of Communications and Operations. From March 2008 until May 2011, he served as DBRI's Director of Marketing. All of these positions are and were held in Dallas, Texas.

Senior Vice President of Operations: Ed Herman

Mr. Herman has served as our Senior Vice President of Operations since our formation in November 2020. Mr. Herman has also served as DBRI's Senior Vice President of Operations since September 2018. From September 2015 to September 2018, Mr. Herman served as DBRI's Regional Vice President of Operations. From November 2013 to September 2015, Mr. Herman served as DBRI's Franchise Director of Operations. All of these positions are and were held in Dallas, Texas.

Vice President of Franchise Sales: Ray Bodnar

Mr. Bodnar has served as our Vice President of Franchise Sales since January 2021. Mr. Bodnar has also served as DBRI's Vice President of Franchise Sales since January 2021. From January 2018 to December 2020, Mr. Bodnar was Vice President of Franchise Sales with Radisson Hotel Group. From March 2015 to January 2018, Mr. Bodnar was Director of Franchise Sales with Wyndham Hotel Group. All of these positions are and were held in Dallas, Texas.

Vice President of International Development: Jim Perkins

Mr. Perkins has served as our Vice President of International Development since November 2020. Mr. Perkins has also served as DBRI's Vice President of International Development since September 2018. From October 2017 to September 2018, Mr. Perkins was self-employed. From October 2015 to September



2017, Mr. Perkins was Vice President of International with MAM Food Co. All of these positions are and were held in Chicago, Illinois.

### ITEM 3 LITIGATION

#### Pending Litigation Involving Us:

None.

#### Pending Litigation Involving DCG:

*Ross Diczhazy et al. v. Dickey's Barbecue Restaurants d/b/a Dickey's Barbecue Pit, Inc., and Dickey's Capital Group Inc., United States District Court for the Southern District of California, Case No. 3:20-cv-02189-L-MDD, Filed on November 9, 2020; Tammy Jeary et al. v. Dickey's Barbecue Restaurants, Inc. d/b/a Dickey's Barbecue Pit, and Dickey's Capital Group, United States District Court for the Northern District of Texas, Case No. 3:21-cv-00137-K, Filed on January 20, 2021; Latorsha Adams et al. v. Dickey's Barbeque Restaurants, Inc. and Dickey's Capital Group Inc., United States District Court for the Northern District of Texas, Case No. 3:20-cv-03603-K, Filed on December 9, 2020.*

DBRI and DCG are defendants in different putative class actions related to a limited data security incident that impacted some Dickey's Barbecue Pit locations between April 2019 and October 2020. Plaintiffs seek to certify nationwide and California classes of consumers who claim to have had payment card information compromised in the incident. DBRI and DCG deny any liability with respect to these cases and the claims being asserted. Only DBRI and DCG have been sued in these lawsuits; no franchisees have been named as defendants. The two cases in the Northern District of Texas assert claims for the following: (i) in *Adams*, negligence, invasion of privacy, breach of implied contract, unjust enrichment, breach of fiduciary duty, and breach of confidence; and, (ii) in *Jeary*, negligence, negligent misrepresentation, negligence per se – FTC Act, fraud and fraud through silence, violations of state data breach statutes, violations of state consumer protection statutes, intrusion upon seclusion, unjust enrichment, and bailment. The plaintiffs in the Northern District of Texas seek actual and statutory damages. The plaintiffs in *Jeary* also seek declaratory judgments. The same claims are asserted against DBRI and DCG. The Northern District of Texas consolidated these and two other actions brought only against DBRI on April 14, 2021, under a single civil action number.

The *Diczhazy* action in the Southern District of California asserts claims for violations of California's Consumer Privacy Act, violations of California's Unfair Competition Law and negligence. The plaintiffs in *Diczhazy* seek declaratory judgments and injunctive relief. DBRI and DCG filed motions to transfer the *Diczhazy* action to the Northern District of Texas and also to dismiss the action. Plaintiffs in the *Diczhazy* action have opposed transfer and dismissal, and they filed their own motions to consolidate and appoint lead counsel, which DBRI and DCG oppose.

#### Concluded Litigation Involving Us:

None.

Concluded Litigation Involving DCG:

None.

Other than these actions, no litigation is required to be disclosed in this Item.

**ITEM 4  
BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**ITEM 5  
INITIAL FEES**

Franchise Fee. You pay an initial franchise fee (the "Franchise Fee") to us of: (a) \$20,000 for a Traditional Restaurant, or (b) \$15,000 for a Non-Traditional Restaurant (including a Mobile Unit Franchise), Delivery-Carryout Restaurant or Ghost Kitchen. The Franchise Fee is due in a lump sum at the time you sign the Franchise Agreement for each Restaurant. The Franchise Fee is uniformly imposed, except that (i) the Franchise Fee may be reduced or waived if you are purchasing an existing Restaurant from us or an affiliate, (ii) we offer a \$5,000 first responder's and veteran's discount to the Franchise Fee for your first Restaurant if you are a retired or current police officer, firefighter, or paramedic or honorably discharged veteran of the United States Armed Forces or the National Guard as evidenced by your submission to us of a valid military identification, Certificate of Release or Discharge From Active Duty (DD Form 214) or other similar evidence as we reasonably require, (iii) you may receive credit toward your Franchise Fee if you entered into a previously terminated Franchise Agreement with us and your Franchised Restaurant under that Franchise Agreement was never developed, (iv) we may reduce the Franchise Fee for existing Restaurant franchisees who elect to purchase additional Restaurant franchises; and (v) the Franchise Fee may be waived or reduced if you sign a Development Agreement and pay a Development Fee to us as noted below. The Franchise Fees we charged during the fiscal year ending May 31, 2021 ranged from no fee to \$7,000. The Franchise Fee is non-refundable.

Development Fee. If you agree to develop and operate two or more Restaurants under a Development Agreement you sign with us, you pay a fee (the "Development Fee") equal to the amount of the applicable Franchise Fee due for the first Restaurant (i.e. \$20,000 for a Traditional Restaurant or \$15,000 for a Non-Traditional Restaurant, Delivery-Carryout Restaurant or Ghost Kitchen) plus \$15,000 for each additional Traditional Restaurant and \$10,000 for each additional Non-Traditional Restaurant, Delivery-Carryout Restaurant or Ghost Kitchen you agree to develop (regardless of the type) in a lump sum when you sign the Development Agreement. We apply the Development Fee to the Franchise Fee for each Restaurant opened under the Development Agreement when you sign the then current Franchise Agreement for such Restaurants. If you develop a Traditional Restaurant, you are eligible to receive a \$5,000 discount on the Franchise Fee due for the second and subsequent Traditional Restaurants you develop under the Development Agreement so long as you timely develop and open your Restaurants and comply with the other terms of the Development Agreement. If not, the standard Franchise Fee of \$20,000 applies to each Traditional Restaurant you develop and you must pay the balance of the Franchise Fee to us in a lump sum after the deposit is applied when you sign the then current Franchise Agreement.

Our Development Fee is uniformly imposed, except the Development Fee may be reduced or waived under the same circumstances as noted above for the Franchise Fee, or when business circumstances warrant, such as when you are developing Restaurants in a new market for us. We did not enter into any

Development Agreements during the fiscal year ending May 31, 2021, so we did not charge any Development Fees. The Development Fee is non-refundable.

Restaurant Opening Fee. Before you attend our initial training program (the "Virtual Brands Training Program"), you must pay to us as the "Restaurant Opening Fee" (a) \$8,000 for a Traditional Restaurant, or (b) \$5,000 for a Non-Traditional Restaurant, Delivery-Carryout Restaurant, or Ghost Kitchen, or (c) \$1,000 for a Non-Traditional Restaurant that is a Mobile Unit Franchise. We may consult with you if we have not opened any Restaurants in your market area. We will use the Restaurant Opening Fee on your behalf to pay the local advertising and promotional marketing expenses we believe are appropriate for your Franchised Restaurant's pre-opening and grand opening campaigns and in some cases, a post-opening campaign. The Restaurant Opening Fees we charged during the fiscal year ending May 31, 2021 ranged from no fee to \$5,000. The Restaurant Opening Fee is payable in a lump sum and is non-refundable.

Inspection Reimbursement. You are required to reimburse us for the expenses we incur to perform any site inspection of a proposed location for your Franchised Restaurant in excess of the first three site inspection visits we provide to you at no additional cost. The Inspection Reimbursement is payable in a lump sum and is non-refundable.

Training Fee. If this is your first Restaurant, then you must pay a non-refundable \$2,900 Training Fee to us for the Virtual Brands Training Program which your Owner/Operator will attend in Dallas, Texas. If you choose to attend ServSafe training performed as part of our Virtual Brands Training Program, then you must pay us \$185 in addition to the Training Fee. The Training Fee also covers online training and on-site training and certification for up to 3 Restaurant managers you select. Any manager certification that you do not utilize before opening your Franchised Restaurant will be forfeited. The Training Fee also includes the cost of training materials but not uniforms for the trainees. You must pay a portion of the Training Fee in the amount of \$1,150 (or \$1,335, if you choose to attend ServSafe training as part of our Virtual Brands Training Program) when you register your Owner/Operator for training. You must pay the remaining portion of the Training Fee in the amount of \$1,750 to us for online and on-site training of up to 3 managers at least 30 days before your Franchised Restaurant opens.

If you are an existing Restaurant franchisee and your Owner/Operator has already attended and completed our Virtual Training Program to our satisfaction, you are only required to pay a non-refundable Training Fee of \$1,750 to us at least 30 days before your Franchised Restaurant opens.

We did not collect any Training Fees during the fiscal year ending May 31, 2021.

Day One Deposit. You are required to pay us a "Day One Deposit" of up to \$8,200 within one business day after the "Orientation Call" with us for your Franchised Restaurant. We will use this deposit to pay approved vendors the deposits for your Franchised Restaurant's architectural design services, equipment, and signage, all of which are listed as part of your pre-opening expenses in Item 7. If you do not open your Franchised Restaurant and your Franchise Agreement terminates for non-performance of your pre-opening obligations, we will retain the Day One Deposit to cover payments to approved vendors. See Item 17. We did not collect any Day One Deposits during the fiscal year ending May 31, 2021. The Day One Deposit is payable in a lump sum and is non-refundable.

Technology in a Box. We require the use of our proprietary "Technology in a Box" support system ("TIBS") that provides in-store technology to facilitate store operations, marketing, and data capture and reporting. You must purchase TIBS equipment from our approved vendor, which as of the date of this Disclosure Document is Spark, our affiliate. The current cost of TIBS is approximately \$5,000 to \$7,000 and includes point of sale hardware and application software that provides reports to you and us on store

operations, an Ipad, intelligent printer, firewall, switch, a wi-fi access point for Restaurant customers while on premises, and other features, operational functions, marketing benefits, and applications as may be determined by us.

Technology Support Setup Fee. You must pay us or our designee a one-time, non-refundable initial fee between \$575 and \$2,227 for certain required equipment necessary to support required cybersecurity services.

Spark Online Ordering Setup Fee. You must purchase a subscription to Spark’s Online Ordering system and pay a one-time, non-refundable initial installation fee of \$125. You must also purchase an Epson printer in the amount of \$500 from us or an approved vendor (currently, Spark).

Spark POS SaaS Setup Fee. You must purchase a subscription to the Spark Point of Sale (“POS”) system and pay a one-time, non-refundable initial installation fee of \$125.

Chowly Upfront Fee. You must pay us a one-time, non-refundable fee of \$200 for a subscription to Chowly, Inc.’s third-party delivery service aggregation software.

Insurance Fee. You must obtain all required insurance policies solely from insurance agents/brokers or other providers we approve. If you desire to purchase the required insurance policies from an unapproved insurance agent/broker or provider, you will submit to us a written request for such approval. If we grant our approval for the use of an unapproved insurance agent/broker or other provider, you must pay us a \$350 fee to cover the costs of reviewing the insurance coverage procured by the unapproved vendor. The Insurance Fee is non-refundable. We did not collect any Insurance Fees during the last fiscal year ending May 31, 2021.

**ITEM 6  
OTHER FEES**

Type of Fee	Amount	Due Date	Remarks
Royalty Fee	6% of Net Sales	Payable weekly on the Monday following the calendar week to which such payments relate	See footnotes (1), (2) and (3).
Marketing Fund	3% of Net Sales	Payable weekly on the Monday following the calendar week to which such payments relate	See footnotes (1), (2), (3) and (10).
Spark POS SaaS Fee	Currently, \$149 per month	Payable monthly or weekly, in our discretion	May vary with required technology and desired level of support. We may modify this fee once each calendar year
Technology Support Fee	Currently between \$251 and \$340 per month.	Payable monthly or weekly, in our discretion	This range varies with required technology and desired level of support. We may modify this fee once each calendar year.

Type of Fee	Amount	Due Date	Remarks
Smokestack Sales Reporting System Software Fee	\$58 per month for the first Restaurant plus \$40 per month for each additional Restaurant and each manager with access to the system; \$100 annual infrastructure support fee per Restaurant	Payable monthly or weekly, in our discretion	See footnote (11) and Items 5, 8 and 11.
Spark Online Ordering Fee/Mobile Unit Software	\$157 per month	Payable monthly or weekly, in our discretion	See footnote (12) and Items 5, 8 and 11.
Spark Processing Fee	\$0.01 per online order	Upon invoice	See footnote (12) and Item 11
Spark POS-SaaS for Mobile Unit Franchise only	\$125 per month	Payable monthly or weekly, in our discretion	See footnote (12) and Item 11
Spark POS – Maintenance/ license fee – Mobile Unit Franchise only	\$2.08 monthly or \$25 per year	Payable monthly or weekly, in our discretion	See footnote (12)
Mobile Unit Franchise Hardware	Approximately, \$2,500	Lump sum, as agreed	See footnote (12)
Epson Printer	\$500	Upon invoice	See footnote (12) and Items 5, 8 and 11.
Chowly Monthly Fee	\$30 per month plus, if your Franchised Restaurant is a Co-Brand Restaurant, an additional \$15 per month for your third and each additional branded concept operated as part of the Co-Brand Restaurant, if applicable	Payable monthly	We will pay this amount to Chowly, Inc. and invoice you.

Type of Fee	Amount	Due Date	Remarks
Insurance	Premiums vary depending on location	As agreed or upon billing	We have the right to obtain insurance for your Franchised Restaurant at your expense for premium if you fail to purchase or renew your required insurance and provide proof of coverage to us. See footnote (4).
Payments to Landlord and Utility Providers	Vary depending on location	As agreed under the Payment Services Agreement	We will pay the following payments on your behalf: (i) rent due to your landlord under a lease agreement for the premises of the Franchised Restaurant; and (ii) ongoing utility payments due to utility providers who service the Franchised Restaurant. We will debit these amounts from your designated account by ACH electronic transfer on a weekly basis. See footnote (14).
Unapproved Insurance Vendor Review Fees	\$350 for costs of reviewing insurance coverages procured by proposed vendor; additional \$150 for each subsequent review of insurance coverages due to insufficient coverage or changes	Upon invoice	Payable if we approve your request to purchase required insurance from an unapproved insurance agent/broker or provider. See Item 8.
Training Instruction and Materials	\$1,150 for each Owner/Operator and any other individual(s) you designate and we approve to attend our Virtual Brands Training Program; \$1,750 for online and onsite training for up to 3 managers, which includes manager certification.	See footnotes (1) and (5).	See footnotes (1) and (5).
Training Program Enrollment	\$10 per month	Payable monthly or weekly, in our discretion	See footnotes (1) and (5).

Type of Fee	Amount	Due Date	Remarks
Audit	Cost of audit plus interest	30 days after billing	Payable only if audit shows understatement of at least 2% of Net Sales for any month. See footnotes (1), (3), (6) and (7).
Site Evaluation Fee and Costs	All of our reasonable costs and expenses plus a site evaluation fee of \$1,000	30 days after billing	We provide 3 on-site evaluations for your Franchised Restaurant at no charge to you. See footnotes (1) and (8).
Product and Service Purchases	Varies	Upon invoice	You will buy certain products and services from us, our affiliates, designated and approved vendors whose items meet our standards and specifications, and/or other suppliers in the industry (See Item 8)
Testing	The cost of inspection and testing	Upon billing	This covers our costs and expenses for testing samples of food or non-food items from your inventory or your Franchised Restaurant, or to inspect and test the facilities and products of an unapproved supplier
Inspection	The cost of inspection and correcting any deficiencies	Upon billing	We may charge you for the costs of any inspections if we detect deficiencies in your Franchised Restaurant. We (or our representatives and agents) have the right (but not the obligation) to correct any deficiencies at your expense
Replacement or Update of the Manuals or other forms used in running your Franchised Restaurant	Actual cost of replacement or update and delivery of Manuals or other forms necessary for running your Franchised Restaurant	Upon invoice	Payable to us or our designated vendor if we make arrangements for automatic delivery to you of the revised Manuals and/or forms

Type of Fee	Amount	Due Date	Remarks
Transfer	Greater of \$15,000 or our reasonable costs and expenses	5 days prior to confirmation of transfer	Payable to us when you transfer the franchise or your ownership. No charge for transfer to an entity which you control; we may defer, reduce or waive the fee for transfer of a distressed Restaurant. See footnotes (1) and (6).
Renewal	\$15,000	5 days prior to commitment of 10-year renewal term	Payable to us if you elect to renew your franchise prior to expiration of initial 20-year term. See footnote (1) and (6).
Securities Offering Review	\$1,000 or our costs incurred for review of offering materials, whichever is greater	Upon invoice	Payable if you engage in a public or private securities offering that includes a prospectus or offering memorandum that we review
Management Fee	5% of Net Sales, plus pass through costs and expenses	Payable monthly	Only payable if we or an affiliate operates your Franchised Restaurant after your death or disability. See footnotes (1) and (3).
Indemnification	Actual legal fees, costs and expenses	Upon billing	Payable if and when we defend a claim for which you indemnify us under the Franchise Agreement, or we incur costs to collect amounts due from you under the Franchise Agreement.
Interest	15% or maximum rate allowed by law, whichever is less	Upon billing	See footnotes (1) and (6).
Late Fee	Actual legal fees, costs and expenses	Upon billing	Payable on all overdue amounts as an administrative fee to compensate us for our increased costs and expenses



Type of Fee	Amount	Due Date	Remarks
Insufficient Funds Processing Fee	\$40	Upon billing	Payable if you have insufficient funds in your account, or, if you pay by check, a check is returned for insufficient funds
Legal	Actual legal fees and expenses	Upon billing	Incurred only if a court determines you have breached the Franchise Agreement. See footnotes (1) and (9).
Termination	Liquidated Damages equal to the present value of your Royalty Fees for the number of months remaining in the term of the Franchise Agreement, not to exceed 60 months	Upon billing after termination	See footnotes (2), (3) and (13).
Non-Compliance Fee	\$500 to \$2,000 for deviations from operational requirements/standards and specifications.	Within 5 days of receiving notice from us	Due, at our option, if you deviate from our requirements for operations or standards and specifications. This compensates us for administrative and management costs, not for our damages due to your default. We may charge you \$500 for each deviation from a contractual requirement, including any standards and specifications cited by us. If we discover the same (or a substantially similar) deviation from a contractual requirement on 1 or more consecutive, subsequent visits to or inspections of your Franchised Restaurant, we may charge \$1,000 for 1 <sup>st</sup> repeat deviation and \$2,000 for second deviation and each subsequent repeat deviation.

Type of Fee	Amount	Due Date	Remarks
Customer Complaint Reimbursement	Out-of-pocket cost reimbursement	As incurred	You must reimburse us if we resolve a customer complaint with one of your customers; amount depends on extent of your noncompliance.

**Footnotes:**

(1) Except as noted above, these fees are uniformly imposed for all new franchisees, are collected by and payable only to us, and are nonrefundable.

(2) You are required to pay us a “Royalty Fee” equal to 6% of Net Sales of your Franchised Restaurant and a contribution to the Marketing Fund for each calendar week period (the "Sales Period") equal to 3% of Net Sales of your Franchised Restaurant. Currently, we offer a Royalty Fee rebate program to qualifying franchisees that are in good standing with their franchise agreements and meet certain criteria, including successful sales growth as we determine. This program provides a 1% percent rebate of Royalty Fees paid by qualifying franchisees. We may modify the terms and/or discontinue this program at any time and in our sole discretion. These payments are electronically drafted from your account by ACH transfer based upon your statement certifying Net Sales for the Sales Period. We may negotiate these fees when the circumstances warrant such negotiation. If you do not report your Franchised Restaurant’s Net Sales, we may debit your account for an amount equal to the last Royalty Fee and Marketing Fund contribution that we debited. If the amounts we debit are less than the amounts you actually owe us, then we will debit your account for the remaining balance on the day we specify.

(3) “Net Sales" includes all revenue from the sale of food, beverages, services and products from in-store dining, carry-out, online orders, delivery, third-party voucher sales, catering, and otherwise, including the sale of food and beverages (both alcoholic and non-alcoholic), redemption of gift cards, and merchandise (e.g., packaged food products, T-shirts, sweatshirts, caps, watches, etc.) and all other income of whatever nature or kind relating to your Franchised Restaurant, whether for cash or credit and regardless of collection in the case of credit; provided, that Net Sales excludes sales tax or other taxes collected from customers by you and paid to the appropriate taxing authority, employee meals and discounts for meals purchased with promotional coupons we approve.

(4) If you, for any reason, fail to obtain or maintain the insurance required by each Franchise Agreement entered into between us and you, as these requirements may be revised by us in the Manuals or otherwise in writing, we have the right and authority (but not the obligation), to immediately obtain such insurance and to charge the same to you, which charges, together with a reasonable fee for our expenses in so acting, will be payable by you immediately upon notice. Insurance costs are non-refundable. Insurance coverage requirements are uniformly imposed on all new franchisees. However, the costs of this coverage may not be uniform for all franchisees because premiums may vary according to the insurer, marketplace conditions, the location of the insured's premises, the insurance requirements of applicable law and other factors. These costs will not be collected or imposed in whole or in part by us on behalf of any third party, and are payable to the applicable insurer or agent.

(5) We may charge a fee for training instructions, manuals and materials of \$1,150 per person for each Owner/Operator and any other individual(s) you designate and we approve to attend our Virtual Brands Training Program in Dallas, Texas, to be paid when you register for our Virtual Brands Training

Program. You must also pay us \$1,750 for online and on-site training of up to 3 managers before your Franchised Restaurant's opening, which includes manager certification, to be paid at least 30 days before your Franchised Restaurant's opening. If you are an existing Restaurant franchisee and your Owner/Operator has already attended and completed our Virtual Brands Training Program to our satisfaction, you are only required to pay us a non-refundable Training Fee of \$1,750 at least 30 days before your Franchised Restaurant's opening. If more than 3 trainees attend on-site training and will be certified, you will incur an additional training fee of \$175 per person for manager certification. You must also pay a \$10 monthly fee for any successor, replacement, and ongoing manager training, which includes online access to our Virtual Brands Training Program and continued access to materials needed for manager certification.

(6) Interest is charged when any of the Royalty Fee, Marketing Fund contribution, transfer or renewal fee payments, or any other sum due to us is not paid when due or an audit reveals underpayments based on incorrect Net Sales.

(7) Although audit costs are uniformly imposed on all franchisees subject to this Disclosure Document, the cost of each audit may not be the same for each franchisee. Audit costs will vary depending on factors such as the audit firm utilized, billing arrangements and time spent to complete the audit.

(8) Although site evaluation costs are uniformly imposed on all franchisees subject to this Disclosure Document, for each additional site evaluation in excess of the three site evaluations provided by us at no cost, the cost of each such additional site evaluation may not be the same for each franchisee. Site evaluation costs will vary depending on factors such as the location of the franchisee, travel expenses and duration of the site visit.

(9) Legal fees and expenses will vary depending on factors such as the nature of the legal matter, venue and the complexity of the legal matter.

(10) We may require that you participate in an approved local or regional advertising cooperative with certain other franchisees. If you are required to participate in an approved advertising cooperative, a certain percentage of your Marketing Fund contribution will be applied towards the local or regional advertising, marketing and promotions targeting the geographic area in which your Franchised Restaurant is located. Under the terms of our current standard cooperative advertising agreement, fees are not assessed by the advertising cooperative. For additional information, see Item 11, Paragraph C, titled "Advertising".

(11) These fees are payable to our affiliate, Spark (see Item 1). If you own and operate more than one Restaurant, the fee for your second and any additional Restaurant is \$40 per month. You may elect to pay the direct manager access fee in a lump sum, in which case the fee will be discounted by 10%. Spark may change the fees and institute new fees for the use of the Smokestack sales reporting system. Any changes and new fees will become effective on 30 days' notice.

(12) These fees are payable to our affiliate, Spark (see Item 1). The Spark Online Ordering Fee for Mobile Software includes technology support for our approved third-party delivery services aggregator and geolocation services to allow guests to find Restaurants near them, currently provided by Chowly, Inc. and Google respectively. If you operate a Mobile Unit Franchise, you will incur the costs for the hardware and software in your vehicle noted in the table above. You must also pay interest to Spark on overdue amounts at the maximum rate allowed by law or 1.5% per month. You must purchase an Epson printer for use with the Spark Online Ordering system from us or an approved supplier (currently, Spark). Spark may

change the fees and institute new fees for the use of the Spark Online Ordering system, including required or optional new features and services. Any changes and new fees will become effective on 60 days' notice.

(13) Unless otherwise indicated in writing from us, and to the extent permitted by applicable law, you must pay us in a single lump sum payment, as "Liquidated Damages" and not as a penalty, after early termination of the Franchise Agreement, Liquidated Damages equal to the Royalty Fees for the lesser of: (i) the number of months remaining in the term of the Franchise Agreement (or the renewal term, if applicable); or (ii) 60 months. This calculation of Royalty Fees is based on the monthly average of the Royalty Fees payable to us. If the Franchise Agreement terminates after the second year of the term, then Liquidated Damages will be calculated based upon the average monthly Net Sales of your Franchised Restaurant reported for the 12 months preceding termination. Liquidated Damages are the present value of the annuity represented by the Royalty Fees for the months remaining in your Franchise Agreement term assuming these average Net Sales, without adjustment for inflation. The discount rate for calculating present value is 110% of the long term Applicable Federal Rate for monthly compounding published by the Internal Revenue Service immediately prior to termination. If your Franchised Restaurant has not yet opened, or has not been open for at least 24 months at the time of termination, the average monthly Net Sales used to calculate Liquidated Damages will be based upon the average monthly Net Sales of all Restaurants for the preceding fiscal year as determined from our audited financial statements published in our Franchise Disclosure Document. An example of these calculations is included in the Operations Manual. Both assume an aggregated monthly average of the Royalty Fees paid each week, and that Royalty Fees represent 63% of the "Operating Income" revenue line in our audited financial statements.

(14) Under the Payment Services Agreement, we will debit a prorated portion of your rent and utility payments weekly from your designated bank account by ACH electronic transfer on or before the Monday following the calendar week to which such payments relate. The weekly amounts we debit from your designated bank account for rent will be based on information you provide, including the information contained in your lease agreement. If there are insufficient funds in your designated bank account to pay rent when due, we will pay rent to your landlord from the amounts actually debited from your bank account in the preceding month and you must pay the remaining balance due to your landlord for that month's rent. You will also provide us with monthly billing statements issued by each of your utility providers ("Utility Bills") on or before the 5<sup>th</sup> day of the month immediately following such Utility Bills being issued. We will project the amount due for utilities each month based on (i) the prior 2 months' Utility Bills; or (ii) if the Franchised Restaurant has not been open for at least 2 months, either (x) the first month's Utility Bill, or (y) other Restaurants' utility bills operating near the Franchised Restaurant. After receiving all of your Utility Bills in a given month, if we discover that the amounts we debited from your bank account are (i) greater than the amounts you actually owe for utilities, then we will credit an amount equal to the excess against the amounts we would otherwise debit from your bank account for Utility Bills in the following week; or (ii) less than the amounts you actually owe for utilities, then, we will immediately debit your bank account in an amount equal to the remaining balance due under the Utility Bills. If there are insufficient funds in your bank account to pay the Utilities Bills when due, we will pay the Utility Bills to your utility providers from the amounts actually debited from your bank account in the preceding month and you must pay the remaining balance due to your utility providers for that month's utilities.

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**ITEM 7  
ESTIMATED INITIAL INVESTMENT**

<b>YOUR ESTIMATED INITIAL INVESTMENT - SINGLE FRANCHISE AGREEMENT</b>							
<b>TYPE OF EXPENDITURE</b>	<b>AMOUNT<sup>(*)</sup>(12)</b>				<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS TO BE MADE</b>
	<b>GHOST KITCHENS</b>	<b>DELIVERY-CARRYOUT RESTAURANTS</b>	<b>NON-TRADITIONAL</b>	<b>TRADITIONAL RESTAURANTS</b>			
<b>Franchise Fee</b>							
Franchise Fee <sup>(1)</sup>	\$15,000	\$15,000	\$15,000	\$20,000	Lump Sum	Execution of Franchise Agreement	Us
<b>Construction Expenses</b>							
Architectural Plans <sup>(2), (13)</sup>	\$0 – \$1,000	\$0 - \$9,500	\$0 - \$15,000	\$0 - \$15,000	Installment and/or Lump Sum	A deposit (\$0-\$5,000 for Traditional, Non-Traditional and Delivery-Carryout Restaurants; \$0-\$750 for Ghost Kitchens) is due within one business day after the "Orientation Call" with us for your Franchised Restaurant and remainder is due as invoiced by Architect.	Architectural Firm
Permits <sup>(6), (13)</sup>	\$0 - \$500	\$0 - \$4,000	\$0 - \$7,000	\$0 - \$20,000	Lump Sum	As Incurred	State or Municipal Agencies

<b>YOUR ESTIMATED INITIAL INVESTMENT - SINGLE FRANCHISE AGREEMENT</b>							
<b>TYPE OF EXPENDITURE</b>	<b>AMOUNT<sup>(*)</sup>(12)</b>				<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS TO BE MADE</b>
	<b>GHOST KITCHENS</b>	<b>DELIVERY-CARRYOUT RESTAURANTS</b>	<b>NON-TRADITIONAL</b>	<b>TRADITIONAL RESTAURANTS</b>			
Leasehold Improvements <sup>(3), (13)</sup>	\$0 – \$8,000	\$30,000 - \$75,000	\$48,000 - \$135,000	\$142,000 - \$205,000	Negotiable	Negotiable	Landlord/Contractors
Furniture, Fixtures, and Equipment <sup>(4), (13)</sup>	\$2,500 – \$30,000	\$26,500 - \$43,700	\$25,700 - \$43,500	\$70,000 - \$104,400	Lump Sum	\$2,100 Deposit due within one business day after the "Orientation Call" with us for your Franchised Restaurant; remainder due as invoiced by Equipment Vendor.	Vendor/Contractors/Us
Graphics	\$0	\$0	\$750 - \$2,000	\$4,000 - \$8,000	As Arranged	As Incurred	Vendors
Digital Menu Boards	\$0	\$3,000	\$3,000	\$3,000	Negotiable	Negotiable	Vendors
Signage <sup>(5)</sup>	\$0	\$3,000 - \$8,000	\$1,000 - \$4,500	\$2,000 - \$8,000	Installment	\$1,000 Deposit due within one business day after the "Orientation Call" with us for your Franchised Restaurant; remainder due as invoiced by Sign Vendor	Sign Vendor/Us
Point of Sale Computer and Technology in A Box	\$5,000 - \$7,000	\$5,000 - \$7,000	\$5,000 - \$7,000	\$5,000 - \$7,000	Lump Sum	As Incurred	POS/TIBS Vendor

YOUR ESTIMATED INITIAL INVESTMENT - SINGLE FRANCHISE AGREEMENT							
TYPE OF EXPENDITURE	AMOUNT <sup>(*)</sup> (12)				METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	GHOST KITCHENS	DELIVERY-CARRYOUT RESTAURANTS	NON-TRADITIONAL	TRADITIONAL RESTAURANTS			
<b>SUB-TOTAL (Construction)<sup>(24)</sup></b>	\$7,500 - \$46,500	\$67,500 - \$150,200	\$83,450 - \$217,000	\$226,000 - \$370,400			
<b>Other Start-Up Expenses</b>							
Lease Deposits <sup>(13) (14)</sup>	\$0 - \$7,000	\$0 - \$4,000	\$0 - \$8,000	\$0 - \$10,000	Lump Sum	As Incurred	Landlord/Utilities
Training <sup>(15)</sup>	\$1,750 - \$2,900	\$1,750 - \$2,900	\$1,750 - \$2,900	\$1,750 - \$2,900	As Arranged	\$1,150 due upon Training Registration; \$1,750 due at least 30 days prior to opening	Us
ServSafe Training <sup>(16) (13)</sup>	\$0 - \$185	\$0 - \$185	\$0 - \$185	\$0 - \$185	As Arranged	Upon Training Registration/As invoiced by ServSafe Instructor	Us/ ServSafe approved instructor
Training Enrollment Fee <sup>(17) (13)</sup>	\$297	\$297	\$297	\$297	As Arranged	Monthly or weekly	Us
Opening Inventory and Services <sup>(8), (13)</sup>	\$4,000	\$4,500 - \$5,000	\$4,000 - \$5,000	\$7,000	Lump Sum	Vendors' Terms/As Incurred	Vendors
Insurance <sup>(7), (13)</sup>	\$0 - \$4,000	\$0 - \$6,000	\$0 - \$12,000	\$0 - \$8,000	Annually	Annually	Insurance Agents
Restaurant Opening Fee <sup>(9), (13)</sup>	\$5,000	\$5,000	\$5,000	\$8,000	Cash	60 Days Prior to Opening	Us
Professional Fees <sup>(10), (13)</sup>	\$0 - \$2,000	\$0 - \$2,000	\$0 - \$3,000	\$0 - \$2,000	As Arranged	As Arranged	Vendors
Closing and Finance Costs <sup>(11), (13)</sup>	\$0	\$0 - \$8,000	\$0 - \$10,000	\$0 - \$15,000	As Arranged	As Arranged	Lender

<b>YOUR ESTIMATED INITIAL INVESTMENT - SINGLE FRANCHISE AGREEMENT</b>							
<b>TYPE OF EXPENDITURE</b>	<b>AMOUNT<sup>(*)</sup>(12)</b>				<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS TO BE MADE</b>
	<b>GHOST KITCHENS</b>	<b>DELIVERY-CARRYOUT RESTAURANTS</b>	<b>NON-TRADITIONAL</b>	<b>TRADITIONAL RESTAURANTS</b>			
Smokestack Sales Reporting System Software Fee <sup>(18)</sup>	\$200	\$200	\$200	\$200	As Arranged	Monthly or weekly	Spark
Spark Online Ordering Fee <sup>(19)</sup>	\$596	\$596	\$596	\$596	As Arranged	Monthly or weekly	Spark
Spark POS SaaS Fee <sup>(20)</sup>	\$572	\$572	\$572	\$572	As Arranged	Monthly or weekly	Spark
Technology Support Fee <sup>(21)</sup>	\$1,328 - \$3,139	\$1,328 - \$3,139	\$1,328 - \$3,139	\$1,328 - \$3,139	As Arranged	Monthly or weekly	Us
Chowly Fees <sup>(22)</sup>	\$290 - \$335	\$290 - \$335	\$290 - \$335	\$290 - \$335	As Arranged	Upon invoice and monthly	Us
Epson Printer <sup>(23)</sup>	\$0 - \$500	\$0 - \$500	\$0 - \$500	\$0 - \$500	Lump Sum	As Incurred	Vendors/Spark
Additional Funds – 3 Months <sup>(25), (13)(14)</sup>	\$2,200 - \$5,000	\$5,000 - \$15,000	\$5,000 - \$15,000	\$7,000 - \$15,000	Cash	As Needed	Various Payees
<b>SUB-TOTAL (Other Start-Up Expenses)</b>	\$16,233 - \$35,724	\$19,533 - \$53,724	\$19,033 - \$66,724	\$27,033 - \$73,724			
<b>TOTAL <sup>(26), (27)</sup></b>	\$38,733 - \$97,224	\$102,033 - \$218,924	\$117,483 - \$298,724	\$273,033 - \$464,124			



## **Footnotes:**

\* The low ends of the ranges for Ghost Kitchens apply to Restaurant Ghost Kitchens located in restaurants operating under brands owned by us or one of our affiliates. The high ends of the ranges for Ghost Kitchens apply to Commissary Ghost Kitchens. We anticipate that the costs for Restaurant Ghost Kitchens located in restaurants operating under brands owned by unrelated third-parties will fall between the low and high ends of the ranges. The ranges in the table for Ghost Kitchens, Delivery-Carryout Restaurants, Non-Traditional Restaurants and Traditional Restaurants include the estimated initial costs associated with developing a Restaurant in one of those formats as part of a Co-Brand Restaurant. As described in Item 1, the franchise offer of each of the other restaurant concepts that is a part of a Co-Brand Restaurant is made under a separate disclosure document. If you purchase a Co-Brand Restaurant, then in addition to the initial costs for developing the Restaurant disclosed in this table, you will also be required to spend additional amounts for developing the other restaurant concepts (including, for example, additional amounts for leasehold improvements, furniture, fixtures, and equipment, graphics, digital menu boards, signage, point of sale and other computer hardware and software systems, initial franchise fees, training-related fees/expenses, opening inventory and services, and additional funds during first 3 months of operations (e.g., debt service, wages, rent, stocking initial inventory/food/supplies).

(1) See Item 5 for the Franchise Fee required for single unit Restaurants under a Franchise Agreement, and for circumstances when the Franchise Fee may be discounted and/or negotiated. Neither we nor any of our affiliates offer any financing for your Franchise Fee or any portion of your initial investment. We will be pleased to refer you to independent lenders who may finance some portion of your initial investment, but we make no promises that any such financing will be available to you, and we do not guarantee any such loans to you.

(2) You are required to use an architect and general contractor we approve for the planning, design and construction of your Franchised Restaurant. These amounts are estimated costs for acquiring and adapting our prototype plans for use in connection with each proposed Restaurant. The low end of each range is \$0 to account for Co-Brand Restaurants, as the related fees/costs will be incurred only once for an entire Co-Brand Restaurant, not once for the Restaurant included in the Co-Brand Restaurant and again for the other restaurant concept(s) included in the Co-Brand Restaurant.

(3) We require that you lease the premises for a Restaurant. The amounts provided are based on a Restaurant within a shopping center, free-standing structure, or non-traditional setting containing the approximate footprint size for a Traditional Restaurant (1,500 to 2,200 square feet), Non-Traditional Restaurant (400 to 1,000 square feet), Delivery-Carryout Restaurant (1,000 to 1,300 square feet) and Commissary Ghost Kitchen (1,000 to 1,300 square feet). The square footage of Restaurant Ghost Kitchens varies depending on the size of the existing restaurants' kitchens. The amounts you pay for leasehold improvements may vary substantially based upon local commercial leasing conditions, cost of utility deposits, and labor rates and conditions and the availability and prices of materials.

The franchisees of our affiliate, DBRI, received allowances and credits during the prior calendar year ranging from \$20,000 - \$80,000 (for delivery-carryout restaurants), \$25,000 - \$85,000 (for non-traditional restaurants), and \$30,000 - \$90,000 (for traditional restaurants), to offset the remodeling and build-out costs they incurred to conform their sites for their restaurant locations. You may receive similar allowances and credits from your landlord. We do not anticipate Ghost Kitchens receiving any allowances or credits from landlords for build-out costs.

(4) These amounts include costs for tables, chairs, track lighting fixtures, chandelier lighting, cabinets and decor items required for a Restaurant, refrigeration and other kitchen equipment, hood and fire

and ventilation system and stainless steel, smallwares, and catering equipment. These figures can vary substantially. Costs at the low end of this estimate assume existing useable fixtures and equipment with very few additional items to be purchased, or in the case of Ghost Kitchens, no fixtures or furniture at all. Costs at the high end of this estimate assume that all furniture, fixtures, and equipment are purchased new. These figures are our best estimates based on current equipment costs and financing conditions in the Dallas-Fort Worth, Texas metropolitan area. Costs may vary substantially depending on geographic location, creditworthiness and financing arrangements. A portion of the Day One Deposit referenced in Item 5 is applied to these costs.

(5) These amounts include interior and exterior signage. The cost of signage may vary significantly depending on the location of the Restaurant, landlord and municipal requirements, and market conditions. A portion of the Day One Deposit referenced in Item 5 is applied to these costs. Ghost Kitchens are not required to purchase signage.

(6) Permit fees will vary depending on location and on whether any applicable federal, state or municipal laws or regulations require the payment of occupational taxes for restaurants. Permit fees will be greater for any construction for the finish-out or renovation of the Restaurant and will likely take more time to obtain. Permit fees will also likely be higher if your Franchised Restaurant is required to serve alcoholic beverages. Any state income or franchise taxes required to be paid for corporate franchisees are not included. The low end of each range is \$0 to account for Co-Brand Restaurants, as the related fees/costs will be incurred only once for an entire Co-Brand Restaurant, not once for the Restaurant included in the Co-Brand Restaurant and again for the other restaurant concept(s) included in the Co-Brand Restaurant.

(7) The costs of insurance may vary substantially depending on the insurer, the location of the Restaurant, the value of the equipment and improvements and your claims history. The cost does not include any premium for worker's compensation insurance (or any non-subscription alternatives), liquor liability, auto liability, employment practices liability insurance, data privacy/cyber liability. The amount of such premiums will vary widely based upon state insurance markets, number of employees, and other factors.

(8) We estimate that the range given will be sufficient to cover food and paper inventory needs for the first week of operations when training and dry-runs of Restaurant services occur prior to the opening of the Restaurant to the general public. These amounts may vary according to your sales volume during the indicated period, current market conditions, and local suppliers' terms.

(9) The amounts shown include costs and expenses of a new store opening promotion/initial marketing package for your Franchised Restaurant, for which you are required in the Franchise Agreement to pay us to be spent by us, in our discretion, on your behalf in connection with your Franchised Restaurant opening promotion (including, to fund local or national advertising, marketing materials and promotional support during the first six months of the operation of your Franchised Restaurant). An accounting of the sums we spent in connection with your opening promotion will be provided at your request. While we will exercise best efforts to spend the full amount you are required to pay in connection with your opening promotion, any remaining balance after the first six months of the operation of your Franchised Restaurant will be deposited into the Marketing Fund and applied by us using the procedures described below for the utilization of the proceeds of the Marketing Fund.

(10) These amounts only apply if you choose to employ professionals to review this Disclosure Document and assist you in your organization and formation and are our best estimate of legal and accounting fees associated with such costs and expenses. Your actual costs may vary substantially depending on difficulties encountered, the individual professionals utilized and organizational structure

chosen. These fees assume you use the same legal entity for the second Restaurant. The low end of each range is \$0 to account for Co-Brand Restaurants, as the related fees/costs will be incurred only once for an entire Co-Brand Restaurant, not once for the Restaurant included in the Co-Brand Restaurant and again for the other restaurant concept(s) included in the Co-Brand Restaurant.

(11) These amounts only apply if you choose to finance certain costs related to opening your Franchised Restaurant (including any finish-out or renovation costs and equipment, inventory and working capital) with a third-party lender. These amounts are not payable to us and will vary depending on the terms of the financing you negotiate with your lender and the fees, costs and expenses incurred by lender and any other party involved in the financing. All amounts are estimates only based upon our experience to date.

(12) Except as noted in the table above and footnote 13 below, these amounts are non-refundable.

(13) These amounts may or may not be refundable depending on the nature of the expenditure and your arrangement with the supplier.

(14) The amounts provided are based on Restaurants located within shopping centers, free standing structures or non-traditional settings based on the footprint size listed in footnote 3 above. The low end of each range is \$0 to account for Co-Brand Restaurants, as the related fees/costs will be incurred only once for an entire Co-Brand Restaurant, not once for the Restaurant included in the Co-Brand Restaurant and again for the other restaurant concept(s) included in the Co-Brand Restaurant.

We expect franchisees to negotiate a rent abatement period for the first 6 months of a lease term. The franchisees of our affiliate, DBRI, have reported to DBRI average rent abatement for the first 6 months of their leases ranging from \$10,000 - \$24,000 (for delivery-carryout restaurants), \$18,000 - \$48,000 (for non-traditional restaurants), and \$24,000 - \$60,000 (for traditional restaurants). We do not anticipate Ghost Kitchens receiving any rent abatement. Any lease negotiations are your sole responsibility.

(15) This amount represents the fee assessed by us for our Virtual Brands Training Program which your Owner/Operator and two Restaurant managers are required to complete. It also includes the cost of training manuals. If this is your first Restaurant, the training fee is \$1,150 for each Owner/Operator and any other personnel attending our Virtual Brands Training Program in Dallas, Texas and \$1,750 for online and on-site training of up to 3 individuals at least 30 days before your Franchised Restaurant opening which includes manager certification and/or our online Virtual Brands Training Program. If you are an existing Restaurant franchisee and your Owner/Operator has already attended and completed our Virtual Brands Training Program to our satisfaction, you are only required to pay a Training Fee of \$1,750 to us at least 30 days before the opening of your Franchised Restaurant. The training fee does not include any costs for uniforms (which you are required to purchase from our approved supplier), or any additional costs or expenses incurred by your trainees in connection with our Virtual Brands Training Program including costs of travel, lodging, meals, and wages. If more than 3 trainees attend on-site training and will be certified, you will incur an additional training fee of \$175 per person for manager certification.

(16) This estimate assumes that your Owner/Operator and two other managers attend and complete training from a ServSafe-approved instructor and that you do not attend ServSafe training as part of our Virtual Brands Training Program in order to become ServSafe certified. The current cost of ServSafe training is approximately \$145 per person online or \$185 per person for an instructor led class.

(17) This amount includes the monthly \$10 Training Enrollment fee for an initial 3-month period.

(18) This estimate includes your required subscription to Spark's Smokestack sales reporting system and assumes that you operate one Restaurant and purchase access to the system for one manager. This amount is for the subscription and infrastructure support fees for a 3-month period. These fees will increase if you purchase access to the system for multiple managers or you operate multiple Restaurants.

(19) This estimate includes your required subscription to Spark's Online Ordering system and assumes that you operate one Restaurant. This amount includes the \$125 installation fee for the Spark Online Ordering System and the subscription fees for a 3-month period.

(20) This amount includes the monthly \$149 Spark POS SaaS fee for an initial 3-month period. This amount also includes the \$125 installation fee for the Spark POS.

(21) This amount includes the monthly Technology Support Fee (\$251 - \$340) for an initial 3-month period. This amount also includes the required initial Technology Support Setup Fee (\$575 - \$2,227) for certain required equipment necessary to support required cybersecurity services.

(22) This amount includes the monthly Chowly, Inc. software fee (\$30 - \$45) for an initial 3-month period. The low end of this estimate assumes that you operate a Restaurant as the only restaurant in a facility or you operate a Co-Brand Restaurant that includes 2 branded concepts and the high end of this estimate assumes that you operate a Co-Brand Restaurant that includes 3 branded concepts. This amount also includes the required Chowly, Inc. upfront fee (\$200) for the subscription. We will pay these amounts to Chowly, Inc. and invoice you.

(23) An Epson printer is a required component of the Spark Online Ordering system, and must be purchased from us or an approved supplier (currently, Spark). The low end of each range is \$0 to account for Co-Brand Restaurants, as the related fees/costs will be incurred only once for an entire Co-Brand Restaurant, not once for the Restaurant included in the Co-Brand Restaurant and again for the other restaurant concept(s) included in the Co-Brand Restaurant.

(24) The range for the subtotal of construction costs represents the estimated construction costs.

(25) The amounts stated will be used by you to cover costs and expenses such as debt service, wages, rent and other occupancy costs, initial stocking of inventory, food stocks and supplies, and other operating expenses during the initial three months of operations. These amounts are estimates, and we cannot guaranty that you will not have additional expenses starting your Franchised Restaurant, or that the period of time during which your Franchised Restaurant operates with negative cash flow will not be longer than anticipated. You should arrange for additional capital resources to be available to you if your initial investment expenses exceed this estimate. This estimate also reflects the cost of your Owner/Operator and two Restaurant managers to attend and complete our Virtual Brands Training Program (but excluding the fees described in footnote 15 above). These amounts include estimated transportation costs, the cost of lodging and meals, employee wages (but no salary for the Owner/Operator), and incidental expenses. Your costs may be greater depending upon your distance from the Dallas-Fort Worth, Texas metropolitan area and the lodging and meals chosen, and your employee wages.

(26) We have relied on our recent experience to compile these estimates. We cannot assure you that you will incur the same costs in your market. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. The Initial Investment estimates relate to a single Restaurant in each listed category.

(27) This table provides estimates of your initial investment for a Restaurant constructed using our current prototype plans and specifications. Traditional Restaurants typically have 40-50 seats for dining

depending upon the square footage of the Restaurant premises under a single unit Franchise Agreement. Non-Traditional Restaurants may have limited seating capacity while Delivery-Carryout Restaurants generally do not have seating or share a common seating area within a larger venue. Ghost Kitchens do not have any seating for customers. If you decide to incur additional costs to develop a design for your Franchised Restaurant that varies from our prototype, or you select a location where the landlord requires that you make design changes that incur costs that exceed our estimates, even if we approve the variation or changes, you are responsible for the additional costs and their impact on the performance and finances of your Franchised Restaurant. For purposes of this table, the numbers for a Non-Traditional Restaurant are based on a conversion of an existing food service facility located within a convenience store, food court or other "non-traditional" setting containing 400 to 1,000 square feet. The estimates for Traditional Restaurants include the conversion of a previously finished out, equipped restaurant facility containing approximately 1,500 to 2,200 square feet. This may entail a (i) "retail space conversion", that is, the conversion of previously finished out retail "white space" not equipped with restaurant facilities and containing; or (ii) a "shell building finish out", that is, an unfinished retail space in a "shell" condition, typically located within a retail strip center. The estimates for Delivery-Carryout Restaurants and Commissary Ghost Kitchens assume limited footprints of approximately 1,000 to 1,300 square feet. The table assumes in all cases that you will lease the location of your Franchised Restaurant. We do not estimate the cost of new construction, free standing restaurants.

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**YOUR ESTIMATED INITIAL INVESTMENT - DEVELOPMENT AGREEMENT**

<b>TYPE OF EXPENDITURE</b>	<b>AMOUNT</b>	<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS TO BE MADE</b>
Development Fee <sup>(1)</sup>	\$25,000 - \$80,000	Lump Sum	Execution of Development Agreement	Us
Legal and Accounting <sup>(2)</sup>	\$2,500 - \$10,000	As Arranged	As Incurred	Attorney, Accountant
<b>TOTAL<sup>(3)</sup></b>	<b>\$27,500 - \$90,000</b>			

**Footnotes:**

(1) As described in Item 5, if you execute a Development Agreement, you must pay us a Development Fee in full when you sign the Development Agreement, which is fully earned when paid and not refundable under any circumstances. The Development Fee you pay depends upon the number of Restaurants to be opened, and will equal the amount of the applicable Franchise Fee due for the first Restaurant (i.e. \$20,000 for a Traditional Restaurant or \$15,000 for a Non-Traditional Restaurant, Delivery-Carryout Restaurant or Ghost Kitchen) plus \$15,000 for each additional Traditional Restaurant and \$10,000 for each additional Non-Traditional Restaurant, Delivery-Carryout Restaurant or Ghost Kitchen you agree to develop (regardless of the type). The Development Fee presented in this Item 7 table assumes the development of 2 Restaurants on the low end, and the development of 5 Restaurants on the high end.

(2) We recommend strongly you engage the services of professionals to assist you in evaluating our franchise and to enter into the Development Agreement. This will include attorneys and accountants. Actual cost depends on the work done by your attorneys and accountants and their rates.

(3) The estimated initial investment for a single Restaurant, as set forth in the Item 7 table above, will apply to each Restaurant opened under the Development Agreement. You should be aware that such estimated initial investment for your second and subsequent Restaurant will likely be higher than for your first Restaurant due to inflation and other economic facts that may vary over time.

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

**Required Purchases and Approved Suppliers**

You must purchase your salad dressings, condiments, pre-made salads, side dishes, bread, produce, proteins, spices, packaging and other ingredients for proprietary recipes from approved suppliers. We do not permit you to contract with any alternative suppliers for the products described in this paragraph, nor do we issue specifications for these items. If you fail to make any of the required menu items available for sale in your Franchised Restaurant, we may direct our approved supplier(s) to deliver, at your expense, a reasonable quantity of the required menu item(s) based upon the sales volume of your Franchised Restaurant. In addition, unless you operate a Ghost Kitchen, in which case you will not use any menu boards, you must purchase your menu boards and ongoing support and maintenance for the menu boards from our designated supplier.

You must also purchase your food products, paper stocks, chemicals, uniforms, collateral marketing materials, and other supplies only from approved suppliers and vendors under the standards and specifications prescribed in the Manuals or otherwise identified in writing by us. We have developed a list of approved suppliers and vendors for these items. You may request that we approve alternative suppliers or vendors.

We require that you purchase and utilize our approved point of sale system and related hardware and software (currently, the Spark Point-of-Sale system with the Smokestack information management system), and may require you to utilize point of sale and restaurant operating hardware and software programs in the future that replace or add to the point of sale system then approved and required for use in your Franchised Restaurants. (See Item 11) We have developed a list of approved suppliers for the approved point of sale system and related software and hardware. In addition to the TIBS described below, we may require you purchase from approved suppliers and use point of sale systems, operations, catering, back office, accounting, customer service, credit card and gift card processing, loyalty program processing, online ordering and delivery, and other hardware and software in the operation of your Franchised Restaurant. You must use an approved supplier for credit card and gift card processing. If your Franchised Restaurant is a Ghost Kitchen, you must also purchase and use any hardware, operating system(s), and software application(s) required by third party delivery company(ies).

In addition, we may require you to purchase and utilize any upgrades, additions, enhancements or replacements of the hardware or software, some or all of which are developed and licensed by or on behalf of us or an affiliate, or otherwise required by us at such cost as we or our approved vendors make such upgrades, additions, enhancements, and replacements available to you (See Items 6 and 11). We do not permit you to contract with any alternative suppliers of computer hardware and software for use with or in your Franchised Restaurant, nor do we issue specifications for these items. Subject to our approval, you may use standard, off the shelf general business applications software such as Microsoft Office obtained from an authorized reseller for use in your Franchised Restaurant. You must install and maintain internet services in your Franchised Restaurant that comply with our then current standards for bandwidth and speed.

You must purchase TIBS from our supplier, which is currently Spark. This TIBS system costs approximately \$5,000 - \$7,000 for installation and the required hardware and software. The TIBS system includes point of sale hardware and application software that provides reports to you and us on store operations, an Ipad, intelligent printer, firewall, switch, a wi-fi access point for your Franchised

Restaurant's customers while on premises, and other features, operational functions, marketing benefits, and applications as we may determine. See Items 5 and 11.

You must offer delivery services from your Franchised Restaurant if one of our designated third-party delivery providers offers delivery services in the Assigned Area. You must offer delivery services in compliance with the standards proscribed by us in the Manuals or otherwise in writing, including utilizing only the specified designated delivery service providers we identify, making available the menu items identified as appropriate for delivery (and only those designated menu items), and limiting the delivery services to any delivery area we specify to you in writing. (See Item 12)

You must purchase or lease all of your equipment, including barbecue pits and pellets, under any specifications prescribed in the Manuals. These specifications include standards for temperature, design and performance, and are based on our sole judgment and discretion and our and our affiliates' experience operating and franchising restaurants. We have developed a list of approved equipment suppliers; however, you may purchase this equipment from any supplier we approve.

Unless you operate a Ghost Kitchen, in which case you will not use any fixtures, furnishing and interior design finishings, you must purchase all of your fixtures, furnishings, and interior design finishings only from approved suppliers or vendors under the standards and specifications prescribed by the plans obtained from an approved architect or otherwise identified in writing by us. We have developed a list of approved suppliers for these items. You may request that we approve alternative suppliers.

Certain paper and food products you use in the operation of your Franchised Restaurant are manufactured or purchased for redistribution by Wycliff. The tables, beverage bar and serving line components, merchant rack, wainscoting, and construction materials you use in the design, build-out, construction and operation of your Franchised Restaurant are manufactured or purchased for redistribution by Stanford Sonoma.

You must use an architect we approve for the planning and design of your Franchised Restaurant. We will provide you with a list of approved architectural firms. If you prefer to use an architect that is not on our approved list, you must, within 30 days of executing the Franchise Agreement, submit the architect's information and your contract for our prior approval. We may withhold our approval if we determine that your proposed architect does not demonstrate the experience, credentials or qualifications for a project such as your Franchised Restaurant, or our prior experience with the architect has not been satisfactory. Any franchisee requesting an alternate architect must submit its proposal to us and our then current form of agreement for alternate architects executed by the alternate architect in order to have the proposal evaluated. You will be required to independently and at your own expense have the design plans and specifications adapted for the finish-out or renovation of your Franchised Restaurant by an approved architect in compliance with all applicable federal, state or local laws and ordinances. We may require you to use one of our then current approved architects, if your architect fails to adapt our prototypical design plans and specifications to our satisfaction or fails to meet the development timeframe in your Franchise Agreement.

You must use a general contractor we approve for the construction of your Franchised Restaurant. If you prefer to use a general contractor that is not on our approved list, you must, within 30 days of executing the Franchise Agreement, submit the general contractor's qualification information to us. In order to be approved, the general contractor must execute our then current master service agreement with us, which provides for paying you damages if the contractor does not finish the work on time and requires that certain terms be included in the contract executed between you and the general contractor and which may require the general contractor to pay an additional fee for its approved status. At any time during construction, we may withdraw approval of your general contractor and require you to use one of our then current approved general contractors if your contractor fails to complete construction to our satisfaction or fails to meet the



development timeframe in your Franchise Agreement. You must take steps to remove any unapproved general contractor from the construction site within 48 hours of receiving written notice from us.

You must use an accounting firm we approve to provide comprehensive accounting services for your Franchised Restaurant. The approved supplier of these services may be limited to us, our affiliates, and/or our designated third party suppliers, and you must purchase these services only from us, our affiliates, and/or our designated third party suppliers. If you prefer to use an accounting firm that is not on our approved list, you must submit the accountant's information and your contract with the accounting firm for our prior approval. We may withhold our approval if we determine that your proposed accountant does not demonstrate the experience, credentials or qualifications necessary to provide accounting services for your business and the System.

You must subscribe to any third-party online ordering or delivery services that we have approved and are available to provide services in the Assigned Area. Spark is currently the only approved vendor for online orders placed through our website. You also must purchase a subscription to our sole approved supplier's (Chowly, Inc.) third-party online ordering system aggregation software. For other delivery services, we will provide you with a list of currently approved vendors in your area. We may require you to participate in third-party discount voucher programs (i.e. Groupon or Living Social) and/or any customer loyalty programs that have been approved by us. You may not use any third-party online, delivery, or voucher company that has not been approved by us. We may add or remove vendors from the approved list at any time. We may also provide you with written guidelines governing the minimum standards and specifications of certain products, services and equipment which you procure from unrelated third parties. These standards and specifications may be set forth in the Manuals. We may modify these standards and specifications, as well as the other standards and specifications discussed in this Item 8, by providing you with written notification.

We require all franchisees to execute a Smokestack Customer Agreement with Spark for a subscription which allows you to access to the Smokestack sales data collection and reporting system. We require all franchisees to execute a Spark On-Line Services User Agreement with Spark for a subscription which allows you to access to the Spark Online Ordering system. Currently, an Epson printer is a required component of the Spark Online Ordering system, and must be purchased from us or an approved supplier (currently, Spark). We may in the future to designate ourselves, an affiliate of ours, or a supplier in which our officer owns an interest, as an approved supplier for additional items.

We require you to obtain and maintain certain insurance coverage within thirty (30) days after the execution of the lease for your Franchised Restaurant. You must obtain all required insurance policies solely from insurance agents/brokers or other providers we approve (including our affiliate or subsidiary). We may or may not receive compensation or other economic benefits from these approved insurance agents/brokers or other providers. If you desire to purchase the required insurance policies from an unapproved insurance agent/broker or provider, you will submit to us a written request for such approval. If approval is granted by us for the use of an unapproved insurance agent/broker or other provider, you will pay us a \$350 fee to cover the costs of reviewing the Coverages procured by the unapproved vendor. Should our review of the procured Coverages determine that the unapproved vendor procured insufficient Coverages, you must procure the Coverages we identify within 7 business days upon receiving notification from us. Additionally, you will pay us an additional \$150 fee to review these subsequent changes (and a \$150 fee to review in the event that any additional changes are necessary).

Such policy or policies will be written by an insurance carrier or insurance carriers with a Best's Insurance Guide rating of "A" or better, and will include, at a minimum, the following:

- A. Commercial general liability insurance, with bodily injury, property damage, and advertising and personal injury coverage parts. The medical payments coverage part will have a per occurrence liability limit of \$5,000.00 per Restaurant location. The commercial general liability policy will have a minimum per occurrence liability limit of \$1,000,000 per Restaurant location and a general aggregate liability limit of \$2,000,000 per Restaurant location.
- B. Crime (inside/outside) and employee dishonesty insurance with a minimum per occurrence liability limit of \$10,000 per Restaurant location for inside crime and a minimum per occurrence liability limit of \$10,000 per Restaurant location for outside crime. Employee dishonesty coverage will have a minimum per occurrence liability limit of \$50,000 per Restaurant location.
- C. Worker's compensation insurance in amounts provided by applicable law
- D. Automobile liability insurance coverage for owned, non-owned, and hired vehicles with a liability limit of not less than \$1,000,000 combined single limit (which will include coverage for your delivery, including home delivery, if applicable, and catering operations).
- E. Liquor liability insurance if you sell alcoholic beverages at your Franchised Restaurant, with a minimum per occurrence liability limit of \$1,000,000 per Restaurant location.
- F. Building and personal property insurance coverage for physical loss or damage to personal property and real property including the leasehold improvements, at each Restaurant location. The coinsurance percentage will not be less than eighty percent (80%).
- G. Umbrella liability insurance over the above described general commercial liability, liquor liability, automobile liability, products/completed operations, and employer's liability insurance coverage parts with a per occurrence limit of \$1,000,000, and an aggregate limit of \$1,000,000 per Restaurant. The umbrella policy will be written on an occurrence reporting basis.
- H. Employment practices liability coverage in such form and amounts we require and with coverage limits of not less than \$1,000,000. This policy must include coverage for third party claims. In addition, the policy must have a sublimit for defense costs relating to wage and hour claims.
- I. Data Privacy/Cyber Liability Insurance, including first party coverage (forensics investigation, notification, credit monitoring, loss of business income, crisis management) and third party coverage, with coverage limits of no less than \$1,000,000.
- J. Any insurance which may be required by statute or rule of the state or locality in which your Franchised Restaurant will be operated.
- K. For the period of any construction, finish-out, renovation, refurbishment or remodeling of your Franchised Restaurant, you or your approved general contractor will maintain builder's all risk insurance and performance/completion and payment bonds in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to us.
- L. Additional insurance coverages, together with waivers of subrogation, exclusions, endorsements, naming of additional insureds and notice provisions for all insurance policies, that may reasonably be specified by us in accordance with standards and specifications set forth in the Manuals or otherwise in writing.

You may not have any deductible, self-insured retention or self-funded retention for any of these coverages in excess of the amount we approve, which may require first dollar coverage for some of this insurance without a deductible or a self-insured retention. Within thirty (30) days after the execution of the lease for your Franchised Restaurant and, thereafter, at least sixty (60) days prior to the expiration of any such policy, you will deliver to us certificates of insurance indicating the contracted for insurance coverages as well as the description of special provisions (e.g. additional named insured status). You will also provide a binder, declarations page, or confirmation of insurance, describing and confirming the coverages afforded by the required policies described above upon request.

Except for the products and services described above that are provided by our affiliates, Spark, Wycliff and Stanford Sonoma, neither we nor any of our affiliates are currently approved suppliers of any required products or services. We and/or one of more of our affiliates may in the future be approved suppliers or the only approved suppliers of these and other products and services.

### **Approval of Alternate Suppliers**

We may, at our discretion, approve suppliers and vendors and to revoke the approval of any supplier or vendor. We will notify you in writing when an approval of a previously approved supplier or vendor has been revoked. We must approve alternative suppliers or vendors in writing before you use them. If you request approval of a new supplier or vendor, you must do so in writing, and must include pertinent information about the supplier or vendor, your reasons for the request, and a list of products to be supplied by the proposed supplier or vendor. If your request is approved or denied, we will notify you in writing within 30 days. While we do not maintain written criteria for alternate suppliers and vendors, upon request, we will evaluate alternative suppliers and vendors based upon many factors such as their ability to meet our standards and specifications, meat and produce quality and freshness and dry goods quality, and based upon the supplier's financial position, business reputation, delivery performance, accessibility, credit rating, and other criteria. We may establish and revise approved supplier or vendor criteria as we deem appropriate and will make them available to our franchisees upon written request. Any charges we incur in connection with the testing and inspection of the proposed supplier's or vendor's offering must be paid by the franchisee requesting such approval. Any franchisee requesting an alternate architect or general contractor must submit its proposal to us and the alternate architect or general contractor must execute our required form of agreement. See Items 8 and 22.

### **Revenue from Franchisee Purchases and Payments from Designated Suppliers**

During the 2021 fiscal year, we received no revenue or other material consideration from Wing Boss franchisees based on required purchases or leases. During the 2021 fiscal year, our affiliate, Stanford Sonoma, received a total of \$44,024.04 from Wing Boss franchisees for purchases of fixtures, furnishings, and interior design finishings used in the operation of their Restaurants. No other affiliates received revenue or other material consideration during the 2021 fiscal year from Wing Boss franchisees based on required purchases or leases.

Certain approved suppliers currently, or may in the future, pay us (or an affiliate) compensation or otherwise credit our account (or of our affiliate) in the form of sales incentives or rebates based on the purchases you may make from such suppliers. Currently, approved suppliers pay us and our affiliates the following sales incentives and payments: (1) food and beverage items, paper goods and cleaning products: either (i) a flat amount per pound or case (or other specified measure) purchased by our franchisees or (ii) a percentage of the supplier's total sales to our franchisees; (2) credit card and gift card processing services: a flat amount per transaction processed; (3) firewood and pellets: a flat amount per case or bag purchased; (4) Restaurant equipment: a percentage of the supplier's total sales to our franchisees; and (5) insurance: a percentage of

the insurance broker's commission realized on each policy purchased by our franchisees. During the 2021 fiscal year, we and our affiliates received a total of \$8,074.17 in credits and payments from these vendors based on Wing Boss franchisees' purchases. In addition, we anticipate that one of our approved food suppliers will pay us an administrative fee based on cases of product delivered for our or our affiliates performing certain activities to assist the supplier, such as promoting use of the supplier's products; providing additional marketing support; assisting in the collection of past due amounts from franchisees; coordinating the purchase of perishables items; providing order entry training; maintaining order guides; determining appropriate stock levels for products; monitoring the purchasing patterns of Restaurants; and coordinating new Restaurant equipment purchases.

We and our affiliates apply such sums to defray costs in discharging duties and obligations to our franchisees, to partially fund the Marketing Fund, and to generate revenues. In addition, we currently offer participating franchisees up to 70% of the payments we receive from certain suppliers that are directly attributable to a franchisee's Restaurant based on those participating franchisees purchases. In order to receive these rebates, a franchisee must purchase supplies from our participating suppliers, be in good standing with their franchise agreement and demonstrate successful sales growth as we determine. We may modify the terms and/or discontinue this program at any time and in its sole discretion.

#### **Percentage of Total Purchases Represented by Required Purchases**

We anticipate that the required purchases and leases from approved suppliers will constitute the substantial majority of all purchases by you for the development and operation of your Franchised Restaurant. We estimate that up to 75% of your initial investment to establish and open your Franchised Restaurant will be applied to required purchases and leases, and that up to 75% of your expenditures to operate your Franchised Restaurant will be applied to required purchases and leases.

#### **Cooperatives**

There are no purchasing or distribution cooperatives, although we retain the right to establish them.

#### **Negotiated Purchases**

We and our affiliates negotiate volume discount arrangements with certain designated suppliers for our franchisees (including pricing and payment terms), based upon volume purchases by the System. These suppliers may require you to enter into separate contracts with them. The primary designated supplier is US Foods.

#### **Material Benefit**

We do not provide any material benefits to franchisees based upon their use of designated or approved suppliers. We may not grant franchises or confer other benefits to any franchisee, for any reason or no reason, which may include the failure to follow and support the System, including our recommended purchase of particular products or services or use of particular supplies.

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**ITEM 9  
FRANCHISEE'S OBLIGATIONS**

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

<b>FRANCHISEE'S OBLIGATIONS</b>			
<b>Obligation</b>	<b>Disclosure Document Item</b>	<b>Article in Franchise Agreement</b>	<b>Article in Development Agreement</b>
a. Site selection and acquisition/lease	Item 11	Articles 3 and 7	Article 3
b. Pre-opening purchases/leases	Items 7 and 11	Articles 7 and 8	Article 3
c. Site development and other pre-opening requirements	Item 11	Article 7	Article 3
d. Initial and ongoing training	Item 11	Articles 3, 8, 9 and 15	Articles 5 and 8
e. Opening	Item 11	Articles 3, 5 and 7	Article 3
f. Fees	Items 5 and 6	Articles 4, 5 and 16	Articles 2, 5, 6, 7, 8 and 9
g. Compliance with standards and policies/operating manual	Items 8 and 16	Articles 3, 8 and 11	None
h. Trademarks and proprietary information	Items 13 and 14	Articles 1, 8, 10, 11 and 12	Articles 6, 7 and 8
i. Restrictions on products/services offered	Item 16	Article 8	Articles 5 and 6
j. Warranty and customer service requirements	Item 16	Article 8	Articles 9 and 15
k. Territorial development and sales quotas	Item 12	None	Articles 1, 3, 4 and 6
l. Ongoing product/service purchases	Item 8	Article 8	None
m. Maintenance, appearance and remodeling requirements	Items 16 and 17	Articles 2, 7, 8, 14 and 17	Article 6
n. Insurance	Item 7	Articles 8 and 14	None
o. Advertising	Items 6, 7 and 11	Articles 3, 5 and 8	Article 1
p. Indemnification	Item 11	Articles 9, 10, 15 and 20	Article 9

<b>FRANCHISEE'S OBLIGATIONS</b>			
<b>Obligation</b>	<b>Disclosure Document Item</b>	<b>Article in Franchise Agreement</b>	<b>Article in Development Agreement</b>
q. Owner's participation/management/staffing	Item 15	Articles 8 and 9	Articles 5, 8 and 9
r. Records and reports	Item 6	Articles 4, 5 and 13	Article 5
s. Inspections and audits	Items 6 and 11	Articles 3, 7, 8 and 13	None
t. Transfer	Item 17	Article 15	Articles 3, 6, 7, 5 and 9
u. Renewal	Item 17	Article 2	None.
v. Post-termination obligations	Item 17	Articles 17 and 18	Articles 4, 6 and 9
w. Non-competition covenants	Item 17	Article 18	Attachment B
x. Dispute resolution	Item 17	Article 27	Article 14
y. Other - Guaranty	Item 15	Articles 2, 8, 15 and 21	Articles 3 and 7 and the Consent of Developer's Investors

**ITEM 10  
FINANCING**

We do not offer direct or indirect financing. Additionally, we do not guarantee your note, lease or any other obligation.

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

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

**Pre-Opening Obligations**

Before you open your business, we, or our designated affiliate, will:

Designate your assigned territory. (Franchise Agreement - Article 1).

Integrate you into our "Phases and Stages" program, a business and store development program that outlines the structure and timeline in the planning, development and opening of your Franchised Restaurant, and in which you will be obligated to participate. (Franchise Agreement – Article 3).

Provide you with our site selection counseling and such other assistance as we deem advisable. (Franchise Agreement - Article 3).

Provide a site evaluation as we determine necessary. (Franchise Agreement - Article 3).

Accept or not accept a site for your Franchised Restaurant location. For additional information, see Item 11, "Site Selection". (Franchise Agreement - Articles 1 and 7).

Provide you with the contract information for our approved architect who is the only architect we have supplied with a set of prototypical architectural and design plans for a Restaurant. We must review and approve all plans and specifications for the finish-out or renovation of your Franchised Restaurant. We do not assist in conforming the prototype plans or your premises to local ordinances and building codes or in obtaining any required permits. (Franchise Agreement - Articles 3 and 7).

Provide you with the contract information for our approved general contractors for the finish-out or renovation of your Franchised Restaurant. (Franchise Agreement - Articles 3 and 7)

Provide you with a list of the accounting firms we approve to provide comprehensive accounting services for your Franchised Restaurant. (Franchise Agreement – Article 13)

Provide you with assistance and advice concerning equipment, signs, fixtures, supplies and will specify your opening inventory selection and purchasing in connection with the opening of your Franchised Restaurant, as we deem appropriate. See Item 8 regarding equipment, opening inventory and supplies provided by us or our approved suppliers and any written specifications for those items. We do not provide any of these items directly and will not deliver or install any such items. (Franchise Agreement - Article 3).

Provide our Virtual Brands Training Program for two managers you designate and your Owner/Operator. For additional information, see Item 11, "Training." We will not provide any assistance in hiring any of your employees; however, all employees must meet our then current standards and criteria for the applicable position and any applicable training requirements. (Franchise Agreement - Articles 3, 8 and 9).

Provide a single print copy of the Manuals; however, you may receive such print copy of the Manuals before you buy a Restaurant franchise if you first sign and return to us a Non-Disclosure Agreement in the form attached to this Disclosure Document as Exhibit G. You must strictly comply with the Operations Manual and other Manuals in operating the business. We have the right to revise the contents of the Manuals at any time. You must comply with all changes to the Manuals when you receive notice of them. (Franchise Agreement - Articles 3 and 11).

Provide you with a list of required and approved suppliers and vendors, as set forth in the Manuals and other written directives as we deem appropriate. (Franchise Agreement - Articles 3 and 8).

Approve any advertising and promotional items to be used in connection with your "Restaurant opening" promotion, and provide you, at your expense, with at least one of our trained representatives to provide on-site training, supervision and assistance around the time of your "Restaurant opening". For additional information, see Item 11, "Training". (Franchise Agreement - Articles 5 and 9).

### **Site Selection**

If your Franchised Restaurant is a Restaurant Ghost Kitchen, then the location of your proposed Franchised Restaurant has already been identified and we will either accept or reject it before entering into a Franchise Agreement with you. For all other types of Restaurants, we typically require that you lease your Franchised Restaurant's site. Generally, we do not own the Restaurant sites leased to our franchisees. The site for your Franchised Restaurant is selected by you, subject to our acceptance. Your Franchised Restaurant may

not be relocated without our prior written consent. Before you lease the site for your Franchised Restaurant, you are required to locate a site that satisfies our site selection guidelines and submit to us or our designated affiliate, in the form we specify, a description of the site, including evidence satisfactory to us demonstrating that the site satisfies our site selection guidelines, together with other information and materials that we may require, including a letter of intent or other evidence that confirms your favorable prospects for obtaining the site. You will submit such information for the proposed site to us or our designated affiliate for our acceptance no later than 90 days after the execution of the Franchise Agreement. We will have 30 days after receipt of this information and materials from you to accept or not accept, in our sole discretion, the proposed site as the location for your Franchised Restaurant. You are required to acquire by lease, at your expense, the site for your Franchised Restaurant within 120 days after execution of the Franchise Agreement unless we decide, in our discretion, to extend such period. You must obtain the acceptance from us or our designated affiliate of any lease for your Franchised Restaurant premises prior to execution by you. If you fail to acquire a site for your Franchised Restaurant within the required period, we may, among other things, terminate the Franchise Agreement upon notice to you and retain the Franchise Fee and any other fees you paid under the Franchise Agreement. You must request from the landlord the execution of the Lease Rider in the form attached to the Franchise Agreement. You will furnish to us or our designated affiliate a copy of the executed lease, including the Lease Rider, for your Franchised Restaurant site within ten days of its execution. (Franchise Agreement - Articles 1, 3 and 7).

We or our designated affiliate will provide to you such site selection guidelines and such site selection counseling and assistance as we deem advisable. Our guidelines for site selection require an evaluation of the building type, square footage and the functional utilities of the site. (Franchise Agreement - Articles 1, 3 and 7).

We or our designated affiliate will also provide on-site evaluation of a proposed site if we deem this to be necessary or in response to your request for site assistance; neither us nor our designated affiliate will provide on-site evaluation for any proposed site prior to the receipt of the materials required to be submitted to us or our designated affiliate as described above, including a letter of intent. We or our designated affiliate will provide up to 3 on-site evaluations for your Franchised Restaurant (and for each Restaurant under a Development Agreement) at no additional charge to you. Thereafter, if additional on-site evaluations are deemed necessary by us or our designated affiliate, on our own initiative or at your reasonable request, you must pay a fee of \$1,000 for each additional on-site evaluation and must reimburse us or our designated affiliate for all reasonable expenses in connection with such on-site evaluation, including the cost of travel, lodging, meals, and wages. (Franchise Agreement - Articles 1, 3 and 7).

Unless your Franchised Restaurant is a Ghost Kitchen, we estimate that the time from execution of the Franchise Agreement to the commencement of operations of your Franchised Restaurant will be from 9 months to 12 months. If your Franchise Restaurant is a Ghost Kitchen, we estimate that the time from execution of the Franchise Agreement to the commencement of operations of your Franchised Restaurant will be from 45 days to 90 days. The actual time required may vary depending upon the time necessary to locate and then approve a site, financing, the permits and licenses necessary for the finish-out or renovation of your Franchised Restaurant and the operation of your Franchised Restaurant, the finish-out or renovation of your Franchised Restaurant as it may be affected by weather conditions, shortages, delivery schedules and other similar factors, preparation of the interior and exterior of your Franchised Restaurant (including decorating, purchasing and installing fixtures, equipment and signs, and landscaping) and complete preparation for the operation of your Franchised Restaurant (including purchasing inventory and supplies). If you lease the site for your Franchised Restaurant and your Franchised Restaurant is not a Ghost Kitchen, the finish-out or remodeling of your Franchised Restaurant must be completed within 150 days of the date you sign your lease. If you own your Franchised Restaurant's premises and your Franchised Restaurant is not a Ghost Kitchen, then the finish-out or remodeling of your Franchised Restaurant must be completed



within 180 days of the effective date of the Franchise Agreement. Unless your Franchised Restaurant is a Ghost Kitchen, you are obligated to open your Franchised Restaurant and commence business within 12 months following the execution of the Franchise Agreement, or according to the development schedule set forth in the Development Agreement, as applicable. If your Franchised Restaurant is a Commissary Ghost Kitchen or a Restaurant Ghost Kitchen located in a restaurant operating under a brand owned by an unrelated third-party, then you are obligated to commence operations of your Franchised Restaurant within 90 days following the execution of the Franchise Agreement. If your Franchised Restaurant is a Restaurant Ghost Kitchen located in a restaurant operating under a brand owned by us or one of our affiliates, then you are obligated to commence operations of your Franchised Restaurant within 45 days following the execution of the Franchise Agreement. (Franchise Agreement - Articles 1, 3 and 7).

You must sign our then current form of Franchise Agreement for each new Restaurant you develop and operate under a Development Agreement. The then current form of Franchise Agreement will include our then current standards for site selection we use for new franchisees with which you must comply. (Development Agreement – Article 3).

### **Obligations After Opening**

During your operation of the franchised business, we, or our designated affiliate, will:

Notify you of any additions, replacements or other changes regarding the menu items or pricing or products and services we approve for sale. (Franchise Agreement - Article 8).

Provide on-site training, the Virtual Brands Training Program for successor and replacement managers and Restaurant personnel, and other training programs and seminars as we deem appropriate. We will not provide any assistance in hiring any of your employees; but all employees must be able to perform the job responsibilities for the position. For additional information, see Item 11, "Training". (Franchise Agreement - Articles 3 and 9).

Provide, as we deem appropriate, advice and written materials concerning techniques of managing and operating your Franchised Restaurant, including new developments and improvements in restaurant equipment, food products, packaging, preparation, and operational systems. (Franchise Agreement - Article 3).

Provide you with guidelines on pricing policies. You have the right to sell your food products and merchandise and offer services at any prices you may determine, so long as you are in compliance with our general guidelines on pricing policies as set forth in the Manuals or otherwise in writing. Subject to applicable legal constraints, you must participate in and comply with all sales and promotional programs promulgated by us. (Franchise Agreement - Article 5).

Provide indemnification against and reimbursement for all damages for which you are held liable in any proceeding arising out of your use of any of the Proprietary Marks, if your conduct and the conduct of each person owning an equity interest in you with respect to such proceeding and use of the Proprietary Marks is in compliance with the terms of the Franchise Agreement. (Franchise Agreement - Article 10).

Provide you access, upon your request, subject our approval and at such cost as we make these materials available to other franchisees operating under the System, copies of any then current training films and instructional videos and audio materials that may be developed and made available to franchisees by us. (Franchise Agreement - Article 3).

Conduct, in our discretion, meetings, seminars, and other related activities regarding the operation of Restaurants for franchisees generally, which you may attend. Except as approved by us, any costs incurred by you or Restaurant personnel in attending such events will be your responsibility. (Franchise Agreement - Article 3).

Provide ongoing operational assistance as we deem necessary, subject to the availability of our appropriate personnel. (Franchise Agreement - Article 3).

Inspect your Franchised Restaurant and evaluate your Franchised Restaurant's products and services at such times as we may deem advisable to maintain the high standards of quality, appearance and service of the System, in person or remotely by telephone where possible. Require the Owner/Operator and other personnel on site during an inspection to correct any standards deviations that may be discovered during the inspection. (Franchise Agreement - Article 3 and 8.22)

Provide interim management of your Franchised Restaurant in the event of the death or permanent disability of your Owner/Operator, or any other person with a direct or indirect beneficial ownership interest in you if we determine, in our sole discretion, that such person had substantial control or supervision over the management of your Franchised Restaurant. Such interim management is provided by us at our option and we will charge a monthly management fee of five percent (5%) of Net Sales plus pass through costs and expenses. In addition, if we provide one of our employees as manager, you must pay us the manager's then current salary for the time of such interim management. (Franchise Agreement - Article 15).

Approve or disapprove of any advertising and promotional materials and programs you propose within 30 days after your submission of the materials and programs for approval. For additional information, see Item 11, "Advertising". (Franchise Agreement - Articles 3, 5 and 8).

Continue to furnish you with a list of approved vendors and/or specifications for certain products and services or notify you of any additions to or changes to the approved vendors and/or specifications. (Franchise Agreement - Articles 3, 7 and 8).

Provide additional or remedial training. For additional information, see Item 11, "Training". We will not provide any assistance in hiring any employees; but, all employees must be able to perform the job responsibilities for the position. (Franchise Agreement - Articles 3, 8 and 9).

Establish or modify a promotional gift card acceptance program and/or customer loyalty program for so long as we elect to do so. (Franchise Agreement - Article 5).

Assign to you a Regional Business Leader in our sole discretion to advise you as to any operational matters regarding your Franchised Restaurant as we may require. (Franchise Agreement - Article 8).

Establish or maintain a catering hotline in which you are required to participate subject to the policies, procedures, terms and conditions prescribed in the Manuals. By participating in the catering hotline, you will be required to offer certain standard catering options required by us. We may discontinue or modify the catering hotline at any time.

Guide you with your required participation in the philanthropic, community, and charitable causes that we require for the purpose of enhancing the goodwill, presence and reputation of the Proprietary Marks and the System, including as a part of marketing promotions or otherwise. These causes may involve The Dickey Foundation or other causes directed by us in our sole discretion. You may not cause your Franchised Restaurant to participate in any philanthropic, community or charitable cause without our prior written approval. (Franchise Agreement – Article 8)

Except as listed above, we do not have any obligation to provide you with assistance regarding (1) establishing and using administrative, bookkeeping, accounting or inventory control procedures or (2) resolving operating problems you may encounter.

### **Advertising**

We have no obligation to conduct advertising except through the Marketing Fund described below. We advertise nationally through our web site, and place most broadcast advertising in local and regional media placements. We will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. We have an in-house advertising function that works with outside regional and national advertising agencies. We have no obligation to spend any amount on advertising in an area or territory where each franchisee is located.

You must participate actively in and comply with all advertising, marketing, and sales promotion programs according to the terms and conditions we establish for each program, subject to restrictions imposed by applicable law. In all aspects of these programs, including the type, quantity, timing, placement and choice of media, market areas and advertising agencies, to the extent permitted by law, our procedures, standards and specifications will be final.

We will spend the Restaurant Opening Fee for "Promotional and Pre-Opening Expenses" described in Item 7 in our discretion, on your behalf for your Franchised Restaurant's opening promotion. We use this amount, in our discretion, to fund marketing materials, local advertising and promotional support for your Franchised Restaurant's opening. We will provide to you at your request an accounting of how we spend these funds for your Franchised Restaurant's opening promotion. While we will exercise commercially reasonable efforts to spend the full \$8,000 (if a Traditional Restaurant); \$5,000 (if a Non-Traditional Restaurant, Delivery-Carryout Restaurant or Ghost Kitchen); or \$1,000 (if a Non-Traditional Restaurant is operating as a Mobile Unit), for your Franchised Restaurant's opening promotion, any balance remaining six months after your Franchised Restaurant's opening will be deposited into the Marketing Fund to be used as described below.

We have established and intend to maintain a URL website, [www.wingboss.com](http://www.wingboss.com), promoting the System and identifying the location of franchise and company-owned Restaurants. You are required to authorize us to identify and promote your Franchised Restaurant on our website and further authorize us to modify its website and to conduct promotions on a system-wide basis, and you and your Franchised Restaurant will participate in all such promotions. You are prohibited from establishing or utilizing your own URL website, mobile apps appearing on smartphones or other electronic devices (including, for example, Android Marketplace or the Apple Store), or social media webpage to promote your Franchised Restaurant, except that you must participate in and maintain a Facebook page or other relevant social media platforms as our marketing team determines under a name that includes "Wing Boss" and your Franchised Restaurant's city and state (Franchise Agreement - Article 5). You must integrate messaging as our marketing team determines on any page you maintain on a social media platform.

*Cooperatives.* You may be required to participate in a local or regional advertising cooperative organized and approved by us, and composed of certain other franchisees located in the geographic area in which you are located. Membership in, and the coverage of, each advertising cooperative is defined geographically, typically based upon the metropolitan area in which your Franchised Restaurant is located. Not all areas will have our-approved advertising cooperative. If you are required to participate in an approved advertising cooperative, a certain percentage of your Marketing Fund contribution may be applied towards advertising, marketing and promotions targeting the local or regional area comprising your advertising

cooperative under a cooperative advertising agreement. The same percentage of each advertising cooperative member's sales revenue designated for advertising and marketing purposes under a franchise agreement with us will be applied towards such local or regional advertising, marketing and promotions. Advertising cooperatives are not required to prepare financial statements, but an accounting of the funds utilized by an advertising cooperative will be provided upon request by an advertising cooperative member. Each advertising cooperative is governed by the terms of an advertising cooperative agreement approved by us. Our standard cooperative advertising agreement is available to you for review upon request. Advertising, marketing and promotional activities are based on a majority vote of the members of the advertising cooperative; however, we must approve all such activities and may initiate any advertising, marketing and promotional activity on account of the advertising cooperative. Additionally, we administer the application of the funds designated for use by advertising cooperatives. We may terminate an advertising cooperative under each particular cooperative advertising agreement (typically by providing 30 days prior written notice of its intent to terminate the advertising cooperative as of December 31 of the year the notice is given). We may require advertising cooperatives to be formed, changed, dissolved or merged. Company-owned Restaurants are not required to participate in advertising cooperatives but may elect to do so. (Franchise Agreement - Article 5). We currently do not have a franchise advisory council that advises us on advertising policies.

*Marketing Fund.* We or our designee administers a marketing fund for the purpose of producing marketing materials for the System and other restaurant brands owned by us or one of our affiliates that could operate along with the Restaurants as Co-Brand Restaurants on system-wide basis (the "Marketing Fund"). Sums from the Marketing Fund will not be applied towards Promotional and Pre-Opening Expenses related to your Franchised Restaurant opening (including new store opening kits or related local advertising or promotional support). You are required to make a continuous contribution to the Marketing Fund in an amount equal to 3% of Net Sales of your Franchised Restaurant. As of the date of this Disclosure Document, all new franchisees under the System are required to contribute this percentage of their Net Sales towards the Marketing Fund. However, certain franchisees who executed older forms of Franchise Agreements may contribute a lower percentage of their sales towards the Marketing Fund. The Marketing Fund is maintained and administered by us or our designee, in our sole discretion, as follows:

The Marketing Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks and the proprietary marks of other restaurant brands owned by us or one of our affiliates that could be used with the Proprietary Marks. We will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. We and DBP will contribute to the Marketing Fund on behalf of company-operated Restaurants at the same rate as franchised Restaurants that opened at the same time. In administering the Marketing Fund, we and our designees are not required to make expenditures for you which are equivalent or proportionate to your contribution or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.

The Marketing Fund may be used by us (or our designee) in our sole discretion to satisfy or defray any and all costs of maintaining, administering, directing and preparing marketing campaigns, promotions and advertising, including the cost of preparing and conducting television, radio, internet/web-based, magazine, newspaper, and electronic media advertising campaigns; developing, implementing, and maintaining an electronic commerce website and/or related strategies; the cost of market research, costs of administering customer loyalty programs, direct mail and outdoor billboard advertising; public relations activities; employing advertising agencies to assist therein; costs of our personnel and other departmental costs for advertising that is internally administered or prepared by us; costs associated with customer loyalty programs; costs of providing other advertising materials to Restaurants; and costs of maintaining national "1-800" customer and/or franchisee service telephone numbers if we elect to establish this service. All

sums paid by you to the Marketing Fund will be maintained in a separate account by us or our designee and will not be used to defray any of our general operating expenses, except for such reasonable administrative costs, salaries and overhead, that we may incur in activities reasonably related to the administration or direction of the Marketing Fund and development and implementation of marketing programs for franchisees and the System. Any funds not spent in the fiscal year in which they accrue will be carried forward and used in connection with advertising activities conducted during the following fiscal year. The Marketing Fund will not be used by us for the targeted purpose of promoting franchise sales, but application of the Marketing Fund may indirectly benefit franchise sales. The Marketing Fund and its earnings will not otherwise inure to our benefit and will be operated solely as a conduit for collecting and expending the advertising fees as outlined above.

A statement of the operations of the Marketing Fund will be prepared annually by us or our designee and will be made available to you upon request, as well as an accounting of Marketing Fund expenditures. We are not obligated to provide an accounting of each marketing program and spend for your individual Franchised Restaurant. The Marketing Fund is audited on an annual basis as part of our annual audit. For the fiscal year ending May 31, 2021, monies in the Marketing Fund were expended as follows:

<u>Category</u>	<u>Percentage</u>
Administrative	16.9%
Production	7.8%
Media Placement	73.1%
Other	2.2%

Although the Marketing Fund is intended to be of perpetual duration, we may terminate the Marketing Fund in its discretion. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended for advertising or promotional purposes or returned to contributing franchised or company-operated restaurants, including Restaurants, without interest, on the basis of their respective contributions. (Franchise Agreement - Article 5).

**Technology**

Before commencement of the operation of your Franchised Restaurant, you must purchase the required computer hardware, software, internet connections and service, required dedicated telephone and power lines and other related accessories, peripherals, consoles and equipment required to operate our then current mandatory point of sale system and TIBS. Additionally, you must (i) subscribe to any third-party online ordering or delivery services that we have approved in the Assigned Area, including Chowly, Inc.’s third-party delivery service aggregation software, and may be available to provide services in your area and (ii) implement and use QuickBooks accounting software in the operation of your Franchised Restaurant. If your Franchised Restaurant is a Ghost Kitchen, you must also purchase and use any hardware, operating system(s), and software application(s) required by third party delivery company(ies). We, our affiliates, and designated suppliers may charge you a monthly or other fee for any software or technology that we, our affiliates or designated suppliers license to you and for other maintenance and support services that we, our affiliates or designated suppliers may require you to receive during the term of the Franchise Agreement.

We currently require that our franchisees use the Spark Point-of-Sale system (including such add-on consoles as we may require). The Spark Point-of-Sale system is available from Spark and the current cost of this point of sale system plus TIBS is approximately \$5,000 to \$7,000 for the hardware and software, and installation. We require the use of our proprietary TIBS that provides in-store technology to facilitate store operations, marketing, and data capture and reporting. The TIBS system includes point of sale

hardware and application software that provides frequent reports to you and us on store operations, Ipad, intelligent printer, firewall, switch, a wi-fi access point for Restaurant customers while on premises, and other features, operational functions, marketing benefits, and applications as we may determine.

The Smokestack sales reporting system, a product of Spark, is currently the only supplier approved by us for sales reporting software. (See Item 6) The Smokestack sales reporting system is used to provide you with sales data and customizable reports regarding your Franchised Restaurant to assist you in the management of your Franchised Restaurant. The Smokestack Customer Agreement which you must sign requires you pay a per Restaurant and user fee for access to the system as well as an infrastructure support fee to support data infrastructure related to data store, data transfers, POS integration and BOSS integration. (see Item 6) You may (at your option) request store and district level data interpretation and email broadcasts for additional fees payable to Spark. Spark may change the fees and institute new fees for the use of the Smokestack sales reporting system or system-support effective on 30 days' notice to you. We require you to pay a one-time, non-refundable initial fee between \$575 and \$2,227 for certain required equipment necessary to support required cybersecurity services. (See Item 5) We also require you to pay a Technology Support Fee ranging between \$251 and \$340 per month (see Item 6), which we will use, in our sole discretion, to provide basic technology support for point-of sale, cybersecurity and 24/7 data protection, back of house computer, and other basic office equipment to our franchisees during Restaurant operating hours. We may modify the Technology Support Fee once each calendar year on at least 60 days' prior written notice to cover the costs of technology support and implementation of new technology.

We require you to pay a one-time, non-refundable initial fee in the amount of \$125 for the installation of the Spark POS. (See Item 5) We also require that you pay a Spark POS SaaS Fee of \$149 per month (See Item 6), which is used by us, in our sole discretion, to provide basic technology support for point-of sale, back of house computer, and other basic office equipment to its franchisees during Restaurant operating hours. We may modify the Spark POS SaaS Fee once each calendar year on at least 60 days' prior written notice to cover the costs of technology support and implementation of new technology. You must maintain the point of sale system and related consoles and keep them in good repair. We may at any time require that you upgrade payment processing hardware and software including requiring you use "chip and pin" technology, to ensure that credit card payment processing is consistent with the current PCI standards.

We also require that you use the Spark Online Ordering system, a product of Spark, which is currently the only supplier approved by us for online ordering through our website. (See Item 8) The Spark Online Ordering system allows guests to order meals for pickup through our website. We require you to pay a one-time, non-refundable initial fee in the amount \$125 for the installation of the Spark Online Ordering System. (See Item 5) The Spark On-Line Services User Agreement which you must sign requires you pay Spark a monthly per Restaurant fee of \$157 per month for access to the system (see Item 6). As part of the Spark Online Ordering system, you must also purchase an Epson printer, the current cost of which is approximately \$500, from us or an approved supplier (currently, Spark). The Spark Online Ordering system includes a software license to integrate your Franchised Restaurant's Point-of-Sale system with our approved third-party online ordering system aggregator, currently Chowly, Inc.'s software, as well as geolocation services to allow guests to find Restaurants near them (currently provided through Google). Spark may change the fees and institute new fees for the use of the Spark Online Ordering system effective on 60 days' notice to you. If you operate a Mobile Unit Franchise, you must purchase additional hardware and software from Spark for your vehicle. You must pay Spark approximately \$2,500 for the hardware plus a \$199 set up fee and \$125 per month for the point of sale software for your vehicle and \$2.08 monthly or \$25 per year for the maintenance/license fee. Under your agreement with Spark, you are also obligated to provide an internet fail over (i.e. a cellular back up) in case the Spark hardware loses reception.

We require that you use our approved third-party online ordering system aggregator provided by Chowly, Inc. You must pay us (i) a one-time, non-refundable upfront fee of \$200 for a subscription to Chowly, Inc.'s software and (ii) a monthly subscription fee of \$30 per month plus, if your Franchised Restaurant is a Co-Brand Restaurant, an additional \$15 per month for your third and each additional branded concept operated as part of the Co-Brand Restaurant, if applicable. We will collect all fees payable for Chowly, Inc.'s software and pay them directly to Chowly, Inc. on your behalf.

We may require you to purchase, license and use point of sale systems, operations, catering, online ordering, delivery, back office, accounting, customer service, loyalty program processing, credit card and gift card processing, and other hardware and software in the operation of your Franchised Restaurant, including additions, upgrades, enhancements and replacements of the current software and hardware (including TIBS and point of sale systems). Some or all of these may be developed, supplied or licensed by or on behalf of us or an affiliate, at such cost as we or our approved vendors make such systems, hardware, software, upgrades, enhancements and replacements available to franchisees. The cost of maintaining, updating, upgrading or replacing your point of sale system and other required technology cannot be estimated at this time because it will depend on your repair history, local costs of computer maintenance and service in your area and technological advances which we cannot predict. You will be licensed to use or subscribe to and implement and keep in good repair all accounting/financial reporting programs and systems as we may require (and any upgrades, enhancements, replacements, modifications or additions), including the Point-of-Sale system. We have independent access to the accounting and cash receipts and sales and other information generated and stored in the Point-of-Sale system, TIBS system, Smokestack sales reporting system and Spark Online Ordering system. We will have exclusive control over such systems and programs and the data generated thereby, and you will not attempt to modify, regulate, block or restrict our access to the information and data generated or stored in the Point-of-Sale system (Franchise Agreement - Article 8).

The point of sale system will store information concerning your sales, inventory, accounting and other operations. You may not further modify or manipulate (except for pricing) the database for the computer software systems without our prior consent. We may retrieve from your point of sale system and other technology any and all information we consider necessary, desirable or appropriate. There is no contractual limitation on our right to access information or modify the software systems on your point of sale system or other required technology. If necessary, we may utilize remote access to provide required upgrades and installation of hardware your point of sale system and TIBS. You will have independent access to the information that will be generated or stored in the point of sale and reporting system, but you may not manipulate the data that is generated or block or restrict our access to the data. (Franchise Agreement - Article 8)

We also require the installation of two "agents" on your Back of House ("BOH") computer. These agents will be installed by us prior to or concurrent with opening. The agents will retrieve, store, and transmit to us or our affiliates certain data for sales reporting purposes.

### **Operations Manual**

Before buying a franchise, you may view the Operations Manual after you and all of the individuals you include as part of your group sign and return to us the Non-Disclosure Agreement attached to this Disclosure Document as Exhibit G. The Non-Disclosure Agreement binds you to certain additional covenants prohibiting your solicitation of certain employees and opening a competitive restaurant. See Exhibit G.

## **Training**

Not later than 60 days before the opening date of your Franchised Restaurant, your Owner/Operator and two other managers are required to have completed, to our satisfaction, our Virtual Brands Training Program. Each participant must satisfy our then current requirements for admission to our Virtual Brands Training Program. To be admitted into our Virtual Brands Training Program, we currently require that each potential trainee has (a) attended and successfully completed at its own cost paid to a ServSafe instructor (or for an additional fee paid to us) such ServSafe training classes and obtained the ServSafe Food Manager Certificates and such other ServSafe certifications required by us, (b) successfully completed a phone interview with one of our representatives, (c) delivered to us fully completed copies of our current application forms and payment of the training fees for our Virtual Brands Training Program, and (d) completed all other pre-training requirements, as identified in the Manuals. We intend to offer our Virtual Brands Training Program monthly. Training for the Owner/Operator will be conducted at our corporate training center and/or at a company-operated Restaurant or another location designated by us. Currently, all such locations are in the North Texas area. Training for the two managers will be completed online and certification will occur just before your Franchised Restaurant's opening. We will determine, in our sole discretion, whether your employees have satisfactorily completed our Virtual Brands Training Program. We anticipate that completion of our Virtual Brands Training Program for the Owner/Operator will require up to four weeks. If any of your designated participants fail to meet the admission requirements for our Virtual Brands Training Program, if our Virtual Brands Training Program is not satisfactorily completed by your trainees after meeting the admission requirements, or if we, in our reasonable business judgment based upon the performance of your trainees, determines that our Virtual Brands Training Program cannot be satisfactorily completed by such person(s), you must immediately designate a replacement trainee(s), as applicable, to apply for and complete such training within 30 days from the date of any such occurrence (but in any event not later than 60 days before the opening date of your Franchised Restaurant). (Franchise Agreement - Articles 3, 8 and 9).

If you fail to designate replacement trainee(s) who have satisfied the admission requirements, if our Virtual Brands Training Program is not satisfactorily completed by any replacement trainee (or the initial trainee, if no replacement is designated) by the deadline set forth above, or if we determine that the training program cannot be satisfactorily completed by such person(s), we may, in our sole discretion, delay the opening of your Franchised Restaurant or terminate the Franchise Agreement upon notice to you and retain the Franchise Fee and any other fees paid by you under the Franchise Agreement. (Franchise Agreement - Articles 3, 8 and 9).

We will provide instructors and training materials for our Virtual Brands Training Program at a cost to you of \$1,150 for each Owner/Operator and any other individual(s) you designate and we approve to attend our Virtual Brands Training Program and \$1,750 for online and on-site training of up to 3 managers during your Franchised Restaurant opening which includes manager certification. If you are an existing Restaurant franchisee and your Owner/Operator has already attended and completed our Virtual Brands Training Program to our satisfaction, you are only required to pay us a non-refundable Training Fee of \$1,750 at least 30 days before your Franchised Restaurant opening. You must also pay us a \$10 monthly fee for any successor, replacement, and ongoing manager training, which includes online access to our Virtual Brands Training Program and continued access to materials needed for manager certification. We may modify this fee once per calendar year on at least 60 days' prior written notice. The training materials currently consist of the Manuals (including the Operations Manual, recipe book, activity packet, and ServSafe Manager book), checklists, demonstrations and on the job-training. In addition, you are responsible for all expenses incurred by your trainees in connection with attending our Virtual Brands Training Program including costs of travel, lodging, meals, and wages. (Franchise Agreement - Articles 3, 8 and 9).



The Owner/Operator and your employees may attend such additional or remedial training programs and seminars as we may offer. All certified managers will be required to complete 12 credit hours of continuing education courses per year at a rate of one credit hour per month. Should a certified manager not fulfill the one credit hour per month requirement, that manager will lose their certified status and be required to complete our recertification program through our online Virtual Brands Training Program. All hourly employees will be required to be certified with our online training within 15 days of starting work. If any hourly employee fails to pass the online training, he or she will repeat the online training until he or she passes. At our discretion, such additional training (including on-site remedial training), will be mandatory for such individuals and other Restaurant personnel as we require. For all such training, we will provide the instructors and training materials; however, we may impose a reasonable fee for such training, including costs of travel, lodging, meals, and wages for our representatives. You are responsible for any and all expenses incurred by you or your trainees in connection with such additional training including the costs of travel, lodging, meals, and wages. (Franchise Agreement - Articles 3, 8 and 9).

In connection with the opening of your Franchised Restaurant, we will provide you with at least one of our trained representatives to provide on-site training, supervision and assistance, with respect to such matters and for such period of time determined by us in our sole discretion. The on-site training, supervision and assistance for consecutive days and may be provided either before and/or after the opening of your Franchised Restaurant. Except as otherwise provided in this Item 11, you will be responsible for training all of your Franchised Restaurant’s personnel under the specifications and standards regarding such training described in the Manuals or otherwise in writing by us. (Franchise Agreement - Article 9).

Our training program is led by Chef Phil Butler. Mr. Butler has been with us since December 2020 and DBRI for 3 years and has over 36 years of restaurant experience. Our Virtual Brands Training Program is run by Matt Goodman. Mr. Goodman has been with us since December 2020 and DBRI for 2.5 years, has a Bachelor of Science in Restaurant Management and has 20 years’ experience in the restaurant business. The following individuals are also training program instructors for us: Todd Peacock who has been with us for less than 1 year and has 25 years’ experience in the restaurant business; and Andrew Moody who has been with us for 1 year and has 15 years of training experience.

Below is a summary of the subject matters, hours of classroom training, hours of on-the-job training and the location for our Virtual Brands Training Program.

<b>TRAINING PROGRAM</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Restaurant Operation	9 to 11	15 to 20	Our corporate training center, or at another Restaurant or location designated by us
Food Preparation and Service	8 to 11	10 to 18	Our corporate training center, or at another Restaurant or location designated by us
Station Training	1 to 2	10 to 15	Our corporate training center, or at another Restaurant or location designated by us
Purchasing	3 to 5	3 to 7	Our corporate training center, or at another Restaurant or location designated by us

Accounting and Controls	4 to 6	7 to 10	Our corporate training center, or at another Restaurant or location designated by us
Marketing and Advertising	3 to 5	6 to 8	Our corporate training center, or at another Restaurant or location designated by us
Catering	8 to 10	10 to 12	Our corporate training center, or at another Restaurant or location designated by us
<b>TOTAL</b>	<b>36 to 50</b>	<b>61 to 90</b>	

If your Franchised Restaurant is a Co-Brand Restaurant that includes a Big Deal Burger Restaurant, then you and each of your required attendees only need to attend and successfully complete the Virtual Brands Training Program once. If your Franchised Restaurant is a Co-Brand Restaurant that includes a Dickey’s Restaurant, then, in addition to completing the Virtual Brands Training Program, you and each of your required attendees must attend and successfully complete the initial training program requirement under your Dickey’s Restaurant franchise agreement in order to satisfy our training requirements. A full description of the initial training program for Dickey’s Restaurants can be found in the Dickey’s franchise disclosure document. You must separately pay the fees for the Virtual Brands Training Program and the initial training program requirement under your Dickey’s Restaurant franchise agreement

If your Franchised Restaurant is a Ghost Kitchen that will be located within a Dickey’s Restaurant, then you will not be required to complete our standard Virtual Brands Training Program. Instead, you, your Owner/Operator and two other managers must complete, to our satisfaction, our Virtual Brands Training Program for Ghost Kitchens. Below is a summary of the subject matters, hours of classroom training, hours of on-the-job training and the location for our Virtual Brands Training Program for Ghost Kitchens.

<b>TRAINING PROGRAM</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Restaurant Operation	1 Hour	1 Hour	Our corporate training center, or at another Restaurant or location designated by us (which may be online)
Food Preparation and Service	1 Hour	1.5 Hours	Our corporate training center, or at another Restaurant or location designated by us (which may be online)
Station Training	1 Hour	2 Hours	Our corporate training center, or at another Restaurant or location designated by us (which may be online)
Purchasing	30 minutes	30 minutes	Our corporate training center, or at another Restaurant or location designated by us (which may be online)
Accounting and Controls	NA	NA	Our corporate training center, or at another Restaurant or location designated by us (which may be online)

Marketing and Advertising	1 hour	NA	Our corporate training center, or at another Restaurant or location designated by us (which may be online)
Catering	30 minutes	30 minutes	Our corporate training center, or at another Restaurant or location designated by us (which may be online)
<b>TOTAL</b>	<b>7 Hours</b>	<b>8.5 Hours</b>	

## **ITEM 12 TERRITORY**

The Franchise Agreement grants to you the right to operate your Franchised Restaurant at a single location selected by you and approved by us. You will offer the approved products and services of the System only through your Franchised Restaurant. You do not have the right to use alternative channels of distribution (e.g., catalog sales, internet sales, etc.) in connection with offering the products and services of the System unless otherwise approved by us.

Unless your Franchised Restaurant is a Ghost Kitchen, your Franchised Restaurant will be located within a designated geographic area (the "Assigned Area") as described in the Franchise Agreement. At such time as you propose and we accept your proposed Franchised Restaurant location identified by a specific street address within the Assigned Area so that it becomes the "Accepted Location," the Assigned Area will automatically and without further writing be reduced to an area within a one (1)-mile radius of the Accepted Location (the "Primary Area"). For Ghost Kitchens, your Accepted Location will be identified before you enter into the Franchise Agreement and your Primary Area will be a one (1)-mile radius around the Accepted Location. We may request that you confirm the specific physical address of the Accepted Location in a writing provided by or acceptable in form and substance to us that you sign and deliver to us. You are required to operate your Franchised Restaurant only at this Accepted Location and may not relocate your Franchised Restaurant without our prior written consent based upon our sole judgment and discretion. Your Franchise Agreement does not give you any options, rights of first refusal or similar rights to acquire additional franchises, but you may apply for the right to operate additional Restaurants under separate Franchise Agreements.

You must offer delivery services from your Franchised Restaurant if one of our designated third-party delivery providers offers delivery services in the Assigned Area. You must make accommodations for delivery services in compliance with our standards, including limiting the delivery services to any delivery area we specify to you in writing. (See Item 8) Any delivery area we specify is not exclusive and we may engage, and/or allow other franchisees and third parties to engage, in any activities we desire within the delivery area without any restrictions (including allowing other Wing Boss franchisees and delivery service providers to provide delivery services in the delivery area). Any delivery area we specify is nothing more than the geographic boundaries in which you may deliver those menu items approved for delivery from your Franchised Restaurant, and no other rights are granted to you.

When and if the Assigned Area converts to the Primary Area, we will not, except as provided below and as long as you are in full compliance with the Franchise Agreement, establish and operate or license or authorize any other party to establish or operate a Restaurant within the Primary Area for the balance of the Term of the Franchise Agreement. Except as expressly limited by the previous sentence, we and our affiliates retain all rights with respect to Restaurants, the Proprietary Marks, the sale of similar or dissimilar products and services, and any other activities we deem appropriate whenever and wherever we desire. Specifically, we and our affiliates reserve the following rights:

- (1) the right to establish and operate, and to grant to others the right to establish and operate businesses offering identical, similar or dissimilar products and services through similar or alternative channels of distribution, at any locations inside or outside the Assigned Area or Primary Area under trademarks or service marks other than the Proprietary Marks and on any terms and conditions we deem appropriate. We are not required to compensate you in any way for offering or selling in your Assigned Area or Primary Area any of the products or services described in this paragraph;
- (2) the right to offer and sell (and authorize others to offer and sell) products and services which may be the same or similar to those offered by Restaurants, under the Proprietary Marks in the Assigned Area and Primary Area, if offered and sold through a distribution channel other than a Restaurant (e.g., product and catalog sales, internet sales, grocery store or supermarket sales, warehouse store sales, memorabilia or recipes through other retail outlets, and other channels of distribution) ("Alternative Channel Products"). The Alternative Channel Products may be packaged for retail sale, and we may request or require franchisees to sell or advertise the Alternative Channel Products in their Restaurants. We may, in its discretion, contribute a percentage of its revenues from the sale or license of Alternative Channel Products to the Marketing Fund. We may offer and sell (and may authorize others to offer and sell) products and services through alternative distribution channels ("Alternative Distribution Channels"), including product and catalog sales, internet sales, grocery store sales, and other channels of distribution in the Assigned Area or Primary Area which may be similar to those offered by the Restaurants, under names and marks other than the Proprietary Marks;
- (3) the right to, and to grant to others the right to, at any time, advertise and promote the System, or fulfill customer orders (including catering and delivery services) in the Assigned Area and the Primary Area;
- (4) the right to establish and operate, and to grant to others the right to establish and operate, businesses offering dissimilar products and services, both inside and outside the Assigned Area or Primary Area under the Marks and on any terms and conditions we deem appropriate;
- (5) the right to operate, and to grant others the right to operate Restaurants located anywhere outside the Assigned Area or Primary Area under any terms and conditions we deem appropriate and regardless of proximity to your Franchised Restaurant;
- (6) if operating a Traditional Restaurant, the right to, directly or indirectly, operate, license, or grant a franchise to operate a Non-Traditional Restaurant, Mobile Unit Franchise, Delivery-Carryout Restaurant, Ghost Kitchen within the Assigned Area or Primary Area;
- (7) if operating a Non-Traditional Restaurant, Mobile Unit Franchise, Delivery-Carryout Restaurant or Ghost Kitchen, the right to, directly or indirectly, operate, license, or grant a franchise to operate a Traditional Restaurant within the Assigned Area or Primary Area;
- (8) the right to acquire the assets or ownership interests of one or more businesses providing products and services similar to those provided at Restaurants, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Assigned Area or Primary Area); and
- (9) the right to be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to

those provided at Restaurants, or by another business, even if such business operates, franchises and/or licenses competitive businesses in the Assigned Area or Primary Area.

If your Franchised Restaurant is a Ghost Kitchen, you may offer Menu Items to customers residing in the geographic area in which the applicable third party delivery company(ies) agree to deliver, unless otherwise determined by us in writing.

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

We, DBP, Love Field JV, DFW JV, DFW E Satellite, any other Restaurant franchisee, and restaurants franchised by Combo Kitchen offering Wing Boss menu items may also, at any time, advertise and promote the System, and may solicit, accept and fulfill consumer orders (including by providing catering and delivery services) in the Primary Area.

During the term of the Franchise Agreement, the territorial rights granted to you are not dependent upon the achievement of a certain sales volume, market penetration or other contingency, nor are there any circumstances which permit us to modify your territorial rights without your approval prior to the expiration or termination of the Franchise Agreement. Except as provided in any Development Agreement, you will not be granted any options, rights of first refusal or similar rights to acquire additional franchises.

Under a Development Agreement, you are assigned a geographic area (the "Territory") within which you are required to develop two or more Restaurants under a prescribed development schedule. Each Territory will be divided into a series of "Markets" to be developed. The size of the Territory may range from a portion of a city or an unincorporated area to a single or multi-county or single state area and will be described in the Development Agreement by reference to a description, an area marked on a map, streets or highways, political jurisdiction boundaries, by an area encompassed within a radius of a specific distance (or a range of distances) or of a distance sufficient to encompass a specified population (or range of populations) or by such other method of delineation as we may prescribe.

Except as provided below in this paragraph and subject to your full compliance with the Development Agreement, neither we nor our affiliates will establish, or authorize any other person or entity, other than you, to establish, the same type(s) of Restaurants in the Territory granted to you in the Development Agreement during the term of the Development Agreement; provided, however, that such exclusivity will terminate with respect to each Market included within the Territory upon execution of the last Franchise Agreement required to fulfill the obligation for such Market. At that time, the Primary Area for each Restaurant in the terminated Market will remain as the only territorial protection within the Market and we are free to franchise and authorize a franchisee to operate, and our affiliates may develop, lease, manage and operate, a Restaurant in the terminated Market outside of your Primary Area(s). We and our affiliates (and our and our affiliates' respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all of our rights and discretion with respect to the Proprietary Marks, the System and Restaurants anywhere in the world, and the right to engage in any business whatsoever, including the right to: (a) at any time, advertise and promote the System, or fulfill customer orders (including providing catering and delivery services) in the Territory, and we may offer and sell (and may authorize others to offer and sell) products and services which may be similar to those offered by the Restaurants, under the Proprietary Marks in the Territory or elsewhere, if offered and sold other than through a Restaurant (e.g., product and catalog sales through direct mailings or internet sales, pre-packaged food items through grocery stores or supermarkets, internet sales, or memorabilia or recipes through other retail outlets, and other channels of distribution); (b) directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Territory if the location of the Restaurant is in a

non-traditional venue including a stadium, airport, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino, food truck, gas station, convenience store, or similar location; (c) operate, and grant to others the right to operate Restaurants outside the Territory at such locations and on such terms and conditions as we deem appropriate; (d) offer and sell (and may authorize others to offer and sell) in the Territory or elsewhere, products and services under the Proprietary Marks or other trademarks, service marks, or trade dress, which may be similar to those offered by the Restaurants, through Alternative Distribution Channels; (e) operate, and grant to others the right to operate, restaurants identified by trademarks, service marks or trade dress, other than the Proprietary Marks; and (f) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Restaurants, or by another business, even if such business operates, franchises and/or licenses businesses similar to or competitive with Restaurants in the Territory. We are not required to compensate you in any way for offering or selling in your Territory any of the products or services described in this paragraph. Further, we may, directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Territory if the location of the Restaurant is in a non-traditional venue including a stadium, airport, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino, food truck, or similar location.

As disclosed above, we also grant franchises for Big Deal Burger Restaurants and our affiliate, DBRI, grants franchises for Dickey's Restaurants. In addition, we and/or our affiliates may operate Big Deal Burger Restaurants and Dickey's Restaurants. Big Deal Burger Restaurants operate under the "Big Deal Burger" name and Dickey's Restaurants operate under the "Dickey's Barbecue Pit" name. DBRI also has plans to open at least one new restaurant in approximately the next 6 months that serves hot chicken and related menu items under the trademark "Trailer Birds Hot Chicken" (the "Trailer Birds Restaurant"). We, our affiliates and our and DBRI's franchisees may operate Big Deal Burger Restaurants and/or Dickey's Restaurants in your Primary Area, and offer and sell Big Deal Burger menu items and/or Dickey's Barbecue Pit menu items to customers who reside within your Primary Area. Similarly, DBRI, its affiliates and our franchisees may operate Trailer Birds Restaurants in your Primary Area, and offer and sell Trailer Birds menu items to customers who reside in your Primary Area. We do not anticipate any conflicts between Restaurants, Big Deal Burger Restaurants, Dickey's Restaurants and Trailer Birds Restaurants because the menu items offered are different. Our principal business address is disclosed in Item 1 and we do not intend to maintain physically separate offices or training facilities for Big Deal Burger Restaurants, Dickey's Restaurants or Trailer Birds Restaurants.

Each franchisee may solicit and accept orders from customers, and deliver catering orders outside the Primary Area. Our catering system prioritizes catering orders received by telephone or on our web site according to the distance between the delivery location and the nearest Restaurants. You may compete with our other franchised and affiliate-owned Restaurants for off-premises catering and delivery orders, which may be delivered to locations in your Primary Area or in the Primary Area of another Restaurant. Franchisees may not use alternate distribution channels, such as product and catalog sales, grocery store sales, and other channels of distribution, to promote sales to customers outside of the Territory. All customer orders must be delivered on a ready to eat basis in your Franchised Restaurant for on-premises dining or take out, or by your Franchised Restaurant's cargo van or a third party local delivery service.

If you develop up to 3 Restaurants under a Development Agreement, you must develop each of those Restaurants by the end of successive 12 month development periods. If you agree to develop more than 3 Restaurants under a Development Agreement, you must develop the fourth and each additional Restaurant within development periods of eight months.


You must sign our then current form of Franchise Agreement for each new Restaurant you develop and operate under a Development Agreement. The then current form of Franchise Agreement will include our then current standards for site selection we use for new franchisees with which you must comply.

When you develop a Restaurant in a Market, the Territory is modified to delete the Market and your territorial rights in the Market will be defined by the Primary Area under the Franchise Agreement for that Restaurant. The territorial rights granted to you under the Development Agreement are not dependent upon the achievement of a certain sales volume, market penetration or other contingency except as stated in the following paragraph. Also, except as stated in the following paragraph, there are no circumstances under which the Territory may be altered prior to the expiration or termination of the Development Agreement.

If you fail to timely open the minimum number of Restaurants in compliance with the development schedule as required in the Development Agreement or otherwise commit a material event of default under the Development Agreement as described in Item 17, we may, in addition to other remedies, terminate, modify or reduce the Territory granted to you. If you develop a Restaurant outside of your Territory, then we will modify the Territory granted to you in your Development Agreement by requiring you to release a Market in your Territory.

### ITEM 13 TRADEMARKS

The Franchise Agreement grants you the right to use the Proprietary Marks, only in the manner we authorize and only for the operation of your Franchised Restaurant at the location specified in the Franchise Agreement. The Development Agreement does not grant you any right to use or any interest in the Proprietary Marks. The current principal Proprietary Marks, for which DBP has filed applications for registration on the Principal Register of the United States Patent and Trademark Office (“USPTO”), are:

MARK	REGISTRATION OR APPLICATION NUMBER	REGISTRATION OR APPLICATION DATE
WING BOSS	90189354 (App.)	September 17, 2020 (App.)
<b>WING BOSS</b> 	90232301 (App.)	October 2, 2020 (App.)

DBP does not have a federal registration for the principal Proprietary Marks. Therefore, these trademarks do not have many legal benefits and rights as federally registered trademarks. If our/DBP’s rights to use these trademarks are challenged, you may have to change to an alternative trademark, which may increase your expenses.

No affidavits or renewal filings are yet due in connection with these applications. No application for the registration of the Proprietary Marks has been filed in any state.

Under a license agreement with DBP dated December 16, 2020, DBP has licensed us the right to use and to sublicense the Proprietary Marks to our franchisees to use in operating Restaurants. The license

agreement allows our franchisees the right to use the Proprietary Marks, System, and other intellectual property anywhere in the world. The license agreement has an indefinite term, but either we or DBP may terminate the license agreement with 120 days' notice to the other party with or without cause. If the license agreement terminates, Wing Boss franchisees will have a period of 3 months from the date of expiration or termination to continue to use the Proprietary Marks in operating Restaurants. No other agreement limits our right to use or license the Proprietary Marks.

In addition to the Proprietary Marks disclosed in the table above, we acquired from The Dickey Foundation the right to use and license the use of The Dickey Foundation's name and logo under a charitable sales promotion and licensing agreement between us and The Dickey Foundation. Under the agreement, we are permitted to (i) sublicense the use of The Dickey Foundation name to franchisees of Restaurants for offering patrons an opportunity to make a donation to further The Dickey Foundation's purposes at the point of sale in our (and our franchisees') Restaurants and (ii) at our option, provide The Dickey Foundation a donation based on sales of certain menu items that we designate at our (and our franchisees') Restaurants. We must obtain The Dickey Foundation's prior written approval of all promotional materials before the promotional materials are disseminated or published. We will donate all proceeds from patrons from point of sales donations and may, at our option, donate a portion of sales from certain menu items that we designate to The Dickey Foundation. Except for advertising and marketing related to the promotions mentioned above, we may not use The Dickey Foundation name or logo. The charitable sales promotion and licensing agreement is perpetual in duration, but either party may terminate the agreement upon 60 days written notice to the other party. If the agreement is terminated, we may, for a period of 90 days following the termination, continue to distribute and dispose of materials bearing The Dickey Foundation name or logo provided that any proceeds generated from such use will be remitted to The Dickey Foundation. The agreement cannot be modified without our and The Dickey Foundation's written consent.

Except for the agreements between us and DBP and us and The Dickey Foundation described above, there are no agreements currently in effect which significantly limit our rights to use or license the Proprietary Marks to you.

You are required to immediately notify us of any infringement or challenge to your use of the Proprietary Marks or claim by any person to any rights in any of the Proprietary Marks. You are not permitted to communicate with any person other than us and our counsel in connection with any such infringement, challenge, or claim. We have sole discretion to take such action as we deem appropriate and the right to exclusively control any litigation or Patent and Trademark Office or other administrative proceeding arising out of any infringement, challenge or claim or otherwise relating to any of the Proprietary Marks. You are required to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in any such litigation or Patent and Trademark Office or other administrative or other agency proceeding or to otherwise protect and maintain our interest in the Proprietary Marks.

We will indemnify you against and reimburse you damages for which you are held liable in any proceeding arising out of your use of any of the Proprietary Marks, provided that your conduct with respect to such proceeding and use of the Proprietary Marks is in compliance with the terms of the Franchise Agreement.

Except as provided above, we are not obligated by the Franchise Agreement to protect any rights granted to you to use the Proprietary Marks or to protect you against claims of infringement or unfair competition with respect to them. However, although we are not contractually obligated to protect the Proprietary Marks or your right to use them, as a matter of corporate policy, DBP and we intend to defend the Proprietary Marks vigorously.



We may require you to discontinue or modify your use of any of the Proprietary Marks or to use one or more additional or substitute trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin if we, in our sole discretion, determine that such addition or substitution will be beneficial to the System. We will not reimburse you for your direct expenses associated with our requiring you to discontinue or modify any of the Proprietary Marks (including your expenses of promoting modified or substitute trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin), or for any loss of goodwill associated with any modified or discontinued Proprietary Mark.

You are required to comply with our instructions in filing and maintaining the requisite trade name or fictitious name registrations and you must execute any documents deemed necessary by us or our counsel to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability. In addition, you may not directly or indirectly contest the validity of DBP's or our ownership in the Proprietary Marks.

Your rights to the Proprietary Marks granted in the Franchise Agreement are nonexclusive to you. We and DBP, therefore, have and retain, subject only to your rights in the Territory and in the Assigned Area (See Item 12), certain rights with respect to the Proprietary Marks, including the following rights:

1. To use and to grant other licenses for the use of the Proprietary Marks in addition to those licenses already granted to existing franchisees;
2. To develop and establish other systems using the Proprietary Marks or other names or marks and to use and to grant licenses or franchises thereto without providing any rights therein to you; and
3. To engage, directly or indirectly, through its employees, representatives, licensees, assigns, agents and others, at wholesale, retail or otherwise, in (i) the production, distribution, license and sale of products and services and (ii) the use in connection with such production, distribution, license and sale, of the Proprietary Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs, and other identifying characteristics as may be developed or used by us.

There are no currently effective material determinations of the U.S. Patent and Trademark Office, the Trademark Trial and Appeal Board or any state trademark administrator or court regarding the Proprietary Marks, nor are there any pending infringement, opposition or cancellation proceedings regarding the Proprietary Marks. Further, there is no pending material federal or state court litigation regarding our use or ownership rights to the Proprietary Marks. There are no superior prior rights or infringing uses regarding the Proprietary Marks known to us which could materially affect your use of the Proprietary Marks.

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

There are no patents or copyrights material to the franchise and we do not have any pending patent applications. There have not been any material determinations of the U.S. Patent Office, the U.S. Copyright Office or a court regarding any patent or copyright material to the franchise.

We claim a common law copyright, trade secret protection, and proprietary interests in the recipes, sauces, spice mixes and rubs, development and operating procedures and know-how contained in the Manuals or otherwise used in connection with the development and operation of the Restaurants. We will disclose to you confidential and proprietary information and trade secrets as part of the training program and the other services to be rendered by us ("Confidential Information"). You, your Owner/Operator, Investors,

Management Group (if applicable), and all other persons affiliated with you are prohibited, during the term of your Agreement, and thereafter, from communicating, divulging or using for the benefit of any other person, persons, partnership, association, corporation or other entity any Confidential Information, knowledge, or know-how concerning the methods of development and operation of the Restaurants that may be communicated to you, your Owner/Operator or any other person affiliated with you, or of that they may be apprised by virtue of your development and operation of a Restaurant under the terms of any Agreement. You are permitted to divulge this Confidential Information only to your manager(s) of your Franchised Restaurant and such other personnel who must have access to it in order to operate your Franchised Restaurant. Neither you nor your Owner/Operator or any other person affiliated with you are permitted at any time, without our prior written consent, to copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. Any and all information, knowledge, know-how, and techniques used in or related to the System that we communicate to you, your Owner/Operator or any other person affiliated with you, including the Manuals, recipes, sauces, plans, and specifications, marketing information and strategies and site evaluation and selection guidelines and techniques, are deemed Confidential Information for purposes of the Agreements.

At our request, you must require any person who has an ownership interest in you or who otherwise has or will have access to any Confidential Information of ours, to execute and deliver to us an agreement by which the signatory covenants and agrees to maintain the confidentiality of the information received by such person or entity in connection with their relationship with us.

If you or your Owner/Operator develop any new concept, process, or improvement in the operation or promotion of a Restaurant, you are required to promptly notify us prior to implementation and provide us with all necessary related information, without compensation. We may approve any such new concept, process or improvement prior to implementation. You and your Owner/Operator acknowledge that any such concept, process, or improvement will become our property and we may use or disclose such information to other franchisees or developers as we determine to be appropriate.

Except as disclosed in this Item 14, there are no present agreements which limit the use of any patent, patent application or copyright material to the franchise. We are not obligated to protect any patent or copyright, nor do we have any contractual obligation to defend our franchisees against any claims arising from a franchisee's use of patented or copyrighted materials.

We are not aware of any claims of any patent or copyright infringement which could materially affect you.

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

You must designate and retain an individual to serve as the "Owner/Operator" under the Franchise Agreement. You must designate your Owner/Operator at the time you sign the Franchise Agreement. The Owner/Operator must meet the following qualifications:

As a corporation, limited liability company, limited partnership, sole proprietorship, or any other Entity, the Owner/Operator will, at all times during which he or she serves as Owner/Operator: (i) directly or indirectly hold an ownership interest of 20% or more in the Entity; (ii) work on a "full time" basis in your Franchised Restaurant; and, (iii) be fully authorized, directed and entitled to manage and control the day-to-day business affairs of the Franchised Restaurant and to take any

action that you are required to take or omit to take under the Franchise Agreement, all in such Owner/Operator's sole discretion, and without the approval or joinder of any person or entity.

We only permit one person to serve as the Owner/Operator under a Franchise Agreement. The Owner/Operator is required to execute the Franchise Agreement and is bound by all of the obligations of the Franchise Agreement. You may not change your Owner/Operator without our prior written consent. The Owner/Operator is required to successfully complete our Virtual Brands Training Program.

We require that the Owner/Operator participate in the on-premises supervision of your Franchised Restaurant(s) on a full time basis. Full time is considered to be at least 40 hours per week in your Franchised Restaurant or other Restaurant under a Franchise Agreement with us. The Owner/Operator will be our sole point of contact with regard to franchise matters.

In addition to the Owner/Operator, you must appoint at least two managers per Restaurant to assist in the day-to-day management and supervision of each such Restaurant. Each manager must be appointed in a timely manner in order to satisfy each manager's initial training obligation under the Franchise Agreement, and must devote full time and best efforts to the daily management and supervision of your Franchised Restaurant. Managers are not required to have any equity interest in the franchise.

The Owner/Operator and each manager must meet any other of our standards and criteria for such positions, as set forth in the Manual or otherwise in writing by us. These standards and criteria may be revised from time to time in our sole discretion.

The Owner/Operator and any manager must satisfy the training requirements set forth in the Franchise Agreement. If, during the term of the Franchise Agreement, the Owner/Operator or any manager is not able to continue to serve in such capacity or no longer qualifies to act as such under the Franchise Agreement, you must promptly notify us and designate a replacement within 30 days after the Owner/Operator or manager ceases to serve. Any replacement will be subject to the same qualifications listed above, including training requirements. You must provide for interim management of your Franchised Restaurant until a replacement is designated, and this interim management must be conducted in compliance with the Franchise Agreement.

You are required to retain such additional managers and other persons as we deem necessary for the operation and management of your Franchised Restaurant. All such personnel must satisfy our educational and business criteria as provided to you in the Manuals or otherwise and must be individuals acceptable to us. These individuals must also satisfy the applicable training requirements set forth in the Franchise Agreement and the Manuals.

If you own more than 2 Restaurants (or one or more Restaurants and 2 or more other businesses as approved by us), you are considered a multi-unit operator and in lieu of appointing an Owner/Operator, we and you must sign an addendum to the Franchise Agreement under which you must appoint a Director of Operations. Any individual that will be designated as the Director of Operations must (i) hold an ownership interest of 5% or more in your equity, (ii) attend, and complete to our satisfaction, all required training programs and be certified as typically required of an Owner/Operator as provided in Article 9 of the Franchise Agreement, and (iii) work on a "full time" basis in your Franchised Restaurant(s). We may also require you to hire a District Manager (or multiple District Managers) to oversee the operations of a subset of your Franchised Restaurants.

Under the Franchise Agreement and the Manuals, at our request, you will require and obtain from your Owner/Operator, and other person or entity affiliated with you who has received or will receive Confidential Information or training from us, the execution of covenants not to compete and to maintain the

confidentiality of information they receive as part of their employment, management or ownership relationship with your Franchised Restaurant. These covenants must be similar to those set forth in Article 18 of the Franchise Agreement. The form of Confidentiality and Non-Competition Agreement we prescribe is attached to this Disclosure Document as **Exhibit G**.

Each person who owns an equity interest in you, including the Owner/Operator, is required to jointly and severally guaranty payment and performance of your obligations to us. An "equity interest" means ownership of common stock if you are a corporation, a partnership interest in a partnership, a membership interest in a limited liability company, and a trust beneficiary interest of a trust. The guarantees are binding on the guarantors, their respective personal representatives (guardians, conservators, executors and administrators), heirs and legatees under Article 21 of the Franchise Agreement.

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

Unless your Franchised Restaurant is a Ghost Kitchen or Co-Brand Restaurant, you must use your Franchised Restaurant's premises solely for the operation of the Franchised Restaurant. If your Franchised Restaurant is a Co-Brand Restaurant, you are required to use the Co-Brand Restaurant solely for the operation of the Franchised Restaurant and the co-branded restaurant. You must maintain business hours for your Franchised Restaurant as provided for in the Manuals or as we may specify in writing. You may not use or permit the use of the premises for any other purpose or activity at any time without first obtaining our written consent. You may conduct business only with customers at your Franchised Restaurant and any catering or delivery operations we authorize you to conduct. (See Items 8 and 12)

You are required to meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant. You must furnish to us, within three days after receipt, a copy of any inspection report, warning, citation, certificate, rating and any other document issued by any federal, state, local or other administrative agency, instrumentality or organization with respect to the health or safety conditions of your Franchised Restaurant.

To ensure that the highest degree of quality and service is maintained, you must operate your Franchised Restaurant in strict conformity with such methods, standards and specifications as required by law and as we may prescribe in the Manuals or otherwise in writing. You must maintain in sufficient supply and use and sell at all times only such food and beverage items, ingredients, products, materials, equipment, supplies and paper goods that conform to our standards and specifications and that are acquired from vendors or suppliers we approve; prepare all menu items in compliance with our recipes and procedures for preparation contained in the Manuals or other written directives, including the prescribed measurements of ingredients; and refrain from deviating from our standards and specifications by the use or offer of non-conforming items or differing amounts of any items, without our prior written consent. You are required to sell and offer for sale only such menu items, products and services as have been expressly approved for sale in writing by us; to refrain from any deviation from our standards and specifications without our prior written consent; and to discontinue selling and offering for sale any menu items, products or services which we may, in our discretion, disapprove in writing at any time. (See Item 8). We may discard of any food product, without compensation to you, during any on-site inspection, if such food product does not meet our standards and specifications.

You must offer for sale and sell at the Restaurant all menu items and other designated products and services (including gift cards) required by us and to provide such products and services in the manner and style prescribed by us, including dining-in, catering and carry-out services. If your Franchised Restaurant is a Ghost Kitchen, then you can only use third party delivery services and at no time may you (i) offer on-site

dining, customer pickup or any other method of distribution, (ii) use a third-party delivery company that has not been approved by us and/or (iii) offer, sell, or deliver to customers located outside the Primary Area. We have the unlimited right to add, alter or discontinue the types of authorized goods and services which you may offer. You do not have the right to change the menu items and other designated products and services which you are required to offer and sell at your Franchised Restaurant. If one or more required menu items are not available for sale in your Franchised Restaurant, we may direct our approved vendor(s) to deliver, at your expense, a reasonable quantity of the required menu item(s) based upon the sales volume of your Franchised Restaurant. To the fullest extent allowed by law, we may regulate the maximum, minimum, or other prices you charge for your products and services, including your acceptance, redeeming, and applying of any coupons or other discount promotions that we require. Subject to the general policies and procedures set forth in the Manuals or otherwise announced by us (and specifically including periodic promotions) you have sole discretion as to the prices to be charged to customers for the offer and sale of any menu items, products, merchandise, and services.

We have developed and will continue to develop for use in the System certain products which are prepared from highly confidential secret recipes and which are our trade secrets. Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that we closely control the production and distribution of such products. Accordingly, if such products become a part of the System, you must use only our secret recipe products and must purchase solely from us or from a source we designate all of your requirements for such products.

We will make available at a reasonable cost and, at our option will require you to purchase from us for resale to your customers certain promotional merchandise identifying the System such as prepackaged sauces, spices and other food items, gift cards, T-shirts, sweatshirts, caps, and watches, in amounts sufficient to meet your customers' demand.

You are required to maintain competent, conscientious, and trained personnel to operate your Franchised Restaurant in compliance with the Franchise Agreement and the Manuals and to take such steps as are necessary to ensure that your employees preserve good customer relations, comply with such dress code and/or wear uniforms as we may prescribe in the Manuals or otherwise and observe reasonable standards of grooming and cleanliness.

We do not restrict your solicitation of customers. All advertising and promotion by you in any medium must conform to our standards and specifications as set forth in the Manuals or otherwise and all advertising and promotional plans and materials must be approved by us prior to your use of such plans and materials.

You must, at your sole cost and expense, cause your Franchised Restaurant to participate in the philanthropic, community, and charitable causes that we require for the purpose of enhancing the goodwill, presence and reputation of the Proprietary Marks and the System, including as a part of marketing promotions or otherwise. These causes may involve causes directed by us in our sole discretion. You may not cause your Franchised Restaurant to participate in any philanthropic, community or charitable cause without our prior written approval.

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

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

<b>THE FRANCHISE RELATIONSHIP</b>		
<b>Provision</b>	<b>Section in Franchise or Other Agreement</b>  [Article in Franchise Agreement/ <i>Article in Development Agreement</i> ]	<b>Summary</b>  [Items shown in plain text depict summary from Franchise Agreement / <i>Items shown in italicized text depict summary from Development Agreement</i> ]
a. Length of the franchise term	Article 2/ <i>Article 4</i>	20 years for Traditional Restaurants or 10 years for Non-Traditional Restaurants, Mobile Unit Franchises, Delivery-Carryout Restaurants and Ghost Kitchens subject to periodic remodeling./ <i>Depends on the number of Franchised Restaurants you commit to open.</i>
b. Renewal or extension of the term	Article 2/ <i>Not applicable.</i>	If you are not in default you can renew franchise for 10 additional years./ <i>Not applicable.</i>
c. Requirements for franchisee to renew or extend	Article 2/ <i>Not applicable.</i>	The "renewal" of the franchise means that you may continue to operate the franchise at the existing location for an additional 10 years provided, among other things, that you execute our then current Franchise Agreement which may contain materially different terms and conditions from the original Franchise Agreement. The requirements for the franchisee to renew or extend the franchise term include that you pay a renewal fee of \$15,000, sign a new franchise agreement in the then current form which may contain materially different terms and conditions, comply with the requirements of the new agreement (including higher Royalty Fees and advertising contributions, but excluding any franchise or renewal fees), remodel, give 6-12 months' notice, satisfy all monetary obligations, provide evidence of your right to possession for the renewal term, execute a release (unless prohibited by applicable local law), comply with the then current qualifications and training, and your franchise must be above the 50 <sup>th</sup> percentile of the

		Net Sales/customer complaint ratio calculated on a chain wide basis./ <i>Not applicable.</i>
d. Termination by franchisee	Articles 16 and 17/ <i>Article 6</i>	You may terminate the Franchise Agreement but will be required to, among other things, make a lump sum payment of the Royalty Fees due for the remaining term of the Franchise Agreement (also see Item 17i., below) (subject to state law). You may also terminate the Franchise Agreement on any grounds permitted by state law./ <i>You may terminate the Development Agreement but will be required to comply with the matters set forth in Item 17i (subject to state law). You may also terminate the Development Agreement on any grounds permitted by state law.</i>
e. Termination by franchisor without cause	Article 16/ <i>Article 6</i>	We have no such rights./ <i>We have no such rights.</i>
f. Termination by franchisor with cause	Article 16/ <i>Article 6</i>	We can terminate if a franchisee defaults. You will be in default of the Franchise Agreement if a default, other than a failure to comply with the development schedule, occurs under a Development Agreement and the default is not timely cured. / <i>We can terminate if a developer defaults. You will be in default of the Development Agreement if a default occurs under a Franchise Agreement and the default is not timely cured.</i>
g. "Cause" defined – curable defaults	Article 16/ <i>Article 6</i>	Curable defaults include 7 days to cure nonpayment of monetary obligations to us or our affiliates, violations of our standards for Restaurant development and operations, failure to timely submit to us a copy of your lease and Lease Rider, misuse or unauthorized use of Proprietary Marks, failure to timely submit to us annual proof of insurance, breach of covenants (including non-competition covenants), you, your Owner/Operator or any of your investors engage in any dishonest, unethical or other conduct which, in our opinion, adversely affects your Franchised Restaurant's reputation or the goodwill associated with the Proprietary Marks, you, your Owner/Operator, any of your investors, representatives or employees make any illicit statements, including in an email to our employees, officers, or directors or in any social media posts or any other unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, gambling-related, drug-related, alcohol-related, profane, racist, sexually explicit or indecent comments that in our opinion negatively affects us, our employees, our

		<p>operations or otherwise affects your Franchised Restaurant's reputation or the goodwill associated with the Proprietary Marks, purchase of food and beverage or other products or otherwise utilizing non-approved vendors and/or suppliers, or failure to pay vendors, unless you are in good faith contesting your liability for amounts you owe to such vendors. If any of these are repeated more than twice in any 12-month period, you have no cure period. You have 30 days to cure material misrepresentations, uncured defaults under any other agreement with us or our affiliates, other breaches of the terms and conditions of the Franchise Agreement and Manual which are not provided above, unless such breaches are repeated more than twice in any 12-month period. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F. /</p> <p><i>You have 30 days to cure breaches of the Development Agreement other than those set forth in Item 17.h. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F. .</i></p>
<p>h. "Cause" defined – non-curable defaults</p>	<p>Article 16/ <i>Article 6</i></p>	<p>Except as permitted under state law, non-curable defaults include bankruptcy or insolvency (our right to terminate the franchise upon a franchisee's bankruptcy may not be enforceable under federal bankruptcy law), failure to locate a proposed site or acquire accepted location, merger, consolidation or dissolution, levy or foreclosure of your assets, judgments against you, failure to meet health and safety standards, breach of confidentiality or non-compete obligations, unapproved transfers, failure to open your Franchised Restaurant within 12 months, default under your lease or any financing agreement, cessation of operations of your Franchised Restaurant, threat to health and safety of the public arising out of the operation of your Franchised Restaurant, repeated defaults even if cured, or a default under any other agreement you have with us, our subsidiaries, or affiliates that is not cured within any applicable grace or cure period. If your Franchised Restaurant is a Ghost Kitchen, non-curable defaults also include unauthorized use of any third party delivery service and offering on-site dining, customer pickup or any other method of distribution not approved by us. You will be in default of the Franchise Agreement if a default, other than a failure to comply with the</p>



		<p>development schedule, occurs under a Development Agreement and the default is not timely cured. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F. /</p> <p><i>Except as permitted under state law, non-curable defaults include bankruptcy or insolvency (our right to terminate upon a developer's bankruptcy may not be enforceable under federal bankruptcy law), judgments against you, levy or foreclosure of your assets, failure to comply with the development schedule, failure to timely execute Franchise Agreements and to pay Franchise Fee, failure to timely open your Franchised Restaurants or replacement Franchised Restaurants, conviction or plea of nolo contendere to certain offenses by your Owner/Operator, threat or danger to public health or safety resulting from construction, maintenance or operation of any Restaurant, failure to designate a replacement Owner/Operator, failure to comply with certain covenants, representations and warranties, transfer or attempted transfer of obligations under the Development Agreement, failure to affect an approved transfer upon death or disability, misuse of the Proprietary Marks, repeated material defaults, or a default under any other agreement you have with us, our subsidiaries, or affiliates. You will be in default of the Development Agreement if a default occurs under a Franchise Agreement and the default is not timely cured. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</i></p>
<p>i. Franchisee's obligations on termination/non-renewal</p>	<p>Article 17/ Article 6</p>	<p>Obligations include ceasing operation of your Franchised Restaurant, making a lump sum payment of Liquidated Damages (described in Item 6), ceasing use of Confidential Information and the Proprietary Marks, retention of the Day One Deposit if termination occurs before your Franchised Restaurant opens as Liquidated Damages, completing the de-identification with us, cancel assumed name registration, assigning your lease and telephone number to us or our designee at our option (not applicable for Ghost Kitchens), payment of our damages, costs, and expenses and other fees, returning all Manuals, materials, files and customer lists, delivering access to all social media accounts, selling to us, at our option, all of your assets, and complying with</p>

		<p>confidentiality covenants (also see Item 17r. below)./</p> <p><i>Obligations include loss, reduction or modification of Territory and compliance with non-competition covenants.</i></p>
j. Assignment of contract by franchisor	Article 15/ Article 7	<p>No restriction on our right to assign./</p> <p><i>No restriction on our right to assign.</i></p>
k. "Transfer" by franchisee- defined	Article 15/ Article 7	<p>Includes transfer of contract or assets or ownership change./</p> <p><i>Includes transfer of contract or assets or ownership change.</i></p>
l. Franchisor approval of transfer by you	Article 15/ Article 7	<p>We have the right to approve all transfers (except transfers which are not of a "controlling interest" and transfers of less than 1% interest in publicly held corporations) but will not unreasonably withhold approval./</p> <p><i>We have the right to approve all transfers (except for transfers which are not of a "controlling interest" and transfers of less than 1% interest in publicly traded corporations) but will not unreasonably withhold approval.</i></p>
m. Conditions for franchisor approval of transfer	Article 15/ Article 7	<p>Except as permitted under state law, conditions include payment of a \$15,000 transfer fee (or such greater amount if our costs and expenses exceed this amount), receipt of payment of all monetary obligations to us or our affiliates, no default under any agreements with us or our affiliates, execution of a general release (to the extent not prohibited under applicable law), execution of an agreement by the new franchisee to assume your obligations, if required, execution of a new Franchise Agreement and other agreements, you remain liable for all of your obligations, delivery of all documents we require, the new franchisee completes training and otherwise qualifies and the new franchisee renovates your Franchised Restaurant as required./</p> <p><i>Except as permitted under state law, conditions include payment of a \$15,000 transfer fee (or such greater amount if our costs and expenses exceed this amount), payment of all monetary obligations, no default under any agreements, execution of a general release (to the extent not prohibited under applicable law), execution of an agreement by the new developer to assume your obligations, if required, execution of a new Development Agreement and other agreements, you remain liable for all of your obligations and new developer satisfies our requirements for a developer.</i></p>

n.	Franchisor's right of first refusal to acquire franchisee's business	Article 15/ <i>Article 7</i>	We can match an offer for the franchisee's business./ <i>We can match an offer for the developer's business.</i>
o.	Franchisor's option to purchase franchisee's business	Article 17/ <i>N/A</i>	We have the option to purchase the assets of your business upon termination of the franchise./ <i>We do not have any such option.</i>
p.	Death or disability of franchisee	Article 15/ <i>Article 7</i>	Interest in franchise must be transferred to an approved person within 12 months in the event of death and 6 months in the event of disability./ <i>Interest in development rights must be transferred to an approved person within 12 months in the event of death and 6 months in the event of disability.</i>
q.	Non-competition covenants during the term of the franchise	Article 18/ <i>Article 8</i>	You will not divert any business or customer to a competitor and you will not be involved in a competing restaurant. (subject to state law)/ <i>You will not divert any business or customer to a competitor and you will not be involved in a competing restaurant (subject to state law).</i>
r.	Non-competition covenants after the franchise is terminated or expires	Article 18/ <i>Article 8</i>	No competing business for 2 years within 30 miles of your Franchised Restaurant or within 5 miles of another Restaurant (including after assignment) (subject to state law)./ <i>No competing business for 2 years within 5 miles of the boundary of the Territory or within 5 miles of another Restaurant (subject to state law).</i>
s.	Modification of the agreement	Article 25/ <i>Article 13</i>	Generally, no modifications without your consent, except we may unilaterally change the scope of the competition covenants, Proprietary Marks and Manual./ <i>Generally, no modifications without your consent, except we may unilaterally change the scope of the competition covenants and the Proprietary Marks.</i>
t.	Integration/merger clause	Article 25/ <i>Article 13</i>	Only the terms of the Franchise Agreement are binding (subject to state law), except nothing in the Franchise Agreement disclaims the representations made in this Disclosure Document or its attachments and addenda. Any other promises or representations may not be enforceable. <i>Only the terms of the Development Agreement are binding (subject to state law), except nothing in the Development Agreement disclaims the representations made in this Disclosure Document or its attachments or addenda. Any other promises or representations may not be enforceable.</i>
u.	Dispute resolution by arbitration or mediation	Article 27/ <i>Article 14</i>	Except for certain claims, all disputes must be mediated and, if not resolved, arbitrated in Texas unless contrary to applicable state law./

		<i>Except for certain claims, all disputes must be mediated and, if not resolved, arbitrated, in Texas unless contrary to applicable state law.</i>
v. Choice of forum	Article 27/ Article 14	<p>Subject to arbitration requirement, litigation must be in the state district courts of Collin County, Texas or the U.S. District Court for the Eastern District of Texas, Sherman Division except as otherwise required by applicable state law. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F./</p> <p><i>Subject to arbitration requirement, litigation must be in the state district courts of Collin County, Texas or the U.S. District Court for the Eastern District of Texas, Sherman Division except as otherwise required by applicable state law.</i></p> <p><i>Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</i></p>
w. Choice of law	Article 27/ Article 14	<p>Except for Federal Arbitration Act and other federal law, Texas law applies except as otherwise required by applicable state law. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F./</p> <p><i>Except for Federal Arbitration Act and other federal law, Texas law applies except as otherwise required by applicable state law.</i></p> <p><i>Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</i></p>

**ITEM 18  
PUBLIC FIGURES**

We currently do not use, compensate or provide any benefit to any public figure to promote our franchise, but may do so in the future.

**ITEM 19  
FINANCIAL PERFORMANCE REPRESENTATIONS**

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

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's Legal Department at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287; Telephone Number: 972-248-9899, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

<b>TABLE NO. 1 SYSTEM-WIDE OUTLET SUMMARY FOR YEARS 2019 TO 2021</b>				
<b><u>Column 1</u></b>	<b><u>Column 2</u></b>	<b><u>Column 3</u></b>	<b><u>Column 4</u></b>	<b><u>Column 5</u></b>
<b><u>Outlet Type</u></b>	<b><u>Year</u></b>	<b><u>Outlets at the Start of the Year</u></b>	<b><u>Outlets at the End of the Year</u></b>	<b><u>Net Change</u></b>
Franchised	2019	0	0	0
	2020	0	0	0
	2021	0	38	+38
Company- Owned	2019	0	0	0
	2020	0	0	0
	2021	0	4	+4
Total Outlets	2019	0	0	0
	2020	0	0	0
	2021	0	42	+42

**NOTES:**

- The figures above and in each subsequent table presented in this Item 20 are for the fiscal years June 1, 2018 – May 31, 2019, June 1, 2019 – May 31, 2020, and June 1, 2020 – May 31, 2021.

<b>TABLE NO. 2 TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN FRANCHISOR) FOR YEARS 2019 TO 2021</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
FLORIDA	2019	0
	2020	0
	2021	2
<b>Totals</b>	<b>2019</b>	0
	<b>2020</b>	0
	<b>2021</b>	2

<b>TABLE NO. 3 STATUS OF FRANCHISED OUTLETS FOR YEARS 2019 TO 2021</b>								
<b>Col. 1</b>	<b>Col. 2</b>	<b>Col. 3</b>	<b>Col. 4</b>	<b>Col. 5</b>	<b>Col. 6</b>	<b>Col. 7</b>	<b>Col. 8</b>	<b>Col. 9</b>
<b>State</b>	<b>Year</b>	<b>Outlets at Start of Year</b>	<b>Outlets Opened</b>	<b>Terminations</b>	<b>Non-Renewals</b>	<b>Re-acquired By Franchisor</b>	<b>Ceased Operations Other Reasons</b>	<b>Outlets at End of the Year</b>
ARIZONA	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
CALIFORNIA	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	8	0	0	0	0	8
COLORADO	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	8	0	0	0	0	8
FLORIDA	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	5	0	0	0	0	5
	2019	0	0	0	0	0	0	0

**TABLE NO. 3  
STATUS OF FRANCHISED OUTLETS  
FOR YEARS 2019 TO 2021**

<b>Col. 1 State</b>	<b>Col. 2 Year</b>	<b>Col. 3 Outlets at Start of Year</b>	<b>Col. 4 Outlets Opened</b>	<b>Col. 5 Terminations</b>	<b>Col. 6 Non-Renewals</b>	<b>Col. 7 Re-acquired By Franchisor</b>	<b>Col. 8 Ceased Operations Other Reasons</b>	<b>Col. 9 Outlets at End of the Year</b>
LOUISIANA	2020	0	0	0	0	0	0	0
	2021	0	2	0	0	0	0	2
MICHIGAN	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
NORTH CAROLINA	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
NEVADA	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
TEXAS	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	11	0	0	0	0	11
Totals (U.S. and International)	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	38	0	0	0	0	38

**TABLE NO. 4  
STATUS OF COMPANY-OWNED OUTLETS  
FOR YEARS 2019 TO 2021**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisees	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisees	Col. 8 Outlets at End of the Year
OKLAHOMA	2019	0	0	0	0	0	0
	2020	0	0	0	0	0	0
	2021	0	1	0	0	0	1
TEXAS	2019	0	0	0	0	0	0
	2020	0	0	0	0	0	0
	2021	0	3	0	0	0	3
Totals	2019	0	0	0	0	0	0
	2020	0	0	0	0	0	0
	2021	0	4	0	0	0	4

**TABLE NO. 5  
PROJECTED OPENINGS AS OF MAY 31, 2021**

Column 1 State	Column 2 Franchise Agreement Signed But Outlet not Opened	Column 3 Projected New Franchised Outlets in the Next Fiscal Year	Column 4 Projected New Company-Owned Outlets in the Next Fiscal Year
ARIZONA	1	1	0
ARKANSAS	3	3	0
CALIFORNIA	7	7	0
FLORIDA	1	1	0
LOUISIANA	3	3	0
OHIO	1	1	0
OKLAHOMA	1	1	0
TEXAS	2	2	2
<b>Total</b>	<b>19</b>	<b>19</b>	<b>2</b>

The contact information for current franchisees of open Restaurants and those under development appears in **Exhibit R**. The contact information for the franchisees who have had a franchise terminated, cancelled, not renewed, transferred, or who otherwise voluntarily ceased to do business under his or her Franchise Agreement during the fiscal year ended May 31, 2021, or who have not communicated with us within 10 weeks of the Issuance Date, also appears in **Exhibit R**. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the System.



None of our franchisees have signed confidentiality clauses during the last three fiscal years. In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the System. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

There is currently no independent franchisee organization that has asked to be included in this Disclosure Document.

## **ITEM 21 FINANCIAL STATEMENTS**

The following audited financial statements are attached to this Disclosure Document as **Exhibit I**:

1. DCG's audited balance sheet as of May 31, 2021, and related statement of operations, shareholders' equity and cash flows for the year then ended.
2. DCG's audited balance sheet as of May 31, 2020, and related statement of operations, shareholders' equity and cash flows for the year then ended.
3. DCG's audited balance sheet as of May 31, 2019, and related statement of operations, shareholders' equity and cash flows for the year then ended.

DCG's unaudited balance sheet as of August 31, 2021, and related unaudited income statement and statement of cash flows for the period from May 31, 2021 to August 31, 2021, are also attached to this Disclosure Document as **Exhibit I**.

DCG absolutely and unconditionally guarantees to assume our duties and obligations under the Franchise Agreement should we become unable to perform our duties and obligations under the Franchise Agreement. DCG's guaranty of performance is included in **Exhibit I**.

## **ITEM 22 CONTRACTS**

Attached to this Disclosure Document are copies of all proposed agreements that are part of this franchise offering, including the following:

1. Franchise Agreement including ACH Authorization, Franchisee Questionnaire, Consent and Release for Training, State Addenda, and Lease Rider (attached as **Exhibit A**).
2. Development Agreement and State Addenda (attached as **Exhibit B**).
3. General Release (attached as **Exhibit C**).
4. Form of Non-Disclosure Agreement for prospective franchisees to be signed before disclosure of Operations Manual; this form includes covenants not to solicit employees or compete (attached as **Exhibit G**).
5. Form of Management Confidentiality and Non-Competition Agreement for Restaurant managers to sign (attached as **Exhibit H**).
6. Non-Traditional Venue Addendum (attached as **Exhibit J**).

7. Mobile Unit Rider (attached as **Exhibit K**).
8. Delivery-Carryout Venue Addendum (attached as **Exhibit L**)
9. Ghost Kitchen Addendum (attached as **Exhibit M**)
10. Co-Brand Addendum (attached as **Exhibit N**)
11. Smokestack Customer Agreement (attached as **Exhibit O**).
12. Spark Point-of-Sale Purchase and On-Line Services User Agreement (attached as **Exhibit P**).
13. Payment Services Agreement (attached as **Exhibit Q**).

**ITEM 23**  
**RECEIPTS**

Our and your copies of the Disclosure Document Receipt are located at the last 2 pages of this Disclosure Document.

**EXHIBIT A**  
**FRANCHISE AGREEMENT**

Ex. A

**VIRTUAL BRANDS, INC.**  
**WING BOSS**  
**FRANCHISE AGREEMENT – 2021/2022**

**VIRTUAL BRANDS, INC.  
FRANCHISE AGREEMENT**

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**VIRTUAL BRANDS, INC.  
FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (the “**Agreement**”) is made and entered into and effective on the Effective Date (herein so called) stated below, by and between VIRTUAL BRANDS, INC., a Texas corporation, hereinafter referred to as “**Franchisor**,” and the party identified below in the Franchisee Summary as the Franchisee, hereinafter referred to as the “**Franchisee**” or “**you**.” The purpose of this Agreement is to set forth the terms and conditions of the business relationship between Franchisor and the Franchisee.

FRANCHISEE SUMMARY

EFFECTIVE DATE (Date Executed by Franchisor): \_\_\_\_\_

TERM: Twenty (20) Years from Effective Date

REQUIRED OPENING DATE: Twelve (12) Months after Effective Date

FRANCHISEE: \_\_\_\_\_

BUSINESS ENTITY:  corporation  partnership  individual  limited liability company formed under the laws of: \_\_\_\_\_

FRANCHISEE’S ADDRESS: \_\_\_\_\_

FRANCHISEE’S TELEPHONE: \_\_\_\_\_

FRANCHISEE’S FACSIMILE: \_\_\_\_\_

FRANCHISEE’S E-MAIL: \_\_\_\_\_

FRANCHISED RESTAURANT ADDRESS: \_\_\_\_\_

ATTORNEY OR ADVISOR: \_\_\_\_\_

ATTORNEY’S OR ADVISOR’S ADDRESS: \_\_\_\_\_

<b>FRANCHISE FEE:</b> \$20,000.00	<b>ROYALTY:</b> 6%	<b>MARKETING FUND:</b> 3%
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## WITNESSETH:

**WHEREAS**, Franchisor has acquired the right to develop, and as a result of the expenditure of time, skill, effort, and money, has developed a system relating to the establishment and operation of restaurants under the name and mark “Wing Boss” (each a “**Restaurant**”) featuring the sale of chicken wings, chicken tenders and other food and beverage products (the “**System**”);

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior design, decor, color scheme and furnishings, special recipes and menu items, uniform standards, specifications and procedures for operations, quality and uniformity of products and services, inventory and management control, training and assistance, and advertising and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time;

**WHEREAS**, Franchisor has determined to continue development of the System through the granting of franchises using certain trade names, service marks, trademarks, symbols, logos, name and emblems, and indicia of origin, including but not limited to the mark “Wing Boss” and such other trade names, service marks, and trademarks as Franchisor may develop in the future to identify for the public the source of services and products marketed under these marks and under the System and representing the System’s high standards of quality, appearance, and service (collectively, the “**Proprietary Marks**”);

**WHEREAS**, you acknowledge the importance of Franchisor’s high standards of quality, cleanliness, appearance, and customer service and the necessity of operating the business franchised hereunder in conformity with Franchisor’s standards and specifications;

**WHEREAS**, you desire to use the System in connection with the operation of a Restaurant under the name “Wing Boss” at the location specified hereunder as well as to receive and apply the training and other assistance provided by Franchisor in connection therewith;

**WHEREAS**, you understand that the Franchise Agreement contains indemnity and arbitration agreements, release provisions, and additional insured obligations in favor of Franchisor; and,

**WHEREAS**, you represent and warrant that you have not received any representations (oral or written) except for those contained in this Agreement and in the Franchise Disclosure Document provided to you by Franchisor;

**NOW, THEREFORE**, the parties, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

### ARTICLE 1. FRANCHISE

**1.1 GRANT.** Franchisor hereby grants to you, upon the terms and conditions in this Agreement, the right and franchise, and you undertake the obligation, to develop and operate a “Wing Boss” Restaurant (your “**Franchised Restaurant**”) and to use, solely in connection with your operation of the Franchised Restaurant, the Proprietary Marks and the System, as such may be changed, improved, and further developed by Franchisor from time to time, only at the Accepted Location (as defined in Article 1.2) within the Assigned Area (as defined in Article 1.3).

**1.2 ACCEPTED LOCATION.** The “**Accepted Location**” shall be the leased site for your Franchised Restaurant in the Assigned Area accepted by Franchisor pursuant to Article 7.4. You shall not relocate the franchised business without Franchisor’s prior written consent. This Agreement does not grant you the right or franchise to operate the Franchised Restaurant or to offer or sell any products or services described under this Agreement at or from any other location, except for catering and delivery services you

are required to offer from your Franchised Restaurant in accordance with Franchisor’s policies and procedures.

**1.3 ASSIGNED AREA & PRIMARY AREA.** The “Assigned Area” is initially the city/township/borough/incorporated town in which this address is located:

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Prior to your designation and Franchisor’s acceptance of your proposed Franchised Restaurant location, Franchisor may grant to others Wing Boss franchises providing the right to open and operate Restaurants within the Assigned Area. You acknowledge that the Assigned Area is large enough for you to locate, establish, and operate a Restaurant within such Assigned Area. At such time as you propose and Franchisor accepts your proposed Franchised Restaurant location identified by a specific street address within the Assigned Area so that it becomes the “Accepted Location,” the Assigned Area shall automatically and without further writing be reduced to an area within a one (1)-mile radius of the Accepted Location and thereafter identified as the “Primary Area.” Franchisor may request that you confirm the specific physical address of the Accepted Location in a writing provided by, or acceptable in form and substance to, Franchisor that you sign and deliver to Franchisor. When and if the Assigned Area converts to the Primary Area, Franchisor will identify the Primary Area on a map attached as **Attachment F** and will not establish and operate, or license or authorize any other party to establish or operate, a Restaurant within the Primary Area for the balance of the Term of this Agreement. Except as expressly limited by the previous sentence, Franchisor and its affiliates retain all rights with respect to Restaurants, the Proprietary Marks, the sale of similar or dissimilar products and services, and any other activities Franchisor deems appropriate whenever and wherever Franchisor desires. Specifically, but without limitation, Franchisor and its affiliates reserve the following rights:

- (1) the right to establish and operate, and to grant to others the right to establish and operate, businesses offering identical, similar or dissimilar products and services through similar or alternative channels of distribution at any locations inside or outside the Assigned Area and Primary Area under trademarks or service marks other than the Proprietary Marks and on any terms and conditions Franchisor deems appropriate. Franchisor is not required to compensate you in any way for offering or selling in your Assigned Area or Primary Area any of the products or services described in this subparagraph (1);
- (2) the right to offer and sell (and authorize others to offer and sell) products and services that may be the same or similar to those offered by Restaurants, under the Proprietary Marks in the Assigned Area and Primary Area, if offered and sold through a distribution channel other than a Restaurant (e.g., product and catalog sales, internet sales, grocery store or supermarket sales, warehouse store sales, memorabilia or recipes through other retail outlets, and other channels of distribution) (“Alternative Channel Products”). The Alternative Channel Products may be packaged for retail sale and Franchisor may request or require franchisees to sell or advertise the Alternative Channel Products in their Restaurants. Franchisor may, in its discretion, contribute a percentage of its revenues from the sale or license of Alternative Channel Products to the Marketing Fund (as defined in Article 3.6). Franchisor may offer and sell (and may authorize others to offer and sell) products and services through alternative distribution channels (“Alternative Distribution Channels”), including but not limited to product and catalog sales, internet sales, grocery store sales, and other channels of distribution in the Assigned Area and Primary Area that may be similar to those offered by Restaurants, under names and marks other than the Proprietary Marks;

- (3) the right to, and to grant to others the right to, at any time, advertise and promote the System or fulfill customer orders (including but not limited to catering and delivery services) in the Assigned Area and the Primary Area;
- (4) the right to establish and operate, and to grant to others the right to establish and operate, businesses offering dissimilar products and services both inside and outside the Assigned Area and Primary Area under the Proprietary Marks and on any terms and conditions we deem appropriate;
- (5) the right to operate, and to grant others the right to operate, Restaurants located anywhere outside the Assigned Area and Primary Area under any terms and conditions we deem appropriate and regardless of proximity to your Franchised Restaurant;
- (6) the right to, directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Assigned Area and Primary Area if the location of the Restaurant is (i) in a non-traditional venue, including a stadium, airport, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino, food truck, gas station, convenience store, or similar location, (ii) a delivery-carryout restaurant that only offer delivery or carry-out items; or, (iii) a ghost kitchen located in a commissary kitchen that only offers food to third-party food delivery vendors Franchisor authorizes and catering services through one of Franchisor's websites;
- (7) the right to acquire the assets or ownership interests of one or more businesses providing products and services similar to those provided at Restaurants, and franchising, licensing, or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Assigned Area and Primary Area); and,
- (8) the right to be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Restaurants, or by another business, even if such business operates, franchises, and/or licenses competitive businesses in the Assigned Area and Primary Area.

## **ARTICLE 2. TERM AND RENEWAL**

**2.1 INITIAL TERM.** Except as otherwise provided herein, the initial term of this Agreement shall expire twenty (20) years from the Effective Date of this Agreement.

**2.2 RENEWAL.** To the extent permitted under applicable state law, you may, at your option, renew the franchise granted hereunder for an additional term of ten (10) years, such term to begin upon the expiration of the initial term, subject to the following conditions, all of which (as determined by Franchisor) must be satisfied prior to such renewal:

1. You shall give Franchisor written notice of your election to renew not less than six (6) months nor more than twelve (12) months prior to the end of the initial term;

2. You shall repair or replace, at your cost and expense, equipment (including computer hardware and software), signs, menu boards (interior and drive-through, as applicable), interior and exterior decor items, fixtures, furnishings, supplies, and other products and materials required for the operation of your Franchised Restaurant as Franchisor may reasonably require. You shall also obtain, at your cost and expense, any new or additional equipment, fixtures, supplies, and other products and materials that may be reasonably required by Franchisor for you to offer and sell new menu items from your Franchised Restaurant or to provide your Franchised Restaurant's services by alternative means such as drive-through,

carry-out, or delivery arrangements and shall otherwise modernize your Franchised Restaurant premises (including, without limitation, the modernization of your Franchised Restaurant to conform to Franchisor's then-current Restaurant specifications and requirements), equipment (including computer hardware and software), signs, menu boards (interior and drive-through, as applicable), interior and exterior decor items, fixtures, furnishings, supplies, and other products and materials required for the operation of your Franchised Restaurant, as reasonably required by Franchisor to reflect the then-current standards and image of the System as contained in the Manuals (as defined in Article 3.8) or otherwise provided in writing by Franchisor; provided, that Franchisor shall provide you with a reasonable time period within which to effect such repairs, replacements, or acquisitions, and that the total cost of such repairs, replacements, or acquisitions required at the time of renewal shall not exceed \$100,000.00;

3. You shall not be in default of any provision of this Agreement or any other agreement between you and Franchisor or its subsidiaries or affiliates; and, you shall have substantially and timely complied with all the terms and conditions of this Agreement and such other agreements during their terms;

4. You shall have satisfied all monetary obligations owed by you to Franchisor and its subsidiaries and affiliates under this Agreement and any other agreement between you and Franchisor or its subsidiaries or affiliates and shall have timely met those obligations throughout the term thereof;

5. You shall present evidence satisfactory to Franchisor that you have the right to remain in possession of the Accepted Location for the duration of the renewal term of this Agreement;

6. If you satisfy all of the other conditions for a renewal franchise, you and your Owner/Operator and Investors agree to execute a renewal franchise agreement and any ancillary agreements Franchisor then customarily uses in granting franchises for Restaurants, including a personal guaranty for the renewal term (modified as necessary to reflect the fact that it is for a renewal franchise), which may contain provisions that differ materially from any and all of those contained in this Agreement. You and your Owner/Operator and Investors further agree to sign Franchisor's then-current form of general release of any and all claims against Franchisor and its affiliates, shareholders, officers, directors, members, employees, agents, successors, and assigns. Franchisor will consider your or your Owner/Operator and Investors' failure to sign these agreements and releases and to deliver them to us for acceptance and execution within thirty (30) days after their delivery to you to be an election by you not to acquire a renewal franchise;

7. You shall pay Franchisor a franchise renewal fee of \$15,000.00;

8. To the extent not prohibited by applicable law, you and your Owner/Operator and Investors shall execute a general release, in a form prescribed by Franchisor, of any and all claims you may have, of whatever nature or kind, against Franchisor and its subsidiaries and affiliates and their respective officers, directors, shareholders, partners, employees, servants, representatives, independent contractors, and agents, in their corporate and individual capacities, including without limitation, claims arising under this Agreement and any other agreement between you and Franchisor or its subsidiaries or affiliates and under any federal, state, and local laws, rules, and ordinances;

9. You shall comply with Franchisor's then-current qualification and training requirements; and,

10. Your franchise must score above the 50<sup>th</sup> percentile of the Net Sales (as defined in Article 4.6)/customer complaint ratio we calculate on a chain wide basis for the twelve month period preceding the date you give notice of your intent to renew.

### ARTICLE 3. FRANCHISOR'S DUTIES.

Franchisor or its designated affiliate shall provide the following services and assistance to you:

**3.1 SITE SELECTION.** Franchisor or its designated affiliate shall provide the following site selection assistance:

1. Franchisor or its designated affiliate shall provide you with its counseling and assistance as Franchisor may deem advisable; and,

2. Franchisor or its designated affiliate shall provide a site evaluation; provided, however, that neither Franchisor nor its designated affiliate shall provide an on-site evaluation for any proposed site prior to the receipt of all required information and materials concerning such site prepared pursuant to Article 7. Franchisor or its designated affiliate will provide up to three (3) on-site evaluations for your Franchised Restaurant (or for your first Franchised Restaurant under a Development Agreement). Thereafter, if additional on-site evaluations are deemed appropriate by Franchisor or its designated affiliate or as requested by you, you shall pay a reasonable fee for each such evaluation and shall reimburse Franchisor or its designated affiliate for all reasonable expenses incurred by Franchisor or its designated affiliate in connection with such on-site evaluation, including, without limitation, the cost of travel, lodging, meals, and wages. As used in this Agreement, "**Development Agreement**" means an agreement to establish more than one (1) Restaurant executed on or prior to the Effective Date by Franchisor and you or your affiliate, and pursuant to which agreement you are executing this Agreement.

**3.2 DESIGN PLANS AND CONSTRUCTION.** Franchisor shall maintain a list of approved architects and general contractors. Franchisor has provided a set of prototypical design plans for a Restaurant to the approved architects. You must, independently and at your expense, have such design plans and specifications adapted for the finish-out or renovation of your Franchised Restaurant by a Franchisor-approved architect of your choice in accordance with Article 7.7. You may contract with an alternative architect or general contractor, subject to Franchisor's approval. If you request an alternate architect or general contractor, you must, within thirty (30) days of the Effective Date, submit your proposal to Franchisor prior to engaging the architect or general contractor along with a \$750 evaluation fee and the alternate architect and/or general contractor must execute Franchisor's then-current form of agreement for alternate architects or general contractors (which may require the architect or general contractor to pay a fee) in order to have the proposal evaluated.

**3.3 TRAINING.** Franchisor shall provide initial training program at its Virtual Brands Training Program for certain of your personnel in accordance with Article 9 and shall make available such other training programs and seminars as it deems appropriate. All training provided by Franchisor shall be in accordance with Article 9.

**3.4 INITIAL PURCHASE.** Franchisor shall provide you with assistance and advice concerning equipment and will specify your opening inventory selection and purchasing in connection with the opening of your Franchised Restaurant.

**3.5 PRE-OPENING, OPENING AND OPERATING ASSISTANCE.** Franchisor shall provide you with "**pre-opening assistance**" in accordance with Franchisor's "**Phases and Stages**" program, and shall provide you with on-site opening supervision and assistance and thereafter such additional advisory assistance in the operation of the franchised business during the term of this Agreement as set forth in Article 9.

**3.6 MARKETING FUND.** Franchisor has established a System-wide marketing fund (the “**Marketing Fund**”) promoting the System in accordance with Article 5.8. Franchisor may modify or terminate the Marketing Fund at any time in accordance with Article 5.8 and provide for the advertisement and promotion of your Franchised Restaurant and the System by such other methods as set forth in Article 5.

**3.7 ADVERTISING AND PROMOTIONAL MATERIALS.** Franchisor may, from time to time, make available to you at a reasonable cost certain advertising and promotional materials and information developed by Franchisor for your use in marketing and conducting local advertising for your Franchised Restaurant. Franchisor shall have the right to review and approve or disapprove all advertising and promotional materials that you propose to use pursuant to Articles 5 and 8.

**3.8 OPERATING MANUALS AND SOFTWARE.** Franchisor shall provide to you, on loan, and at the cost established by Franchisor or its vendors, one (1) set of the operations manual (the “**Operations Manual**”) and such other manuals, forms, written materials (collectively, as the same may be revised by Franchisor from time to time, the “**Manuals**”), and software programs as Franchisor may, from time to time, develop for use in the franchised business, as more fully described in Articles 8 and 11. You will be required to utilize computer hardware and software pursuant to Article 8.13. Franchisor or Franchisor’s approved vendor or supplier shall also make available to you, from time to time, any upgrades, enhancements, or replacements to the hardware and software that are developed by or on behalf of Franchisor, at such cost as Franchisor makes such upgrades, enhancements, and replacements available to other franchisees operating under the System.

**3.9 TRAINING MATERIALS.** Franchisor may create, from time to time, training films and other instructional video and audio materials. Upon request, Franchisor shall make available to you, from time to time, on loan, these materials at such cost as Franchisor makes such materials available to other franchisees operating under the System.

**3.10 ONGOING SEMINARS, ETC.** Franchisor shall, from time to time, in its discretion, conduct meetings, organize and conduct seminars, and other related activities regarding the System for franchisees generally. Franchisor may require your attendance at such events. Except as approved by Franchisor, any costs incurred by you or your Franchised Restaurant personnel in attending such events shall be your responsibility. Any video or audio tapes relating to such meetings and seminars will be made available to you, on loan, at such cost as Franchisor makes such materials available to other franchisees operating under the System.

**3.11 ONGOING INSTRUCTIONAL MATERIALS.** Franchisor shall provide to you, from time to time as Franchisor deems appropriate, advice and written materials concerning techniques of managing and operating your Franchised Restaurant, including new developments and improvements in restaurant equipment, food products, packaging, and preparation. Except as set forth herein, you are responsible for the training of your employees in accordance with Franchisor’s standards.

**3.12 ONGOING OPERATING ASSISTANCE.** Subject to the availability of appropriate personnel of Franchisor, Franchisor shall provide you with ongoing operational assistance from time to time as Franchisor deems necessary.

**3.13 LIST OF REQUIRED AND APPROVED SUPPLIERS AND VENDORS.** Franchisor shall provide you, following execution of this Agreement and thereafter from time to time as Franchisor deems appropriate during the term of this Agreement, with a list of Franchisor’s required suppliers and vendors as well as Franchisor’s approved suppliers and vendors as described in Article 8.



**3.14 PROPRIETARY PRODUCT SALES.** Franchisor may make available at a reasonable cost and, at its option, may require you to purchase from Franchisor or an affiliate for resale to your customers, certain packaged food products such as bottled sauces, spices, gift cards available for redemption at any Restaurant, and certain promotional merchandise identifying the System (such as gift cards, T-shirts, sweatshirts, and caps), in amounts sufficient to meet your customer demand.

**3.15 MAINTENANCE OF STANDARDS.** Franchisor shall seek to maintain the high standards of quality, appearance, and service of the System, and accordingly shall conduct, as it deems advisable, inspections of your Franchised Restaurant and evaluations of the products sold and services rendered therein, as more fully described in Article 8.10.

**3.16 DELEGATION OF PERFORMANCE.** You agree that Franchisor has the right to delegate the performance of any portion or all of Franchisor's obligations under this Agreement to third-party designees, whether these designees are Franchisor's affiliates, agents, or independent contractors with whom Franchisor contracted to perform these obligations.

#### ARTICLE 4. FRANCHISE AND ROYALTY FEES

**4.1 FRANCHISE FEE.** You shall pay Franchisor an initial franchise fee ("**Franchise Fee**") in an amount equal to Twenty Thousand Dollars (\$20,000.00) upon the execution of this Agreement. **Such initial Franchise Fee shall be nonrefundable.** If a Development Agreement has been executed, the initial Franchise Fee will be payable according to its terms.

**4.2 ROYALTY FEES.** You shall pay a continuing nonrefundable "**Royalty Fee**" throughout the term of this Agreement, equal to six percent (6%) of the Net Sales (as defined in Article 4.6) of your Franchised Restaurant, which shall be due and payable and shall be electronically drafted on your designated bank account on or before the Monday following the calendar week to which such payments relate. If the date on which such payments would otherwise be due is not a business day, then payment shall be due and drafted upon on the next business day. You shall not be entitled to withhold any payments due to Franchisor on grounds of alleged non-performance by Franchisor under this Agreement. The calendar week for which Royalty Fees are due is sometimes referred to as the "**Sales Period.**"

**4.3 SALES REPORT.** You shall, during the term of this Agreement, on or before the third (3<sup>rd</sup>) day of each calendar month, submit to Franchisor a report (the "**Monthly Sales Report**"), prepared and approved by you setting forth (i) your Franchised Restaurant's Net Sales for each Sales Period during the previous calendar month; (ii) the amount of the Royalty Fee due for each Sales Period during the prior calendar month ; (iii) the Marketing Fund contribution due for each Sales Period during the prior calendar month; and, (iv) an income statement and other reports for your Franchised Restaurant. In addition, you shall submit to Franchisor on a daily or weekly basis, in such manner as Franchisor may require, a report detailing your Franchised Restaurant's Net Sales for the current Sales Period prior to the time that your Royalty Fees and Marketing Fund contribution for such Sales Period is due and payable.

**4.4 ACH TRANSFERS.** All payments of Royalty Fees, Marketing Fund contributions, customer refund reimbursements, and any other sums owed to Franchisor hereunder shall be made by ACH electronic transfer drawn upon your account at your bank on a weekly or monthly basis, or such other frequency as Franchisor determines in its sole discretion. Payments of Royalty Fees and Marketing Fund contributions shall be determined based upon information retrieved by Franchisor from the Point of Sale System (as defined in Article 8.13) regarding the applicable weekly Sales Period. You agree to accept Franchisor's calculation of the Royalty Fees and Marketing Fund contributions due hereunder and not attempt to withhold any payments absent manifest mathematical error. You shall execute and deliver to Franchisor the ACH authorization in the form attached as **Attachment A** hereto (or such other form as may

be required by Franchisor or its bank). You further covenant to maintain your account identified in the ACH transfer authorization throughout the term of this Agreement and to maintain within such account such funds as are necessary to process the payment and transfer of Royalty Fees or Marketing Fund contributions from time to time. You further agree that any account you maintain for purposes of complying with this Article 4.4 will be used only in connection with your Franchised Restaurant's operation and will not be used for any personal use or expense outside the normal course of the business of your Franchised Restaurant. Payment of Royalty Fees, Marketing Fund contributions, or any other sum owed to Franchisor hereunder to Franchisor by check or in any other manner may be made only upon the express written consent of Franchisor. If you fail to report your Franchised Restaurant's Net Sales as required by Article 4.3 above, we may debit your account for an amount equal to the last Royalty Fee and Marketing Fund contribution that we debited (together with the late fee noted in Article 4.5 above). If we discover, once we have determined your Franchised Restaurant's true and correct Net Sales, that the amounts we debited from your account are less than the amounts you actually owe us, then we will debit your account for the remaining balance on the day we specify.

**4.5 LATE PAYMENTS.** If any payment or fee due under this Agreement is not paid by you when the payment or fee is due, you shall pay Franchisor, in addition to the overdue amount, interest on such amount from the date it was due until paid at the rate of fifteen percent (15%) per annum, or the maximum rate permitted by law, whichever is less. In addition, you shall reimburse Franchisor for any out-of-pocket expenses incurred by Franchisor in connection with any such late payment or the collection of any such late payment. If you have insufficient funds in your account to cover a payment or fee due under this Agreement, or if any check is returned due to insufficient funds, you shall pay to Franchisor an additional amount of Forty Dollars (\$40.00) for each such occurrence. Any failure to comply with this Article 4.5 shall be an event of default under Article 16. Franchisor's entitlement to such interest shall be in addition to any other remedies Franchisor may have in law or in equity, arising under this Agreement or otherwise.

**4.6 NET SALES.** As used in this Agreement, "**Net Sales**" shall include all revenue from the sale of services and products by in-store dining, carry-out, on-line orders, delivery, third-party voucher sales, catering, and otherwise, including, but not limited to, the sale of food and beverages (both alcoholic and non-alcoholic), the redemption of gift cards, and the sale of merchandise, (e.g., prepackaged sauces, spices or other food products, and any T-shirts, sweatshirts, etc.) and all other income of whatever nature or kind relating to the franchised business, whether for cash or credit and regardless of collection in the case of credit; provided that Net Sales shall not include any sales tax or other taxes collected from your customers and paid to the appropriate taxing authority, employee meals and the discounts offered for meals purchased with promotional coupons approved by Franchisor, and any accounts receivable representing Net Sales for which you have previously paid Royalty Fees but that subsequently you have deemed uncollectible. Franchisor may, from time to time, in writing, permit certain other items to be excluded from Net Sales. Any such permission may be revoked or withdrawn at any time in writing by Franchisor in its discretion.

**4.7 TRAINING FEE.** If this is your first Restaurant, then you must pay a non-refundable Two Thousand Nine Hundred Dollars (\$2,900) Training Fee to Franchisor for Franchisor's Virtual Brands Training Program that your Owner/Operator will attend in Dallas, Texas. If you choose to attend ServSafe training performed at as part of Franchisor's Virtual Brands Training Program, then you must pay Franchisor One Hundred Eighty-Five Dollars (\$185) in addition to the Training Fee. The Training Fee also covers online training and on-site training and certification for up to three (3) Franchised Restaurant managers you select. Any manager certification that you do not utilize before opening the Franchised Restaurant will be forfeited. The Training Fee also includes the cost of training materials but not uniforms for the trainees. You must pay a portion of the Training Fee in the amount of One Thousand One Hundred

Fifty Dollars (\$1,150) (or One Thousand Three Hundred Thirty-Five Dollars (\$1,335), if you choose to attend ServSafe training at Franchisor's Virtual Brands Training Program) when you register your Owner/Operator for training. You must pay the remaining portion of the Training Fee in the amount of One Thousand Seven Hundred Fifty Dollars (\$1,750) to Franchisor for online and on-site training of up to three (3) managers at least thirty (30) days before the Franchised Restaurant opening.

**4.8 DAY ONE DEPOSIT.** You are required to pay Franchisor a “Day One Deposit” of up to Eight Thousand Two Hundred Dollars (\$8,200) within one business day after the “Orientation Call” with us for your Franchised Restaurant. We will use this deposit to pay approved vendors the deposits for your Franchised Restaurant's architectural design services, equipment, and signage. If you fail to meet your obligations to develop and commence operations of your Franchised Restaurant as provided in Article 7 of this Agreement, so that this Agreement terminates, Franchisor will retain any amounts paid as a “Day One Deposit” to cover payments to approved vendors.

**4.9 TECHNOLOGY SUPPORT FEE.** You are required to pay Franchisor or its designee a one-time, non-refundable, initial fee between Five Hundred Seventy-Five Dollars (\$575) and Two Thousand Two Hundred Twenty-Seven Dollars (\$2,227) for certain required equipment necessary to support required cybersecurity services. You also are required to pay Franchisor or its designee a technology support fee between Two Hundred Fifty-One Dollars (\$251) and Three Hundred Forty Dollars (\$340) each month. The technology support fee is used by Franchisor or its designee, in its sole discretion, to provide basic technology support for point-of sale, cybersecurity, and 24/7 data protection, back of house computer, and other basic office equipment to its franchisees during restaurant operating hours. Franchisor may modify these fees once a calendar year on at least sixty (60) days' prior written notice to cover the costs of technology support and implementation of new technology.

**4.10 TRAINING ENROLLMENT FEE.** Upon opening your Franchised Restaurant, you are required to pay Franchisor or its designee an ongoing training enrollment fee in the amount of Ten Dollars (\$10) each month. The training enrollment fee is used for any successor, replacement, and ongoing manager training, which includes online access to Franchisor's Virtual Brands Training Program and continued access to materials needed for manager certification. Franchisor may modify this fee once a calendar year on at least sixty (60) days' prior written notice.

**4.11 SPARK POS SAAS FEE.** You are required to install and use the Spark Point of Sale (“POS”) system. You must pay Franchisor or its designee a one-time, non-refundable, initial fee in the amount of One Hundred Twenty-Five Dollars (\$125) for the installation of the Spark POS. You also are required to pay Franchisor or its designee a Spark POS SaaS Fee in the amount of One Hundred Forty-Nine Dollars (\$149) each month. The Spark POS SaaS Fee is used by Franchisor or its designee, in its sole discretion, to provide basic technology support for point-of sale, back of house computer, and other basic office equipment to its franchisees during restaurant operating hours. Franchisor may modify this fee once a calendar year on at least sixty (60) days' prior written notice to cover the costs of technology support and implementation of new technology.

**4.12 SPARK ONLINE ORDERING FEE.** You are required to install and use the Spark Online Ordering System. You must pay Franchisor or its designee a one-time, non-refundable, initial fee in the amount of One Hundred Twenty-Five Dollars (\$125) for the installation of the Spark Online Ordering System. You also are required to pay Franchisor or its designee a Spark Online Ordering Fee in the amount of One Hundred Fifty-Seven Dollars (\$157) each month. The Spark Online Ordering Fee provides you access to the Spark Online Ordering System, which includes technology support for third-party delivery services and geolocation services to allow guests to find Restaurants near them. Franchisor may modify

this fee once a calendar year on at least sixty (60) days' prior written notice to cover the costs of technology support and implementation of new technology.

## ARTICLE 5. ADVERTISING AND RELATED FEES

**5.1 PARTICIPATION.** You shall participate actively in and comply with all advertising, marketing, and sales promotion programs in complete accordance with the terms and conditions established by Franchisor for each program, subject to restrictions imposed by applicable law. In all aspects of these programs, including without limitation, the type, quantity, timing, placement, and choice of media, market areas and advertising agencies, to the extent permitted by law, Franchisor's procedures, standards, and specifications shall be final and binding upon you.

**5.2 FRANCHISED RESTAURANT OPENING.** You shall carry out an opening promotion for your Franchised Restaurant in accordance with the Manuals or as otherwise required by Franchisor. Any advertising and promotional campaigns used by you in connection with such Franchised Restaurant opening promotion must be approved by Franchisor prior to use. You shall comply with the direct and local advertising and promotional campaign for restaurant openings devised by Franchisor and adapted for your Assigned Area. Before you attend Franchisor's Virtual Brands Training Program, you shall pay to Franchisor Eight Thousand Dollars (\$8,000.00) (the "**Restaurant Opening Promotion Funds**") to be spent by Franchisor on your behalf in connection with such Franchised Restaurant opening promotion. The Restaurant Opening Promotion Funds will be used by Franchisor, in its discretion, to fund marketing materials, local or national advertising, and promotional support related to the Franchised Restaurant pre-opening and grand opening campaigns, and in some cases post-opening campaigns. Upon your request, an accounting of the Restaurant Opening Promotion Funds spent by Franchisor in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, will be provided. While Franchisor will exercise best efforts to spend the full amount of the Restaurant Opening Promotion Funds in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, any remaining balance after the first six (6) months of the operation of your Franchised Restaurant will be deposited into the Marketing Fund and applied by Franchisor in accordance with the procedures described herein for the utilization of the proceeds of the Marketing Fund.

**5.3 LOCAL MARKETING.** You shall build brand awareness for the System in your Assigned Area through direct local marketing and promotion of your Franchised Restaurant. Upon Franchisor's request, you shall furnish to Franchisor, on a monthly basis, supporting documentation evidencing your efforts. Examples of local marketing include, but are not limited to, promotion through word of mouth, in-store sampling, and the offering of free dinner cards and Be My Guest cards ("**BMG**"). You may expend such sums on local marketing as you deem appropriate. Any advertising and promotional materials must be approved by Franchisor prior to use.

**5.4 GIFT CARDS.** Franchisor has established and administers a promotional gift card acceptance program. You will be required to purchase and carry a minimum carrying inventory of gift cards from Franchisor pursuant to such program. You shall honor any such gift card presented at your Franchised Restaurant for the purchase of food and beverage items.

**5.5 INTERNET PROMOTIONS.** Except as we expressly authorize in the Manuals, you are prohibited from establishing and operating a URL website, mobile apps appearing on smartphones or other electronic devices (including, but not limited to, Android Marketplace or the Apple Store), or social media account or webpage relating to your Franchised Restaurant, except that you must participate in and maintain a Facebook page or other relevant social media platforms as our marketing team determines under the name "Wing Boss - [City, State]." You must integrate messaging as Franchisor's marketing team determines on

any page you maintain on a social media platform. Franchisor has established and intends (but is not obligated) to maintain a website for the System, (the “**Franchisor’s Website**”). You authorize Franchisor to identify and promote your Franchised Restaurant on Franchisor’s Website. We may provide guidance, suggestions, mandates, and restrictions about web sites and social media for the Franchised Restaurant in the Manuals.

**5.6 PRICING; PARTICIPATION IN PROMOTIONS.** Franchisor reserves the right, to the fullest extent allowed by applicable law, to establish maximum, minimum, or other pricing requirements with respect to the prices you may charge for products and services. You acknowledge and agree that periodic discounts, “value deals,” giveaways, customer loyalty programs, and other promotions are an integral part of the System. Therefore, you agree to offer and participate in such discounts, giveaways, customer loyalty programs, and other promotions at your sole cost and expense, in accordance with Franchisor’s specifications. You further agree to honor the discounts, giveaways, customer loyalty programs, and other promotions offered by other Restaurant franchise owners under any such program Franchisor establishes (including but not limited to the holiday promotion and limited time offers of prime rib, holiday ham, and whole turkeys), as long as such compliance does not contravene any applicable law, rule, or regulation.

**5.7 GENERAL STANDARDS.** All advertising and promotion by you in any medium shall be conducted in a dignified manner and shall conform to the standards and requirements of Franchisor as set forth in the Manuals or otherwise in writing. You shall obtain Franchisor’s approval of all advertising and promotional plans and materials prior to use if such plans and materials have not been prepared by Franchisor or previously approved by Franchisor during the six (6) months prior to their proposed use. You shall submit such unapproved plans and materials to Franchisor and Franchisor shall approve or disapprove such plans and materials within thirty (30) days of Franchisor’s receipt thereof. You shall not use such unapproved plans or materials until they have been approved by Franchisor, and upon notice from Franchisor, you shall promptly discontinue use of any advertising or promotional plans or materials, whether or not previously approved.

**5.8 MARKETING FUND.** Franchisor has established a Marketing Fund for the purpose of promoting the System and other restaurant brands owned by Franchisor or one of its affiliates that could operate along with Restaurants as co-branded restaurants. The Marketing Fund may be operated by one of Franchisor’s affiliates. You agree to contribute to the Marketing Fund three percent (3%) of your Net Sales of your Franchised Restaurant as determined by Franchisor. Such fee shall be paid weekly at the time and in the manner for which Royalty Fees are paid as set forth in Article 4.

You agree that the Marketing Fund shall be maintained and administered by Franchisor or its designee, in its sole discretion, as follows:

1. Franchisor or its designee shall direct all advertising programs and shall have sole discretion to approve or disapprove the creative concepts, materials, and media used in such programs and the placement and allocation thereof. Franchisor will own the copyright in the design, content, and materials created using Fund monies. You agree and acknowledge that the Marketing Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks and the proprietary marks of other restaurant brands owned by Franchisor or one of its affiliates that could be used in connection with the Proprietary Marks and enhance the collective success of all Restaurants operating under the System and other restaurant brands owned by Franchisor or one of its affiliates that could operate along with Restaurants as co-branded restaurants. In administering the Marketing Fund, Franchisor and its designee undertake no obligation to make expenditures for you that are equivalent or proportionate to your contributions or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.

2. You agree that the Marketing Fund may be used by Franchisor or its designee, in its sole discretion, to satisfy any and all costs of maintaining, administering, directing, and preparing advertising (including, without limitation, the cost of preparing and conducting television, radio, internet/web-based, magazine, newspaper, and electronic media advertising campaigns, developing, implementing, and maintaining an electronic commerce website and/or related strategies; the cost of market research, costs of administering customer loyalty programs, direct mail, and outdoor billboard advertising, public relations activities, employing advertising agencies to assist therein, costs of Franchisor's personnel and other departmental costs for advertising that is internally administered or prepared by Franchisor, costs of providing other advertising materials to Restaurants operated under the System, the costs of maintaining Franchisor's Website, and the costs of a national "1-800" customer and/or franchisee service telephone number if such service is implemented by Franchisor). All sums paid by you to the Marketing Fund shall be maintained in a separate account by Franchisor or its designee and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Franchisor or its designee may incur in activities reasonably related to the administration or direction of the Marketing Fund and advertising programs for franchisees and the System. The Marketing Fund and its earnings shall not otherwise inure to the benefit of Franchisor. The Marketing Fund is operated solely as a conduit for collecting and expending the marketing and advertising fees as outlined above and may also be used to establish a catering hotline.

3. A statement of the operations of the Marketing Fund shall be prepared annually by Franchisor and shall be made available to you upon request. Franchisor is not obligated to provide an accounting of each marketing program and spend for your individual Franchised Restaurant.

4. Although the Marketing Fund is intended to be of perpetual duration, Franchisor may terminate the Marketing Fund at any time. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising or promotional purposes or returned to contributing franchised or Company-Operated Restaurants, without interest, on the basis of their respective contributions.

**5.9 ADVERTISING CO-OPS.** Franchisor may, in its sole discretion, require you to participate in certain local or regional advertising cooperatives organized and approved by Franchisor and composed of certain other franchisees located in the geographic area in which you are located as defined in a cooperative advertising agreement. If you are required to participate in a Franchisor-approved advertising cooperative, you will be required to execute Franchisor's then-current standard advertising cooperative agreement. Franchisor may terminate any advertising cooperative pursuant to the terms of each particular cooperative advertising agreement. Franchisor reserves the right to require advertising cooperatives to be formed, changed, dissolved or merged.

## **ARTICLE 6. YOUR ORGANIZATION**

### **6.1 CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY.**

Within thirty (30) days after the Effective Date, you must obtain a Federal Employer Identification Number, either as a sole proprietor or as an "Entity" such as a corporation, partnership, or limited liability company that will own and operate the Franchised Restaurant. If you form an Entity, or if you are an entity as of the Effective Date, you represent and warrant to, and covenant with Franchisor, and you will provide Franchisor with all documentation required by Franchisor that demonstrates the following:

1. The Entity is duly organized and validly existing under the laws of your state of formation;

2. The Entity is duly qualified to do business and in good standing in the jurisdiction where the Franchised Restaurant is located, and in each jurisdiction in which your business activities or the nature of the properties owned by you require such qualification;

3. The Entity's organizational documents shall at all times provide that your activities are limited to the development and operation of Restaurants and that you will not engage in any other business;

4. The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action on behalf of you and the holders of your Entity's ownership interests, and by all persons and entities that directly or indirectly control or manage your business and affairs (collectively, the "**Management Group**"), and such actions do not and will not violate, breach, or constitute a default under any agreement, judgment, order, law, rule, or regulation to which any of the foregoing is a party or by which bound;

5. Your ownership interests are accurately and completely described and listed in in Article 21. Further, upon Franchisor's request from time to time, you shall provide to Franchisor a current or updated list of all holders of direct and indirect, issued and contingent, equity ownership interests in the Entity;

6. If a change in any ownership interest in the Entity occurs, directly or indirectly, you shall notify Franchisor in writing prior to such change and otherwise comply with the terms and conditions of Article 15, and you shall cause each new owner of an equity ownership interest in the Entity to execute a joinder to this Agreement as one of your Investors (as defined in Article 26.3.3) and agree to be individually bound by all of your obligations hereunder as a condition to their equity investment;

7. If you have or at any time shall issue any certificate evidencing any ownership interest in the Entity, you shall have conspicuously noted upon such certificate a statement in a form satisfactory to Franchisor that it is held subject to all restrictions on Transfers imposed by this Agreement. In addition, you shall maintain on your Entity records instructions against the Transfer of any of your ownership interests that are prohibited under this Agreement without Franchisor's prior written consent, and the Entity's organizational documents shall also provide that all ownership interests are subject to all restrictions on Transfers imposed by this Agreement;

8. You and, at Franchisor's request, your Owner/Operator, each of your Investors, and each member of the Management Group, have provided Franchisor with your most recent financial statements and the most recent financial statements of your Owner/Operator and Investors (and, if applicable, the Management Group). Such financial statements present fairly the financial position and that of you and each of your Investors (and Management Group), as applicable, at the dates indicated therein and with respect to you as a sole proprietor or as the Entity, the results of your operations and your cash flow for the years then ended. You agree that you shall maintain, and your Investors (or Management Group, if applicable) will cause you to maintain, at all times during the term of this Agreement, sufficient working capital to fulfill your obligations under this Agreement. Each of the Entity financial statements mentioned above has been prepared in conformity with generally accepted accounting principles applicable to the respective periods involved and, except as expressly described in the applicable notes, applied on a consistent basis. No material liabilities, adverse claims, commitments, or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent, or otherwise, which are not reflected as liabilities on your financial statements or those of your Owner/Operator or Investors (or Management Group, if applicable).

**6.2** **FRANCHISEE'S NAME.** Neither you nor your Entity will use the name "Wing Boss," or any derivative thereof in your Entity name. You will hold yourself out to the public as an independent

contractor operating your Franchised Restaurant pursuant to a franchise from Franchisor and will place a highly visible sign, approved by Franchisor, to such effect at a prominent location within your Franchised Restaurant. You will file for a certificate of assumed name in the manner required by applicable state law so as to notify the public that you are operating your Franchised Restaurant as an independent business pursuant to this Agreement.

**6.3 YOU AND YOUR INVESTORS.** You and your Owner/Operator and Investors (and Management Group, if applicable) acknowledge and agree that the representations set forth above in this Article 6 are your continuing obligations and those of your Owner/Operator and Investors (and Management Group, if applicable) and that any failure to comply with such representations shall constitute an event of default under Article 16. You will cooperate with Franchisor in its efforts to verify compliance with such representations.

## **ARTICLE 7. SITE SELECTION. PLANS AND CONSTRUCTION**

**7.1 SITE SELECTION.** You assume all cost, liability, expense, and responsibility for locating, obtaining, and developing the site for your Franchised Restaurant within the Assigned Area and for finish-out or renovation and equipping your Franchised Restaurant at the Accepted Location. You shall not make any binding commitment to a prospective lessor of real estate with respect to a site for your Franchised Restaurant unless the site is accepted as set forth in this Article 7. You acknowledge that Franchisor's acceptance of a prospective site and the rendering of assistance in the selection of a site does not constitute a representation, promise, warranty, or guarantee by Franchisor that your Franchised Restaurant operated at that site will be profitable or successful. Except as expressly provided herein, no provision of this Agreement will be construed or interpreted to impose any obligation upon Franchisor to locate a site for the Accepted Location, to assist you in the selection of a suitable site for the Accepted Location, or to provide any assistance to you in the lease of the Accepted Location.

**7.2 SITE LOCATION.** Prior to acquiring by lease a site for your Franchised Restaurant, you shall locate a site for your Franchised Restaurant within the Assigned Area that satisfies the site selection guidelines provided to you by Franchisor pursuant to Article 3.1 and shall submit to Franchisor or its designated affiliate, in the form specified by Franchisor, a description of the site, including evidence satisfactory to Franchisor that the site satisfies Franchisor's site selection guidelines, together with such other information and materials as Franchisor may reasonably require, and a letter of intent or other evidence satisfactory to Franchisor or its designated affiliate that confirms your favorable prospects for obtaining the site. Recognizing that time is of the essence, you agree that you will submit such information and materials for the proposed site to Franchisor or its designated affiliate for its acceptance no later than ninety (90) days after the execution of this Agreement. Franchisor shall have thirty (30) days after receipt of this information and materials to accept or not accept, in its sole discretion, the proposed site as the location for your Franchised Restaurant. No site may be used for the location of your Franchised Restaurant unless it is first accepted by Franchisor. **You acknowledge and agree that Franchisor's acceptance of your proposed site is not an assurance that the Franchised Restaurant will achieve a certain sales volume or profit level; it means only that your proposed site meets Franchisor's minimum criteria for site selection guidelines for Restaurants.**

**7.3 FAILURE TO ACQUIRE SITE.** Your failure to acquire the site for your Franchised Restaurant within the time stated in Article 7.5 below, and in the manner required in Article 7.2 above, shall constitute an event of default under this Agreement subject to termination upon notice and without an opportunity to cure from Franchisor pursuant to Articles 16.2.5 and/or 16.2.6.

**7.4 ACCEPTANCE OF LOCATION.** At such time as you locate, and Franchisor accepts, the proposed location within the Assigned Area, the Assigned Area shall automatically and without



requirement of further action be reduced to an area within a one (1)-mile radius of the Accepted Location (“**Primary Area**”). Upon Franchisor’s request, the Accepted Location shall be confirmed in writing, in such form and substance acceptable to Franchisor, which describes the location of the Accepted Location and is executed by you and Franchisor.

**7.5 LEASE OF FRANCHISED RESTAURANT SITE.** You shall be required to lease a site for your Franchised Restaurant constituting a space that is ready for finish-out or conversion to a Restaurant. Within one hundred twenty (120) days after execution of this Agreement, you shall lease, at your expense, a location for your Franchised Restaurant at a site accepted by Franchisor as set forth above. You must request from the landlord the execution of the Lease Rider in the form attached to the Franchise Agreement as **Attachment E**. The Lease Rider allows us to step in to operate the Franchised Restaurant if you default under the lease, and assign the lease to a qualified successor franchisee that we recruit. Unless Franchisor has granted you an extension in writing, if you fail to acquire an accepted site within such time period, Franchisor may terminate this Agreement effective immediately upon notice to you. In such event, Franchisor shall not be obligated to return the Franchise Fee, or any other fees paid by you under this Agreement. You shall furnish to Franchisor a copy of the executed lease, including the Lease Rider, for your Franchised Restaurant site within ten (10) days of its execution. Failure to do so is an event of default with an opportunity to cure under Article 16.3.3. If the term of the lease for your Franchised Restaurant expires before the term of the Franchise Agreement expires, you shall execute a lease renewal or new lease as required for continued operation of the Franchised Restaurant at the Accepted Location during the Term of this Agreement. You may not relocate the Franchised Restaurant without receiving pre-approval from Franchisor.

**7.6 ZONING AND REGULATORY APPROVALS.** You shall be responsible for obtaining all zoning and regulatory approvals that may be required by state or local laws, ordinances, or regulations or that may be necessary as a result of any restrictive covenants relating to your Franchised Restaurant premises. Prior to beginning the finish-out or renovation of your Franchised Restaurant, you shall (i) obtain all permits, licenses, and certifications required for the lawful construction or remodeling and operation of your Franchised Restaurant; and, (ii) certify in writing to Franchisor that the insurance coverage specified in Article 14 is in full force and effect and that all required approvals, clearances, permits, and certifications have been obtained. Upon request, you shall provide to Franchisor additional copies of your insurance policies or certificates of insurance and copies of all such approvals, clearances, permits, and certifications.

**7.7 DESIGN SERVICES.** You must independently obtain, at your own expense, any architectural, engineering, and design services you deem necessary for the finish-out or renovation of your Franchised Restaurant, provided that you may only engage an architectural firm listed on Franchisor’s then-current list of approved architects, unless Franchisor approves in writing another architect that you request to engage. Any franchisee requesting an alternate architect must submit its proposal to Franchisor within thirty (30) days of the Effective Date and prior to engaging the architect along with a \$750 non-refundable evaluation fee and Franchisor’s then-current alternate architect agreement executed by the alternate architect in order to have the proposal evaluated. You will be required to independently, and at your own expense, have the design plans and specifications adapted for the finish-out or renovation of your Franchised Restaurant by a Franchisor-approved architect in compliance with all applicable federal, state, or local laws and ordinances. Franchisor reserves the right to require you to use one of Franchisor’s then-current approved architects if your alternate architect fails to adapt Franchisor’s prototypical design plans and specifications to our satisfaction or fails to meet the development timeframe in your Franchise Agreement. With the assistance of a Franchisor-approved architect, you shall adapt the prototypical design plans and specifications for the finish-out or renovation of your Franchised Restaurant provided to you by Franchisor in accordance with Article 3.2 as necessary and shall submit such adapted plans to Franchisor for review. If Franchisor determines, in its sole discretion, that any such plans are not consistent with the

best interests of the System, Franchisor may prohibit the implementation of such plans, and in this event will notify you of any objection(s) within fifteen (15) days of receiving such plans. If Franchisor fails to notify you of an objection to the plans within this time period, you may use such plans. If Franchisor objects to any such plans, it shall provide you with a reasonably detailed list of changes necessary to make the plans acceptable. You shall resubmit your plans with such changes, and Franchisor will notify you within fifteen (15) days of receiving the resubmitted plans whether the plans are acceptable. If Franchisor fails to notify you of any objection within such time period, you may use the resubmitted plans. Franchisor will have no responsibility to you or any other party if the Accepted Location is not finished out or renovated by you or your contractor: (i) according to Franchisor's prototype architectural design plans and specifications; (ii) in compliance with all applicable federal, state or local laws and ordinances; or, (iii) in a good and workmanlike manner. Notwithstanding the foregoing, Franchisor reserves the right to require you to use an architectural firm listed on Franchisor's then-current list of approved architects, if, at any time, the architect that you request to engage fails to adapt Franchisor's prototypical design plans and specifications properly, in Franchisor's judgment, or fails to meet Franchisor's development timeframe.

**7.8 ASSIGNMENT OF LEASE AND NOTICES UNDER LEASE.** At Franchisor's option, no lease for your Franchised Restaurant premises shall be accepted by Franchisor unless the Lease Rider in Exhibit E permitting an assignment of the lease to Franchisor and providing for the delivery of all notices to Franchisor simultaneously with the delivery of such notices to you as tenant is attached to the lease and incorporated therein. You acknowledge and agree that Franchisor's approval or acceptance of a lease does not mean that the economic terms of the lease are favorable; it means only that the lease contains certain lease terms that Franchisor requires. Should you, for any reason, default under your lease agreement for failing to make a payment due under the lease, Franchisor shall have the right (without the obligation) to immediately cure said default by paying the amount due on your behalf. Franchisor will debit this amount from your account by ACH electronic transfer in accordance with Article 4.4 herein. These remedies shall be in addition to any other remedies at law or in equity that Franchisor may have.

**7.9 FINISH-OUT OR REMODELING.** You shall diligently pursue the finish-out or remodeling (as applicable) of your Franchised Restaurant under a written agreement with a general contractor licensed in the Approved Location and approved by Franchisor. You may not act as your own general contractor for the initial development of your Franchised Restaurant. If you prefer to use a general contractor that is not on our approved list, you must, within thirty (30) days of the Effective Date, submit the general contractor's qualification information to Franchisor prior to engaging the general contractor along with a \$750 non-refundable evaluation fee. In order to be approved, the general contractor must execute Franchisor's then-current master service agreement with Franchisor, which provides for paying you damages if the contractor doesn't finish the work on time, requires that certain terms be included in the contract executed between you and the general contractor, and requires the contractor to pay fees to Franchisor to establish and maintain its status as an approved general contractor. At any time during construction, Franchisor reserves the right to withdraw approval of your general contractor and require you to use one of Franchisor's then-current approved general contractors if your contractor fails to complete construction to our satisfaction or fails to meet the development timeframe in your Franchise Agreement. You shall take steps to remove any unapproved general contractor from the construction site within forty-eight (48) hours of receiving written notice from Franchisor. During the time of the finish-out or remodeling, you shall provide Franchisor with such periodic reports regarding the progress of the finishing-out or remodeling as may be reasonably requested by Franchisor or as required by the Contractor Addendum. You shall regularly communicate with Franchisor's construction department regarding the status of the project. Franchisor may require that you engage a professional construction manager to oversee the project. In addition, Franchisor shall make such on-site inspections as it may deem reasonably necessary to evaluate such progress. The finish-out or remodeling of your Franchised Restaurant shall be completed no later than one hundred fifty (150) days following the date you sign your lease. In the event

you own the Franchised Restaurant premises, the finish-out or remodeling shall be completed no later than one hundred eighty (180) days after the Effective Date of this Agreement. Within a reasonable time after the date of completion of the finish-out or remodeling Franchisor shall, at its option, conduct an inspection of the completed Franchised Restaurant. You acknowledge and agree that you will not open your Franchised Restaurant for business without the written authorization of Franchisor, that authorization to open shall be conditioned upon your strict compliance with this Agreement, and that Franchisor will not unreasonably withhold its authorization.

**7.10 COMMENCE BUSINESS.** You acknowledge that time is of the essence with respect to opening and commencing business operations of your Franchised Restaurant. Subject to your compliance with the conditions stated below, you are obligated to open your Franchised Restaurant and commence business on or before the expiration of twelve (12) months after the Effective Date of this Agreement, unless you obtain an extension of such time period from Franchisor in writing or unless otherwise provided in a Development Agreement between you and Franchisor. Prior to opening, you shall complete all exterior and interior preparations for your Franchised Restaurant, including installation of equipment, fixtures, furniture, chairs, tables, lights, kitchen equipment, the barbecue pit, and signage pursuant to the plans and specifications and from vendors approved by Franchisor. You shall comply with all other pre-opening obligations to Franchisor's satisfaction, including but not limited to, those obligations described in Articles 4.1, 6.1, 7, 8, 9 and 12. If you fail to comply with any of these obligations, Franchisor shall have the right to prohibit you from commencing business. Your failure to open your Franchised Restaurant and commence business in accordance with the foregoing shall be deemed an event of default under Article 16.

## **ARTICLE 8. FRANCHISED RESTAURANT OPERATIONS**

**8.1 OWNER/OPERATOR.** Simultaneously with the execution of this Agreement, you shall designate an individual to serve as the "**Owner/Operator**" of your Franchised Restaurant, unless Franchisor waives such requirement in writing. The Owner/Operator shall satisfy the following qualifications, unless waived in writing by Franchisor:

1. As a corporation, limited liability company, limited partnership, sole proprietorship, or any other Entity, the Owner/Operator shall, at all times during which he or she serves as Owner/Operator: (i) directly or indirectly hold an ownership interest of twenty percent (20%) or more in the Entity; (ii) unless otherwise waived by Franchisor, work on a full-time basis (not less than forty (40) hours per week) in the Franchised Restaurant or other Restaurant under a Franchise Agreement with Franchisor; and, (iii) be fully authorized, directed, and entitled (including under any relevant governing documents and under any agreements and/or duly adopted resolutions by the shareholders, directors, officers, members, managers, and/or any other owner or governing body of you) to manage and control the day-to-day business affairs of the Franchised Restaurant and to take any action that is required to take or omit to take under this Agreement, all in such Owner/Operator's sole discretion, and without the approval or joinder of any person or entity. The Owner/Operator shall be Franchisor's sole point of contact with regard to franchise matters.

2. Except as otherwise provided in this Agreement, the Owner/Operator's interest in the Franchised Restaurant shall be and shall remain free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, voting agreement, proxy, security interest, or purchase right or options.

The Owner/Operator shall execute this Agreement and shall be individually, jointly, and severally bound by, and shall and hereby does guaranty payment and performance of, all obligations hereunder. There shall be no change, removal, resignation, or addition of the Owner/Operator without Franchisor's prior written consent. You and your Investors (and Management Group, if applicable) hereby represent and warrant that, as of the date of this Agreement, the undersigned person executing this Agreement as the Owner/Operator

has been designated as your Owner/Operator, and such person meets all of the qualifications set forth in this Article for the Owner/Operator.

**8.2 SUPERVISION AND MANAGEMENT.** Franchisor requires that the Owner/Operator must work at least forty (40) hours per week and participate in the on-premises supervision of your Franchised Restaurant(s). You shall also employ, in addition to the Owner/Operator, at least two (2) managers per Restaurant who are certified by Franchisor to carry out the day-to-day management and supervision of each such Restaurant. To be certified, such manager must satisfactorily complete the initial training obligations set forth in Article 9; shall meet Franchisor's educational, managerial and business standards; and, shall be approved in writing by Franchisor. In addition, each manager must devote full time and best efforts to the daily management and supervision of your Franchised Restaurant.

**8.3 POSITION QUALIFICATIONS.** The Owner/Operator and at least two (2) managers shall meet any other of Franchisor's standards and criteria for such positions as set forth in the Manuals or otherwise in writing by Franchisor. Such standards and criteria may be revised from time to time in Franchisor's sole discretion.

**8.4 TRAINING REQUIREMENTS.** The Owner/Operator and at least two (2) managers shall satisfy the training requirements set forth in Article 9. If, during the term of this Agreement, the Owner/Operator or any manager is not able to continue to serve in such capacity or no longer qualifies to act as such in accordance with this Article 8, you shall promptly notify Franchisor and designate a replacement within thirty (30) days after the Owner/Operator or manager ceases to serve, such replacement being subject to the same qualifications listed above. You shall provide for interim management of your Franchised Restaurant until such replacement is so designated, and such interim management to be conducted in accordance with this Agreement.

**8.5 ADDITIONAL MANAGEMENT POSITIONS.** You shall retain such additional managers, chefs, and other persons as Franchisor, in its reasonable discretion, deems necessary for the operation and management of your Franchised Restaurant. All such personnel shall satisfy Franchisor's educational and business criteria as provided to you in the Manuals or otherwise and shall be individuals acceptable to Franchisor. Such individuals shall satisfy the applicable training requirements in Article 9 and such other training required by Franchisor.

**8.6 HIRING.** You understand that compliance by all franchisees and developers operating under the System with Franchisor's training and operational requirements is an essential and material element of the System, and that Franchisor consequently expends substantial time, effort, and expense in training personnel to in turn train and supervise Wing Boss franchisees, their owner/operators, and other personnel. You are solely responsible for all employment decisions for your Franchised Restaurant, including hiring, firing, remuneration, personnel policies, training, benefits, and maintaining supervision and discipline, regardless of whether you receive advice from us on any of these subjects.

**8.7 USE OF FRANCHISED RESTAURANT PREMISES.** You shall use your Franchised Restaurant premises solely for the operation of the franchised business, shall maintain business hours as provided for in the Manuals or as Franchisor may specify from time to time in writing, and shall refrain from using or permitting the use of the premises for any other purpose or activity at any time without obtaining the prior written consent of Franchisor. Business hours of operation shall be prominently posted on each entrance door and all menu items shall be available for customers to purchase during the posted business hours of operation. Failure to maintain the business hours of operation as provided for in the Manuals or as Franchisor may specify shall be an event of default subject to cure under Article 16.3.1.

**8.8 PERSONNEL.** You agree to maintain competent, conscientious, and trained personnel to operate your Franchised Restaurant in accordance with this Agreement and the Manuals and all applicable laws, regulations, and codes of your jurisdiction and to take such steps as are necessary to ensure that your employees establish and preserve good customer relations, comply with such dress code and/or wear such uniforms as Franchisor may prescribe in the Manuals or otherwise, and observe reasonable standards of grooming and cleanliness. You and your personnel shall promptly resolve all customer complaints (including but not limited to, social media complaints, eco share complaints, quality assurance complaints) in a manner that will not detract from the name and goodwill of the Proprietary Marks, the System, or Franchisor and in accordance with the standards and specifications Franchisor may from time to time prescribe in the Manuals or otherwise in writing, including without limitation, resolving customer complaints within a prescribed timeframe, issuing refunds, accepting returns, and other adjustments. Franchisor may, in its sole discretion, at any time resolve a customer complaint on your behalf, in which case you must reimburse Franchisor via ACH electronic transfer for its out-of-pocket costs in resolving the complaint.

**8.9 HEALTH AND SAFETY STANDARDS.** You shall meet and maintain the highest health and safety standards and ratings applicable to the operation of your Franchised Restaurant. You shall furnish to Franchisor, within three (3) days after receipt thereof, a copy of any inspection report, warning, citation, certificate, rating, and any other document, of whatever nature or kind, issued by any federal, state, local, or other administrative agency, instrumentality, or other organization with respect to the health or safety conditions of your Franchised Restaurant. To ensure the highest degree of health and safety of both your customers and employees, you shall prohibit unauthorized persons from gaining access to the kitchen. Failure to maintain the highest health and safety ratings shall be an event of default under Article 16.2, for which you have no right to cure.

**8.10 PRODUCTS AND SERVICES.** To ensure that the highest degree of quality and service is maintained, you shall operate your Franchised Restaurant in strict conformity with such methods, procedures, standards, and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. You further agree:

1. To open your Franchised Restaurant to the public during such hours of operation as may be required by Franchisor (currently 11:00 a.m. to 9:00 p.m., seven (7) days a week) and to offer for sale and sell at your Franchised Restaurant all menu items and other designated products and services required by Franchisor and to provide such products and services in the manner and style prescribed by Franchisor;

2. To sell and offer for sale only the menu items, products, and services that have been expressly approved for sale in writing by Franchisor; to refrain from deviating from Franchisor's standards and specifications without Franchisor's prior written consent; and, to discontinue selling and offering for sale any menu items, products, or services that Franchisor may, in its discretion, disapprove in writing at any time;

3. That Franchisor may discard any food or beverage product, without compensation to you, during any on-site inspection, if such food or beverage product does not meet Franchisor's standards and specifications;

4. To maintain in sufficient supply and to use and sell at all times only such food and beverage items, ingredients, products, materials, supplies, uniforms, and paper goods that conform to Franchisor's standards and specifications and that are purchased from vendors or suppliers approved by Franchisor; to prepare all menu items in strict accordance with Franchisor's recipes and procedures for preparation contained in the Manuals or other written directives, including, but not limited to, the prescribed measurements of ingredients and serving sizes; and, to refrain from deviating from Franchisor's standards

and specifications by the use or offer of non-conforming items or differing amounts of any items, without Franchisor's prior written consent. If you fail to make any of the required menu items available for sale in the Franchised Restaurant, Franchisor may direct its approved supplier(s) to deliver, at your expense, a reasonable quantity of the required menu item(s) based upon the sales volume of the Franchised Restaurant;

5. To permit Franchisor and its representatives and agents, at any reasonable time, to remove samples of food or non-food items from your inventory or from your Franchised Restaurant, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent laboratory to determine whether such samples meet Franchisor's then-current recipes, standards, and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require you to bear the cost of such testing if the supplier of the item has not previously been approved by Franchisor or if the sample fails to conform with Franchisor's specifications; and,

6. To purchase or lease and install, at your expense, all fixtures, furnishings, kitchen and dining room equipment, Point of Sale Systems, credit card and gift card processing equipment, computer hardware (including internet connections and service, dedicated telephone and power lines and other related accessories, peripherals, consoles and equipment required to operate the Point of Sale System) and software (including without limitation the software described in Article 8.13), menu boards (interior and exterior, as applicable), decor items, and signs required by Franchisor, all of which must be purchased from vendors and suppliers approved by Franchisor and must conform to the standards and specifications as Franchisor may reasonably direct from time to time in the Manuals or otherwise in writing, and to refrain from installing or permitting to be installed on or about your Franchised Restaurant premises, without Franchisor prior written consent, any fixtures, furnishings, kitchen and dining room equipment, computer hardware and software, menu boards, decor items, signs, games, vending machines, or other items not previously approved by Franchisor. If any of the property described above is leased by you from a third party, such lease must be approved by Franchisor in writing, prior to execution. Franchisor's approval shall be conditioned upon such lease containing a provision that permits any of your interest in the lease to be assigned to Franchisor upon the termination or expiration of this Agreement and that prohibits the lessor from imposing an assignment or related fee upon Franchisor in connection with such assignment.

**8.11 REQUIRED AND APPROVED SUPPLIERS AND VENDORS.** Except for those items that you are required to obtain from Franchisor or its designee, you shall obtain all food and beverage items, ingredients, supplies, equipment (including the Point of Sale Systems allowing remote access by Franchisor), computer hardware and software, materials, and other products used or offered for sale at or from your Franchised Restaurant solely from vendors or suppliers (including manufacturers, distributors, and other sources) approved by Franchisor and who demonstrate, to the continuing reasonable satisfaction of Franchisor, the ability to meet Franchisor's then-current standards and specifications for such items, who possess adequate quality controls and capacity to supply your needs promptly and reliably, and who have been approved in writing by Franchisor prior to any purchases by you and have not thereafter been disapproved by Franchisor. Franchisor or any affiliate or subsidiary may be an approved or required supplier of certain items and products. Franchisor may limit the number of approved distributors or suppliers with whom you may deal, designate sources that you must use, and/or refuse any of your requests for any reason, including that Franchisor already designated an exclusive source (which might be Franchisor or its affiliate) for a particular item or service. Franchisor may or may not receive compensation or other economic benefits from these required or approved suppliers and vendors. If you desire to purchase, lease, or use any products from an unapproved supplier or vendor, you shall submit to Franchisor a written request for such approval or may request the supplier or vendor to do so. You shall not purchase or lease from any supplier or vendor until such supplier or vendor has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives and agents be permitted to inspect the supplier's or vendor's facilities and that samples from the supplier or vendor be delivered either to Franchisor or to an

independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by you or the supplier or vendor. Franchisor reserves the right, at its option, to re-inspect from time to time the facilities and products of any such approved supplier or vendor and to revoke its approval upon the supplier's or vendor's failure to continue to meet any of Franchisor's then-current criteria. Nothing above shall require Franchisor to approve any particular supplier or vendor.

Franchisor may also provide you from time to time a list of approved suppliers and vendors offering products and services typically of use to persons owning Restaurants similar to your Franchised Restaurant. You are not required to subscribe to those services unless Franchisor so stipulates. Franchisor may or may not receive compensation or other economic benefits from these approved vendors. The list of approved vendors may be modified by Franchisor from time to time.

**8.12 SYSTEM SECRET RECIPES.** You acknowledge and agree that Franchisor has developed and may continue to develop for use in the System seasonings, sauces, salad dressings, condiments, and other products that are prepared from highly confidential secret recipes and that are trade secrets of Franchisor or an affiliate ("**Branded Products**"). Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that Franchisor closely control the production and distribution of such Branded Products. Accordingly, you agree that as and when such Branded Products become a part of the System, you shall use only Franchisor's secret recipe Branded Products and shall purchase solely from Franchisor or from a source designated by Franchisor all of your requirements for such Branded Products.

**8.13 SOFTWARE AND HARDWARE.** Franchisor requires that you utilize certain computer hardware and software in connection with the operation of your Franchised Restaurant. You agree to implement and use in the operation of your Franchised Restaurant point of sale computer hardware, software, and related consoles and modules approved and required by Franchisor (collectively, the "**Point of Sale System**"), currently, the Spark Point-of-Sale system with the Smokestack information management system, or any replacement hardware and/or software system Franchisor may designate from time to time. Additionally, you must (i) subscribe to Franchisor-approved third-party online ordering or delivery services that are available to provide services in your Assigned Area and third-party online ordering system aggregation software; and, (ii) implement and use QuickBooks accounting software in the operation of your Franchised Restaurant. Franchisor, its affiliates, and designated suppliers may charge you a monthly or other fee for any software or technology that Franchisor, its affiliates, or its designated suppliers license to you and for other maintenance and support services that Franchisor, its affiliates, or its designated suppliers may require you to receive during the term of this Agreement. Further, you agree to implement and use in the operation of your Franchised Restaurant any upgrades, enhancements, replacements, and additions to any computer hardware and software (including, without limitation, with regard to the Point of Sale System) required by Franchisor from time to time. You shall be licensed to use or subscribe to and implement and keep in good repair all accounting/financial reporting programs and systems as Franchisor may require (and any upgrades, enhancements, replacements, modifications, or additions required by Franchisor thereto), including, without limitation, the Point of Sale System that allows Franchisor to access your accounting and cash receipts and sales directly, and in this regard, you acknowledge that Franchisor shall have exclusive control over such systems and programs and the data generated thereby, and you shall not attempt to modify, regulate, block, or restrict Franchisor's access to the information and data generated or stored in the Point of Sale System.

**8.14 PRE-PACKAGED FOOD ITEMS AND PROMOTIONAL MERCHANDISE.** Franchisor may make available at a reasonable cost and, at its option, will require you to purchase from Franchisor, for resale to your customers, certain prepackaged food items including, but not limited to,

sauces, spices, Branded Products, and other food products and certain promotional merchandise identifying the System (such as T-shirts, sweatshirts, etc.), in amounts necessary to meet your customer demand.

**8.15 ADVERTISING AND PROMOTIONAL MATERIALS.** You shall require all advertising and promotional materials, menu boards, signs, decorations, paper goods (including menus and all forms and stationery used in the franchised business), and other items that may be designated by Franchisor to bear the Proprietary Marks in the form, color, location, and manner prescribed by Franchisor. You will not conduct any advertising, promotion, marketing, public relations, or telemarketing program or campaign for your Franchised Restaurant unless and until Franchisor has given you prior written approval for all concepts, materials, or media proposed on any such advertising, promotion, marketing, public relations, or telemarketing program or campaign. You shall purchase collateral marketing materials from Franchisor, or its designated supplier as required in connection with such advertising and marketing programs. You will not permit any third party to advertise its business, services or products on the premises of the Accepted Location without obtaining the prior written approval of Franchisor.

**8.16 MAINTENANCE.** You shall, at your expense, repair, paint, and keep in a clean and sanitary condition the interior, the exterior, the parking lot, menu boards (interior and exterior, as applicable), signage, interior and exterior lighting, and the grounds of your Franchised Restaurant and the Accepted Location, and will replace all floor covering, wall coverings, light fixtures, curtains, blinds, shades, furniture, room furnishings, wall hangings, menu boards, signs, fixtures, and other décor items as such items become worn-out, soiled, damaged, or in disrepair. All mechanical equipment, including ventilation, heating and air conditioning, must be kept in good working order by you at all times and must meet Franchisor's quality standards. All replacement equipment, décor items, furniture, fixtures, menu boards, signs, supplies, and other items used in your Franchised Restaurant by you must comply with Franchisor's then-current standards and specifications.

**8.17 REMODELING AND REDECORATION OF FRANCHISED RESTAURANT.** At Franchisor's request, you will make the reasonable capital expenditures necessary to extensively remodel, modernize, redecorate, and renovate your Franchised Restaurant (including, without limitation, to conform your Franchised Restaurant to Franchisor's then-current Restaurant specifications and requirements) and the Accepted Location and to replace and modernize the furniture, menu boards, fixtures, supplies, and equipment so that your Franchised Restaurant will at all times reflect the then-current image of Restaurants. All remodeling, modernization, redecoration, and renovation must be done in accordance with the standards and specifications prescribed by Franchisor from time to time, and must have the prior written approval of Franchisor. All replacements for the furniture, menu boards, fixtures, supplies, and equipment must conform to Franchisor's then-current quality standards, and must be approved by Franchisor in writing. You will commence remodeling, modernizing, redecorating, and renovating your Franchised Restaurant within six (6) months after the date you receive written notice from Franchisor specifying the required remodeling, modernization, redecoration, and renovation, and will diligently complete such remodeling, modernization, redecoration, and renovation within a reasonable time. You will not be required to extensively remodel, modernize, redecorate and renovate your Franchised Restaurant or to replace and modernize its furniture, menu boards, fixtures, supplies and equipment more than once every five (5) years during the term of this Agreement, or incur more than \$50,000.00 in costs for each such remodeling or renovation. All remodeling, modernizing, redecorating, and renovating of your Franchised Restaurant shall be performed in accordance with the requirements set out in this Article 8.17 and Articles 7.7 and 7.9.

**8.18 SIGNAGE.** You shall only display signs on or within your Franchised Restaurant premises that comply with guidelines established by Franchisor or that have been approved by Franchisor in writing, and you shall not use or display any other signs of any kind or nature on or within your Franchised Restaurant without obtaining prior written approval of Franchisor. You will, at your expense,



be responsible for any and all installation costs, sign costs, architectural fees, engineering costs, construction costs, permits, licenses, repairs, maintenance, utilities, insurance, taxes, assessments, and levies in connection with the erection or use of the signs including, if applicable, all electrical work, construction of the base and foundation, relocation of power lines, and all required soil preparation work. You will comply with all federal, state, and local laws, regulations, lease requirements, building codes, and ordinances relating to the erection, maintenance, and use of the signs. You may not alter, remove, change, modify, or redesign the signs unless approved in advance by Franchisor in writing. Franchisor reserves the right from time to time to redesign the layout or the plans and specifications for signage during the term of the Agreement without your approval or consent. Within thirty (30) days after receipt of written notice from Franchisor, you must, at your expense, either modify or replace your signage so that the signs at your Franchised Restaurant comply with Franchisor's modified signage requirements. You will not be required to modify or replace the signs more than once every five (5) years. Franchisor will be entitled to seek injunctive relief against you, without the posting of any bond or security, to require you, at your expense, to: (i) exhibit, use and display the approved signs at your Franchised Restaurant during the term of this Agreement; (ii) remove the signs upon the termination or expiration of this Agreement; and, (iii) remove the signs from any former location upon any relocation of your Franchised Restaurant.

**8.19 VENDING AND GAMING MACHINES.** You will not permit any automated teller machine ("ATM"), juke box, video electronic games, vending machines, coin or token operated machines (including pinball), gambling machines, or other gambling devices to be used in the premises of your Franchised Restaurant, other than those approved by Franchisor in advance and in writing. You will not keep or offer for sale or allow employees to offer for sale at your Franchised Restaurant any tickets, subscriptions, pools, chances, raffles, lottery tickets, or pull tabs, except by the prior written consent of Franchisor.

**8.20 ALCOHOLIC BEVERAGES.** You shall serve beer (and such other alcoholic beverages approved by Franchisor) at your Franchised Restaurant provided that there are no extenuating circumstances approved by Franchisor or applicable laws or regulations preventing the sale of alcohol at or by your Franchised Restaurant. You may request a waiver of this obligation from Franchisor, which Franchisor will not unreasonably withhold, delay, or condition. You covenant to comply with all licensing, serving, server training, server qualification, insurance requirements, and other laws, regulations, and requirements applicable to, and in a manner consistent with prudent business practices in connection with, the sale of alcoholic beverages. You will also comply with the alcoholic beverage liability insurance requirements outlined in Article 14 and that Franchisor may subsequently promulgate. Your obligations to indemnify and defend Franchisor and certain other parties set forth in Article 20 apply to your offer and sale of alcoholic beverages, as provided therein. Such indemnification obligations are incorporated herein by this reference.

**8.21 STANDARD ATTIRE OR UNIFORMS.** You will purchase and require your employees to wear the current standard attire uniforms as may be established and approved by Franchisor from time to time. All of your employees will wear clean and neat attire or uniforms and practice good personal hygiene as prescribed in the Manuals or other written directive.

**8.22 INSPECTIONS.** You hereby grant Franchisor and its representatives and agents the right to enter upon your Franchised Restaurant premises or call your Franchised Restaurant at any time for the purpose of conducting in person or telephonic inspections of your Franchised Restaurant and its operation. You shall cooperate with Franchisor's representatives and agents by rendering such assistance as they may reasonably request and, upon notice from Franchisor or its representatives and agents and without limiting Franchisor's other rights under this Agreement, you shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Franchisor reserves the right to charge

you, and you shall pay, the costs of any such inspections if deficiencies are detected. Should you fail to correct such deficiencies within a reasonable time as determined by Franchisor, Franchisor (or its representatives and agents) shall have the right (without, however, any obligation), to correct such deficiencies at your expense, payable by you immediately upon demand.

**8.23 REFERRAL FEES.** Franchisor may, from time to time, offer existing franchisees a fee for referring prospects to Franchisor who ultimately become Wing Boss franchisees. Any such prospect cannot be an existing Wing Boss franchisee, and the assigned territory awarded such prospect must be outside the Assigned Area of any existing Wing Boss franchisee. In the event Franchisor announces and implements any such referral fee program, you acknowledge that you will comply with the requirements of such program. You further acknowledge that you do not have the authority to discuss or negotiate the offer of a franchise to any prospect or otherwise to contract or act on Franchisor's behalf. Franchisor will not be bound by any statements or representations you may make, and Franchisor is under no obligation to offer or enter into a franchise agreement with anyone you may refer to Franchisor.

**8.24 REGIONAL BUSINESS LEADER.** Franchisor may elect, in its sole discretion, to assign to you a Regional Operations Leader (herein so called), who shall be an employee, representative, or agent of Franchisor's. The Regional Business Leader may advise you as to any operational matters regarding your Franchised Restaurant as Franchisor may require. Should Franchisor elect to assign a Regional Business Leader, you will fully cooperate with the Regional Business Leader in implementing any recommendations made by the Regional Business Leader regarding operational matters. Franchisor is not obligated to assign to you a Regional Business Leader, and at any time, Franchisor may choose to terminate the assignment of any Regional Business Leader or reassign to you a different Regional Business Leader.

**8.25 CATERING.** You shall at all times offer catering services in accordance with Franchisor's policies and procedures. You may, at your option, obtain and maintain a cargo/minivan bearing the Wing Boss logo and other identifying trade dress and promotional information as required by Franchisor in order to perform such services. You shall participate in Franchisor's catering hotline and/or approved software centralizing catering orders and requests. In fulfilling catering orders, you shall comply with Franchisor's policies and procedures regarding the hotline and/or software. You acknowledge that Franchisor reserves the right to suspend or terminate your hotline, software and any other catering lead referrals and redirect them to other Restaurants for service if Franchisor determines that you (i) do not comply with Franchisor's policies and procedures, (ii) are not using suppliers approved by Franchisor for all items you are required to obtain from approved suppliers, or (iii) provide catering service that is deficient or is the subject of customer complaints Franchisor deems to be unacceptable. You also acknowledge that Franchisor reserves the right to direct any general catering request received through Franchisor's catering hotline and/or software to any Wing Boss franchisee based on such franchisee's experience, efficiency, relationship with or proximity to the customer placing the order. You shall process all catering orders and perform catering services in strict compliance with the standards proscribed by Franchisor and set forth in the Manuals.

**8.26 DELIVERY.** You must offer delivery services from your Franchised Restaurant if one of Franchisor's designated third-party delivery providers offers delivery services in the Assigned Area. You must make accommodations for such delivery services in compliance with the standards proscribed by Franchisor set forth in the Manuals or otherwise in writing by Franchisor, including without limitation, utilizing only the specified designated delivery service providers Franchisor identifies that are operating in the Assigned Area, making available the menu items identified as appropriate for delivery (and only those designated menu items), and limiting the delivery services to any delivery area Franchisor specifies to you in writing. You acknowledge and agree that any delivery area Franchisor specifies is not exclusive and Franchisor may engage, and/or allow other franchisees and third parties to engage, in any activities

Franchisor desires within the delivery area without any restrictions (including allowing other Wing Boss franchisees and delivery service providers to provide delivery services in the delivery area). You further acknowledge and agree that any delivery area Franchisor specifies is nothing more than the geographic boundaries in which you may deliver those menu items approved for delivery from your Franchised Restaurant, and no other rights are granted to you whatsoever.

**8.27 DRIVE-THROUGH SERVICES.** If your Franchised Restaurant contains drive-through facilities or may be developed to contain drive-thru facilities and Franchisor determines that your Franchised Restaurant should provide drive-through service, you shall provide drive-through service at your Franchised Restaurant in accordance with Franchisor's policies and procedures.

**8.28 COMPLIANCE.** You acknowledge that you will at all times promote the Wing Boss brand, goodwill, and Proprietary Marks and shall take or suffer no action that would reflect negativity on the Wing Boss brand, goodwill, and Proprietary Marks, and shall comply with all the covenants and obligations imposed upon you under this Agreement, the Manuals, and Franchisor's policies and procedures. Your failure to comply with any such covenants or obligations shall constitute an event of default under Article 16.

**8.29 COMMUNITY AND CHARITABLE PARTICIPATION.** You agree, at your sole cost and expense, to cause your Franchised Restaurant to participate in philanthropic, community, and charitable causes that Franchisor requires for the purpose of enhancing the goodwill, presence, and reputation of the Proprietary Marks and the System, including as a part of marketing promotions or otherwise. Notwithstanding anything to the contrary in this Article 8.29, you may not cause your Franchised Restaurant to participate in any philanthropic, community, or charitable cause without Franchisor's prior written approval.

**8.30 COMMUNICATIONS.** You understand and acknowledge that personnel from Franchisor's corporate headquarters ("Corporate Personnel") may need to directly and specifically communicate with you from time to time to relay information pertaining to you or your Franchised Restaurant. This does not include newsletters and other general updates and information sent to all Owner/Operators. You agree to promptly respond to any direct communications from Corporate Personnel and acknowledge that such communication is essential to the operation of your Franchised Restaurant.

## **ARTICLE 9. TRAINING**

You agree that it is necessary to the continued operation of the System and your Franchised Restaurant that your Owner/Operator, at least two (2) of your managers and other Franchised Restaurant personnel as specified in the Manuals or as Franchisor may otherwise require receive the training and accordingly agree as follows:

### **9.1 INITIAL TRAINING PROGRAM.**

1. Not later than sixty (60) days prior to the Opening Date on a date or dates designated by Franchisor, the Owner/Operator and two (2) other managers shall have completed, to Franchisor's satisfaction, Franchisor's Virtual Brands Training Program. Prior to attending Franchisor's Virtual Brands Training Program, each participant must satisfy Franchisor's then-current requirements for admission to the program, which requirements may include that the potential participant (i) has attended and successfully completed such ServSafe training classes and obtained such ServSafe certifications required by Franchisor; (ii) successfully completed a phone interview with a representative of Franchisor; and, (iii) delivered to Franchisor fully completed copies of Franchisor's current application forms and payment of the training fees for Franchisor's Virtual Brands Training Program. The Owner/Operator will attend Franchisor's

Virtual Brands Training Program at Franchisor's corporate training center in Dallas, Texas, and the two (2) restaurant managers will receive online training and on-site training at your Franchised Restaurant from a traveling trainer. Franchisor shall determine, in its sole discretion, whether your trainees have satisfactorily completed Franchisor's Virtual Brands Training Program. If any of your designated trainees fail to meet the admission requirements for Franchisor's Virtual Brands Training Program, if Franchisor's Virtual Brands Training Program is not satisfactorily completed by your trainees, or if Franchisor, in its reasonable business judgment based upon the performance of your trainees, determines that Franchisor's Virtual Brands Training Program cannot or will not be satisfactorily completed by all such person(s), you shall immediately designate replacement trainee(s), as applicable, to apply for and complete Franchisor's Virtual Brands Training Program no later than thirty (30) days from the date of any such occurrence (but in any event no later than sixty (60) days prior to the Opening Date). Your management personnel must successfully complete the training program as determined and certified in writing by Franchisor prior to commencing pre-opening operations, as defined in the Manuals. You shall be responsible for any and all expenses incurred by you or your trainees in connection with Franchisor's Virtual Brands Training Program, including, without limitation, costs of travel, lodging, meals, uniforms, and wages.

2. Without limiting Franchisor's right to terminate this Agreement pursuant to Article 16, if you fail to designate replacement trainee(s) who have satisfied the admission requirements for Franchisor's Virtual Brands Training Program, if Franchisor's Virtual Brands Training Program is not satisfactorily completed by any replacement trainee (or the initial designees if no replacement is designated) by the required deadline set forth above, or if Franchisor determines that the training program cannot or will not be satisfactorily completed by such person(s), as set forth above, Franchisor may, in its sole discretion, terminate this Agreement effective immediately upon notice to you. Franchisor shall not be obligated to return the Franchise Fee, or any other fee paid by you under this Agreement if the Agreement is terminated under this provision.

3. Franchisor shall provide instructors and training materials for Franchisor's Virtual Brands Training Program. If this Agreement is for your first Restaurant, when you register your Owner/Operator for training, you must pay Franchisor a training fee pursuant to Article 4.7 herein equal to One Thousand One Hundred Fifty Dollars (\$1,150) for each Owner/Operator and any other individual(s) you designate and Franchisor approves attending Franchisor's Virtual Brands Training Program in Dallas, Texas. You must also pay Franchisor a fee of One Thousand Seven Hundred Fifty Dollars (\$1,750) at least thirty (30) days prior to the Franchised Restaurant opening for online and on-site training during the opening of the Franchised Restaurant of up to three (3) individuals, which includes manager certification. If more than three (3) individuals will receive on-site training and manager certification, you must pay Franchisor the then-current training fee for each additional attendee. Any successor or replacement Owner/Operator, managers, employees, and any additional Franchised Restaurant personnel may be required by Franchisor to attend and complete, to Franchisor's satisfaction, Franchisor's Virtual Brands Training Program. Franchisor reserves the right to impose a training fee for any such additional Virtual Brands Training Programs. You shall be responsible for any and all expenses incurred by you or your trainees in connection with Franchisor's Virtual Brands Training Program including, without limitation, costs of travel, lodging, meals, uniforms, and wages.

**9.2 ADDITIONAL TRAINING.** You, the Owner/Operator, your managers and your other employees may attend such additional or remedial training programs and seminars as Franchisor may offer from time to time. All certified managers shall be required to complete twelve (12) credit hours of continuing education courses per year at a rate of one (1) credit hour per month. Should a certified manager not fulfill the one (1) credit hour per month requirement, that manager will lose their certified status and be required to complete Franchisor's recertification program online through Franchisor's Virtual Brands Training Program. All hourly employees shall be required to be certified with Franchisor's online training

within fifteen (15) days of starting work. If any hourly employee fails to pass the online training, he or she shall repeat the online training until he or she passes. At Franchisor's discretion such training (including on-site remedial training) shall be mandatory if Franchisor provides written notice setting forth the reasonable justification for such additional or remedial training in a manner consistent with Franchisor's requirements throughout the System. For all such training, Franchisor will provide the instructors and training materials; however, Franchisor reserves the right to impose a reasonable fee for such training, including costs of travel, lodging, meals, and wages for Franchisor's representatives. You shall be responsible for any and all expenses incurred by you or your employees in connection with such additional training including, without limitation, costs of travel, lodging, meals, uniforms, and wages.

**9.3 MANAGERS; CHANGES IN PERSONNEL.** If your Owner/Operator or any trained manager shall, for any reason, cease to serve in such capacity, your replacement must, at your expense, be trained at an approved Restaurant, and must successfully complete the management training program prior to being able to work in your Franchised Restaurant. You may request that your Franchised Restaurant be approved by Franchisor as a certified training Restaurant by meeting Franchisor's then-applicable criteria. If approved by Franchisor, you may train your own managers at your Franchised Restaurant, thus reducing the expense of training new management personnel at off-site locations. Your Franchised Restaurant may lose its status as an approved certified training Restaurant if Franchisor determines that your Franchised Restaurant is no longer in compliance with the standards of a certified training Restaurant. All certified training Restaurants must be recertified by Franchisor every three (3) years in order to maintain certification.

**9.4 ON-SITE TRAINING.** In connection with the opening of your Franchised Restaurant, Franchisor shall make available to you at your expense at least one (1) trained representative of Franchisor to provide on-site training, supervision and assistance with respect to such matters and for such period of time determined by Franchisor in its sole discretion. Such on-site training, supervision and assistance need not be for consecutive days and may be provided either before and/or after the Opening Date of your Franchised Restaurant. Except as otherwise provided, you shall be responsible for training all Franchised Restaurant personnel in accordance with the specifications and standards regarding such training described in the Manuals or otherwise in writing by Franchisor.

**9.5 RELEASE.** As a condition to participation in Franchisor's training program, your participating personnel shall execute and deliver to Franchisor the Consent and Release for Training in substantially the form attached as **Attachment C.**

## **ARTICLE 10. USE OF PROPRIETARY MARKS**

**10.1 USE OF PROPRIETARY MARKS.** In accordance with its rights under its license agreement with Dickey's Barbecue Pit, Inc., a Texas corporation affiliated with Franchisor, Franchisor hereby sublicenses you to use the Proprietary Marks during the term of this Agreement as follows:

1. With respect to your sublicensed use of the Proprietary Marks pursuant to this Agreement, you agree that:

A. You shall use only the Proprietary Marks designated by Franchisor and shall use them only in the manner authorized and permitted by Franchisor. Any unauthorized use of the Proprietary Marks shall constitute an infringement of Franchisor's rights and an event of default under Article 16.

B. You shall use the Proprietary Marks only for the operation of your Franchised Restaurant at its Accepted Location or in connection with advertising related to your Franchised

Restaurant and only during the term of this Agreement. You expressly agree to cease use of the Proprietary Marks after the termination or expiration of this Agreement and shall take appropriate action to remove the Proprietary Marks from your Franchised Restaurant premises and to cancel any advertising relating to your use of the Proprietary Marks;

C. Unless otherwise authorized or required by Franchisor, you shall operate and advertise the franchised business only under the name “Wing Boss” without prefix or suffix;

D. During the term of this Agreement, you shall identify yourself as the owner of the franchised business (i) in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order forms, receipts and contracts; and, (ii) in a notice of such content and form and at conspicuous locations on your Franchised Restaurant premises;

E. You shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor;

F. Except as otherwise specified in this Agreement, you shall not use the Proprietary Marks as part of any website, domain name, e-mail address, or social media webpage;

G. You shall comply with Franchisor’s instructions in filing and maintaining any requisite trade name or fictitious name registrations and shall execute any documents deemed necessary by Franchisor or its counsel to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability; and,

H. You shall immediately notify Franchisor of any infringement or challenge to its use of any of the Proprietary Marks or claim by any person of any rights in any of the Proprietary Marks. You, your Investors, and your Owner/Operator agree that they will not communicate with any person other than Franchisor and Franchisor’s counsel in connection with any such infringement, challenge or claim. Franchisor shall have sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation, or Patent and Trademark Office action, or other proceeding (including any claim or proceeding instituted before a foreign tribunal), arising out of any infringement, challenge, or claim or otherwise relating to any of the Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of Franchisor’s counsel, be necessary or advisable to protect and maintain Franchisor’s interests in any such litigation or Patent and Trademark Office or other proceeding, or to otherwise protect and maintain Franchisor’s interest in the Proprietary Marks. **FRANCHISOR WILL INDEMNIFY YOU AGAINST AND REIMBURSE YOU FOR ALL DAMAGES FOR WHICH YOU ARE HELD LIABLE IN ANY PROCEEDING ARISING OUT OF YOUR USE OF ANY OF THE PROPRIETARY MARKS, PROVIDED THAT THE CONDUCT OF YOU, YOUR INVESTORS, AND YOUR OWNER/OPERATOR WITH RESPECT TO SUCH PROCEEDING AND USE OF THE PROPRIETARY MARKS IS IN COMPLIANCE WITH THE TERMS OF THIS AGREEMENT.**

2. You expressly understand and acknowledge that:

A. Dickey’s Barbecue Pit, Inc. and Franchisor are the owner and licensee, respectively, of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them;

B. Pursuant to its license with Dickey's Barbecue Pit, Inc., Franchisor has the right to use and grant sublicenses to use the Proprietary Marks to franchisees in connection with the operation of businesses under the System;

C. The Proprietary Marks are valid and serve to identify Franchisor and Dickey's Barbecue Pit, Inc. as the source of origin of goods and services provided under them;

D. You shall not directly or indirectly contest the validity of Franchisor's or Dickey's Barbecue Pit, Inc.'s ownership or interest in or validity of the Proprietary Marks;

E. Your use of the Proprietary Marks under this Agreement does not give you any ownership or other interest in or to the Proprietary Marks, except the sublicense granted by this Agreement;

F. Any and all goodwill arising from your use of the Proprietary Marks in your franchised business under this Agreement shall inure solely and exclusively to Franchisor's benefit, and upon the expiration or termination of this Agreement and the sublicense herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with your use of the System or the Proprietary Marks;

G. The right and license of the Proprietary Marks granted hereunder to you is nonexclusive and Franchisor and Dickey's Barbecue Pit, Inc. thus have and retain the following rights, among others, subject only to the limitations of Article 1:

i. To use for their own account and to grant other sublicenses for use of the Proprietary Marks, in addition to those sublicenses already granted to existing franchisees;

ii. To develop and establish other systems using the Proprietary Marks or other names or marks and to grant sublicenses or franchises thereto without providing any rights to you; and,

iii. To engage, directly or indirectly, through their employees, representatives, licensees, assigns, agents, and others, at wholesale, retail, or otherwise, in (1) the production, distribution, license, and sale of products and services; and, (2) the use in connection with such production, distribution and sale, of the Proprietary Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs, and other identifying characteristics as may be developed or used from time to time by Franchisor; and,

H. Franchisor reserves the right to add or substitute different trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin for the Proprietary Marks for use in identifying the System and the businesses operating thereunder; or if Franchisor, in its sole discretion, determines that the addition or substitution of different trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin will be beneficial to the System. In such event, Franchisor may require you to discontinue or modify your use of any of the Proprietary Marks or to use one or more additional or substitute trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin.

## ARTICLE 11. CONFIDENTIAL FRANCHISE OPERATIONS MANUALS

**11.1 PROVISIONS OF MANUAL.** You shall receive from Franchisor one (1) set of the Manuals at the cost established by Franchisor or its vendors and shall retain such set of the Manuals, or any replacement, for so long as this Agreement remains in effect. Franchisor may periodically update the Manuals and other forms necessary for running the franchised business. In the event of updates, Franchisor may make arrangements for automatic delivery of the revised Manuals and/or forms and you must immediately accept and begin to use the updated materials. Franchisor or its designated vendor will invoice you for the costs associated such replacement Manuals and other materials, which is payable by you upon its receipt.

**11.2 USE.** To protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Proprietary Marks, you shall conduct your business in accordance with the Manuals, other written directives that Franchisor may issue to you from time to time whether or not such directives are included in the Manuals, and any other manuals and materials created or approved by Franchisor for use in the operation of the franchised business.

**11.3 CONFIDENTIALITY.** You, your Owner/Operator, and Investors, and any other person affiliated with you, shall at all times treat the Manuals, any written directives of Franchisor, and any other manuals and materials, and the information contained therein, as confidential and shall maintain such information as secret and confidential in accordance with Article 12. You and such persons shall not at any time copy, duplicate, record, or otherwise reproduce these materials, in whole or in part, or otherwise make these materials available to any unauthorized person.

**11.4 OWNERSHIP.** The Manuals, written directives, other manuals and materials, and any other confidential communications provided or approved by Franchisor shall at all times remain the sole property of Franchisor, shall at all times be kept in a secure place on your Franchised Restaurant premises, and shall be returned to Franchisor immediately upon request or upon termination or expiration of this Agreement.

**11.5 SUPPLEMENTATION OF AGREEMENT.** The Manuals, any written directives, and any other manuals and materials issued by Franchisor and any modifications to such materials shall supplement this Agreement.

**11.6 REVISIONS.** Franchisor may, from time to time, revise the contents of the Manuals and the contents of any other manuals and materials created or approved for use in the operation of the franchised business. You expressly agree to comply with each new or changed standard; provided, however, you shall have thirty (30) days in which to implement compliance with each new or changed standard.

**11.7 MAINTENANCE.** You shall, at all times, ensure that the Manuals are kept current and up to date. In the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's corporate office shall control.

## ARTICLE 12. CONFIDENTIALITY COVENANTS

**12.1 DISCLOSURE OF CONFIDENTIAL INFORMATION.** You acknowledge that Franchisor will disclose to you confidential and proprietary information and trade secrets of Franchisor as part of the training program and the other services to be rendered by Franchisor hereunder ("**Confidential Information**"). You, your Owner/Operator, Investors, Management Group (if applicable), and all other persons affiliated with you shall not, during the term of this Agreement and thereafter, communicate or



divulge to, or use for the benefit of, any other person(s), partnership, association, corporation or other entity any Confidential Information, knowledge, or know-how concerning the methods of operation of the franchised business that may be communicated to you or any of such persons or of that they may be apprised by virtue of your operation of the franchised business under this Agreement. You and your Owner/Operator and each of your Investors shall divulge such Confidential Information only to your manager(s) of your Franchised Restaurant and such other Franchised Restaurant personnel as may reasonably require access to it to operate the franchised business. Any and all information, knowledge, know-how, and techniques used in or related to the System that Franchisor communicates to you or your Owner/Operator (including your Investors only if they are an Owner/Operator or have received the Confidential Information or training) including, but not limited to, the Manuals, recipes, sauces, spices, plans, and specifications, marketing information and strategies, and site evaluation and selection guidelines and techniques, shall be deemed Confidential Information for purposes of this Agreement. Neither you nor your Owner/Operator nor your Investors shall at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce such materials or Confidential Information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenant in this Article 12.1 shall survive the expiration, termination, or transfer of this Agreement or any interest herein and shall be binding upon you, your Owner/Operator, and your Investors, including your Management Group, if applicable.

**12.2 CONFIDENTIALITY AGREEMENTS FROM OTHER PARTIES.** At Franchisor's request, and in addition to the requirements of the other provisions of this Agreement, you shall obtain and deliver to Franchisor an executed confidentiality agreement, in such form and content satisfactory to Franchisor, from the holders of any direct or indirect ownership interest in you having access to any confidential information of Franchisor, pursuant to which agreement the signatory covenants and agrees to maintain the confidentiality of the information received by such person or entity in connection with your relationship with Franchisor.

**12.3 NEW CONCEPTS, PROCESSES, OR IMPROVEMENTS.** If you, your Owner/Operator, or any other person affiliated with you develop any new concept, process, or improvement in the operation or promotion of your Franchised Restaurant, you agree to promptly notify Franchisor prior to implementation and provide Franchisor with all necessary related information, without compensation. Franchisor reserves the right to approve any such new concept, process, or improvement prior to implementation in your Franchised Restaurant. You, your Owner/Operator, and your Investors acknowledge that any such concept, process, or improvement shall become the property of Franchisor and Franchisor may use or disclose such information to other franchisees or developers as it determines to be appropriate.

**12.4 INJUNCTIVE RELIEF.** You, your Owner/Operator and your Investors acknowledge that any failure to comply with this Article 12 shall constitute an event of default under Article 16 and will cause Franchisor irreparable injury for which no adequate remedy at law may be available, and you, your Owner/Operator and your Investors accordingly consent to the issuance of an injunction prohibiting any conduct by you or such persons in violation of this Article 12. You, your Owner/Operator and your Investors agree to pay all expenses (including court costs and reasonable legal fees), incurred by Franchisor in enforcing this Article 12 (including obtaining specific performance, injunctive relief or any other equitable or other remedy available to Franchisor for any violation of this Article 12). This remedy is in addition to any other remedies Franchisor may have hereunder or at law or equity.

## **ARTICLE 13. ACCOUNTING AND RECORDS**

**13.1 ACCOUNTING SERVICES.** Franchisor may require you to use an accounting firm approved by Franchisor (which Franchisor may limit to an exclusive source, including Franchisor's affiliate or subsidiary) to provide comprehensive accounting services for your Franchised Restaurant. If you prefer

to use an accounting firm that is not on our approved list, you must submit the accountant's information and your contract with the accounting firm to Franchisor for its approval prior to engaging the accountant. We may withhold our approval if we determine (in our judgment) that your proposed accountant does not demonstrate the experience, credentials or qualifications necessary to provide accounting services for your Franchised Restaurant and the System.

**13.2 MAINTENANCE OF RECORDS.** You shall maintain during the term of this Agreement and shall preserve for such period as may be required by law but not less than three (3) years from the dates of their preparation full, complete and accurate books, records and accounts including, but not limited to, sales slips, coupons, purchase orders, purchase invoices, payroll records, check stubs, bank statements, sales tax records and returns, cash receipts and disbursements, journals and ledgers in accordance with generally accepted accounting principles on a timely basis and in a consistent form and manner as prescribed by Franchisor from time to time in the Manuals or in other written directives.

**13.3 REPORTING REQUIREMENTS.** You and your accountant shall prepare all financial reporting on you and the Franchised Restaurant in accordance with the accounting methods, principles and practices prescribed by Franchisor for the accounting periods prescribed by Franchisor in the Manuals or otherwise in writing. During the term of this Agreement, you shall, at your expense, complete and submit to Franchisor on a continuous basis each of the following reports at the time set forth below and in the form prescribed by Franchisor in the Manuals or in other written directives:

1. A Monthly Sales Report, to be delivered to Franchisor in accordance with and on or before the dates set forth in Article 4.3;

2. A monthly advertising expenditure report consisting of invoices or other documents that accurately reflect your expenditures for local advertising for each Sales Period during the previous calendar month, to be delivered to Franchisor within ten (10) days following the end of the last monthly Sales Period during such calendar month;

3. True, complete and correct copies of your state sales tax reports and returns on or before ten (10) days following the date such reports and returns are to be filed with the appropriate governmental authority; and,

4. Such other forms, reports, graphs, information, and data as Franchisor may reasonably request, in the form and at the times specified in the Manuals or other written directives.

Additionally, you agree that you will provide Franchisor access to your Back of House (“BOH”) computer to allow Franchisor, or its affiliates or designees, to install agents on the BOH computer for the purposes of retrieving, storing, and transmitting to Franchisor or its affiliate certain data for sales reporting purposes. You acknowledge and agree that the installation of these agents is a required reporting obligation under this Agreement. Further, you agree that you shall not tamper with or remove the agents during the term, or any renewal term, of this Agreement.

**13.4 BALANCE SHEETS, INCOME AND STATEMENTS OF CHANGE.** You shall prepare and submit to Franchisor an unaudited balance sheet, income statement, and statement of changes in financial position for the franchised business, prepared in accordance with generally accepted accounting principles, dated as of the end of your fiscal year, within sixty (60) days after the end of your fiscal year, which financial statement shall be signed by you or by your chief financial officer attesting that it is true, complete, and correct.

**13.5 EXAMINATION OF AUDIT RECORDS.** Franchisor or its designees shall have the right at all reasonable times, during the term of this Agreement and for a 12-month period following termination or expiration of this Agreement, to access your point of sale system, to examine and copy, at Franchisor's expense, your books, records and tax returns. Franchisor shall also have the right, at any time, to have an independent audit made of your books. If any audit reveals that you have understated Net Sales in any report or statement, then you shall immediately pay Franchisor the additional amount of fees owing as a result of such understatement, together with interest as provided in Article 4.5. If an audit reveals that Net Sales have been understated in any report or statement by two percent (2%) or more, you shall additionally pay and reimburse Franchisor for all costs of the audit, including, without limitation, travel, lodging, meals and wage expenses and reasonable accounting and legal fees. These remedies shall be in addition to any other remedies Franchisor may have at law or in equity. If, however, any inspection reveals that you have overstated Net Sales and that you have therefore overpaid any fees, the amount of the overpayment, without interest, shall be credited toward your future fees or payment on future invoices. If you are at any time required to furnish any lender, lessor, government agency or other person audited financial statements with respect to the franchised business, you shall concurrently furnish Franchisor a copy of such audited financial statements.

**13.6 DISCLOSURE OF DATA.** You hereby authorize Franchisor to disclose data from your reports, if Franchisor determines, in its sole discretion, that such disclosure is necessary or advisable, which disclosure may include disclosure to prospective or existing franchisees, financial institutions, investment bankers or other third parties.

## ARTICLE 14. INSURANCE

**14.1 MAINTENANCE OF INSURANCE & APPROVED INSURANCE AGENT.** You shall obtain, within thirty (30) days after the execution of the lease for the Franchised Restaurant, and shall maintain in full force and effect at all times during the term of this Agreement, at your expense, all of the insurance policies in Article 14.2 ("**Coverages**") (except for liquor liability insurance if you do not sell alcoholic beverages at your Franchised Restaurant). You shall obtain all Coverages solely from insurance agents/brokers or other provider approved by Franchisor (which Franchisor may limit to an exclusive source, including Franchisor's affiliate or subsidiary). Franchisor may or may not receive compensation or other economic benefits from these approved insurance agents/brokers or other providers. If you desire to purchase the required Coverages from an unapproved insurance agent/broker or provider, you shall submit to Franchisor a written request for such approval prior to procuring the Coverages. If approval is granted by Franchisor for the use of an unapproved insurance agent/broker or other provider, you shall pay to Franchisor a \$350 fee to cover the costs of reviewing the Coverages procured by the proposed vendor. Should Franchisor review of the procured Coverages determine that the proposed vendor procured insufficient Coverages, you must procure the Coverages identified by Franchisor within seven (7) business days upon receiving notification from Franchisor. Additionally, you shall pay Franchisor an additional \$150 fee to review these subsequent changes (and a \$150 fee to review in the event that any additional changes are necessary).

**14.2 COVERAGES.** Such policy or policies shall be written by an insurance carrier or insurance carriers with a Best's Insurance Guide rating of "A" or better, and shall include, at a minimum, the following:

1. Commercial general liability insurance:

A. The commercial general liability insurance policy shall include bodily injury, property damage, advertising and personal injury, and medical payments coverage parts, written on an occurrence reporting basis. However, such coverage shall not include an insured versus

insured exclusion or any exclusion that prevents coverage of a claim by one insured against another. The bodily injury, property damage, and advertising and personal injury coverage parts shall have a minimum per occurrence liability limit of \$1,000,000.00 per Restaurant location and a general aggregate liability limit of \$2,000,000.00 per Restaurant location. The medical payments coverage part shall have a per occurrence liability limit of \$5,000.00 per Restaurant location. The coverage shall include a separation of insureds provision.

B. The commercial general liability policy shall have a products/completed operations coverage part under ISO form CG 24 07 or equivalent coverage. Additionally, the commercial general liability policy shall have a minimum per occurrence liability limit of \$1,000,000.00 per Restaurant location and a general aggregate liability limit of \$2,000,000.00 per Restaurant location.

C. The commercial general liability policy shall also have the following endorsements:

i. An endorsement listing Franchisor, its subsidiaries, affiliates, successors and assigns as additional named insureds on all coverage parts. The additional insured coverage shall include premises-operations, contractual liability, independent contractors, and products and completed operations. Also, the additional insured coverage shall be primary and non-contributory to any other insurance that Franchisor its subsidiaries, affiliates, successors and assigns has procured themselves. The additional insured coverage shall not be limited to Franchisor vicarious liability, and shall include coverage for liability arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business. It is understood and agreed that the insurance coverages and limits required above shall not limit, and are independent of, the indemnification obligations.

ii. A waiver of subrogation in favor of Franchisor, its subsidiaries, affiliates, successors and assigns.

iii. An endorsement requiring the commercial general liability insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the commercial general liability policy, regardless of the reason for cancellation.

2. Crime (inside/outside) and employee dishonesty insurance:

A. Crime (moneys and securities) inside/outside coverage shall have a minimum per occurrence liability limit of \$10,000.00 per Restaurant location for inside crime and a minimum per occurrence liability limit of \$10,000.00 per Restaurant location for outside crime.

B. Employee dishonesty coverage shall have a minimum per occurrence liability limit of \$50,000.00 per Restaurant location.

3. Worker's compensation insurance in amounts provided by applicable law or, if permissible under applicable law, any legally appropriate alternative providing substantially similar compensation for injured workers satisfactory to Franchisor, provided that you (i) maintain an excess indemnity or "umbrella" policy covering employer's liability and a medical disability policy covering medical expenses for on the job accidents, which policy or policies shall contain such coverage amounts as you and Franchisor shall mutually agree upon and (ii) conduct and maintain a risk management and safety program for your

employees as you deem appropriate. Such policies shall also include, if available, an “alternate employer endorsement” in favor of Franchisor, its subsidiaries, affiliates, successors and assigns, and a waiver of subrogation in favor of Franchisor, its directors, officers, shareholders, partners, employees, servants, representatives, agents, subsidiaries, affiliates, successors and assigns. The workers compensation insurance and employer’s liability/medical disability policies must provide Coverage Part A for claims made by the injured worker and Coverage Part B for claims made by the injured worker’s family members, including wrongful death claims.

4. Automobile liability insurance coverage for owned, non-owned, and hired vehicles with a liability limit of not less than \$1,000,000.00 combined single limit (which shall include, without limitation, coverage for your delivery, including home delivery, if applicable, and catering operations). The automobile liability insurance shall also have an endorsement listing Franchisor, its subsidiaries, affiliates, successors and assigns as additional named insured. The automobile liability insurance shall contain a waiver of subrogation in favor of Franchisor, its subsidiaries, affiliates, successors and assigns. Such coverage shall not include an insured versus insured exclusion or any exclusion that prevents coverage of a claim by one insured against another. The coverage shall include a separation of insureds provision.

5. Liquor liability insurance:

A. If you sell alcoholic beverages at the Franchised Restaurant, you shall carry liquor liability insurance with a minimum per occurrence liability limit of \$1,000,000.00 per Restaurant location.

B. The liquor liability insurance shall also have the following endorsements:

i. An endorsement listing Franchisor, its subsidiaries, affiliates, successors and assigns as additional named insureds. The additional insured coverage shall not be limited to Franchisor’s vicarious liability, and shall include coverage for liability arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business. Also, the liquor liability insurance shall contain a waiver of subrogation in favor of Franchisor, its subsidiaries, affiliates, successors and assigns. The coverage shall include a separation of insureds provision.

ii. An endorsement making the liquor liability insurance policy issued in your name primary insurance coverage on a non-contributory basis with any other insurance available to Franchisor.

iii. An endorsement requiring the liquor liability insurance carrier(s) to provide at least thirty (30) days’ notice of any intent to cancel the liquor liability policy, regardless of the reason for cancellation.

6. Building and personal property insurance coverage:

A. Property coverage for physical loss or damage to personal property and real property including the leasehold improvements, at each Restaurant location. This coverage shall include all risk replacement cost property insurance for your Franchised Restaurant and its contents, awnings, equipment, signs, glass, additions under construction, outdoor fixtures, personal property, as well as business interruption insurance for income loss, food spoilage endorsements, equipment breakdown coverage, business ordinance coverage, debris removal, preservation of property, fire department service charges, pollutant clean up and removal, newly acquired or constructed

property, property of others, property off premises, and stock. The coinsurance percentage shall not be less than eighty percent (80%).

B. The building and personal property insurance shall also have the following endorsements:

i. An endorsement requiring the building and personal property insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the building and personal property insurance coverage, regardless of the reason for cancellation.

ii. A loss payable endorsement listing Franchisor as the loss payee for equipment and supplies financed by Franchisor either by a loan, line of credit, or an open account.

iii. A waiver of subrogation in favor of Franchisor, its subsidiaries, affiliates, successors and assigns.

7. Umbrella liability insurance:

A. Umbrella coverage over the above described general commercial liability, liquor liability, automobile liability, products/completed operations, and employer's liability insurance coverage parts with a per occurrence limit of \$1,000,000.00 and an aggregate limit of \$1,000,000 per Restaurant location (*i.e.*, if you have 2 Restaurant locations, you must purchase an umbrella policy with a per occurrence limit of \$1,000,000 and an aggregate limit of \$2,000,000 million; if you have 3 Restaurant locations, you must purchase an umbrella policy with a per occurrence limit of \$1,000,000 and an aggregate limit of \$3,000,000 million). The umbrella policy shall be written on an occurrence reporting basis. Such coverage shall not include an insured versus insured exclusion or any exclusion that prevents coverage of a claim by one insured against another. The coverage shall include a separation of insureds provision.

B. The umbrella liability insurance shall also have the following endorsements:

i. An endorsement listing Franchisor, its subsidiaries, affiliates, successors and assigns as additional named insureds. The additional insured coverage shall not be limited to Franchisor's vicarious liability, and shall include coverage for liability arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business. Also, the umbrella insurance shall contain a waiver of subrogation in favor of Franchisor, its subsidiaries, affiliates, successors and assigns.

ii. An endorsement requiring the umbrella liability insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the umbrella policy, regardless of the reason for cancellation.

8. Employment practices liability insurance ("EPLI") coverage with coverage limits of \$1,000,000.00 or more. The policy must include coverage for third party claims. In addition, the policy must have a sublimit for defense costs relating to wage and hour claims. The EPLI Policy shall also have an endorsement listing Franchisor, its subsidiaries, affiliates, successors and assigns as additional named insureds. In the event that an additional insured endorsement is not available, you shall have a vicarious liability endorsement protecting Franchisor, its subsidiaries, affiliates, successors and assigns. Such additional insured coverage (or alternatively, vicarious liability protection), shall be primary and non-

contributory to any other insurance that Franchisor its subsidiaries, affiliates, successors and assigns has procured themselves.

9. Data Privacy/Cyber Liability Insurance (“**Cyber Policy**”), including first party coverage (forensics investigation, notification, credit monitoring, loss of business income, crisis management) and third party coverage, with coverage limits of no less than \$1,000,000. The Cyber Liability Policy shall also have an endorsement listing Franchisor, its subsidiaries, affiliates, successors and assigns as additional named insureds. The additional insured coverage shall not be limited to Franchisor’s vicarious liability, and shall include coverage for liability arising out of the operations of the franchised business. Also, the additional insured coverage shall be primary and non-contributory to any other insurance that Franchisor its subsidiaries, affiliates, successors and assigns has procured themselves. Further, the Cyber Policy shall contain a waiver of subrogation in favor of Franchisor, its subsidiaries, affiliates, successors and assigns.

10. Any insurance that may be required by statute or rule of the state or locality in which your Franchised Restaurant will be operated.

11. Additional insurance coverages that may reasonably be specified by Franchisor from time to time, in accordance with standards and specifications set forth in the Manuals or otherwise in writing.

**14.3 DEDUCTIBLES.** The coverages required under Articles 14.2.1, 14.2.4, 14.2.5, and 14.2.7 shall not have any deductible, self-insured retention, self-funded retention, or any similar provision unless prior written consent is given by Franchisor. Should consent be given by Franchisor for a deductible or similar provision to be included for the required coverages under Articles 14.2.1, 14.2.4, 14.2.5, or 14.2.7, the deductible or other similar provision amount may not exceed twenty thousand dollars (\$20,000). With respect to all other required coverages where deductible are permitted, the deductible may not exceed twenty thousand dollars (\$20,000). To the extent that Franchisor, its subsidiaries, affiliates, successors and assigns are additional insureds for a loss or lawsuit covered by an insurance policy required under Articles 14.2.1, 14.2.4, 14.2.5, and 14.2.7 and the policy contains a deductible, self-insured retention or any similar provision, you are responsible for payment of this amount. Also, in such a scenario, you shall assume and fully pay for the legal defense of Franchisor, its subsidiaries, affiliates, successors and assigns from any lawsuit or claim. This defense obligation shall begin immediately upon the filing of any lawsuit or claim that would be defended by the insurance required hereunder. The defense obligation shall continue until such time as the deductible, self-insured retention, self-funded retention, or any similar provision has been satisfied, or the insurer provides a defense to Franchisor, its subsidiaries, affiliates, successors and assigns. Finally, Franchisor, its subsidiaries, affiliates, successors and assigns, shall have the right to select the counsel of its choosing in defending itself from any lawsuit.

**14.4 BUILDER’S RISK.** In connection with any finish-out, renovation, refurbishment or remodeling of your Franchised Restaurant, you or your approved contractor shall maintain builder’s all risk insurance and performance/completion and payment bonds in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to Franchisor.

**14.5 NO RELIANCE UPON FRANCHISOR’S INSURANCE.** Your obligation to obtain and maintain the above policies and bonds in the amounts specified or agreed to by Franchisor shall not be limited in any way by any insurance that may be maintained by Franchisor, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Article 20. Moreover, you shall not claim, or authorize anyone on your behalf to claim (such as your own insurers), additional insured status on any policies purchased or maintained by Franchisor.

**14.6 RELEASE REGARDING INSURANCE.** YOU ACKNOWLEDGE THAT THE COVERAGES REQUIRED BY FRANCHISOR ARE THE MINIMUM AMOUNTS OF COVERAGE

THAT YOU MUST PROCURE UNDER THIS AGREEMENT. YOU FURTHER ACKNOWLEDGE THAT YOU ARE FREE TO BUY ADDITIONAL INSURANCE COVERAGE OR INCREASE THE AMOUNTS OF COVERAGE AS YOU DEEM FIT BASED ON YOUR OWN INVESTIGATION AS TO WHETHER ADDITIONAL COVERAGES OR HIGHER AMOUNTS ARE NECESSARY. YOU FURTHER AGREE THAT YOU ARE NOT RELYING UPON FRANCHISOR TO DETERMINE THE AMOUNT OR TYPE OF INSURANCE COVERAGE NECESSARY FOR YOU. YOU RELEASE FRANCHISOR FROM ANY AND ALL CLAIMS RELATING TO THE PROCUREMENT OF INSURANCE, INCLUDING CLAIMS THAT FRANCHISOR DID NOT REQUIRE YOU TO PROCURE ADEQUATE INSURANCE.

**14.7 EVIDENCE OF INSURANCE.** Within thirty (30) days after the execution of the lease for the Franchised Restaurant and, thereafter, at least sixty (60) days prior to the expiration of any such policy, you shall deliver to Franchisor certificates of insurance indicating the contracted for insurance coverages as well as the description of special provisions (e.g. additional named insured status). You shall also provide a binder, declarations page, or confirmation of insurance, describing and confirming the coverages afforded by the required policies described in Article 14. Upon our request, you shall provide to Franchisor any information requested within ten (10) business days, including, but not limited to, complete copies of the policies, certificates of insurance, declaration pages, and confirmations of insurance.

**14.8 REMEDIES.** Should you, for any reason, fail to obtain or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by Franchisor in the Manuals or otherwise in writing, Franchisor shall have the right (without the obligation) immediately to obtain such insurance and to charge same to you, which charges, together with a reasonable fee for Franchisor's expenses, shall be payable by you immediately upon notice. These remedies shall be in addition to any other remedies at law or in equity that Franchisor may have.

## ARTICLE 15. TRANSFER OF INTEREST

**15.1 TRANSFER BY FRANCHISOR.** Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations hereunder to any person or legal entity without your consent. Specifically, and without limitation to the foregoing, you expressly affirm and agree that Franchisor may sell its assets, the Proprietary Marks or the System to a third party; may merge, acquire other corporations or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of the Proprietary Marks or the System against Franchisor under this Agreement. Nothing contained in this Agreement shall require Franchisor to remain in the business of operating or licensing the operation of Restaurants or other restaurants or to offer any services or products, whether or not bearing the Proprietary Marks, to you, if Franchisor exercises its rights hereunder to assign its rights in this Agreement.

### **15.2 TRANSFER BY YOU.**

1. You and your Owner/Operator and Investors understand and acknowledge that the rights and duties set forth in this Agreement are personal to you and that Franchisor has granted this franchise in reliance on the business skill, financial capacity and personal character of you and your Owner/Operator and Investors. Accordingly, neither you nor your Owner/Operator or any Investor may Transfer any direct or indirect ownership interest in you, this Agreement or the franchised business, without Franchisor's prior written consent. In addition, neither you nor any permitted successor or assign to any part of your interest in this Agreement or the franchised business, nor any person or entity that directly or indirectly has or owns any interest in this Agreement, in the franchised business or in you, shall cause or permit a Transfer of a



Controlling Interest (as defined in this Article 15.2.1) without the prior written consent of Franchisor; provided, however, that Franchisor's prior written consent shall not be required for a Transfer of less than a one percent (1%) interest in a Publicly-Held Corporation. Within five (5) days of the completion of each Transfer of any ownership interest in you, you shall provide to Franchisor written notice of the completion of the Transfer and fully executed copies of all documents evidencing the Transfer and any and all amendments to the organizational documents of the applicable entity in connection with the Transfer.

For purposes of this Agreement, a “**Transfer of a Controlling Interest**” shall mean: (i) a Transfer, directly or indirectly, individually or cumulatively, of more than fifty (50%) of the ownership interest in you; or (ii) a Transfer of any ownership interest, which, directly or indirectly, individually or cumulatively, results in or may result in the change or removal of, or addition to, Owner/Operator. For purposes of this Agreement, a “**Publicly-Held Corporation**” is a corporation whose securities are registered under Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of the Securities Exchange Act, as amended. For purposes of this Agreement, “**Transfer**” means any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise.

Any purported Transfer, by operation of law or otherwise, not having the prior written consent of Franchisor required by this Article 15, shall be null and void and shall constitute an event of default under this Agreement, for which Franchisor may then terminate this Agreement pursuant to Article 16.

2. Subject to applicable state law, Franchisor shall not unreasonably withhold its consent to a Transfer so long as the Transfer has not been completed prior to Franchisor's receipt of notice thereof; however, Franchisor may, in its sole discretion, require any or all of the following as conditions of its approval to any such Transfer requiring Franchisor's prior written consent:

A. All of your accrued monetary and other outstanding obligations to Franchisor and its subsidiaries and affiliates arising under this Agreement or any other agreement between you and Franchisor or its subsidiaries or affiliates shall have been satisfied in a timely manner and you shall have satisfied all trade accounts and other debts, of whatever nature or kind, in a timely manner.

B. You are not in default of any provision of this Agreement or any other agreement between you and Franchisor or its subsidiaries or affiliates.

C. Unless otherwise prohibited by applicable law, the transferor and its Owner/Operator and Investors, as applicable, shall have executed a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its subsidiaries and affiliates and their respective officers, directors, shareholders, partners, employees, servants, representatives, and agents, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement and any other agreement between you and Franchisor or its subsidiaries or affiliates and federal, state and local laws, rules and ordinances.

D. The transferee shall enter into a written agreement, in a form prescribed by Franchisor, assuming full, unconditional, joint and several liability for and agreeing to perform from the date of the Transfer, all of your obligations, covenants and agreements contained in this Agreement; and, if transferee is a corporation, partnership, limited liability company or other entity, the transferee's shareholders, partners, members or other owners, as applicable, shall also execute such agreement as principals of the transferee, including a guaranty of your obligations contained

in this Agreement. The transferee shall assume operations of the franchised business within such timeframe required by Franchisor.

E. The transferee shall demonstrate to Franchisor's satisfaction that the transferee meets the criteria that Franchisor considers when reviewing a prospective franchisee's application for a franchise, including Franchisor's educational, managerial and business standards, transferee's good moral character, business reputation and credit rating, the transferee's aptitude and ability to conduct the franchised business (as may be evidenced by prior related business experience or otherwise), the transferee's financial resources and capital and the geographic proximity of other Restaurants operated by the transferee and territories with respect to which transferee is obligated to develop Restaurants pursuant to any agreements between Franchisor and the transferee, in relation to your Franchised Restaurant.

F. Unless prohibited by applicable law, the transferee shall, at Franchisor's option, execute for a term ending on the expiration date of this Agreement and with such renewal term as may be provided by this Agreement, the form of franchise agreement then being offered to new Wing Boss franchisees and other ancillary agreements as Franchisor may require for the franchised business, which agreements shall supersede this Agreement and its ancillary documents in all respects and the terms of which agreements may differ from the terms of this Agreement and may include, without limitation, a higher Royalty Fee and advertising fee and expenditure requirement; provided, however, that the transferee shall not be required to pay any initial Franchise Fee and if the transferee is a corporation, partnership, limited liability company or other entity, the transferee's shareholders, partners, member or other owners, as applicable, shall also execute such agreements as Owner/Operators and Investors of the transferee, including a guaranty of your obligations contained in such Agreement.

G. The transferee, at its expense, shall renovate, modernize and otherwise upgrade your Franchised Restaurant to conform to the then-current standards and specifications of System Restaurants (including, without limitation, the modernization of your Franchised Restaurant to conform to Franchisor's then-current Restaurant specifications and requirements) as reasonably requested by Franchisor within the time specified by Franchisor; provided, that the transferee shall be provided a reasonable period within which to effect such renovation, modernization or upgrading, and provided further, that the costs of such work shall not be unreasonably expensive.

H. The transferor shall remain liable for all of the obligations to Franchisor in connection with the franchised business incurred prior to the effective date of the transfer and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability.

I. Prior to completion of the Transfer to the transferee, at the transferee's expense, the transferee's Owner/Operator, managers, chefs, and other personnel designated by Franchisor shall complete Franchisor's Virtual Brands Training Program and any other training programs then required, upon such terms and conditions (including payment of a reasonable fee), as Franchisor may reasonably require.

J. You or the transferee shall pay Franchisor a transfer fee of \$15,000.00 or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the application for Transfer, including, without limitation, legal and accounting fees.

K. If transferee is a corporation, partnership, limited liability company, or other entity, the transferee shall make and will be bound by any or all of the representations, warranties and covenants in Article 6.1 as Franchisor requests. Transferee shall provide to Franchisor evidence satisfactory to Franchisor that the terms of Article 6.1 have been satisfied and are true and correct on the date of Transfer.

L. Prior to the Transfer, you shall deliver to Franchisor for review and approval copies of all documents that will evidence the Transfer and, if applicable, any and all amendments to the organizational documents of the applicable entity to be executed in connection with the Transfer.

3. You hereby acknowledge and agree that each condition that must be met by the transferee is reasonable and necessary to ensure the transferee's full performance of the obligations hereunder.

**15.3 TRANSFER FOR CONVENIENCE OF OWNERSHIP.** If a proposed Transfer is to a corporation, partnership, limited liability company or other entity formed solely for the convenience of ownership of the existing Investors, to the extent permitted under applicable state law, Franchisor's consent may be conditioned upon any of the requirements in Article 15.2, except that the requirements in Articles 15.2.2.C, E, F, G, I and J shall not apply. In such event, you shall be the owner of all the outstanding ownership interests in the entity, and if you are more than one (1) individual Investor, each individual Investor shall have the same proportionate ownership interest in the transferee entity as such individual had prior to the Transfer.

**15.4 RIGHT OF FIRST REFUSAL.**

1. In the event you or any person or entity holding a direct or indirect interest in you (including any interest to be transferred pursuant to Article 15.5, in the franchised business or in this Agreement desire to accept any bona fide offer from a third party to purchase such interest, you shall promptly notify Franchisor in writing of each such offer and shall provide such information and documents relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within fifteen (15) days after receipt of such written notification, information and documents, to send written notice to the transferor that Franchisor intends to purchase the transferor's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the transferor's interest, the closing on such purchase must occur within thirty (30) days from the date of notice to the transferor of the election to purchase by Franchisor, or such other date as may be agreed upon. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Article 15.4 shall not constitute a waiver of any other provision of this Agreement, including all provisions relating to a proposed Transfer.

2. If the offer from the third party provides for payment of consideration other than cash or involves certain intangible benefits, Franchisor may elect to purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on such amount, an independent appraiser shall be designated by each party to determine such amount. In the event that such appraisers shall agree on such amount, the determination shall be final and binding. In the event that such appraisers fail to agree within thirty (30) days, a third independent appraiser shall be designated by such appraisers, and the determination by a majority of appraisers shall be binding. Each party shall bear the costs and expenses of the appraiser appointment by such party, and the parties shall share equally the costs and expenses of the third appraiser.

3. If Franchisor elects to exercise the option described in this Article 15.4, it shall have the right to set off the cost of the appraisal described in Article 15.4.2 above, if any, against any payment made hereunder.

4. Failure to comply with the provisions of this Article 15.4 prior to the purchase of a direct or indirect interest in you, in the franchised business or in this Agreement, shall constitute an event of default under Article 16.

### **15.5 TRANSFER UPON DEATH OR PERMANENT DISABILITY.**

1. Upon the death of any person (the “**Deceased**”) with a direct or indirect interest in this Agreement, the franchised business or in you, the executor, administrator or other personal representative of the Deceased shall transfer such interest to a third party, provided that any such transfer shall be subject to the terms, conditions and restrictions regarding Transfers set forth in Article 15.2 and the right of first refusal set forth in Article 15.4. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the estate of the Deceased, then the transfer of such interests to the distributee of such interests shall be subject to the terms, conditions and restrictions regarding Transfers set forth of Article 15.2. If the distributee is required to be approved by Franchisor, but not approved by Franchisor, then the distributee shall transfer such interest to a third party approved by Franchisor within twelve (12) months after the death of the Deceased, subject to the terms and conditions set forth in Article 15.2 and the right of first refusal set forth in Article 15.4.

2. Upon the Permanent Disability (as defined in this Article 15.5) of any person with a direct or indirect interest in this Agreement, the franchised business or in you, Franchisor may, in its sole discretion, require such interest to be transferred to a third party approved by Franchisor within six (6) months after notice to you, subject to the right of first refusal set forth in Article 15.4. “**Permanent Disability**” shall mean any physical, emotional or mental injury, illness or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least ninety (90) consecutive days and from which condition recovery within ninety (90) days from the date of determination of disability is unlikely. Permanent Disability shall be determined by two (2) licensed practicing physicians. One (1) licensed practicing physician shall be selected by Franchisor, while a second licensed practicing physician shall be selected by you. If these two (2) licensed practicing physicians cannot agree on whether a Permanent Disability exists, they shall appoint a third licensed practicing physician whose expert opinion shall be controlling. The costs of any examination required by this Article 15.5 shall be paid by Franchisor.

3. In the event of the death or Permanent Disability of your Owner/Operator, or any other person with a direct or indirect interest in this Agreement, the franchised business or in you, if Franchisor determines, in its sole discretion, that such person had substantial control or supervision over the management of your Franchised Restaurant, then Franchisor at its option may elect to operate your Franchised Restaurant during the interim twelve (12) months following such death or the interim six (6) months following such Permanent Disability, as applicable, until the interest of such person is transferred in accordance with this Article 15 or until the applicable interim period expires, whichever comes first. As compensation for managing your Franchised Restaurant, Franchisor will charge a management fee of five percent (5%) of the Net Sales of your Franchised Restaurant for each Sales Period, which will be in addition to the Royalty Fee, advertising contributions and any other fees or payments due and owing to Franchisor and, if Franchisor provides one of its employees as manager, you shall pay Franchisor the manager’s then-current salary for the time of such interim management. In addition, you will remain responsible for payment of employee salaries, taxes, rent, utilities, supplies and all other costs and expenses associated with the operation of your Franchised Restaurant. Franchisor shall exercise its best efforts in managing your Franchised Restaurant, but shall not be liable for any losses incurred by your Franchised Restaurant during the time of such management and thereafter. IF FRANCHISOR ELECTS TO OPERATE YOUR

FRANCHISED RESTAURANT PURSUANT TO THIS ARTICLE 15.5.3, YOU SHALL INDEMNIFY FRANCHISOR FOR LOSSES AND EXPENSES INCURRED BY FRANCHISOR AS A RESULT OF SUCH OPERATION TO THE SAME EXTENT AS PROVIDED IN ARTICLE 20.6.

4. Upon the death or claim of Permanent Disability of any person with a direct or indirect interest in this Agreement, the franchised business or you, you or your representative must promptly notify Franchisor of such death or claim of Permanent Disability. Any transfer upon death or Permanent Disability shall be subject to the same terms and conditions as described in Article 15.2 shall apply, except that the requirements of Articles 15.2.2.C, F and G shall not apply. If an interest is not transferred upon death or Permanent Disability as required in this Article 15.5, Franchisor may terminate this Agreement pursuant to Article 16.

**15.6 NON-WAIVER OF CLAIMS.** Franchisor's consent to a Transfer of any interest in you, the franchised business or this Agreement shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with this Agreement by the transferee.

**15.7 OFFERINGS BY YOU.** Securities in you may be offered to the public, by private offering or otherwise, only with the prior written consent of Franchisor (whether or not Franchisor's consent is required under Article 15.2), which consent shall not be unreasonably withheld. All materials required for such offering by federal or state law shall be submitted to Franchisor for a limited review as discussed below prior to their being filed with any government agency; and, any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. Your offering shall not imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance or offering of your securities or Franchisor's securities or the securities of any subsidiary or affiliate of Franchisor; and, Franchisor's review of any offering materials shall be limited solely to the subject of the relationship between you and Franchisor and its subsidiaries and affiliates. Franchisor may, at its option, require your offering materials to contain a written statement prescribed by Franchisor concerning the limitations described in the preceding sentence. **YOU AND THE OTHER PARTICIPANTS IN THE OFFERING MUST FULLY INDEMNIFY FRANCHISOR IN CONNECTION WITH THE OFFERING.** For each proposed offering, you shall pay to Franchisor a nonrefundable fee of \$1,000.00, or such other greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering materials, including without limitation, legal and accounting fees. You shall give Franchisor written notice at least thirty (30) days prior to any offering or other transaction covered by this Article 15.7.

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

**16.1 EVENTS OF DEFAULT NOT SUBJECT TO NOTICE AND CURE.** You shall be in default under this Agreement, and, to the extent permitted under applicable state law, at Franchisor's option and all rights granted herein shall automatically terminate without prior notice to you or the opportunity to cure if:

1. You file a bankruptcy, receivership, or equivalent insolvency proceeding under the federal bankruptcy law or any state statute;
2. Any bankruptcy, receivership or insolvency proceeding is filed against you and is not dismissed within sixty (60) days following the filing thereof;
3. You are merged, consolidated, or dissolved in violation of Article 15;

4. A final judgment against you remains unsatisfied or of record for thirty (30) days or longer (unless you have sooner filed an appropriate supersedeas bond); and/or,

5. Any lien against the equipment of the franchised business is foreclosed upon or if the equipment of the franchised business is levied or executed upon.

**16.2 EVENTS OF DEFAULT SUBJECT TO NOTICE BUT WITHOUT CURE.** You shall be in default and, to the extent permitted under applicable state law, Franchisor may, at its option, terminate this Agreement upon delivery of written notice and without providing you an opportunity to cure if:

1. You cease operation of your Franchised Restaurant, after opening, and such cessation continues for at least five (5) days;

2. Any transfer in violation of Article 15;

3. You are in default under your lease of your Franchised Restaurant premises;

4. You are in default under any loan or other agreement for the financing of your Franchised Restaurant;

5. You fail to locate a proposed site for your Franchised Restaurant within the time stated in, and otherwise comply with, Article 7.2;

6. You fail to acquire a site for your Franchised Restaurant within the time stated in and otherwise comply with, Article 7.5;

7. You fail to commence business within the time stated in, and otherwise in accordance with, Article 7.10;

8. You fail to comply with the provisions of Article 8.9;

9. You fail to comply with any confidentiality or non-compete provisions of this Agreement, including, without limitation, those set forth in Articles 11 and 12;

10. A default, other than a failure to comply with a development schedule under a Development Agreement, occurs under any other agreement you, or any entity in which your Investors own majority equity ownership or otherwise control have entered into with Franchisor or its subsidiaries or affiliates, and such default is not cured within any applicable grace or cure period expressly provided for therein;

11. You, your Owner/Operator or any of your Investors engage in any dishonest, unethical or other conduct which, in Franchisor's opinion, adversely affects your Franchised Restaurant's reputation or the goodwill associated with the Proprietary Marks; or,

12. You, your Owner/Operator, any of your Investors, representatives, or employees make any illicit statements, including in an email to Franchisor's employees, officers, or directors or in any social media posts, or any other unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, gambling-related, drug-related, alcohol-related, profane, racist, sexually explicit or indecent comments that in Franchisor's opinion negatively affects Franchisor, its employees, its operations or otherwise affects your Franchised Restaurant's reputation or the goodwill associated with the Proprietary Marks.

**16.3 EVENTS OF DEFAULT SUBJECT TO 7-DAY NOTICE AND CURE.** You shall be in default and, to the extent permitted under applicable state law, Franchisor may, at its option, terminate

this Agreement after notice to you, upon the occurrence of any of the following breaches hereunder, and such breaches are not cured to Franchisor's satisfaction within seven (7) days following the date of written notice of default from Franchisor, if:

1. You fail to operate your Franchised Restaurant in accordance with the provisions, standards, and specifications of Franchisor set forth in Articles 7 and 8 or in the Manuals or other written directives of Franchisor (and in particular, and without limiting the generality of the foregoing, you shall comply with the provisions, standards and specifications set forth in Article 8); provided that any failure to operate your Franchised Restaurant pursuant to Article 8.9 shall be governed by Article 16.1;

2. You fail to timely pay your Royalty Fees, Marketing Fund contribution, or any other monetary obligations owed to Franchisor or its affiliates under this Agreement or otherwise (including, without limitation, any interest accrued on any overdue payments), or, your failure to timely submit your Monthly Sales Report as set forth in Article 4.3;

3. You fail to submit a copy of your Lease and the Lease Rider (Exhibit E) as set forth in Article 7.5;

4. You misuse or make any unauthorized use of the Proprietary Marks or otherwise materially impair the goodwill associated with the Proprietary Marks or with the System or Franchisor's rights therein;

5. You fail to submit annual proof of insurance as set forth in Article 14.7;

6. You or your Owner/Operator or any of your Investors breach the covenants set forth in Article 18 of the Agreement; or,

7. You, your Owner/Operator, or any of your Investors purchase food and beverage or other products or utilize vendors or suppliers for the Franchised Restaurant that have not been approved by Franchisor, or you fail to pay your accounts with Franchisor's approved vendors and suppliers when due, unless you are in good faith contesting your liability for amounts you owe to such vendors or suppliers.

Provided, if you commit or permit any of these breaches two (2) times during any twelve (12) month period, to the extent permitted under applicable state law, Franchisor shall not be obligated to provide you notice or an opportunity to cure any subsequent breaches prior to terminating your rights under this Agreement. If any fact or circumstance giving rise to any event of default described in Article 16.2 is not susceptible to cure, in the reasonable judgment of Franchisor, to extent permitted under applicable state law, such event of default shall be deemed an event of default under Article 16.2 and not subject to any further notice and cure.

**16.4 EVENTS OF DEFAULT SUBJECT TO 30-DAY NOTICE AND CURE.** You shall be in default and, to the extent permitted under applicable state law, Franchisor may, at its option, terminate this Agreement after notice to you, upon the occurrence of any of the following breaches hereunder, and such breaches are not cured to Franchisor's satisfaction within thirty (30) days following the date of written notice of default from Franchisor, if:

1. You or your Owner/Operator or any of your Investors breach any other covenant, agreement, obligation, or term set forth in this Agreement (other than such breaches specified in Articles 16.1 and 16.2); or,

2. If any representation or warranty made by you or your Owner/Operator or any of your Investors in this Agreement or in any certificate, report, notice, financial statement, or other document

furnished to Franchisor at any time in connection with this Agreement or the operation of your Franchised Restaurant shall be false, misleading, or erroneous in any material respect when made.

Provided, if you commit or permit any of these breaches two (2) times during any twelve (12) month period, to the extent permitted under applicable state law, Franchisor shall not be obligated to provide you notice or an opportunity to cure any subsequent breaches prior to terminating your rights under this Agreement. If any fact or circumstance giving rise to any event of default described in Article 16.3 is not susceptible to cure, in the reasonable judgment of Franchisor, to the extent permitted under applicable state law, such event of default shall be deemed an event of default under Article 16.2 and not subject to any further notice and cure.

**16.5 NON-COMPLIANCE FEE.** You acknowledge the importance of operating the Franchised Restaurant in full compliance with this Agreement and Franchisor's standards and specifications set forth in the Manuals or otherwise communicated to you. You further acknowledge that your deviation from any contractual requirement, including any of Franchisor's standards and specifications, is a violation of this Agreement and will require Franchisor to incur incalculable administrative and management costs to address the violation (separate and apart from any damages your violation might cause to the System, Franchisor's business opportunities, and the goodwill associated with the Proprietary Marks). Therefore, you agree that, in order to compensate Franchisor for its incalculable administrative and management costs due to your operational violations, you must pay Franchisor, at Franchisor's option, Five Hundred Dollars (\$500) for each deviation from a contractual requirement, including any of Franchisor's standards and specifications, cited by Franchisor (the "Non-Compliance Fee"). However, if Franchisor discovers that same (or a substantially similar) deviation from a contractual requirement on one or more consecutive, subsequent visits to or inspections of the Franchised Restaurant, the Non-Compliance Fee will, at Franchisor's option, be One Thousand Dollars (\$1,000) for the first repeat deviation and Two Thousand Dollars (\$2,000) for the second deviation and each subsequent, repeat deviation. (The Non-Compliance Fee does not apply to payment defaults for which Franchisor may charge interest and collect its out-of-pocket expenses incurred in connection with such payment defaults under Article 4.5 above.) The Non-Compliance Fee, should one be charged, is deemed by Franchisor and you to be a reasonable estimate of Franchisor's administrative and management costs and is not a penalty. Franchisor may debit your account for Non-Compliance Fees, or set off monies otherwise due and payable to you, to cover the payment of Non-Compliance Fees. Non-Compliance Fees are due and payable to Franchisor within five (5) days after Franchisor notifies you that Franchisor is charging you the Non-Compliance Fee due to your violation. Franchisor need not give you a cure opportunity before charging the Non-Compliance Fee. Charging the Non-Compliance Fee does not preclude Franchisor from seeking to recover damages to the System, Franchisor's business opportunities, or the goodwill associated with the Proprietary Marks due to your violation, seeking injunctive relief to restrain any subsequent or continuing violation, formally defaulting you and terminating this Agreement under this Article 16, or exercising any of Franchisor's other rights under this Agreement, or any other agreement, or applicable law.

**16.6 FRANCHISOR'S ALTERNATE REMEDIES UPON DEFAULT.** In addition to, and without limiting, Franchisor's other rights and remedies under this Agreement, any other agreement or applicable law, upon the occurrence of any event giving rise to Franchisor's right to terminate this Agreement under this Article 16, Franchisor may instead of terminating this Agreement elect, at Franchisor's sole option and upon providing you written notice, to (a) suspend your and your Franchised Restaurant's right to (i) participate in any advertising, marketing, promotional, or public relations programs that Franchisor or the Marketing Fund provide, authorize, or administer; (ii) offer catering or delivery services; or, (iii) receive services and support provided by Franchisor and/or its affiliates; (b) temporarily or permanently reduce or eliminate the Primary Area, in which case the restrictions on Franchisor or its affiliates under Article 1 will not apply in the geographic area removed from the Primary Area; or, (c)



temporarily remove information concerning your Franchised Restaurant from Franchisor's Website or extranet operated for the network of Wing Boss franchisees, and/or restrict your or your Franchised Restaurant's participation in other programs or benefits offered on or through the Wing Boss Website or extranet.

## **ARTICLE 17. OBLIGATIONS UPON TERMINATION OR EXPIRATION**

Upon the termination or expiration of this Agreement, all rights granted hereunder to you shall terminate and:

1. Unless otherwise indicated in writing from Franchisor, and to the extent permitted by applicable law, you must pay to Franchisor in a single lump sum payment, as "**Liquidated Damages**," as defined herein, and not as a penalty, after early termination of the Franchise Agreement, Liquidated Damages equal to Royalty Fees for the lesser of: (i) the number of months remaining in the term of the Franchise Agreement (or the renewal term, if applicable); or, (ii) sixty (60) months. The calculation of Royalty Fees payable under this Article is based on the monthly average of the Royalty Fees payable to us. If the Franchise Agreement terminates after the second year of the term, then Liquidated Damages shall be calculated based upon the average monthly Net Sales of your Franchised Restaurant reported for the 12 months preceding termination. Liquidated Damages are the present value of the annuity represented by the Royalty Fees for the months remaining in your Franchise Agreement term assuming these average Net Sales, without adjustment for inflation. The discount rate for calculating present value is 110% of the long term Applicable Federal Rate for monthly compounding published by the Internal Revenue Service immediately prior to termination. If your Franchised Restaurant has not yet opened, or has not been open for at least 24 months at the time of termination, the average monthly Net Sales used to calculate Liquidated Damages will be based upon the average monthly Net Sales of all Restaurants for the preceding fiscal year as determined from the audited financial statements of Franchisor published in its Franchise Disclosure Document. An example of these calculations is included in the Operations Manual. Both assume an aggregated monthly average of the Royalty Fees paid each week.

2. You shall immediately and permanently cease to use, in any manner, any Confidential Information, and methods, procedures, techniques, and trade secrets associated with the System, the Proprietary Marks, and all other distinctive forms, slogans, signs, symbols, and devices associated with the System, as set forth in the Manuals. In particular, you shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, and any other articles that display the Proprietary Marks. All such items that display the Proprietary Marks shall be removed from your Franchised Restaurant premises at your cost within thirty (30) days of termination.

3. You shall take such action as may be necessary to cancel any assumed name or equivalent registration that contains the Proprietary Marks or any part thereof or any other service mark or trademark of Franchisor's and you shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after the termination or expiration of this Agreement.

4. You shall, at Franchisor's option, assign to Franchisor or its designee any interest that you have in any lease or sublease for your Franchised Restaurant premises or for any equipment used in the operation of the franchised business. Franchisor may exercise such option at or within thirty (30) days after either termination or (subject to any existing right to renew) expiration of this Agreement. The time for closing on the assignment of lease, sublease, or equipment shall be a date no later than ten (10) days after Franchisor's exercise of the option(s) unless Franchisor is also exercising its option to purchase property described below in Article 17.5, in which case the date of closing shall be on the same date prescribed for the purchase option. Closing shall take place at Franchisor's corporate office or at such other location as the parties may agree. If neither you nor Franchisor elect to exercise its option to acquire the lease or

sublease for the premises of the franchised business, you shall make such modifications or alterations to such premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of such premises from that of other Restaurants operating under the System and shall make such specific additional changes as Franchisor may reasonably request. If you fail or refuse to comply with the requirements of this Article 17.4, Franchisor shall have the right to enter upon the premises of the franchised business, without being guilty of trespass or any other crime or tort, to make or cause to be made such changes as may be required, at your expense, which expense you shall pay upon demand.

5. A. Franchisor shall have the option, which it may exercise by providing written notice to you within thirty (30) days after termination or (subject to any right to renew) expiration of this Agreement, to purchase from you any or all of your furnishings, equipment (including any computer hardware and software), signs, fixtures, supplies or inventory related to the operation of the franchised business, at your cost or fair market value, whichever is less. Should Franchisor exercise such option.

B. Franchisor shall be purchasing your assets only and shall be assuming no liabilities. Notwithstanding anything contained herein to the contrary, Franchisor and you shall fully comply with the requirements of any “bulk transfer” or fraudulent conveyance statute or equivalent law in the jurisdiction in which your Franchised Restaurant is located, so that Franchisor shall not assume or acquire any “transferee” liability.

C. If the parties cannot agree on a fair market value within thirty (30) days from the date of Franchisor’s notice to exercise its option, an independent appraiser shall be designated by each party and the two (2) independent appraisers shall select a third independent appraiser. The determination of fair market value by the majority of the appraisers shall be binding. Each party shall bear the costs and expenses of the appraiser appointed by such party, and the parties shall share equally the costs and expenses of the third appraiser.

D. At closing, you shall deliver to Franchisor, in a form satisfactory to Franchisor, such bills of sale, assignments, releases of liens, and such other documents and instruments that Franchisor deems reasonably necessary to perfect Franchisor’s title and possession in and to the assets being purchased and to certify that the requirements of all taxing and other governmental authorities have been satisfied. If at the time of closing you have not obtained all of these certificates and other documents, Franchisor may, in its sole discretion, place the purchase price in escrow pending the issuance of any required certificates or documents.

E. The time and place for the closing of the purchase and sale of such assets shall be a date not later than thirty (30) days after the purchase price is determined by the parties or the appraisers, whichever is later, at Franchisor’s operating office in Dallas, Texas, unless the parties mutually agree to another date or place.

F. At closing, Franchisor shall have the right to set off all amounts you owe to Franchisor and its subsidiaries and affiliates, and the cost incurred in connection with any escrow arrangement (including reasonable legal fees), against any payment for the assets, and shall pay the remaining amount in cash.

6. You, at Franchisor’s option, shall assign to Franchisor or its designee all rights to the telephone numbers of your Franchised Restaurant and execute all forms and documents required by any telephone company to transfer such service and numbers to Franchisor or its designee. You hereby appoint Franchisor your true and lawful agent and attorney-in-fact with full power and authority, for the sole purpose of taking such action as is necessary to complete such assignment. This power of attorney shall

survive the expiration or termination of this Agreement. You shall thereafter use different telephone numbers at or in connection with any subsequent business conducted by you.

7. You agree, if you continue to operate or subsequently begin to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks, either in connection with such other business or its promotion, which is likely to cause confusion, mistake or deception or which is likely to dilute Franchisor's rights in and to the Proprietary Marks, and further agree not to use any designation of origin or description or representation that falsely suggests or represents a continuing association or connection with Franchisor.

8. You shall promptly pay all sums owing to Franchisor and its subsidiaries and affiliates. In the event of termination for any default by you, such sums shall include interest on any past due amounts as set forth in this Agreement, and all damages, costs, and expenses, including reasonable legal fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory owned by you and on the premises of the franchised business at the time of default.

9. You shall pay to Franchisor all damages, costs, and expenses, including reasonable legal fees, incurred by Franchisor after the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Article 17.

10. You shall immediately deliver to Franchisor all materials, including the Manuals, records, files, instructions, correspondence, customer lists, access to all social media accounts, and all other writings or electronic data related to operating the franchised business, including, without limitation, brochures, agreements, invoices, and all other related materials in your possession, and all copies thereof (all of which are acknowledged to be Franchisor's property), and shall retain no copy or record of any of the above, except your copy of this Agreement and of any correspondence between the parties and any other documents that you reasonably need for compliance with any applicable law.

11. You and your Owner/Operator and each of your Investors shall comply with the restrictions on confidential information contained in Article 12.1 and the covenants contained in Article 18.2.B. Any other person required to execute similar covenants pursuant to Articles 12.2 or 18 shall also comply with such covenants.

## **ARTICLE 18. COVENANTS**

1. You covenant that during the term of this Agreement, except as otherwise approved in writing by Franchisor, you and your Owner/Operator shall devote full time, energy and best efforts to the management and operation of the franchised business.

2. You and your Owner/Operator and each of your Investors specifically acknowledge that, pursuant to this Agreement, you and your Owner/Operator and each of your Investors will receive valuable specialized training, trade secrets, and Confidential Information, including, without limitation, information regarding the operational, sales promotional and marketing methods and techniques of Franchisor and the System and proprietary recipes that are beyond your present skills and experience, and that of your Owner/Operator, Investors, and your managers and employees. You and your Owner/Operator acknowledge that such training, trade secrets, and Confidential Information provide a competitive advantage and will be valuable to you in the development of the franchised business and that gaining access to such training, trade secrets, recipes, and Confidential Information is, therefore, a primary reason for

entering into this Agreement. In consideration for such training, trade secrets, and Confidential Information, you, your Owner/Operator and each of your Investors covenant as follows:

A. During the term of this Agreement, except as otherwise approved in writing by Franchisor, neither you nor your Owner/Operator nor any of your Investors shall, either directly or indirectly, for yourselves or through, on behalf of or in conjunction with any person, partnership, corporation, or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System; or,

ii. Own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist, or make loans to, any person or entity engaged in any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers chicken wings or chicken tenders as a primary or featured menu item.

B. With respect to you, for a continuous uninterrupted period commencing upon the expiration or termination of, or transfer of all of your interest in, this Agreement or with respect to your Owner/Operator and each of your Investors, for a continuous uninterrupted period commencing upon the earlier of: (i) the expiration, termination or transfer of all of your interest in this Agreement; or, (ii) the time such individual or entity ceases to satisfy the definition of your Owner/Operator or an Investor in Article 26.3.3, and for two (2) years thereafter (which two-year period shall be tolled during any period of noncompliance), except as otherwise approved in writing by Franchisor, neither you nor your Owner/Operator nor any of your Investors shall, either directly or indirectly, for yourselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System; or,

ii. Own, maintain, operate, engage in, or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist, or make loans to, any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers chicken wings or chicken tenders as a primary or featured menu item that business is, or is intended to be, located within a thirty (30)-mile radius of the location accepted hereunder or within a five (5)-mile radius of any Restaurant in existence or under construction as of date the time period set forth in Article 18.2.B commences for you or your Owner/Operator or any of your Investors, as applicable.

C. Articles 18.2.A.ii and 18.2.B.iii shall not apply to ownership of less than a one percent (1%) beneficial interest in the outstanding equity securities of any Publicly-Held Corporation.

D. Neither you nor your Owner/Operator nor any of your Investors shall publish or communicate in any way (or assist, encourage, or support) to any third party any statement that might reasonably be construed to be disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Franchisor, its subsidiaries, or affiliates, including each party's respective officers, directors or employees, in connection with this Agreement or any prior agreement between the parties and the purchase and operation of any Restaurant and franchise. **With regard to this provision, the person alleged to have violated this provision agrees to waive his/her rights to prior restraint on speech and consents to the issuance of a temporary restraining order, temporary injunction, or other available injunctive relief designed to prevent any further breach of this provision. Additionally, if you or your Owner/Operator or any of your Investors publish or communicate any statement to a third-party that is disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Franchisor, its subsidiaries, or affiliates, including each party's respective officers, directors or employees the other party, you and your Owner/Operator and your Investors agree to assign all copyrights to such publications or communications to Franchisor. You and your Owner/Operator and your Investors agree to take whatever action (including signing assignment or other documents) that Franchisor requests to evidence its ownership or to help Franchisor obtain intellectual property rights in the copyrights to such publications or communications.**

3. The parties agree that each of the above covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Article 18 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision that has not been appealed to which Franchisor is a party, you, your Owner/Operator and your Investors expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Article 18.

4. You and your Owner/Operator and Investors understand and acknowledge that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Article 18.2, or any portion thereof, without your consent, effective immediately upon written notice to you; and you and your Owner/Operator and Investors agree that they shall immediately comply with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Article 25.

5. You and your Owner/Operator and Investors expressly agree that the existence of any claims you 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 Article 18, you and your Owner/Operator and Investors agree to pay all costs and expenses (including reasonable legal fees), incurred by Franchisor in connection with the enforcement of this Article.

6. You and your Owner/Operator and Investors acknowledge that a violation of the terms of this Article 18 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and you and your Investors accordingly consent to the issuance of an injunction prohibiting any conduct by you, your Owner/Operator or any of your Investors in violation of the terms of this Article. This remedy is in addition to any other remedies Franchisor may have hereunder or at law or equity.

7. At Franchisor's request, you shall require and obtain execution of covenants similar to those set forth in this Article 18, from any other person or entity that now or hereafter satisfies the definition of your Investors or your Owner/Operator in Article 26.3.3 or any other person or entity who has received

or will receive confidential information or training by Franchisor. Failure by you to obtain execution of the covenants required by this Article 18.7 shall constitute an event of default under Article 16.

## **ARTICLE 19. TAXES, PERMITS AND INDEBTEDNESS**

1. You shall promptly pay when due all taxes levied or assessed, including without limitation, income, payroll, property, unemployment and sales taxes and all accounts and other indebtedness of every kind incurred by you in the conduct of the franchised business.

2. You shall pay to Franchisor an amount equal to any sales tax, gross receipts tax, excise tax or any similar license or tax, directly or indirectly imposed on Franchisor with respect to any payment to Franchisor required under this Agreement. The preceding sentence shall not apply to any franchise tax or income, war profits or excess profits tax (or any tax in lieu thereof), imposed on Franchisor with respect to the above payments.

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

4. You shall comply with all federal, state and local laws, rules and regulations and shall timely obtain any and all permits, certificates or licenses necessary for the full and proper conduct of the franchised business, including, without limitation, licenses to do business, fictitious name registrations, sales tax permits, fire clearances, health permits, alcoholic beverage permits and licenses, and certificates of occupancy.

5. You shall notify Franchisor in writing within five (5) days of the commencement of any action, suit or proceeding or of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of the franchised business.

## **ARTICLE 20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

**20.1 NO FIDUCIARY RELATIONSHIP.** The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that you shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party as an agent, legal representative, subsidiary, joint venturer, partner, employee, employer, joint employer, or servant of the other for any purpose.

**20.2 FRANCHISEE IS AN INDEPENDENT CONTRACTOR.** During the term of this Agreement, you shall hold yourself out to the public as an independent contractor operating the business pursuant to a franchise from Franchisor. You agree to take such action as shall be necessary to that end, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the franchised premises, the content and form of which Franchisor reserves the right to specify in the Manuals or otherwise in writing.

None of your employees or other personnel will be considered to be Franchisor's employees or personnel. Neither you nor any of your employees or personnel whose compensation you pay may in any way, directly or indirectly, expressly or by implication, be construed to be Franchisor's employee or personnel for any purpose, most particularly with respect to any mandated or other insurance coverage, tax, or contributions,

or requirements pertaining to withholdings, levied or fixed by any city, state, provincial, or federal governmental agency. Franchisor will not have the power to hire or fire your employees or personnel. You expressly agree, and will never contend otherwise, that Franchisor's authority under this Agreement to certify certain of your employees or personnel for qualification to perform certain functions for your Franchised Restaurant does not directly or indirectly vest in Franchisor the power to hire, fire or control any such employee. You acknowledge and agree, and will never contend otherwise, that you alone will exercise day-to-day control over all operations, activities and elements of your Franchised Restaurant and that under no circumstance shall Franchisor do so or be deemed to do so. You further acknowledge and agree, and will never contend otherwise, that the various requirements, restrictions, prohibitions, specifications and procedures of the System that you are required to comply with under this Agreement, whether set forth in the Manuals or otherwise, do not directly or indirectly constitute, suggest, infer or imply that Franchisor controls any aspect or element of the day-to-day operations of your Franchised Restaurant, which you alone control, but only constitute standards you must adhere to when exercising your control of the day-to-day operations of your Franchised Restaurant.

**20.3 NO AUTHORITY TO BIND FRANCHISOR.** You and your Owner/Operator and each of your Investors understand and agree that nothing in this Agreement authorizes you or your Owner/Operator and any of your Investors to make any contract, agreement, warranty or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and, that Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor be deemed liable for any act or omission of you, your Owner/Operator or any of your Investors in the conduct of the franchised business or for any claim or judgment arising therefrom. You and your Owner/Operator agree that Franchisor will not be responsible for any claims against any suppliers or approved vendors, architects, contractors, accountants, or other third parties in connection with the development or operation of the Franchised Restaurant or other services provided in connection therewith.

**20.4 DELIVERY VEHICLES.** You and your Owner/Operator and each of your Investors understand and agree that Franchisor does not exercise any control over a) the manner of operation of any delivery motor vehicles used by or on behalf of you or any of your employees, agents or independent contractors; and, b) the manner or operation of any delivery motor vehicles used by or on behalf of an independent delivery service provider required under this Agreement. The safe operation of delivery service is your or the independent operator's sole responsibility.

**20.5 NO ASSUMPTION OF LIABILITY.** FRANCHISOR AND ITS SUBSIDIARIES, AFFILIATES AND RELATED ENTITIES DO NOT ASSUME ANY LIABILITY FOR ACTS, ERRORS, OR OMISSIONS OF THOSE WITH WHOM YOU, YOUR OWNER/OPERATOR, ANY OF YOUR INVESTORS OR YOUR SUBSIDIARIES AND AFFILIATES MAY CONTRACT, REGARDLESS OF THE PURPOSE.

**20.6 INDEMNIFICATION & RELEASE.**

1. YOU, YOUR OWNER/OPERATOR, AND EACH OF YOUR INVESTORS SHALL, AT ALL TIMES, DEFEND, INDEMNIFY, RELEASE, AND HOLD HARMLESS TO THE FULLEST EXTENT PERMITTED BY LAW FRANCHISOR, ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND ASSIGNS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, SERVANTS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, AND REPRESENTATIVES (COLLECTIVELY, THE "**INDEMNIFIED & RELEASED PARTIES**" OR "**INDEMNIFIED & RELEASED PARTY**") FROM ALL "**LOSSES AND EXPENSES**" (AS DEFINED IN ARTICLE 20.6.5 BELOW) INCURRED IN CONNECTION WITH ANY ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INVESTIGATION OR INQUIRY (FORMAL OR INFORMAL),

OR ANY SETTLEMENT THEREOF (WHETHER OR NOT A FORMAL PROCEEDING OR ACTION HAS BEEN INSTITUTED), WHICH ARISES OUT OF OR IS BASED UPON ANY OF THE FOLLOWING:

**A. NEGLIGENT ACTS, ERRORS OR OMISSIONS, WILLFUL MISCONDUCT, OR BREACH OF CONTRACT OR WARRANTY BY YOU, ANY OF YOUR SUBSIDIARIES AND AFFILIATES, YOUR OWNER/OPERATOR AND ANY OF YOUR INVESTORS AND YOUR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, INDEPENDENT CONTRACTORS, SERVANTS, EMPLOYEES, AND REPRESENTATIVES AND THOSE OF YOUR SUBSIDIARIES AND AFFILIATES IN CONNECTION WITH THIS AGREEMENT AND THE ESTABLISHMENT AND OPERATION OF YOUR FRANCHISED RESTAURANT, INCLUDING WITHOUT LIMITATION, MATTERS ARISING OUT OF, OR CLAIMED TO BE ARISING OUT OF, ANY INDEMNIFIED & RELEASED PARTY'S OWN NEGLIGENT ACTS, ERRORS, OR OMISSIONS, BREACH OF WARRANTY, STRICT LIABILITY, OR BREACH OF CONTRACT. YOUR, YOUR OWNER/OPERATOR'S AND ANY OF YOUR INVESTOR'S OBLIGATION TO DEFEND AND INDEMNIFY AN INDEMNIFIED & RELEASED PARTY FOR ITS OWN NEGLIGENCE APPLIES WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONCURRENT, ACTIVE, OR PASSIVE.**

**B. THE INFRINGEMENT, ALLEGED INFRINGEMENT, OR ANY OTHER VIOLATION OR ALLEGED VIOLATION BY YOU OR YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS OF ANY PATENT, MARK, OR COPYRIGHT OR OTHER PROPRIETARY RIGHT OWNED OR CONTROLLED BY THIRD PARTIES (EXCEPT AS SUCH MAY OCCUR WITH RESPECT TO ANY RIGHTS IN THE PROPRIETARY MARKS OR COPYRIGHTS GRANTED UNDER THIS AGREEMENT), INCLUDING WITHOUT LIMITATION MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, THE INFRINGEMENT OR VIOLATION OF ANY PATENT, TRADEMARK OR COPYRIGHT BY THE INDEMNIFIED & RELEASED PARTIES;**

**C. THE VIOLATION, BREACH OR ALLEGED VIOLATION OR BREACH BY YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS OF ANY FEDERAL, STATE, OR LOCAL LAW, REGULATION, RULING, STANDARD, OR DIRECTIVE OR ANY INDUSTRY STANDARD, INCLUDING WITHOUT LIMITATION (1) MATTERS ARISING FROM ALCOHOLIC BEVERAGE SERVICE AND CONSUMPTION AT THE FRANCHISED RESTAURANT; (2) MATTERS ARISING OUT OF A DATA BREACH, INCLUDING, BUT NOT LIMITED TO DATA NOTIFICATION FINES & PENALTIES, AS WELL AS THIRD PARTY LAWSUITS BROUGHT BY CUSTOMERS, MERCHANTS, AND CREDIT CARD BRANDS; (3) ANY DISPUTE ARISING OUT OF EMPLOYMENT, INCLUDING, BUT NOT LIMITED TO ADMINISTRATIVE CLAIMS AND THIRD PARTY CLAIMS RELATING TO WAGE CLAIMS, UNFAIR LABOR PRACTICES (SUCH AS CLAIMS UNDER THE NATIONAL LABOR RIGHTS ACT), AGE DISCRIMINATION, DISCRIMINATION, DISABILITY, AND HARASSMENT; AND (4) MATTERS ARISING OUT OF DISCRIMINATION BASED ON PUBLIC ACCOMMODATION. THIS RELEASE AND INDEMNIFICATION PROVISION EXPRESSLY INCLUDES WITHOUT LIMITATION MATTERS ARISING OUT OF, OR CLAIMED TO BE ARISING OUT OF, THE INDEMNIFIED & RELEASED PARTIES' OWN NEGLIGENT ACTS, ERRORS, VIOLATIONS, BREACHES, OR INTENTIONAL CONDUCT WITH RESPECT TO SECTIONS (1)-(4) OF THIS PROVISION; AND,**



D. THE VIOLATION OR BREACH BY YOU, YOUR OWNER/OPERATOR OR BY ANY OF YOUR INVESTORS OF ANY WARRANTY, REPRESENTATION, AGREEMENT, OR OBLIGATION IN THIS AGREEMENT OR IN ANY DEVELOPMENT AGREEMENT OR OTHER AGREEMENT BETWEEN YOU AND FRANCHISOR OR ITS SUBSIDIARIES OR AFFILIATES.

2. YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS AGREE TO GIVE FRANCHISOR IMMEDIATE NOTICE OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY, OR INVESTIGATION. AT THE EXPENSE AND RISK OF YOU, YOUR OWNER/OPERATOR, AND EACH OF YOUR INVESTORS, THE INDEMNIFIED & RELEASED PARTIES MAY ELECT TO CONTROL (BUT UNDER NO CIRCUMSTANCE IS OBLIGATED TO UNDERTAKE), AND RETAIN OR ASSOCIATE COUNSEL OF THEIR OWN CHOOSING WITH RESPECT TO THE DEFENSE AND/OR SETTLEMENT OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY, OR INVESTIGATION. SUCH AN UNDERTAKING BY THE INDEMNIFIED & RELEASED PARTIES SHALL, IN NO MANNER OR FORM, DIMINISH THE OBLIGATION OF YOU, YOUR OWNER/OPERATOR, AND EACH OF YOUR INVESTORS TO INDEMNIFY FRANCHISOR AND TO HOLD IT HARMLESS.

3. IN ORDER TO PROTECT PERSONS OR PROPERTY, OR ITS REPUTATION OR GOODWILL, OR THE REPUTATION OR GOODWILL OF OTHERS, THE INDEMNIFIED & RELEASED PARTY MAY, AT ANY TIME AND WITHOUT NOTICE, AS IT IN ITS JUDGMENT DEEMS APPROPRIATE, CONSENT OR AGREE TO SETTLEMENTS OR TAKE SUCH OTHER REMEDIAL OR CORRECTIVE ACTION AS IT DEEMS EXPEDIENT WITH RESPECT TO ANY ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY, OR INVESTIGATION IF, IN SUCH INDEMNIFIED & RELEASED PARTY'S SOLE JUDGMENT, THERE ARE REASONABLE GROUNDS TO BELIEVE THAT:

A. ANY OF THE ACTS OR CIRCUMSTANCES IN ARTICLE 20.6.1 ABOVE HAVE OCCURRED; OR,

B. ANY ACT, ERROR OR OMISSION AS DESCRIBED IN ARTICLE 20.6.1.A MAY RESULT DIRECTLY OR INDIRECTLY IN DAMAGE, INJURY, OR HARM TO ANY PERSON OR ANY PROPERTY.

4. ALL LOSSES AND EXPENSES INCURRED UNDER THIS ARTICLE 20 SHALL BE CHARGEABLE TO AND PAID BY YOU, YOUR OWNER/OPERATOR, OR ANY OF YOUR INVESTORS PURSUANT TO YOUR OBLIGATIONS OF INDEMNITY UNDER THIS ARTICLE, REGARDLESS OF ANY ACTION, ACTIVITY, OR DEFENSE UNDERTAKEN BY AN INDEMNIFIED & RELEASED PARTY OR THE SUBSEQUENT SUCCESS OR FAILURE OF SUCH ACTION, ACTIVITY, OR DEFENSE.

5. AS USED IN THIS ARTICLE 20, THE PHRASE "**LOSSES AND EXPENSES**" SHALL INCLUDE, WITHOUT LIMITATION, ALL LOSSES, COMPENSATORY, EXEMPLARY OR PUNITIVE DAMAGES, FINES, CHARGES, COSTS, EXPENSES, LOST PROFITS, LEGAL FEES, COURT COSTS, SETTLEMENT AMOUNTS, JUDGMENTS, COMPENSATION FOR DAMAGES TO AN INDEMNIFIED PARTY'S REPUTATION AND GOODWILL, COSTS OF OR RESULTING FROM DELAYS, FINANCING, COSTS OF ADVERTISING MATERIAL AND MEDIA TIME/SPACE, AND 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.

6. UNDER NO CIRCUMSTANCES SHALL ANY INDEMNIFIED & RELEASED PARTY BE REQUIRED TO SEEK RECOVERY FROM THIRD PARTIES OR OTHERWISE MITIGATE THEIR LOSSES TO MAINTAIN A CLAIM AGAINST YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS. YOU, YOUR OWNER/OPERATOR, AND EACH OF YOUR INVESTORS AGREE THAT THE FAILURE TO PURSUE SUCH RECOVERY OR MITIGATE LOSS WILL IN NO WAY REDUCE THE AMOUNTS RECOVERABLE FROM YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS BY ANY INDEMNIFIED & RELEASED PARTY PURSUANT TO THIS ARTICLE.

7. EACH OF THESE INDEMNITY OBLIGATIONS IS SEPARATE FROM, AND INDEPENDENT OF, THE INSURANCE OBLIGATIONS FOUND IN THIS AGREEMENT.

8. You and your Investors and your Owner/Operator expressly agree that the terms of this Article 20.6 shall expressly survive the termination, expiration, or transfer of this Agreement or any interest herein.

## **ARTICLE 21. PERSONAL GUARANTY OF YOUR OWNER/OPERATOR AND INVESTORS**

1. In consideration of the grant by Franchisor of a license and franchise to open and operate a Restaurant to Franchisee, pursuant to this Agreement to which this “**Personal Guaranty**” (herein so called) is made a part thereof, and for other good and valuable consideration, the undersigned Owner/Operator and Investors of Franchisee, for themselves, their heirs, successors, and assigns, do individually, jointly, and severally hereby become surety and guaranty for the payment of all amounts and the performance of the covenants, terms, and conditions of this Agreement, to be paid, kept, and performed by Franchisee.

2. The undersigned Owner/Operator and Investors, jointly and severally, hereby agree to be personally bound and obligated by each and every condition and term contained in this Agreement (specifically including, without limitation, the covenants set forth in Article 12 and Article 18 of the Agreement).

3. If any default should at any time be made herein by Franchisee, then the undersigned Owner/Operator and Investors, their heirs, successors, and assigns, do hereby, individually, jointly, and severally promise to agree to pay to Franchisor all monies due and payable to Franchisor under the terms and conditions of this Agreement.

4. In addition, if Franchisee fails to comply with any other terms and conditions of this Agreement, then the undersigned Owner/Operator and Investors, their heirs, successors, and assigns, do hereby, individually, jointly, and severally, promise and agree to comply with the terms and conditions of this Agreement for and on behalf of Franchisee.

5. In addition, should Franchisee at any time be in default on any obligation to pay monies to Franchisor or any subsidiary or affiliate of Franchisor, whether for merchandise, products, supplies, furniture, fixtures, equipment, or other goods purchased by Franchisee from Franchisor or any subsidiary or affiliate of Franchisor, or for any other indebtedness of Franchisee to Franchisor or any subsidiary or affiliate of Franchisor, then the undersigned Owner/Operator and Investors, their heirs, successors, and assigns, do hereby, individually, jointly, and severally, promise and agree to pay all such monies due and payable from Franchisee to Franchisor or any subsidiary or affiliate of Franchisor upon default by Franchisee.

6. This Personal Guaranty shall survive the termination or expiration of this Agreement and/or any other collateral agreement(s) or any determination that this Agreement or any portion of it is void or voidable.

7. It is further understood and agreed by the undersigned that the provisions, covenants, and conditions of this Personal Guaranty will inure to the benefit of the successors and assigns of Franchisor.

**8. Except as precluded by applicable law, each of the undersigned Investors submits to personal jurisdiction exclusively in the state and federal courts of the State of Texas with respect to any litigation, action, or proceeding pertaining to this Personal Guaranty or this Agreement and agrees that the jurisdiction and venue for all such litigation will and must be in Dallas, Collin County, Texas.**

9. Franchisee and the undersigned Owner/Operator and Investors certify that the table immediately below contains a true, correct, and complete listing of all of the holders of a direct or indirect ownership interest in Franchisee (including each Investor) and all of the persons and entities that are members of the Management Group.

Name (Full Legal Name)	Address and Telephone No.	Type of Ownership Interest	Entity in Which Ownership Interest is Held	Ownership %

**ARTICLE 22. APPROVALS, WAIVERS AND REMEDIES**

**22.1 PRIOR APPROVAL OR CONSENT OF FRANCHISOR.** Whenever this Agreement requires the prior acceptance, approval, or consent of Franchisor, you shall make a timely written request to Franchisor and such acceptance, approval, or consent shall be obtained in writing.

**22.2 NO WARRANTIES OR GUARANTIES.** Franchisor makes no warranties or guarantees upon which you, your Owner/Operator, or your Investors may rely, and assumes no liability or obligation to you, your Owner/Operator, your Investors or any third party to which it would not otherwise be subject, by providing any waiver, acceptance, approval, consent, or suggestion to you or your Owner/Operator, or your Investors in connection with this Agreement, or for any neglect, delay or denial of any request therefor.

**22.3 EFFECT OF DELAY, WAIVER, OMISSION OR FORBEARANCE.** No delay, waiver, omission, or forbearance by Franchisor to exercise any right, option, duty, or power arising out of any breach or default by you or your Owner/Operator or your Investors under this Agreement shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power against you or your Owner/Operator or your Investors, or as to a subsequent breach or default by you or your Owner/Operator or your Investors. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by you, your Owner/Operator or your Investors of any terms, provisions, covenants or conditions of this Agreement.

**22.4 RIGHTS AND REMEDIES CUMULATIVE.** All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies that are provided for herein or that may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this

Agreement or any other agreement between you and Franchisor or its subsidiaries or affiliates. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one (1) or more uses thereof, and may be exercised at any time or from time to time as often as may be expedient; and, any option or election to enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration or earlier termination of this Agreement shall not discharge or release you, your Owner/Operator, or any of your Investors from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration or earlier termination of this Agreement.

#### **ARTICLE 23. FORCE MAJEURE**

1. As used in this Agreement, the term “**Force Majeure**” shall mean 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, and any other similar cause not within the control of the affected party.

2. Except as provided in Article 16.1, if the performance of any obligation by any party under this Agreement is prevented, hindered, or delayed because of Force Majeure, which cannot be overcome by use of normal commercial measures, the parties shall be relieved of their respective obligations to the extent the parties are respectively necessarily prevented, hindered, or delayed in such performance during the period of such Force Majeure; provided, that you shall continue to be obligated to perform all of your monetary obligations under this Agreement. The party whose performance is affected by an event of Force Majeure shall give prompt notice of such Force Majeure event to the other party by telephone or email (in each case to be confirmed in writing), setting forth the nature of the event, an estimate as to its duration, and a plan for resuming compliance with this Agreement, which the party shall promptly undertake and maintain with due diligence. Such affected party shall be liable for failure to give such timely notice only to the extent of damage actually caused.

#### **ARTICLE 24. NOTICES**

1. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or, if sent by Franchisor, by electronic mail, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor shall be sent to:

Virtual Brands, Inc.  
18583 N. Dallas Parkway, Suite 120  
Dallas, Texas 75287  
Facsimile: 972-423-2232  
Telephone: 972-423-2201  
legal@dickeys.com

Notices to you shall be sent either to the address set forth on page 1 of this Agreement or to your Franchised Restaurant.

2. Any notice shall be deemed to have been given at the time of personal delivery or, in the case of notices sent by Franchisor by electronic mail, one (1) business day following transmission or, in the case of expedited delivery service or registered or certified mail, three (3) business days after the date and

time of mailing. Any change in the above addresses shall be made by giving fifteen (15) calendar days written notice of the change to the other party.

## **ARTICLE 25. ENTIRE AGREEMENT, NO RELIANCE, AND WAIVER OF CERTAIN CLAIMS**

This Agreement, the documents referred to herein, the attachments hereto, any addenda and any Transfer and Assumption Agreement, if applicable, constitute the entire, full and complete Agreement between Franchisor, you, your Owner/Operator and your Investors concerning the subject matter hereof and supersede all prior related agreements (both written and oral) between Franchisor, you, your Owner/Operator and your Investors. **There are no other oral or written understandings or agreements between you, your Owner/Operator and your Investors and Franchisor, or oral or written representations by Franchisor, relating to the subject matter of this Agreement, or the relationship contemplated hereunder (any understandings or agreements reached, or any representations made before this Agreement, are superseded by this Agreement).** Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representation made by Franchisor in its most recent franchise disclosure document (including exhibits and amendments) delivered to you or your representative. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by Franchisor and you and executed by their authorized officers or agents in writing.

## **ARTICLE 26. SEVERABILITY AND CONSTRUCTION**

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

**26.2 NO ADDITIONAL RIGHTS OR REMEDIES.** Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or entity other than you, Franchisor, Franchisor's officers, directors and personnel and Franchisor's and your respective successors and assigns as may be contemplated and authorized by Article 15, any rights or remedies under or as a result of this Agreement.

**26.3 CONSTRUCTION.** You and your Owner/Operator and your Investors 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 hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions that 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.

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

2. All references to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually

undertaken by your Owner/Operator and your Investors hereunder, all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by you shall be deemed jointly and severally undertaken by your Owner/Operator and all of your Investors.

3. Unless otherwise agreed to in writing between the parties, the term “**Investor**” as used in this Agreement shall include, collectively or individually, (a) each person or entity who now or hereafter directly or indirectly owns an equity interest in you or who now or hereafter executes this Agreement as an Investor or executes an agreement in which such person or entity agrees to be bound by this Agreement as an Investor, and (b) each such other person or entity that is required by Franchisor as a condition to a Transfer or otherwise pursuant to this Agreement to execute this Agreement as one of your Investors or an agreement by which such person or entity agrees to be bound by this Agreement as an Investor. For purposes of this Agreement, the term “**Investor**” shall also include your Owner/Operator.

4. Each reference in this Agreement to a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing entities interchangeably and to any other entity or organization. Further, each reference to the organizational documents, equity owners, partners, directors, managers, general partners, and officers of a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing interchangeably and to the functional equivalent of the foregoing for any entity or organization.

**26.4 COUNTERPARTS.** This Agreement may be executed in counterparts, and each copy so executed shall be deemed an original.

**26.5 EFFECTIVE DATE.** This Agreement shall not become effective until signed by an authorized representative of Franchisor.

**26.6 ELECTRONIC SIGNATURES.** The counterparts of this Agreement and all ancillary documents executed or delivered in connection with this Agreement may be executed and signed by electronic signature by any of the parties to this Agreement, and delivered by electronic or digital communications to any other party to this Agreement, and the receiving party may rely on the receipt of such document so executed and delivered by electronic or digital communications signed by electronic signature as if the original has been received. For the purposes of this Agreement, electronic signature means, without limitation, an electronic act or acknowledgement (e.g., clicking an "I Accept" or similar button), sound, symbol (digitized signature block), or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

## **ARTICLE 27. APPLICABLE LAW, MEDIATION, ARBITRATION, COURT ACTIONS**

**27.1 MEDIATION.** Subject only to Article 27.3, and to the extent permitted under applicable state law, the parties agree to submit all disputes, controversies, claims, and causes of action between Franchisor and its affiliates and its and their respective shareholders, officers, directors, agents, and/or employees, and you, your Owner/Operator, and each of your Investors and/or employees, shareholders, officers, and directors relating to alleged breaches or failures to perform arising out of or relating to this Agreement (and any attachments or addenda to this Agreement or any provision herein), or the relationship created by this Agreement (collectively, “Disputes”) to non-binding mediation prior to filing any action in court or any in arbitration with respect to the Dispute. The mediation shall be conducted in Collin County, Texas. The parties shall attempt to select a mediator by agreement of the parties so long as the mediator selected is experienced in the mediation of disputes in the franchise and food service businesses. If the parties are unable to agree upon such a mediator within a reasonable period of time (not to exceed fifteen (15) days), then the mediation of any Dispute shall be submitted by either party to the American

Arbitration Association (“AAA”) for resolution in accordance with its rules governing mediation, at the office of the AAA located nearest to Franchisor’s corporate headquarters in Dallas, Collin County, Texas. The costs and expenses of mediation, including compensation and expenses of the mediator, shall be borne by the parties equally. If the parties are unable to resolve the Dispute within ninety (90) days after the mediator has been appointed, then either party may submit such Dispute to binding arbitration in accordance with Article 27.2 below.

**27.2 ARBITRATION.** Subject only to Article 27.1 and 27.3, all Disputes that are not resolved through mediation in accordance with Article 27.1, including all disputes relating to the scope, validity, or enforceability of this Arbitration Agreement and any provision in this Article 27.2, shall be submitted for binding arbitration to the office of the AAA located nearest to Franchisor’s corporate headquarters in Dallas, Collin County, Texas, on demand of either party. Such arbitration proceedings shall be conducted by an arbitrator who is experienced in the arbitration of disputes in the franchise and food service businesses, if such an arbitrator is available, and in accordance with the then-current commercial arbitration rules of the AAA. The arbitrator(s) shall have the right to award or include in their award any relief that they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. Provided, that, to the fullest extent permitted by law, the parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any punitive or exemplary damages, all of which are hereby waived by the parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all parties and adjustment may be taken on the award notwithstanding the termination or expiration of this Agreement. Franchisor and you agree that arbitration shall be conducted on an individual, not a class-wide basis. Franchisor and you agree that any arbitration between Franchisor or its affiliates and you shall not be consolidated with any other arbitration that may be taking place between Franchisor or its affiliate and other party.

**27.3 CERTAIN CLAIMS BY EITHER PARTY.** Notwithstanding anything herein to the contrary and to the extent permitted under applicable state law, either party may bring an action in any court having jurisdiction and without first submitting such action to mediation or arbitration for injunctive relief or other extraordinary relief involving the possession or disposition of, or other relief relating to real property the unauthorized disclosure or use of Proprietary Marks, or intellectual property, any violation of Article 12 or in aid of enforcing the parties’ obligations to arbitrate under Article 27.2 above.

**27.4 ACCEPTANCE OF AGREEMENT IN TEXAS.** You have signed this Agreement and submitted it to Franchisor for acceptance and execution by Franchisor at Franchisor’s corporate headquarters in Dallas, Collin County, Texas. You shall make all payments and perform other obligations arising hereunder at Collin County, Texas, and this Agreement is made and entered into at Collin County, Texas. The provisions of this Article 27.4 shall apply to the fullest extent permitted under applicable state law.

**27.5 GOVERNING LAW AND VENUE.** THIS AGREEMENT IS EXECUTED AND DELIVERED IN CONNECTION WITH A TRANSACTION NEGOTIATED AND CONSUMMATED IN COLLIN COUNTY, TEXAS. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER FEDERAL LAW, THIS AGREEMENT AND ANY AND ALL CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF THIS AGREEMENT OR THE

RELATIONSHIP BETWEEN THE PARTIES (REGARDLESS OF THE FORM OF THE CAUSE OF ACTION ASSERTED OR WHETHER THE DISPUTE IS BETWEEN YOU AND AN AFFILIATE OF FRANCHISOR) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES AGREE THAT, WITH RESPECT TO ANY SUCH CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, ANY SUCH CONTROVERSIES, DISPUTES, OR ACTIONS SHALL BE BROUGHT, MAINTAINED, AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION. YOU, FOR YOURSELF, AND YOUR SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, (B) WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT YOU MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SET FORTH ABOVE; AND, (C) WAIVE ANY OBJECTION YOU MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. YOU HEREBY IRREVOCABLY AGREE THAT SERVICE OF PROCESS MAY BE MADE UPON YOU IN ANY LEGAL PROCEEDING RELATING TO ANY DISPUTE BY ANY MEANS ALLOWED BY TEXAS LAW. You and Franchisor acknowledge that the parties' agreement regarding applicable state law and forum set forth herein provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any Dispute covered herein. You and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit. Notwithstanding the foregoing, (1) the parties acknowledge and agree that either party may institute legal action for injunctive relief in any court of competent jurisdiction as set forth in Article 27.3 above, and (2) certain terms and conditions of this paragraph may be subject to certain state laws as more particularly set forth in those state addenda that are attached to this Agreement as Attachment D.

**27.6 JURY TRIAL WAIVER.** YOU AND FRANCHISOR IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.

**27.7 WAIVER OF PUNITIVE AND EXEMPLARY DAMAGES.** EXCEPT FOR YOUR INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 20.6 AND YOUR OBLIGATION TO PAY LIQUIDATED DAMAGES UNDER ARTICLE 17.1, YOUR FAILURE TO COMPLY WITH YOUR CONFIDENTIALITY AND NON-COMPETITION OBLIGATIONS UNDER ARTICLES 11, 12, AND 18, AND EXCEPT FOR PUNITIVE DAMAGES AVAILABLE TO EITHER PARTY UNDER FEDERAL LAW, THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF COMPENSATORY DAMAGES SUFFERED BY THE PARTY.

**27.8 INDIVIDUAL CAPACITY.** In the event that an action in court is permitted, any legal action commenced by either party shall be brought in an individual capacity, and not on a class-wide basis. ALL PARTIES WAIVE THEIR RIGHTS TO INITIATE A CLASS-ACTION LAWSUIT IN ANY COURT.



**27.9 STATUTE OF LIMITATIONS.** Except where not permitted by law, any claim or cause of action asserted by any party arising out of, or related to, the use of this Agreement or the relationship of the parties must be filed within two (2) years after such claim or cause of action arose or be forever barred when the applicable statute of limitations is greater than 2 years. This provision does not affect or apply to any claim or cause of action where the applicable statute of limitations is less than 2 years

## **ARTICLE 28. ACKNOWLEDGMENTS & WARRANTIES**

**28.1 COMPLETION OF INDEPENDENT INVESTIGATION.** You, your Owner/Operator, and your Investors acknowledge and warrant that you have conducted an independent investigation of the franchised business and recognize that the business venture contemplated by this Agreement involves business risks and that its success will largely depend upon your ability, effort, and resources. Franchisor expressly disclaims making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

**28.2 WARRANTY OF RESPONSES TO FRANCHISEE QUESTIONNAIRE.** You, your Owner/Operator and your Investors represent and warrant that your responses to Franchisor the Franchisee Questionnaire, in the form of Attachment B were truthful and well considered. You, your Owner/Operator, and your Investors further acknowledge that Franchisor relied upon your responses to the Franchisee Questionnaire in agreeing to move forward with this Franchise Agreement. Moreover, if your responses to the Franchisee Questionnaire had been different from your current responses to the Franchisee Questionnaire, Franchisor would not have executed the Franchise Agreement.

**28.3 RECEIPT OF AGREEMENT AND DISCLOSURE DOCUMENT.** You, your Owner/Operator, and your Investors acknowledge that you received from Franchisor a complete copy of its Franchise Disclosure Document at least fourteen (14) calendar days prior to the date on which this Agreement was executed and the date on which you first made any payments to Franchisor or an affiliate in connection with any franchise sale contemplated by this Agreement. You acknowledge that you received a copy of this Agreement and the related attachments and agreements in the form executed by you at least seven (7) calendar days prior to the date on which this Agreement was executed.

**28.4 REVIEW OF AGREEMENT.** You, your Owner/Operator and your Investors acknowledge and warrant that you have read and understood this Agreement and the related attachments and agreements, and that Franchisor has provided you ample time and opportunity to consult with advisors and attorneys of your own choosing about the content of the Agreement and the potential benefits and risks of entering into this Agreement.

**28.5 AUTHORIZATION TO CONDUCT INVESTIGATION.** You, your Owner/Operator, and your Investors acknowledge that, in order to enable Franchisor to evaluate your application to acquire the license and franchise herein granted, you have authorized Franchisor and its agents and representatives to conduct such investigations concerning you and your Owner/Operator and your Investors as Franchisor deems necessary, in its sole discretion, including, without limitation, credit reports and references, financial and personal references, and civil and criminal references.

**28.6 NO FINANCIAL REPRESENTATIONS.** You, your Owner/Operator and your Investors acknowledge and agree that neither Franchisor nor its agents or representatives have made any representations concerning actual or potential sales or profits of a Restaurant.

**28.7** You acknowledge that Franchisor’s rendering of initial or continuing training does not constitute a representation, promise, warranty or guarantee by Franchisor that your Franchised Restaurant operated at that site will be profitable or successful based on Franchisor’s training, and that Franchisor does not guaranty your success as a businessperson. You further acknowledge that your success or failure of your Franchised Restaurant and franchise will depend in large part upon your own skills and abilities regarding running a business and restaurant, your own hard work, the service you provide to your customers, competition, interest rates, the economy, inflation, labor and supply costs, lease terms, real estate, the marketplace, and other events outside the control of either party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year first above written.

**FRANCHISOR:**

VIRTUAL BRANDS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Jeff Gruber, Senior Vice President of Franchise  
Relations

**FRANCHISEE:**

\_\_\_\_\_,  
a/  
an \_\_\_\_\_

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

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

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

**OWNER/OPERATOR:**

[Individual]

By: \_\_\_\_\_  
\_\_\_\_\_, an Individual

**INVESTORS:**

[Individual]

By: \_\_\_\_\_  
\_\_\_\_\_, an Individual

[Individual]

By: \_\_\_\_\_  
\_\_\_\_\_, an Individual

**ATTACHMENT A**

**AUTHORIZATION AGREEMENT FOR  
PREAUTHORIZED PAYMENTS  
(ACH DEBITS)**

COMPANY NAME:		TAX ID NO.
I (we) hereby authorize Virtual Brands, Inc., hereinafter called “ <b>Company</b> ,” to initiate debit entries from my <input type="checkbox"/> Checking <input type="checkbox"/> Savings Account (check one) indicated below, and the depository named below, hereinafter called “ <b>Depository</b> ,” to debit the same to such account		
DEPOSITORY NAME:		BRANCH:
STATE:	STATE:	ZIP CODE:
TRANSIT/ABA NO.	ACCOUNT NUMBER:	
This authority is to remain in full force and effect until Company has received notification from me (or either of us) of its termination in such time and in such manner as to afford Company and Depository a reasonable opportunity to act on it.		
NAME(S):		ID NO.:
SIGNED:		DATE:

**ATTACHMENT B**

**FRANCHISEE QUESTIONNAIRE**

Virtual Brands, Inc., a Texas corporation (“**Franchisor**”) and you are preparing to enter into a Franchise Agreement for the operation of a Wing Boss restaurant (the “**Franchise**”). The purpose of this Questionnaire (herein so called) is to determine whether any statements or promises were made to you, the undersigned Franchisee, that Franchisor has not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions carefully and provide honest responses to each question.

1. Have you received, and personally reviewed Franchisor’s Franchise Disclosure Document (the “**Disclosure Document**”) provided to you?

---

2. Did you sign a receipt for the Disclosure Document indicating the date you received it?

---

3. Do you understand the information contained in the Disclosure Document and Franchise Agreement?

---

4. Have you received and personally reviewed the Franchise Agreement and each exhibit attached to it?

---

5. Do you understand and accept your financial and other obligations under the Franchise Agreement?

---

6. Have you discussed the economic and business risks of owning and operating the Franchise with an independent attorney, accountant or other professional advisor?

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7. Do you understand and accept the economic and business risks associated with operating the Franchise?

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8. Do you understand that the success or failure of the Franchise will depend in large part upon your skills and abilities, the service you provide to your customers, competition, interest rates, the economy, inflation, labor and supply costs, lease terms, real estate and the marketplace?

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9. Do you understand that you must satisfactorily complete Franchisor’s Virtual Brands Training Program before Franchisor will allow your Franchise to open, or otherwise before we will consent to a transfer of your Franchise?

---

10. Do you understand and acknowledge that Franchisor's rendering of initial or continuing training does not constitute a representation, promise, warranty or guarantee by Franchisor that your Franchised Restaurant operated at that site will be profitable or successful based on Franchisor's training, and that Franchisor does not guaranty your success as a businessperson?
- 
11. Do you understand that any disputes arising under the Franchise Agreement are subject to arbitration governed under Texas law, and that you are waiving your right to bring a class-action?
- 
12. Do you understand and agree that no financial performance representation has been made by Franchisor in the Disclosure Document (including with regard to the performance of its franchised outlets or company-owned outlets and the potential performance of your outlet) or outside the Disclosure Document?
- 
13. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else regarding the amount of money you may gross or earn in operating the Franchise?
- 
14. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else concerning the total revenues the Franchise may generate?
- 
15. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else regarding the costs involved in operating the Franchise that are contrary to, or different from, the information contained in the Disclosure Document?
- 
16. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else concerning the actual, average or projected profits or earnings or the likelihood of success that you should or might expect from operating the Franchise?
- 
17. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else, other than those matters addressed in your Franchise Agreement, concerning advertising, marketing, media support, market penetration, training, support service or assistance relating to the Franchise that is contrary to, or different from, the information contained in the Disclosure Document?
- 
18. Has any employee or other person speaking on behalf of Franchisor made any promise or agreement that is contrary to, different from, or in addition to, the matters set forth in the Franchise Agreement?
-

19. If you answered “Yes” to any of the questions 13 through 18, please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below). If you answered “No” to each of the foregoing questions, please leave the following lines blank.

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20. Do you understand that the Franchise Agreement and attachments to the Franchise Agreement contain the entire agreement between us and you concerning the franchise for the Franchised Restaurant, meaning any prior oral or written statements not set out in the Franchise Agreement or the attachments to the Franchise Agreement will not be binding? When considering this question, please note that nothing in the Franchise Agreement or the attachments to the Franchise Agreement will disclaim or require you (the franchisee) to waive reliance on any representation that we made in our most recent franchise disclosure document (including its exhibits and amendments) delivered to you or your representative.

---

You understand that your answers are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

Further, by signing this Questionnaire, you agree that Franchisor has properly provided you with all of the appropriate franchise disclosures and has not made any financial claims or representations to you. You agree to hold harmless and release Franchisor and its affiliates, shareholders, officers, directors, agents, attorneys, successors and assigns from any and all liability in connection with the sale of the franchise to the extent that any statement or representation made herein is determined to be false and misleading and to the extent permitted under applicable law.

The following language applies to franchises to be located in Maryland or to be granted to Maryland residents:

The general release included in this questionnaire shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

The acknowledgements or representations of the franchisee in this questionnaire that disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

[Signature page follows]

**FRANCHISEE:**

\_\_\_\_\_,  
a/an \_\_\_\_\_

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

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

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



**ATTACHMENT C**

**CONSENT AND RELEASE FOR TRAINING**

The undersigned is a franchisee of Virtual Brands, Inc., a Texas corporation (“**Franchisor**”), Owner/Operator of or an Investor in a Wing Boss franchise or a manager of a Wing Boss restaurant operated by a franchisee who is commencing training. As part of such training, the undersigned may visit, inspect, train and work in one or more of the Wing Boss restaurants owned or operated by Franchisor, Dickey’s Barbecue Pit, Inc., a Texas corporation, their affiliates or by one or more Franchisor’s franchisees. As an inducement to cause the owner of such restaurant to permit the undersigned to visit, inspect, train and work in such restaurant, THE UNDERSIGNED HEREBY RELEASES, HOLDS HARMLESS, AND AGREES TO DEFEND & INDEMNIFY VIRTUAL BRANDS, INC., DICKEY’S BARBECUE PIT, INC., THE OWNER(S) OF SUCH RESTAURANT(S), AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “**RELEASED & INDEMNIFIED PARTIES**”), FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, INJURY, DAMAGE, COST AND EXPENSE SUFFERED OR INCURRED BY THE UNDERSIGNED AS A RESULT OF ANY SUCH VISIT, INSPECTION, TRAINING OR WORK. IT IS ACKNOWLEDGED THAT THE FOREGOING RELEASE AND INDEMNITY IS INTENDED TO BE AS BROAD AND COMPREHENSIVE AS PERMITTED BY LAW, AND INCLUDES LIABILITY, COST, DAMAGE, INJURY, COST AND EXPENSE SUFFERED AS A RESULT OR PARTLY AS A RESULT OF ANY NEGLIGENCE, ERROR OR OMISSION BY THE RELEASED & INDEMNIFIED PARTIES. The undersigned further represents that he has independently obtained or is covered by adequate insurance to cover the risk of loss or injury. Some states do not allow the limitations on liability set forth above. Accordingly, not all of the limitations set forth in this section may apply to undersigned.

The following language applies to franchises to be located in Maryland or to be granted to Maryland residents:

The general release included in this consent and release shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME/TITLE (IF APPLICABLE)

**ATTACHMENT D**  
**STATE ADDENDA**

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
ILLINOIS FRANCHISE DISCLOSURE ACT**

This Addendum to the Franchise Agreement by and between VIRTUAL BRANDS, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. Illinois law applies to this Agreement and supersedes any conflicting provision of the Franchise Agreement.

2. Subject to the parties arbitration obligation in Article 27.5 of the Franchise Agreement, all litigation by or between you and us, arising directly or indirectly from the franchise relationship, shall be commenced and maintained, at our election, in the state courts of Illinois or the United States District Court for Illinois with the specific venue, in either court system, determined by appropriate jurisdiction and venue requirements.

3. If any of the provisions of the Franchise Agreement are inconsistent with applicable state law, then the state law shall apply to the extent such law is constitutional and valid as applied.

4. Pursuant to 815 IL 705/41, no release language set forth in Articles 2.2, 9.5, and 15.2 or elsewhere in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the Illinois Franchise Disclosure Act or any other law of the State of Illinois.

5. All other rights, obligations, and provisions of the Franchise Agreement shall remain in full force and effect. Only the Articles specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Franchise Agreement for the State of Illinois.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

This Addendum to the Franchise Agreement by and between VIRTUAL BRANDS, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

1. Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provision shall supersede and apply to all franchises offered and sold under the laws of the State of Maryland:

No release language set forth in Articles 2.2, 9.5, or 15.2 or elsewhere in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Maryland. The acknowledgements or representations of the franchisee made in the Franchise Agreement that disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law. Pursuant to such Maryland Franchise Registration and Disclosure Law, any claim by you under such law must be brought within three years of the grant of the franchise. You may file this action in any Maryland court or Federal court located in Maryland.

2. Notwithstanding anything in Article 4 to the contrary, based upon our financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by you shall be deferred until we complete our pre-opening obligations under the Franchise Agreement.

3. Article 16.1 of the Franchise Agreement provides that the Franchise may automatically terminate upon your bankruptcy. This provision may not be enforceable under Federal bankruptcy law (11 U.S.C. Section 101 et seq.).

4. You may obtain an accounting of our advertising expenditures once each year by, requesting the same in writing within one hundred twenty (120) days after the end of our fiscal year. We will provide the accounting to you as Confidential Information subject to Article 12 of the Franchise Agreement.

5. A franchisee (you) may bring an arbitration action in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

6. Notwithstanding anything to the contrary set forth in Article 27.10 of the Franchise Agreement, any limitation on the period of time arbitration/litigation claims must be brought shall not act to reduce the 3 year statute of limitations afforded a franchisee for bringing a claim arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between VIRTUAL BRANDS, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. The following language is added as Article 27.5 of the Franchise Agreement:

Minnesota Statutes, Section 80C.21 and Minn. Rule 2860.4400(J) prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, injunctive relief, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or this Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

2. Minnesota law provides franchisees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C. 14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the franchise agreement.

3. Pursuant to Minnesota Statutes, Section 80C.12, Subdivision 1(g), the following provision is added as Article 20.5 of the Franchise Agreement:

We will indemnify, defend and hold you harmless, to the fullest extent permitted by law, from and against all losses and expenses incurred by you in any action or claim arising from your proper use of the System alleging that your use of the System and any property we license to you is an infringement of a third party’s rights to any trade secret, patent, copyright, trademark, service mark or trade name. You will promptly notify us in writing when you become aware of any alleged infringement, or an action is filed against you. You will cooperate with our defense and resolution of the claim. We may resolve the matter by obtaining a license of the property for you at our expense, or by requiring that you discontinue using the infringing property or modify your use to avoid infringing the rights of others.

4. No release language set forth in Articles 2.2, 9.5, or 15.2 of the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the state of Minnesota.

5. Liquidated damages and termination penalties are prohibited by law in the state of Minnesota and, therefore, Article 17.1 of the Franchise Agreement is amended by deletion of all references to liquidated damages and termination penalties and the addition of the following language to the original language that appears therein:

Notwithstanding any such termination, and in addition to your other obligations, or in the event of termination or cancellation of the Franchise

Agreement under any of the other provisions therein, you shall be, continue and remain liable to us for any and all damages that we have sustained or may sustain by reason of such default or defaults and the breach of the Franchise Agreement on your part until the end of the term.

At the time of such termination of the Franchise Agreement, you covenant to pay to us within 10 days after demand compensation for all damages, losses, costs and expenses (including reasonable attorney's fees) incurred by us and/or amounts that would otherwise be payable for and during the remainder of the unexpired term of the Franchise Agreement but for such termination. This does not constitute a waiver of your right to a trial on any of the above matters.

6. Pursuant to Minnesota Statutes, Section 80C.17, Subdivision 5, the following is added to the end of Article 27.9 of the Franchise Agreement:

However, Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than three (3) years after the cause of action accrues.

7. All other rights, obligations, and provisions of the Franchise Agreement shall remain in full force and effect. Only the Articles specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Franchise Agreement for the State of Minnesota.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE NEW YORK GENERAL BUSINESS LAW**

This Addendum to the Franchise Agreement by and between VIRTUAL BRANDS, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. Article 17 is amended by adding the following statement immediately after the word “terminate” in the beginning of the Article:

However, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the related regulations shall remain in force; it being the intent of this proviso to satisfy the non-waiver provisions of GBL, Sections 687.4 and 687.5.

2. Article 15.1 is amended by adding the following statement immediately after the first sentence of such Article:

However, no assignment shall be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Agreement.

3. Nothing in Article 16 prevents you from asserting your rights under common law to terminate the Franchise Agreement if we commit a material breach of the Franchise Agreement.

4. Article 27.5 is amended by adding the following statement immediately after the first sentence of such Article:

The foregoing choice of law should not be considered a waiver of any right conferred upon you by the GBL of the State of N.Y., Article 33.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_



**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between VIRTUAL BRANDS, INC. (“we”, “our” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede any conflicting terms in the Franchise Agreement:

1. The Franchise Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Franchise Agreement that designates jurisdiction or venue, or requires the franchisee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from the Franchise Agreement. Any non-competition covenants contained in the Franchise Agreement shall be subject to the North Dakota laws on franchising.

2. Notwithstanding anything in Article 4 to the contrary, based upon our financial condition, the State of North Dakota has required a financial assurance. Therefore, all initial fees and payments owed by you shall be deferred until we complete our pre-opening obligations under the Franchise Agreement and you commence doing business.

3. Liquidated damages are prohibited by law in the State of North Dakota. Article 17.1 of the Franchise Agreement is deleted and replaced with the following:

“If we terminate this Agreement, we shall seek and, to the extent permitted by North Dakota law you may be liable to us for, any and all damages that we have sustained or may sustain by reason of your breach of the Franchise Agreement until the end of the term.”

4. Article 18 of the Franchise Agreement is amended by adding the following at the end of that Article:

“Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota.”

5. No release language set forth in the Franchise Agreement (including but not limited to Articles 2.2, 9.5, and 15.2) shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of North Dakota.

6. Any provisions in the Franchise Agreement (including but not limited to Articles 27.6 and 27.7) that require the franchisee to waive the right to a jury trial or to exemplary or punitive damages are deleted from any Agreements issued in the State of North Dakota.

7. Notwithstanding anything to the contrary contained in Article 27 of the Franchise Agreement, the site of any arbitration or mediation between the parties shall be agreeable to all parties and may not be held at a site which is remote from the franchisee’s principal place of business.

To the extent this Addendum is inconsistent with any terms or conditions of the Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

[Signature Page Follows]

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE VIRGINIA RETAIL FRANCHISING ACT**

This Addendum to the Franchise Agreement by and between VIRTUAL BRANDS, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_.

The following provisions supersede any conflicting provisions in the Franchise Agreement:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act (the “**Virginia Act**”), it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement do not constitute reasonable cause, as that term may be defined in the Virginia Act or the laws of Virginia, that provision may not be enforceable.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT AND RELATED AGREEMENTS  
PURSUANT TO THE WASHINGTON FRANCHISE INVESTMENT PROTECTION ACT**

This Addendum to the Franchise Agreement and Related Agreements by and between VIRTUAL BRANDS, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

In recognition of the requirements by the Washington Franchise Investment Protection Act and the Rules and Regulations promulgated thereunder (the “Act”), the Franchise Agreement of VIRTUAL BRANDS, INC. and related agreements are modified by the language presented below:

Article 28.1 of the Franchise Agreement is revised to read as follows:

**COMPLETION OF INDEPENDENT INVESTIGATION.** You, your Owner/Operator and your Investors acknowledge and warrant that you have conducted an independent investigation of the franchised business and recognize that the business venture contemplated by this Agreement involves business risks and that its success will largely depend upon your ability, effort, and resources.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the Franchise Agreement in your relationship with the us including the areas of termination and renewal of your franchise. There may also be court decisions that may supersede the Franchise Agreement in your relationship with us including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.”

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those that unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the Franchise Agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the Franchise Agreement or elsewhere are void and unenforceable in Washington. IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

In accordance with RCW 19.100.050 and WAC 460-80-400, the Washington State Department of Financial Institutions is requiring a financial assurance condition. Therefore, we have posted a surety bond in the amount of \$100,000 to satisfy the condition. A copy of the surety bond is on file with the Washington State Department of Financial Institutions, Securities Division.

**VIRTUAL BRANDS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ATTACHMENT E**

**LEASE RIDER**

## LEASE RIDER

This Lease Rider is made and entered into as of \_\_\_\_\_, 20\_\_ by and among Virtual Brands, Inc., a Texas corporation (“Franchisor”), \_\_\_\_\_ (“Tenant/Operator”) and \_\_\_\_\_, a \_\_\_\_\_ (“Landlord”).

Recitals. Tenant/Operator and Landlord desire to enter into a lease (the “Lease”) pursuant to which Tenant/Operator will occupy and finish the premises located at \_\_\_\_\_ (the “Premises”) for use and operation of a Wing Boss restaurant (the “Franchised Business”) authorized under a Franchise Agreement to be executed between Franchisor and Tenant/Operator prior to the opening of the Franchised Business (the “Franchise Agreement”). Franchisor conditions its approval of the Premises as the location for Tenant/Operator’s Franchised Business on the execution and delivery of this Lease Rider by Landlord and Tenant/Operator.

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Lease authorizes Tenant/Operator to use the Premises only for the operation of the Franchised Business unless and until the Franchise Agreement terminates or expires without renewal or replacement with a successor agreement between Franchisor and Tenant/Operator.
2. Landlord consents to Tenant/Operator’s use and display of such proprietary marks (the “Proprietary Marks”) and signs, decor items, color schemes, plans, specifications and related components of the Wing Boss restaurant chain (the “System”) as Franchisor has prescribed in the common identity standards/décor plan furnished to Landlord, and may in the future prescribe, for the Franchised Business. Landlord agrees not to unreasonably withhold, delay or condition consent or approval of any future changes to the Premises required by Franchisor to conform to changes in the System and the Proprietary Marks.
3. Landlord agrees to send Franchisor conformed, legible copies of any and all letters and notices sent to Tenant/Operator pertaining to the Lease and the Premises at the same time that such letters and notices are sent to Tenant/Operator.
4. In the event of Tenant/Operator’s default under the Lease, Franchisor may, but has no obligation, to cure the default. Franchisor shall make this determination within thirty (30) days after Franchisor receives notice of the Lease default from Landlord. If Franchisor elects to cure the default, Franchisor shall cure the default within thirty (30) days of such election or, if the default cannot be reasonably cured within such thirty (30) day period, then Franchisor shall commence and proceed to act diligently to cure the default within such time as is reasonably necessary to cure the default.
5. Franchisor shall have the right, and Landlord consents to allow Franchisor, to enter the Premises to make any reasonable modification or alteration necessary to protect the Franchised Business, the System and the Proprietary Marks or to cure any default under the Franchise Agreement, or under the Lease, without civil or criminal liability for such entry and action that would otherwise be a tort or subject Franchisor or its agents or contractors to criminal prosecution.
6. Franchisor has an option but not the obligation to acquire the Franchised Business from Tenant/Operator if the Franchise Agreement expires or terminates or upon termination of the Lease by Landlord. If Franchisor exercises the option, it will notify Landlord when it notifies Tenant/Operator of its decision to exercise the option. Such notice will be sent to Landlord at the address for notices in the Lease no later than thirty (30) days after the option becomes exercisable.

If Franchisor so exercises its option, or makes a different arrangement with Tenant/Operator to acquire the Franchised Business, then Landlord shall permit Tenant/Operator to assign the Lease to Franchisor or to Franchisor's affiliated assignee or designee as successor in interest ("Successor") to Tenant/Operator. Successor shall be obligated to assume Tenant/Operator's obligations under the Lease. Landlord shall not seek to impose or effect any modification of the Lease terms and conditions upon Successor. Successor shall attorn to Landlord under the Lease and Landlord shall attorn to and agree not to disturb the tenancy of Successor. Successor shall also assume Tenant/Operator's occupancy rights, rights under any renewal or purchase options, and the right to sublease the Premises, for the remainder of the term of the Lease including any applicable renewal periods. Any prior payments towards such rights or options made by or for Tenant/Operator shall be credited to the account and benefit of Successor as if Tenant/Operator retained such rights or options.

7. Landlord consents to such assignment to Successor in advance and agrees not to impose or assess any assignment fee or similar charge, increase or accelerate rent, cease any rent abatement, reduction or rebate granted to Tenant/Operator, or demand repayment of improvement costs or advances, under the Lease or any other agreement if and when such assignment occurs, or require Successor to pay any rent or other financial obligation of Tenant/Operator to Landlord arising prior to the assignment. Landlord agrees to look solely to the Tenant/Operator and its guarantors for any rents or other financial obligations owed to Landlord arising prior to such assignment. Landlord and Tenant/Operator acknowledge that neither Franchisor nor Successor is a party to the Lease, and neither shall have any liability under the Lease, unless and until the Lease is assigned to, and assumed by Franchisor or Successor, as applicable
8. Notwithstanding anything contained in this Lease Rider and in the Lease, Successor is expressly authorized, without the consent of the Landlord, to sublet the Leased Premises to an authorized Wing Boss franchisee, provided such subletting is specifically subject to the terms of the Lease and further provided the franchisee expressly assumes in writing all obligations of the Lease. Franchisor agrees to notify Landlord as to the name of the franchisee within ten (10) days after such subletting.
9. Tenant/Operator shall not assign or sublet the Lease or renew or extend the Lease's term without the prior written consent of Franchisor.
10. Landlord and Tenant/Operator shall not amend or otherwise modify the Lease in any manner that could materially affect any of the above requirements without the prior written consent of Franchisor.
11. This Lease Rider will supersede any conflicting terms of the Lease.
12. Landlord acknowledges that any landlord's lien or security interest arising under or from the Lease shall not apply to any movies, scripts, software, operations manuals or other tangible and intangible personal property of Tenant/Operator furnished by Franchisor or any supplier to Tenant/Operator under a use restriction, obligation of confidentiality or under license, and to any signage, printed materials, merchandise or other tangible media, goods, inventory, and supplies bearing any Proprietary Marks. At termination of the Lease, Franchisor shall arrange for recovery and removal of such items as provided in the Franchise Agreement.
13. Notwithstanding any term, condition or covenant of the Lease to the contrary, Landlord covenants with Tenant/Operator that during the Term of the Lease, Landlord will not enter into a lease, rental arrangement, license, usufruct or other agreement for space within the same shopping center as the



Premises with, and will not sell any real property or outparcel adjoining the center or used as part of the center's parking lot to a party for use as, any restaurant serving as its primary menu item focus chicken wings or chicken tenders, whether prepared on or off premises, including without limitation any cuisine that is identified by reference to a country other than the United States. The prohibition shall extend to the granting of permission or consent by acquiescence to the presence of mobile food trucks, carts, stands or other serving vehicles on Landlord's property. This prohibition does not extend to any restaurant that offers chicken wings or chicken tenders that represent no more than 10% of the restaurant's gross sales.

**IN WITNESS WHEREOF**, the parties have executed this Lease Rider as of the date first above written.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.,**  
a Texas corporation

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

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

Title:

**TENANT/OPERATOR:**

\_\_\_\_\_

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

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

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

**LANDLORD:**

\_\_\_\_\_

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

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

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

**ATTACHMENT F**  
**PRIMARY AREA MAP**

**EXHIBIT B**  
**DEVELOPMENT AGREEMENT**

Ex. B

**VIRTUAL BRANDS, INC.**  
**WING BOSS**  
**DEVELOPMENT AGREEMENT – 2021/2022**

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**VIRTUAL BRANDS, INC.  
DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into by and between Virtual Brands, Inc., a Texas corporation (hereinafter referred to as "Franchisor") and the Developer identified below in the Developer Summary as the Developer (hereinafter referred to as "you" or "Developer").

**DEVELOPER SUMMARY**

EFFECTIVE DATE (Date Executed by Franchisor): \_\_\_\_\_

DEVELOPER: \_\_\_\_\_

BUSINESS ENTITY: \_\_\_\_\_ corporation/ \_\_\_\_\_ partnership/ \_\_\_\_\_ individual/ \_\_\_\_\_ limited liability company,

formed under the laws of: \_\_\_\_\_

DEVELOPER'S ADDRESS: \_\_\_\_\_

DEVELOPER'S TELEPHONE: \_\_\_\_\_

DEVELOPER'S FACSIMILE: \_\_\_\_\_

DEVELOPER'S E-MAIL ADDRESS: \_\_\_\_\_

ATTORNEY OR ADVISOR: \_\_\_\_\_

ATTORNEY'S OR ADVISOR'S ADDRESS: \_\_\_\_\_

**RECITALS**

WHEREAS, Franchisor has acquired the right to develop and as a result of the expenditure of time, skill, effort and money has developed, a distinctive system relating to the establishment and operation of different types of restaurants, including traditional restaurants, non-traditional restaurants, delivery-carryout only restaurants and ghost kitchens, all under the mark Wing Boss (collectively, "Restaurants"), which specialize in the sale of chicken wings, chicken tenders and other products (the "System");

WHEREAS, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior design, decor, color scheme and furnishings; special recipes and menu items; uniform standards, specifications and procedures for operations; quality and uniformity of products and services offered; procedures for inventory and management control; training and assistance; and advertising and promotional programs; all of which may be changed, improved and further developed by Franchisor from time to time;

WHEREAS, Franchisor identifies the System by means of certain trade names, service marks, trademarks, symbols, logos, emblems and indicia of origin, including, but not limited to, the mark "Wing Boss" and such other trade names, service marks and trademarks as Franchisor may develop in the future to identify for the public the source of services and products marketed under these marks and under the System and representing the System's high standards of quality, appearance and service (collectively, the "Proprietary Marks"); and

WHEREAS, you wish to obtain the right to develop multiple Restaurants (the "Franchised Restaurants") under the System within the geographic territory described in this Agreement, under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1  
GRANT**

A. Franchisor hereby grants to you and you hereby accept, pursuant to the terms and conditions of this Agreement, the right and obligation to develop Restaurants solely within the geographic area described below (the "Territory"), such development rights to be exercised pursuant to Article 3.A and in accordance with the development schedule in Article 3.B (the "Development Schedule").

The Territory shall consist of the following "Markets:"

- Market One: \_\_\_\_\_
- Market Two: \_\_\_\_\_
- Market Three: \_\_\_\_\_
- Market Four: \_\_\_\_\_
- Market Five: \_\_\_\_\_
- Market Six: \_\_\_\_\_

B. When you sign the last Franchise Agreement (defined below) required to fulfill the obligation for each Market, the Market will be deleted from the Territory and your territorial rights for the Market will be replaced by the Primary Area as defined in each Franchise Agreement in the Market. Once deleted from the Territory, Franchisor may franchise and authorize a franchisee to operate, and our

affiliates may develop, lease, manage and operate, a Restaurant in the deleted Market outside the Primary Area(s) of your Franchise Agreement(s).

C. If you develop a Franchised Restaurant outside of your Territory, then Franchisor will modify the Territory granted to you in Article 1.A by requiring you to release exclusivity to a Market in your Territory.

D. Except as otherwise provided in this Agreement and any Franchise Agreement between you and Franchisor, and subject to your full compliance with this Agreement, Franchisor shall not establish or authorize any other person or entity, other than you, to establish, the same type of Restaurants in the Territory granted to Developer hereunder during the term of this Agreement. Except as expressly provided in this Agreement, Franchisor and its affiliates (and Franchisor's and its affiliates' respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all of Franchisor's rights and discretion with respect to the Proprietary Marks, the System and Restaurants anywhere in the world, and the right to engage in any business whatsoever, including the right to: (a) at any time, advertise and promote the System, or fulfill customer orders (including but not limited to catering and delivery services) in the Territory or to authorize any System franchisee or other authorized person or entity to engage in such actions, and Franchisor may offer and sell (and authorize others to offer and sell) products and services which may be similar to those offered by Restaurants, under the Proprietary Marks, in the Territory, if offered and sold other than through a Restaurant (e.g., product and catalog sales through direct mailings or internet sales, pre-packaged food items through grocery stores or supermarkets, internet sales, or memorabilia or recipes through other retail outlets, and other channels of distribution); (b) with respect to the Franchised Restaurants in the Territory that are traditional full-size Restaurants operating from stand-alone buildings or retail centers ("Traditional Restaurants"), directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Territory if the location of the Restaurant is (i) in a non-traditional venue including a stadium, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino, food truck, gas station, convenience store or similar location, (ii) a delivery-carryout location that only offers delivery or carry-out items, or (iii) a ghost kitchen located in a commissary kitchen or a kitchen of a restaurant that operates under a brand owned by Franchisor, one of its affiliates, or an unrelated third-party that only offers delivery service virtually through third-party delivery vendors Franchisor authorizes and catering services through Franchisor's website (collectively, "Non-Traditional Venue Restaurants"); (c) with respect to the Franchised Restaurants in the Territory that are Non-Traditional Venues Restaurants, directly or indirectly, operate, license or grant a franchise to operate Traditional Restaurants within the Territory; (d) operate, and grant to others the right to operate Restaurants outside the Territory at such locations and on such terms and conditions as Franchisor deems appropriate; (e) offer and sell (and may authorize others to offer and sell) any products or services under the Proprietary Marks or under any other trademarks, service marks or trade dress, which may be similar to those offered by Restaurants, through alternative channels of distribution, including without limitation, the internet or similar electronic media and supermarkets; (f) operate, and grant to others the right to operate, restaurants that offer and sell products and services which may be identical or similar to, or different from, those offered by Restaurants, and are identified by trademarks, service marks or trade dress other than the Proprietary Marks, pursuant to such terms and conditions as Franchisor deems appropriate; and (g) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Restaurants, or by another business, even if such business operates, franchises and/or licenses businesses similar to or competitive with the Franchised Restaurants in the Territory.



E. This Agreement is not a franchise agreement and does not grant to you any right or franchise to operate a Restaurant or any right to use or any interest in the Proprietary Marks or the System.

## **ARTICLE 2 DEVELOPMENT FEE**

A. In consideration for the development rights granted to you herein and the rights granted to you under separate Franchise Agreements, you shall pay to Franchisor, upon execution of this Agreement, a non-refundable development fee ("Development Fee") equal to the amount of the applicable initial franchise fee due for the first Franchised Restaurant you develop (i.e. \$20,000 for a Traditional Restaurant or \$15,000 for a Non-Traditional Venue Restaurant) plus \$15,000 for each additional Traditional Restaurant you agree to develop and \$10,000 for each additional Non-Traditional Venue Restaurant you agree to develop in a lump sum when you sign this Agreement. Franchisor applies the Development Fee to the initial franchise fee for each Franchised Restaurant opened under this Agreement when you sign the then current Franchise Agreement for such Franchised Restaurants. If you develop a Traditional Restaurant, you are eligible to receive a \$5,000 discount on the Franchise Fee due for the second and subsequent Traditional Restaurants you develop under this Agreement so long as you timely develop and open your Franchised Restaurants and comply with the other terms of this Agreement. If not, the standard Franchise Fee of \$20,000 applies to each Traditional Restaurant you develop and you must pay the balance of the Franchise Fee to Franchisor in a lump sum after the deposit is applied when you sign the then current Franchise Agreement. Pursuant to the Development Schedule set forth in Article 3.B, the total Development Fee is \$\_\_\_\_\_. The Development Fee and all franchise fees shall be nonrefundable.

## **ARTICLE 3 SCHEDULE AND MANNER FOR EXERCISING DEVELOPMENT RIGHTS**

A. You shall exercise the development rights granted hereunder only by entering into a separate franchise agreement ("Franchise Agreement") with Franchisor for each Franchised Restaurant for which a development right is granted. At the time of execution of this Agreement, you shall also execute and deliver a Franchise Agreement in the form attached as Attachment A for the first Franchised Restaurant to be developed hereunder. You shall additionally execute the form of Franchise Agreement then being used by Franchisor for new franchisees operating under the System, with respect to each subsequent Franchised Restaurant developed hereunder, as provided in the table in Article 3.A.1 below. These subsequent forms of Franchise Agreements may contain terms and conditions, including monetary obligations, which differ materially from the form of Franchise Agreement attached hereto, and shall also be included in the term "Franchise Agreements," as used herein. Notwithstanding anything herein to the contrary, the terms of each Franchise Agreement you enter into for each Franchised Restaurant to be developed under this Agreement shall control as against any terms granted by this Agreement, unless otherwise specified in writing. In particular, the Development Schedule below in Article 3.A.1 only applies as to the development of each Franchised Restaurant. The Franchised Restaurants must commence business in accordance with the commencement obligations set forth in Article 7.10 in each respective Franchise Agreement, unless otherwise specified in writing.

1. Acknowledging that time is of the essence, you agree to exercise your development rights hereunder and according to the Development Schedule (herein so called) below, which schedule designates the number of Franchised Restaurants in the Territory to be established and in operation by you upon the expiration of each of the designated development periods (the "Development Periods"):

<b>Commencement Date of Development Period (Date of Execution of Applicable Franchise Agreement)</b>	<b>Expiration Date of Development Period (Required Franchised Restaurant Opening Date)<sup>1</sup></b>	<b>Cumulative Total Number of Franchised Restaurants Located in the Territory Which Developer Shall Have Open and in Operation</b>
Effective Date	Twelve Months After Effective Date	One
Twelve Months After Effective Date	Twenty-Four Months After Effective Date	Two
Twenty-Four Months After Effective Date	Thirty-Six Months After Effective Date	Three
Thirty-Six Months After Effective Date	Forty-Four Months After Effective Date	Four
Forty-Four Months After Effective Date	Fifty-Two Months After Effective Date	Five
Fifty-Two Months After Effective Date	Sixty Months After Effective Date	Six

During any of the Development Periods set forth above, subject to the terms and conditions of this Agreement, you may develop more than the total minimum number of Franchised Restaurants, which you are required to develop during that Development Period. Any Franchised Restaurants developed during a Development Period in excess of the minimum number of Franchised Restaurants required to be developed upon expiration of that Development Period shall be applied to satisfy your development obligation during the next succeeding Development Period, if any. Notwithstanding the above, you are not authorized to operate within the Territory more than the cumulative total number of Franchised Restaurants you are obligated to develop under this Agreement as set forth above in the Development Schedule without the prior written approval of Franchisor.

2. If during the term of this Agreement, you cease to operate any Franchised Restaurant developed under this Agreement, you shall develop a replacement Franchised Restaurant to fulfill your obligation to have open and in operation the required number of Franchised Restaurants upon the expiration of each Development Period. The replacement Franchised Restaurant shall be developed within a reasonable time to be agreed upon by the parties after you cease to operate the Franchised Restaurant to be replaced. If you transfer your interest in a Franchised Restaurant developed under this Agreement in accordance with the terms of its Franchise Agreement during the term of this Agreement, the transferred Franchised Restaurant shall continue to be counted in determining whether you have complied with the Development Schedule so long as (i) the transferee and its guarantors have signed and delivered a Franchise Agreement, all related documents and a Guaranty, (ii) all fees due and payable in

<sup>1</sup> This schedule is illustrative as Franchisor reserves the right to offer a schedule that requires a different number of Franchised Restaurants, prioritizes certain Markets for earlier or late development, or has different Development Period time frames.

connection with the transfer are timely paid, (iii) the Franchised Restaurant continues to be operated as a Restaurant, and (iv) the transferee is in good standing and not in default under its Franchise Agreement. If these conditions are not met during the term of this Agreement, Franchisor will notify you that you must develop a replacement Franchised Restaurant within a reasonable time to be agreed upon by the parties in order to satisfy your obligations hereunder. In either case (closure or transfer and the transferee's failure to maintain good standing), the reasonable time period shall, subject to Franchisor's consent, extend the term of the applicable Development Period to the end of the mutually agreed upon time period; provided, however, that in no event shall such time period or extension exceed six (6) months from the end of the applicable Development Period.

3. At the end of each Development Period, you shall provide Franchisor with written notice of the projected opening date of each Franchised Restaurant required to be developed during the next Development Period.

4. Failure by you to adhere to the Development Schedule or to any time period for the development of replacement Franchised Restaurants as set forth in Article 3.A.2 shall constitute an event of default under this Agreement.

#### **ARTICLE 4 TERM**

Unless sooner terminated in accordance with this Agreement, the term of this Agreement and all rights granted by Franchisor under this Agreement shall expire on the last day of the last Development Period specified in Article 3 on the Development Schedule. The term will be extended by Franchisor for a reasonable additional time period equal to any extension of time granted under Article 3.A.2 for the last Development Period. Following termination of this Agreement, Franchisor shall have the right to establish and operate, or license others to establish and operate, additional Restaurants in the Territory so long as the locations of such Restaurants do not infringe upon the protected territory of your Franchised Restaurants as set forth in the Franchise Agreements relating to your Franchised Restaurants.

#### **ARTICLE 5 YOUR DUTIES**

You make the following representations, warranties and covenants and accept the following obligations:

- A. You shall comply with all terms and conditions set forth in this Agreement.
- B. 1. If you are a corporation, limited liability company, partnership or any other entity, you represent, warrant and covenant that:
  - a. You are duly organized and validly existing under the state law of its formation;
  - b. You are duly qualified and are authorized to do business in each jurisdiction in which your business activities or the nature of the properties owned by you require such qualification;
  - c. Your organizational documents shall at all times provide that your activities are limited to the development and operation of the Franchised Restaurants;

d. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on behalf of you and the holders of ownership interests in you, and by all persons and entities which directly or indirectly control or manage your business and affairs (collectively, the "Management Group"), and such actions do not and will not violate, breach or constitute a default under any agreement, judgment, order, law, rule or regulation to which any of the foregoing is a party or by which bound;

e. If you are a corporation, limited liability company, partnership or any other entity, copies of your organizational documents, other governing documents, and any and all amendments thereto shall be furnished to Franchisor prior to the execution of this Agreement, including evidence of the consent and approval of the entry into and performance of this Agreement by the requisite number or percentage of your owners and other persons governing or managing your business and affairs (in a form substantially similar to the Consent of Developer's Investors attached hereto as Schedule 1), if any such approval or consent is required by your organizational documents or other governing documents; and copies of each of the foregoing for each of the Management Group;

f. If you are a corporation, limited liability company, partnership or any other entity, the ownership interests in you and each of the Management Group are accurately and completely described in Attachment B. Further, if you are a corporation, limited liability company, partnership or any other entity, you shall at all times maintain a current list of all of the owners of a direct or indirect ownership interest in you and the Management Group. You shall make your list of owners available to Franchisor upon request;

g. If there should be a change in any owner of your direct or indirect ownership interest which results in such owner directly or indirectly holding twenty percent (20%) or more of your outstanding ownership interest or any change in the ownership or composition of the Management Group, you shall notify Franchisor in writing prior to any such change and otherwise comply with the terms and conditions of Article 6, and you shall cause each such person or entity to execute this Agreement as one of your Investors (as defined in Article 26.3.3) and be individually bound by all of your obligations hereunder;

h. If you have or at any time shall issue any certificate evidencing any ownership interest in you, you shall have conspicuously noted upon such certificate a statement in form satisfactory to Franchisor that it is held subject to all restrictions on Transfers imposed by this Agreement. In addition, you shall maintain on your records instructions against the Transfer of any of your ownership interest which are prohibited under this Agreement without Franchisor's prior written consent, and your organizational documents shall also provide that all ownership interests in you are subject to all restrictions on Transfers imposed by this Agreement;

i. You and, at Franchisor's request, each of your Investors have provided Franchisor with their most recent financial statements. Such financial statements present fairly the financial position of you and each of your Investors, as applicable, at the dates indicated therein and with respect to you, the results of your operations and your cash flow for the years then ended. You agree that you shall maintain at all times, during the

term of this Agreement, sufficient working capital to fulfill your obligations under this Agreement. Each of the financial statements mentioned above has been prepared in conformity with generally accepted accounting principles applicable to the respective periods involved and, except as expressly described in the applicable notes, applied on a consistent basis. No material liabilities, adverse claims, commitments or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise, which are not reflected as liabilities on the financial statements of you or such Investors.

j. You and your Investors acknowledge and agree that the representations, warranties and covenants set forth above in Article 5.B.1 are continuing obligations of you and that any failure to comply with such representations, warranties and covenants shall constitute an event of default under this Agreement, you agree that you will cooperate with Franchisor in any efforts made by Franchisor to verify compliance with such representations, warranties and covenants.

2. Upon the execution of this Agreement, you shall designate and retain an individual to serve as the Owner/Operator of you (the "Owner/Operator"). The Owner/Operator shall satisfy the following qualifications, unless waived in writing by Franchisor:

a. If you are an individual, you shall perform all obligations of the Owner/Operator.

b. If you are a corporation, limited liability company, limited partnership, or any other entity, the Owner/Operator shall, at all times during which he or she serves as Owner/Operator, (i) directly or indirectly hold an ownership interest in you, (ii) be fully authorized, directed and entitled (including, under the governing documents of you and the Management Group, and under any agreements and/or duly adopted resolutions by the shareholders, directors, officers, members, managers, and/or any other owner or governing body of you and each of the Management Group) to manage and control the day-to-day business affairs of you and to take any action which you are required to take or omit to take under this Agreement, all in such Owner/Operator's sole discretion, and without the approval or joinder of any person or entity.

c. Except as otherwise provided in this Agreement, the Owner/Operator's interest in you shall be and shall remain free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, voting agreement, proxy, security interest or purchase right or options.

The Owner/Operator shall, during the entire period he or she serves as such, devote full time and best efforts to the supervision and performance of the development activities contemplated under this Agreement, shall execute this Agreement as one of your Investors, shall be individually, jointly and severally bound by all obligations of you and your Investors hereunder, and shall be authorized to represent you and enter into agreements and undertakings on your behalf. You represent and warrant that, as of the date of this Agreement, each undersigned person executing this Agreement as an Owner/Operator has been designated by as an Owner/Operator, and each such person meets all of the qualifications set forth in this Agreement for an Owner/Operator. You shall not cause or permit a change in any Owner/Operator without Franchisor's prior written consent.

3. If you execute a Development Agreement for three (3) or more Franchised Restaurants, notwithstanding anything contained herein which may be to the contrary, you may designate multiple Owner/Operators.

4. You understand that compliance by all developers and franchisees operating under the System with Franchisor's training, development and operational requirements is an essential and material element of the System and that Franchisor and developers and franchisees operating under the System consequently expend substantial time, effort and expense in training management personnel for the development and operation of their respective Restaurants.

5. You and each of your Investors shall not, during the term of this Agreement and thereafter, communicate or divulge to, or use for the benefit of, another person, persons, partnership, association, corporation or other entity any confidential information, knowledge or know-how concerning the methods of development and operation of the Franchised Restaurants which may be communicated to you or any of your Investors or of which they may be apprised under this Agreement. You and each of your Investors shall disclose such confidential information only to your Investors and your personnel who must have access to it in connection with their employment with you. Any and all information, knowledge, know-how, techniques and any materials used in or related to the System which Franchisor communicates to you or your Investors shall be deemed confidential for the purposes of this Agreement. Neither you nor your Investors shall at any time, without Franchisor's prior written consent, dissolve, disseminate, copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenants in this Article 5.B.5 shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be perpetually binding upon you and each of your Investors.

a. Your Owner/Operator and each of your Investors are hereby bound and personally obligated to comply with the foregoing covenant.

b. You and your Investors acknowledge that any failure to comply with the requirements of this Article 5.B.5 shall constitute an event of default under this Agreement and will cause Franchisor irreparable injury. Therefore, you and your Investors agree to pay all court costs and reasonable legal fees incurred by Franchisor in obtaining specific performance, injunctive relief or any other remedy available to Franchisor for any violation of the requirements of such article.

6. You shall comply with all requirements of federal, state and local laws, rules and regulations.

## **ARTICLE 6 DEFAULT, TRANSFER AND TERMINATION**

A. You shall be deemed to be in default under this Agreement and all rights granted herein shall automatically terminate without notice to you: (1) if you become insolvent or make a general assignment for the benefit of creditors or file a voluntary petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state or admit in writing your inability to pay your debts when due; or (2) if you are adjudicated bankrupt or insolvent in proceedings filed against you under any section or chapter of federal bankruptcy law or any similar law or statute of the United States or any state, without further possibility of appeal or review; or (3) if a bill in equity or other proceeding for the appointment of a receiver of you or other custodian for your business or assets is filed and consented to by you, or if a receiver or other custodian permanent or temporarily of

your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or (4) if proceedings for a composition with creditors under any state or federal law are instituted by or against you; or (5) if a final judgment against you remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or (6) if you are dissolved; or (7) if execution is levied against your business or property; or (8) if suit to foreclose any lien or mortgage against the premises or equipment of such business operated hereunder or under any Franchise Agreement is instituted and not dismissed within thirty (30) days; or (9) if the real or personal property of any business operated hereunder or under any Franchise Agreement shall be sold after levy by any sheriff, marshal or constable.

B. You shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording you any opportunity to cure the default except as provided below, effective immediately upon written notice to you, upon the occurrence of any of the following events of default:

1. If you fail to timely comply with the Development Schedule, timely execute Franchise Agreements and pay franchise fees, timely open the Franchised Restaurants, or timely open replacement Franchised Restaurants in accordance with Article 3 hereof (and time is hereby stipulated to be of the essence);

2. If you or any of your Investors is convicted of, or shall have entered a plea of nolo contendere to, a felony, a crime involving moral turpitude or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith or Franchisor's interest therein;

3. If a threat or danger to public health or safety results from the construction, maintenance or operation of any Franchised Restaurant developed under this Agreement;

4. If you fail to designate a qualified replacement Owner/Operator within thirty (30) days after any initial or successor Owner/Operator ceases to serve as such, all as required under Article 5.B.2;

5. If you or any of your Investors breach or fail to perform any of the representations, warranties and covenants in Article 5;

6. Any Transfer in violation of Article 7;

7. If you or any of your Investors fail to comply with the covenants in Article 5.B.5 or 8.B or if you fail to obtain the execution of the covenants required under Article 5.B.5.a or Article 8.H within thirty (30) days following Franchisor's request that you obtain the execution of such covenants;

8. If an approved transfer upon death or permanent disability is not affected within the time period and in the manner prescribed by Article 7.E;

9. If you misuse or make any unauthorized use of the Proprietary Marks or otherwise materially impair the goodwill associated therewith or with the System or Franchisor's rights therein and do not cure such default within twenty-four (24) hours following notice from Franchisor;

10. If you fail, refuse or neglect promptly to pay when due any monetary obligation owing to Franchisor or its subsidiaries or affiliates under this Agreement, any Franchise Agreement or any other agreement between you and Franchisor or its subsidiaries or affiliates,

other than those monetary obligations described in Article 6.B.1, and do not cure such default within seven (7) days following notice from Franchisor;

11. Any default occurs under a Franchise Agreement or any other agreement you have with Franchisor or its subsidiaries or affiliates and such default is not cured within any applicable grace or cure period expressly provided for therein;

12. You, your Owner/Operator or any of your investors engage in any dishonest, unethical or other conduct which, in Franchisor's opinion, adversely affects the reputation of Restaurants or the goodwill associated with the Proprietary Marks;

13. You, your Owner/Operator, any of your investors, representatives or employees make any illicit statements, including any social media posts or any other unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, gambling-related, drug-related, alcohol-related, profane, racist, sexually explicit or indecent comments that in Franchisor's opinion negatively affects Franchisor, its employees, its operations or otherwise affects your Franchised Restaurants' reputation or the goodwill associated with the Proprietary Marks; or

14. If you repeatedly commit an event of default under this Agreement, whether or not such defaults have been cured by you after notice by Franchisor.

C. Except as provided above in Article 6.B, you shall be in default hereunder if you or any of your subsidiaries or affiliates fail to comply with any other term or condition imposed by this Agreement or any other development or other agreement between you or any of your affiliates and Franchisor, as such may from time to time be amended. In such event, and to the extent permitted under applicable state law, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to you at least thirty (30) days prior to the effective date of termination (or, in the case of a breach under any other development agreement or other agreement between you or any of your subsidiaries or affiliates and Franchisor, such other period of time expressly provided therein for the cure of such breach after notice thereof, if any) (the "Cure Period"); provided, however, that you may avoid termination by immediately initiating a remedy to cure such default and curing it to Franchisor's satisfaction within the Cure Period and by promptly providing proof thereof to Franchisor. If any such default is not cured within the Cure Period, or such longer period as applicable law may require, this Agreement shall, subject to Article 6.D, terminate without further notice to you effective immediately upon the expiration of the Cure Period or such longer period as applicable law may require.

D. Upon a default under Article 6.B or Article 6.C, and to the extent permitted under applicable state law, Franchisor has the option, in its sole discretion, in addition to or in lieu of exercising its option to terminate this Agreement as provided in Article 6.B and Article 6.C, to do any one or more of the following:

1. Terminate or modify any territorial rights granted to you in Article 1.C;
2. Reduce the area of such territorial rights;
3. Reduce the number of Franchised Restaurants which you may establish pursuant to Articles 1 and 3.B.1; or
4. Accelerate the Development Schedule; or
5. Increase the amount of the Subsequent Franchise Fee to \$20,000.



E. 1. Upon the termination or expiration of this Agreement, you shall have no further right to establish or operate any Franchised Restaurant for which a Franchise Agreement has not been executed by Franchisor and delivered to you at the time of termination or expiration.

2. If, as a result of your default, Franchisor does not elect to terminate this Agreement but instead elects to modify such territorial rights or modify your Development Schedule, you shall continue to perform your duties and obligations hereunder and develop Franchised Restaurants in accordance with the Development Schedule as modified by Franchisor.

3. If Franchisor exercises any of its rights in Article 6.D, or if this Agreement otherwise expires or terminates, Franchisor shall be entitled to establish, and to license or permit others to establish, restaurants, or conduct any other activity, in the Territory or in the portion thereof no longer a part of the Territory or pursuant to any other modification of your territorial rights, except as may be otherwise provided under any Franchise Agreement which is then in effect between Franchisor and you.

F. Franchisor's exercise of any of its lesser options under Article 6.D shall not, in the event of a default, constitute a waiver by Franchisor to exercise its option to terminate this Agreement at any time with respect to a subsequent event of default of a similar or different nature to the extent permitted under applicable state law.

G. No default under this Agreement shall constitute a default under any Franchise Agreement between the parties hereto, unless the default is also a default under the terms of such Franchise Agreement.

H. No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or in equity.

I. Upon termination or expiration of this Agreement regardless of the cause of such termination, you and your Investors shall comply with the restrictions on confidential information contained in Article 5.B.5 and the covenants against competition contained in Article 8.B.2. Any other person required to execute similar covenants pursuant to Articles 5.B.5.a or 8.H shall also comply with such covenants.

## **ARTICLE 7 TRANSFER OF INTEREST**

### **A. Transfer by Franchisor**

Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations herein to any person or legal entity without your consent. Specifically, and without limitation to the foregoing, you expressly affirm and agree that Franchisor may sell its assets, the Proprietary Marks or the System to a third party; may merge, acquire other entities, or be acquired by another entity or person; may undertake a refinancing recapitalization, leveraged buyout or other economic or financial restructuring, and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claim, demand or damage arising from or related to the loss of the right to develop Restaurants under the System against Franchisor under this Agreement. Nothing contained in this Agreement shall require Franchisor to remain in the business of operating or licensing the operation of Restaurants or other restaurants or to offer any services or products, whether or not bearing the Proprietary Marks, to you, if Franchisor exercises its rights hereunder to assign its rights in this Agreement.

B. Transfer by you

Except as prohibited under applicable state law:

1. You and your Investors understand and acknowledge that the rights and duties set forth in this Agreement are personal to you and that Franchisor has granted this franchise in reliance on the business skill, financial capacity and personal character of you and your Investors. Accordingly, neither you nor any Investor may Transfer any direct or indirect ownership interest in you, this Agreement or the franchised business, without Franchisor's prior written consent. In addition, neither you nor any permitted successor or assign to any part of your interest in this Agreement or the franchised business, nor any person or entity which directly or indirectly has or owns any interest in this Agreement, in the franchised business or in you, shall cause or permit a Transfer of a Controlling Interest (as hereinafter defined) without the prior written consent of Franchisor; provided, however, that Franchisor prior written consent shall not be required for a Transfer of less than a one percent (1%) interest in a Publicly-Held Corporation. Within five (5) days of the completion of each Transfer of any ownership interest in you or any of the Management Group, you shall provide to Franchisor written notice of the completion of the Transfer and fully executed copies of all documents evidencing the Transfer and any and all amendments to the organizational documents of the applicable entity in connection with the Transfer. For purposes of this Agreement, a "Transfer of a Controlling Interest" shall mean: (i) a Transfer, directly or indirectly, individually or cumulatively, of more than fifty (50%) of the ownership interest in you or any of the Management Group; or (ii) a Transfer of any ownership interest, which, directly or indirectly, individually or cumulatively, results in or may result in the change or removal of, or addition to, (a) any of the Management Group, or (b) the Owner/Operator. For purposes of this Agreement, a "Publicly-Held Corporation" is a corporation whose securities are registered under Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of the Securities Exchange Act, as amended. For purposes of this Agreement, "Transfer" means any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise. Any purported Transfer, by operation of law or otherwise, not having the written consent of Franchisor required by this Article 7 shall be null and void and shall constitute an event of default under this Agreement.

2. Franchisor shall not unreasonably withhold its consent to a Transfer so long as the Transfer has not been completed prior to Franchisor's receipt of notice thereof; however, Franchisor may, in its sole discretion, require any or all of the following as conditions of its approval to any such Transfer requiring Franchisor's prior written consent:

a. All accrued monetary and other outstanding obligations to Franchisor and its subsidiaries and affiliates arising under this Agreement or any Franchise Agreement or other agreement between you or any of your subsidiaries or affiliates and Franchisor or its subsidiaries or affiliates shall have been satisfied in a timely manner, and you and your subsidiaries and affiliates shall have satisfied all trade accounts and other debts, of whatever nature or kind, in a timely manner;

b. You are not in default of any provision of this Agreement nor is there any default under any Franchise Agreement or any other agreement between you or your subsidiaries or affiliates and Franchisor or its subsidiaries or affiliates;

c. Unless otherwise prohibited by applicable law, the transferor and its Investors, as applicable, shall have executed a general release, in a form prescribed by Franchisor, of any and all claims of transferor, of whatever nature or kind, against Franchisor and its subsidiaries and affiliates and their respective officers, directors, shareholders, partners, employees, servants, representatives and agents, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement, any Franchise Agreement and any other agreement between you or your subsidiaries or affiliates and Franchisor or its subsidiaries or affiliates and federal, state and local laws, rules and ordinances;

d. The transferee shall enter into a written agreement, in a form prescribed by Franchisor, assuming full, unconditional joint and several liability for and agreeing to perform from the date of the Transfer, all obligations, covenants and agreements of you in this Agreement; and if transferee is a corporation, partnership, limited liability company or other entity, the transferee's shareholders, partners, members or other owners, as applicable, shall also execute such agreement as Investors of the transferee, including a guaranty of your obligations contained in this Agreement.

e. The transferee shall demonstrate to Franchisor's satisfaction that transferee meets the criteria considered by Franchisor when reviewing a prospective developer's application for development rights, including Franchisor's educational, managerial and business standards, transferee's good moral character, business reputation and credit rating, transferee's aptitude and ability to conduct the business contemplated hereunder (as may be evidenced by prior related business experience or otherwise), transferee's financial resources and capital, and the geographic proximity of other territories with respect to which transferee has been granted development rights or of other Restaurants operated by transferee, if any;

f. Unless prohibited by applicable law, the transferee shall execute the standard form development agreement then being offered to new System developers or a revised form of this Agreement, as Franchisor deems appropriate, and such other ancillary agreements as Franchisor may require, which agreements shall supersede this Agreement and its ancillary documents in all respects and the terms of which agreements may differ from the terms of this Agreement (except that the Development Schedule and the Development Periods will not change), and if the transferee is a corporation, a limited liability company, partnership or other entity, transferee's shareholders, members, partners or other owners, as applicable, shall also execute such agreements as Investors of the transferee, including a guaranty of your obligations contained in this Agreement;

g. You or the transferee shall pay a transfer fee of \$15,000.00 or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the application to Transfer, including, without limitation, legal and accounting fees;

h. If transferee is a corporation, limited liability company, partnership or any other entity, transferee shall make and will be bound by any or all of the representations, warranties and covenants in Article 5.B.1 as Franchisor requests. Transferee shall provide to Franchisor evidence satisfactory to Franchisor that the terms of Article 5.B.1 have been satisfied and are true and correct on the date of Transfer. The transferor shall remain liable for all of the obligations to Franchisor in connection with

this Agreement incurred prior to, the effective date of the transfer and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability.

i. Prior to the Transfer, you shall deliver to Franchisor for review and approval copies of all documents which will evidence the Transfer and, if applicable, any and all amendments to the organizational documents of the applicable entity to be executed in connection with the Transfer.

3. You acknowledge and agree that each condition, which must be met by the transferee, is reasonable and necessary to ensure the transferee's full performance of the obligations hereunder.

#### C. Transfer for Convenience of Ownership

If a proposed Transfer is to a corporation, partnership, limited liability company or other entity formed solely for the convenience of ownership, to the extent permitted under applicable state law, Franchisor's consent may be conditioned upon any of the requirements in Article 7.B, except that the requirements in Articles 7.B.2.c, e, f and g shall not apply. In such event, you shall be the owner of all the outstanding ownership interests in the entity, and if you are more than one (1) individual, each individual shall have the same proportionate ownership interest in the entity as such individual had prior to the Transfer.

#### D. Right of First Refusal

1. You or any person holding a direct or indirect interest in you (including any interest to be transferred pursuant to Article 7.E) or in this Agreement and who desires to accept any bona fide offer from a third party to purchase your interests hereunder or any interest in you shall promptly notify Franchisor in writing of each such offer and shall provide such information and documents relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within sixty (60) days after receipt of such written notification, to send written notice that Franchisor intends to purchase the transferor's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the transferor's interest, closing on such purchase must occur within thirty (30) days from the date of Franchisor's notice electing to purchase, or such other date as may be agreed upon. Any material change in the terms of any third party offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Article 7.D shall not constitute a waiver of any other provision of this Agreement, including all provisions relating to a proposed Transfer.

2. If the offer from a third party provides for payment of consideration other than cash or involves certain intangible benefits, Franchisor may elect to purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on such amount, an independent appraiser shall be designated by each party to determine such amount. In the event that such appraisers shall agree on such amount, the determination shall be final and binding. In the event that such appraisers fail to agree within thirty (30) days, a third independent appraiser shall be designated by such appraisers, and the determination by a majority of appraisers shall be binding. Each party shall bear the costs and expenses of the appraiser appointment by such party, and the parties shall share equally the costs and expenses of the third appraiser.

3. If Franchisor elects to exercise the option described in this Article 7.D, it shall have the right to set off the cost of the appraisal described in Article 7.D.2 above, if any against any payment made hereunder.

4. Failure to comply with the provisions of this Article 7.D prior to the transfer of any direct or indirect interest in you or this Agreement shall constitute an event of default under this Agreement.

E. Transfer Upon Death or Permanent Disability

Except as prohibited under applicable state law:

1. Upon the death of any person with a direct or indirect interest in this Agreement or in you (the "Deceased"), the executor, administrator or other personal representative of the Deceased shall transfer such interest to a third party, provided that any such transfer shall be subject to the terms, conditions and restrictions regarding Transfers set forth in Article 7.B and the right of first refusal set forth in Article 7.D. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the estate of the Deceased, then the transfer of such interest to the distributee of such interest shall be subject to the terms, conditions and restrictions regarding Transfers set forth in Article 7.B. If the distributee is not approved by Franchisor, then the distributee shall transfer such interest to a third party approved by Franchisor within twelve (12) months after the death of the Deceased, subject to the terms and conditions set forth in Article 7.B and the right of first refusal set forth in Article 7.D.

2. Upon the permanent disability of any person with a direct or indirect interest in this Agreement or in you, if Franchisor determines Franchisor may, in its sole discretion, require such interest to be transferred to a third party approved by Franchisor within six (6) months after notice to you, subject to the right of first refusal set forth in Article 7.D. "Permanent disability" shall mean any physical, emotional or mental injury, illness or incapacity which would prevent a person from performing the obligations set forth in this Agreement for at least ninety (90) consecutive days and from which condition recovery within ninety (90) days on the date of determination of disability is unlikely. Permanent disability shall be determined by two (2) licensed practicing physicians. One (1) licensed practicing physician shall be selected by Franchisor, while a second licensed practicing physician shall be selected by you. If these two (2) licensed practicing physicians cannot agree on whether a permanent disability exists, they shall appoint a third licensed practicing physician whose expert opinion shall be controlling. The costs of any examination required by this Article shall be paid by Franchisor.

3. Upon the death or claim of permanent disability of any person with a direct or indirect interest in this Agreement or in you, you must promptly notify Franchisor of such death or claim of permanent disability. Except as otherwise provided in this Article 7.E, any transfer upon death or permanent disability shall be subject to the same terms and conditions described in this Article 7.B.2, except that the requirements of Articles 7.B.2.c, f and g shall not apply. If an interest is not transferred upon death or permanent disability as required in this Article 7.E, you shall be in default under this Agreement.

F. Non-Waiver of Claims

Franchisor's consent to a transfer of any interest in you or in this Agreement shall not constitute a waiver of any claims it may have against the transferor, 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.

## G. Offerings by You

Securities in you may be offered to the public, by private offering or otherwise, only with the prior written consent of Franchisor (whether or not Franchisor's consent is required under Article 7.B), which consent shall not be unreasonably withheld. All materials required for such offering by federal or state law shall be submitted to Franchisor for a limited review as discussed below prior to their being filed with any government agency, and any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by you shall imply, by use of the Proprietary Marks or otherwise, that Franchisor is participating in an underwriting, issuance or offering of your securities or the securities of any subsidiary or affiliate of you, and Franchisor's review of any offering materials shall be limited solely to the subject of the relationship between you and Franchisor and its subsidiaries and affiliates and shall not constitute an endorsement of your offering or a representation or confirmation that your offering complies with applicable federal or state laws. Franchisor may, at its option, require your offering materials to contain a written statement prescribed by Franchisor concerning the limitations described in the preceding sentence. **YOU AND THE OTHER PARTICIPANTS IN THE OFFERING MUST FULLY INDEMNIFY FRANCHISOR IN CONNECTION WITH THE OFFERING.** For each proposed offering, you shall pay to Franchisor a non-refundable fee of \$1,000.00, or such larger amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering materials, including, without limitation, legal and accounting fees. You shall give Franchisor written notice at least thirty (30) days prior to any offering or other transaction covered by this Article 7.G.

## ARTICLE 8 COVENANTS

A. You covenant that during the term of this Agreement, except as otherwise approved in writing by Franchisor, your Owner/Operator shall devote full time best efforts to the management and operation of the development activities contemplated under this Agreement.

B. You and your Investors specifically acknowledge that, pursuant to this Agreement, you and your Investors will receive valuable specialized training trade secrets and confidential information, which are beyond the present skills and experience of you and your Investors and your managers and employees and that you have the right and the obligation, arising from this Agreement, to develop the Territory for the benefit of the System. You and your Investors acknowledge that such specialized training, trade secrets and confidential information provide a competitive advantage and will be valuable to you in the development of the Franchised Restaurants and that access to such specialized training, trade secrets and confidential information is, therefore, a primary reason for entering into this Agreement. In consideration for such specialized training, trade secrets, confidential information and exclusive rights, you and your Investors covenant as follows:

1. With respect to you, during the term of this Agreement, or with respect to each of your Investors, during the term of this Agreement for so long as such individual or entity satisfies the definition of "your Investors" in Article 13.E, except as otherwise approved in writing by Franchisor, neither you nor any of your Investors shall, either directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person(s), partnership or corporation:

a. Divert or attempt to divert any business or customer of any Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System; or

b. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to, any person or business which is similar to or competitive with Restaurants, including but not limited to, any restaurant or catering business that offers chicken wings or chicken tenders as a primary or featured menu item.

2. With respect to you, for a continuous uninterrupted period commencing upon the expiration or termination of, or transfer of all of your interest in, this Agreement, or with respect to each of your Investors, for a continuous uninterrupted period commencing upon the earlier of: (i) the expiration, termination or transfer of all of your interest in this Agreement or (ii) the time such individual or entity ceases to satisfy the definition of "your Investors" in Article 13.E, and for two (2) years thereafter (which two-year period shall be tolled during any period of noncompliance), except as otherwise approved in writing by Franchisor, neither you nor any of your Investors shall, either directly or indirectly, for themselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

a. Divert or attempt to divert any business or customer of any Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System;

b. Own, maintain, operate, engage in or have any financial or beneficial interest in (including any interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any person or entity engaged in any business that is similar to or competitive with Restaurants including but not limited to, any restaurant or catering business that offers chicken wings or chicken tenders as a primary or featured menu item, which business is, or is intended to be, located in the Territory or within five (5) miles of the boundary of the Territory, or within a five (5) mile radius of any Restaurant in existence or under construction as of date the time period set forth in Article 8.B.2 commences for you or your Investor, as applicable.

C. Article 8.B.1.b and 2.c shall not apply to ownership of less than one percent (1%) beneficial interest in the outstanding equity securities of any publicly-held corporation.

D. Neither you nor your Owner/Operator nor any of your Investors shall publish or communicate in any way (or assist, encourage, or support) to any third party any statement that might reasonably be construed to be disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Franchisor, its subsidiaries, or affiliates, including each party's respective officers, directors or employees, in connection with this Agreement or any prior agreement between the parties and the purchase and operation of any Restaurant and franchise. **With regard to this provision, the person alleged to have violated this provision agrees to waive his/her rights to prior restraint on speech and consents to the issuance of a temporary restraining order, temporary injunction, or other available injunctive relief designed to prevent any further breach of this provision. Additionally, if you or your Owner/Operator or any of your Investors publish or communicate any statement to a third-party that is disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Franchisor, its subsidiaries, or affiliates, including each party's respective officers, directors or employees the other party, you and your Owner/Operator and you Investors agree to**

**assign all copyrights to such publications or communications to Franchisor. You and your Owner/Operator and your Investors agree to take whatever action (including signing assignment or other documents) that Franchisor requests to evidence its ownership or to help Franchisor obtain intellectual property rights in the copyrights to such publications or communications.**

E. The parties agree that each of the above covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Article 8 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, you and your Investors expressly agree to be bound by any lesser covenants subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Article.

F. You and your Investors understand and acknowledge that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Article 8.B, or any portion thereon, without your consent, effective immediately upon notice to you; and you and your Investors agree that you shall immediately comply with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Article 14.A.

G. You and your Investors expressly agree that the existence of any claims you 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 Article 8. You and your Investors agree to pay all costs and expenses (including reasonable legal fees) incurred by Franchisor in connection with the enforcement of this Article.

H. Failure to comply with the requirements of this Article 8 shall constitute an event of default under this Agreement. You and your Investors acknowledge that a violation of this Article would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and you and your Investors accordingly consent to the issuance of an injunction prohibiting any conduct by you or your Investors in violation of the terms of this Article. This remedy is in addition to any other remedies Franchisor may have hereunder or at law or equity.

I. At Franchisor's request, you shall require and obtain the execution of covenants similar to those set forth in this Article 8 from any person or entity that now or hereafter satisfies the definition of your Investor in Article 13.E and any other person or entity who has received or will receive confidential information or training from Franchisor. Failure by you to obtain the execution of these covenants following Franchisor's request shall constitute an event of default under this Agreement.

## **ARTICLE 9 INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

A. The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that you shall be an independent contractor and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, joint employer or servant of the other for any purpose.

B. During the term of this Agreement, you shall hold yourself out to the public as an independent contractor conducting its development operations pursuant to development rights granted by Franchisor. You agree to take such action as shall be necessary to that end, including, without limitation, exhibiting a notice of that fact in a conspicuous place in any office established for the purposes hereunder, the content and form of which Franchisor reserves the right to specify in writing.



C. You understand and agree that nothing in this Agreement authorizes you or any of your Investors to make any conduct, agreement, warranty or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name, and that Franchisor shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, or for any act or omission of you or any of your Investors or any claim or judgment arising therefrom.

D. 1. YOU AND EACH OF YOUR INVESTORS SHALL, AT ALL TIMES, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS TO THE FULLEST EXTENT PERMITTED BY LAW FRANCHISOR, ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, SERVANTS, EMPLOYEES, AGENTS AND REPRESENTATIVES (collectively, the "INDEMNIFIED PARTIES") FROM ALL "LOSSES AND EXPENSES" (AS DEFINED IN ARTICLE 9.D.4.B BELOW) INCURRED IN CONNECTION WITH ANY ACTION, SUIT, PROCEEDING CLAIM, DEMAND, INVESTIGATION OR INQUIRY (FORMAL OR INFORMAL), OR ANY SETTLEMENT THEREOF (WHETHER OR NOT A FORMAL PROCEEDING OR ACTION HAS BEEN INSTITUTED) WHICH ARISES OUT OF OR IS BASED UPON ANY OF THE FOLLOWING:

a. THE INFRINGEMENT, ALLEGED INFRINGEMENT, OR ANY OTHER VIOLATION, OR ALLEGED VIOLATION BY YOU OR ANY OF YOUR INVESTORS OF ANY PATENT, MARK, COPYRIGHT OR OTHER PROPRIETARY RIGHT OWNED OR CONTROLLED BY THIRD PARTIES (EXCEPT AS SUCH MAY OCCUR WITH RESPECT TO ANY RIGHTS IN THE PROPRIETARY MARKS GRANTED TO YOU UNDER A FRANCHISE AGREEMENT), INCLUDING WITHOUT LIMITATION MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, THE INFRINGEMENT OR VIOLATION OF ANY PATENT, TRADEMARK OR COPYRIGHT BY THE INDEMNIFIED PARTIES;

b. THE VIOLATION, BREACH OR ASSERTED VIOLATION OR BREACH BY YOU OR ANY OF YOUR INVESTORS OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, RULING STANDARD OR DIRECTIVE, OR ANY INDUSTRY STANDARD, INCLUDING WITHOUT LIMITATION MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, THE BREACH OR VIOLATION OF ANY REGULATION, RULING, STANDARD OR DIRECTIVE OR ANY INDUSTRY STANDARD BY THE INDEMNIFIED PARTIES;

c. LIBEL, SLANDER OR ANY OTHER FORM OF DEFAMATION OF FRANCHISOR OR THE SYSTEM, BY YOU OR BY ANY OF YOUR INVESTORS;

d. THE VIOLATION OR BREACH BY YOU OR BY ANY OF YOUR INVESTORS OF ANY WARRANTY, REPRESENTATION, AGREEMENT OR OBLIGATION IN THIS AGREEMENT OR IN ANY FRANCHISE AGREEMENT OR OTHER AGREEMENT BETWEEN YOU AND FRANCHISOR OR ITS SUBSIDIARIES OR AFFILIATES; AND

e. NEGLIGENT ACTS, ERRORS OR OMISSIONS, WILLFUL MISCONDUCT OR BREACH OF ANY CONTRACT OR WARRANTY BY YOU, ANY OF YOUR SUBSIDIARIES OR AFFILIATES AND ANY OF YOUR INVESTORS AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, INDEPENDENT CONTRACTORS, SERVANTS, EMPLOYEES AND

REPRESENTATIVES OF YOU AND ITS SUBSIDIARIES AND AFFILIATES IN CONNECTION WITH THE PERFORMANCE OF THE DEVELOPMENT ACTIVITIES CONTEMPLATED UNDER THIS AGREEMENT OR THE ESTABLISHMENT AND OPERATION OF ANY RESTAURANT PURSUANT TO A FRANCHISE AGREEMENT, INCLUDING BUT NOT LIMITED TO NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ANY OF THE FOREGOING PARTIES IN THE OPERATION OF ANY MOTOR VEHICLE, THIS DEFENSE AND INDEMNITY OBLIGATION INCLUDES, WITHOUT LIMITATION, MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, ANY INDEMNIFIED PARTY'S OWN NEGLIGENT ACTS, ERRORS OR OMISSIONS, BREACH OF WARRANTY OR BREACH OF CONTRACT. YOUR OBLIGATION TO DEFEND AND INDEMNIFY ANY INDEMNIFIED PARTY FOR ITS OWN NEGLIGENCE APPLIES WHETHER SUCH NEGLIGENCE IS ALLEGED OR PROVEN TO BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.

2. YOU AND EACH OF YOUR INVESTORS AGREE TO GIVE FRANCHISOR IMMEDIATE NOTICE OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION. AT THE EXPENSE AND RISK OF YOU AND EACH OF YOUR INVESTORS, FRANCHISOR MAY ELECT TO CONTROL (BUT UNDER NO CIRCUMSTANCE IS OBLIGATED TO UNDERTAKE), AND ASSOCIATE COUNSEL OF ITS OWN CHOOSING WITH RESPECT TO, THE DEFENSE AND/OR SETTLEMENT OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION. SUCH AN UNDERTAKING BY FRANCHISOR SHALL, IN NO MANNER OR FORM, DIMINISH THE OBLIGATION OF YOU AND EACH OF YOUR INVESTORS TO INDEMNIFY FRANCHISOR AND TO HOLD IT HARMLESS.

3. IN ORDER TO PROTECT PERSONS OR PROPERTY OR ITS REPUTATION OR GOODWILL, OR THE REPUTATION OR GOODWILL OF OTHERS, AN INDEMNIFIED PARTY MAY, AT ANY TIME AND WITHOUT NOTICE, AS SUCH INDEMNIFIED PARTY, IN ITS JUDGMENT DEEMS APPROPRIATE, CONSENT OR AGREE TO SETTLEMENTS OR TAKE SUCH OTHER REMEDIAL OR CORRECTIVE ACTION AS SUCH INDEMNIFIED PARTY DEEMS EXPEDIENT WITH RESPOND TO THE ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION IF, IN SUCH INDEMNIFIED PARTY'S SOLE JUDGMENT, THERE ARE REASONABLE GROUNDS TO BELIEVE THAT:

a. ANY OF THE ACTS OR CIRCUMSTANCES ENUMERATED IN ARTICLE 9.D.1 ABOVE HAS OCCURRED; OR

b. ANY ACT, ERROR OR OMISSION AS DESCRIBED IN ARTICLE 9.D.1.E MAY RESULT DIRECTLY OR INDIRECTLY IN DAMAGE, INJURY OR HARM TO ANY PERSON OR ANY PROPERTY.

4. a. ALL LOSSES AND EXPENSES INCURRED UNDER THIS ARTICLE 9 SHALL BE CHARGEABLE TO AND PAID BY YOU OR ANY OF YOUR INVESTORS PURSUANT TO ITS OBLIGATIONS OF INDEMNITY UNDER THIS ARTICLE, REGARDLESS OF ANY ACTION, ACTIVITY OR DEFENSE UNDERTAKEN BY THE INDEMNIFIED PARTY OR THE SUBSEQUENT SUCCESS OR FAILURE OF SUCH ACTION, ACTIVITY OR DEFENSE.

b. AS USED IN THIS ARTICLE 9, THE PHRASE "LOSSES AND EXPENSES" SHALL INCLUDE, WITHOUT LIMITATION, ALL LOSSES, COMPENSATORY, EXEMPLARY OR PUNITIVE DAMAGES, FINES, CHARGES, COSTS, EXPENSES, LOST PROFITS, LEGAL FEES, COURT COSTS, SETTLEMENT AMOUNTS, JUDGMENTS, COMPENSATION FOR DAMAGES TO FRANCHISOR'S REPUTATION AND GOODWILL, COSTS OF OR RESULTING FROM DELAYS, FINANCING, COSTS OF ADVERTISING MATERIAL AND MEDIA TIME/SPACE AND 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.

5. NO INDEMNIFIED PARTY ASSUMES ANY LIABILITY FOR ACTS, ERRORS OR OMISSIONS OF THOSE WITH WHOM YOU, ANY OF YOUR INVESTORS OR YOUR SUBSIDIARIES AND AFFILIATES MAY CONTRACT, REGARDLESS OF THE PURPOSE.

6. UNDER NO CIRCUMSTANCES SHALL ANY INDEMNIFIED PARTY BE REQUIRED OR OBLIGATED TO SEEK RECOVERY FROM THIRD PARTIES OR OTHERS OR MITIGATE THEIR LOSSES TO MAINTAIN A CLAIM AGAINST YOU OR ANY OF YOUR INVESTORS. YOU AND EACH OF YOUR INVESTORS AGREE THAT THE FAILURE TO PURSUE SUCH RECOVERY OR MITIGATE LOSS WILL IN NO WAY REDUCE THE AMOUNTS RECOVERABLE ON YOU OR ANY OF YOUR INVESTORS BY ANY INDEMNIFIED PARTY PURSUANT TO THIS ARTICLE.

7. You and your Investors expressly agree that the terms of this Article 9.D. shall survive the termination, expiration or transfer of this Agreement or any interest herein.

#### **ARTICLE 10 APPROVALS**

A. Whenever this Agreement requires the prior approval or consent of Franchisor, you shall make a timely written request to Franchisor and such approval or consent shall be obtained in writing.

B. Franchisor makes no warranties or guarantees upon which you may rely and assumes no liability or obligation to you or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or suggestion to you in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

#### **ARTICLE 11 NON-WAIVER AND REMEDIES**

A. No delay, waiver, omission or forbearance on the part of Franchisor to exercise any right, option, duty or power arising out of any breach or default by you or your Investors under this Agreement shall constitute a waiver by Franchisor to enforce any such right, option, duty or power against you or your Investors, or as to a subsequent breach or default by you or your Investors. Acceptance by Franchisor of any payments due to it hereunder subsequent to the time at which such payments are due shall not be deemed to be a waiver by Franchisor of any preceding breach by you or your Investors of any terms, provisions, covenants or conditions of this Agreement.

B. All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies which are provided for herein or which may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this Agreement or any other agreement between you and Franchisor or its subsidiaries and affiliates. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one or more uses thereof and may be exercised at any time or from time to time as often as may be expedient; and any option or election to enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration, earlier termination or exercise of Franchisor's rights pursuant to Article 6 of this Agreement shall not discharge or release you or any of your Investors from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration, the earlier termination or the exercise of such rights under this Agreement.

## ARTICLE 12 NOTICES

A. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or, if sent by Franchisor, by electronic mail, to you at the address first set forth above, or to Franchisor at the following address unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:

Virtual Brands, Inc.  
18583 N. Dallas Parkway, Suite 120  
Dallas, Texas 75287  
Attn: Legal Department  
Telephone: (972) 248-9899; Facsimile: (214) 360-6282

Notice to you shall be sent to the address set forth on page 1 of this Agreement.

B. Any notice shall be deemed to have been given at the time of personal delivery or, in the case of notices sent by Franchisor by electronic mail one (1) business day after transmission, or, in the case of expedited delivery service or registered or certified mail, three (3) business days after the date and time of mailing. Any change in the above addresses shall be made by giving fifteen (15) calendar days written notice of the change to the other party.

## ARTICLE 13 ENTIRE AGREEMENT, SEVERABILITY AND CONSTRUCTION

A. This Agreement, the documents referred to herein, the attachments hereto, any addenda and any Transfer Agreement, if applicable, constitute the entire, full and complete Agreement between Franchisor, you, your Owner/Operator and your Investors concerning the subject matter hereof and supersede all prior related agreements (both written and oral) between Franchisor, you, your Owner/Operator and your Investors. **There are no other oral or written understandings or agreements between you, your Owner/Operator and your Investors and Franchisor, or oral or written representations by Franchisor, relating to the subject matter of this Agreement or the relationship contemplated hereunder (any understandings or agreements reached, or any representations made before this Agreement are superseded by this Agreement).** Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representation made by Franchisor in its most recent franchise disclosure document (including exhibits and amendments) delivered to you or your representative. Except for those permitted to be made unilaterally by Franchisor

**DEVELOPMENT AGREEMENT**

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hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by Franchisor and you and executed by their authorized officers or agents in writing.

B. Except as expressly provided to the contrary herein, each portion, article, part, term and provision of this Agreement shall be considered severable; and if, for any reason, any portion, article, part, term or provision is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, this shall not impair the operation of, or have any other effect upon, the other portions, articles, parts, terms or provisions of this Agreement that remain otherwise enforceable, and the latter shall continue to be given full force and effect and bind the parties; and the invalid portions, articles, parts, terms or provisions shall be deemed not to be part of this Agreement.

C. Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, Franchisor, Franchisor's officers, directors and personnel and such of your and Franchisor's respective successors and assigns as may be contemplated (and, as to you, authorized by Article 7), any rights or remedies under or as a result of this Agreement.

D. All captions in this Agreement are intended solely for the convenience of the parties and shall not affect the meaning or construction of any provision of this Agreement.

E. All references to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually undertaken by your Investors under this Agreement, all acknowledgments, promises, covenants, agreements and obligations made or undertaken by you in this Agreement shall be deemed jointly and severally undertaken by all of your Investors.

F. Unless otherwise agreed to in writing between the parties, the term "Investor" as used in this Agreement shall include, collectively or individually, (i) if you are an individual, your spouse and (ii) if you are an entity, (a) each person or entity who now or hereafter executes this Agreement as an Investor or executes an agreement in which such person or entity agrees to be bound by this Agreement as an Investor, and (b) each such other person or entity which is required by Franchisor as a condition to a Transfer or otherwise pursuant to this Agreement to execute this Agreement as one of your Investors or an agreement by which such person or entity agrees to be bound by this Agreement as an Investor. For purposes of this Agreement, the term "Investor" shall also refer to your Owner/Operator. The Owner/Operator shall be one of your Investors unless otherwise agreed to between you and Franchisor, in accordance with certain ownership conditions.

G. This Agreement may be executed in counterparts and each copy so executed shall be deemed an original. The counterparts of this Agreement and all ancillary documents executed or delivered in connection with this Agreement may be executed and signed by electronic signature by any of the parties to this Agreement, and delivered by electronic or digital communications to any other party to this Agreement, and the receiving party may rely on the receipt of such document so executed and delivered by electronic or digital communications signed by electronic signature as if the original has been received. For the purposes of this Agreement, electronic signature means, without limitation, an electronic act or acknowledgement (e.g., clicking an "I Accept" or similar button), sound, symbol (digitized signature block), or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

H. This Agreement shall not become effective until signed by a President or more senior officer of Franchisor.

I. Each reference in this Agreement to a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing entities interchangeably and to any other entity or organization. Further, each reference to the organizational documents, equity owners, partners, directors, managers, general partners, and officers of a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing interchangeably and to the functional equivalent of the foregoing for any entity or organization.

#### **ARTICLE 14 APPLICABLE LAW: MEDIATION**

A. **Subject only to Article 14.C, the parties agree to submit all disputes, controversies, claims, causes of action between Franchisor and its affiliates and its and their respective shareholders, officers, directors, agents, and/or employees, and you, your Owner/Operator and each of your Investors and/or employees), and/or alleged breaches or failures to perform arising out of or relating to this Agreement (and any attachments or addenda to this Agreement or any provision herein) or the relationship created by this Agreement (collectively, "Disputes") to non-binding mediation prior to filing any action in court or any in arbitration with respect to the Dispute. The mediation shall be conducted in Collin County, Texas. The parties shall attempt to select a mediator by agreement of the parties so long as the mediator selected is experienced in the mediation of disputes in the franchise and food service businesses. If the parties are unable to agree upon such a mediator within a reasonable period of time (not to exceed fifteen (15) days, then the mediation of any Dispute shall be submitted by either party to the American Arbitration Association ("AAA") for resolution in accordance with its rules governing mediation, at the office of the AAA located nearest to Franchisor's corporate headquarters in Dallas, Collin County, Texas. The costs and expenses of mediation, including compensation and expenses of the mediator, shall be borne by the parties equally. If the parties are unable to resolve the Dispute within ninety (90) days after the mediator has been appointed, then either party may submit such Dispute to binding arbitration in accordance with Article 14.B below.**

B. Subject only to Article 14.A and 14.C, all Disputes that are not resolved through mediation in accordance with Article 14.A, including all disputes relating to the scope, validity, or enforceability of this Arbitration Agreement and any provision in this Article 14.B, shall be submitted for binding arbitration to the office of the AAA located nearest to Franchisor's corporate headquarters in Dallas, Collin County, Texas, on demand of either party. Such arbitration proceedings shall be conducted by an arbitrator who is experienced in the arbitration of disputes in the franchise and food service businesses, if such an arbitrator is available, and in accordance with the then current commercial arbitration rules of the AAA. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. Provided, that, to the fullest extent permitted by law, the parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any punitive or exemplary damages, all of which are hereby waived by the parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all parties and adjustment may be taken on the award notwithstanding the termination or expiration of this Agreement. Franchisor and you agree that arbitration shall be conducted on an individual, not a class-wide basis. Franchisor and you agree that any arbitration between Franchisor or its affiliates and you shall not be consolidated with any other arbitration that may be taking place between Franchisor or its affiliate and other party.

C. Notwithstanding anything herein to the contrary, either party may bring an action in any court having jurisdiction and without first submitting such action to mediation or arbitration (a) for

injunctive relief or other extraordinary relief, (b) involving the possession or disposition of, or other relief relating to real property, or (c) in aid of enforcing the parties' obligations to arbitrate under Article 14.B above.

**D. You have signed this Agreement and submitted it to Franchisor for acceptance and execution by Franchisor at Franchisor's corporate headquarters in Dallas, Collin County, Texas. You shall make all payments and perform other obligations arising hereunder at Collin County, Texas, and this Agreement is made and entered into at Collin County, Texas. The provisions of this Article 14.D shall apply to the fullest extent permitted under applicable state law.**

**E. THIS AGREEMENT IS EXECUTED AND DELIVERED IN CONNECTION WITH A TRANSACTION NEGOTIATED AND CONSUMMATED IN COLLIN COUNTY, TEXAS. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER FEDERAL LAW, THIS AGREEMENT AND ANY AND ALL CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES (REGARDLESS OF THE FORM OF THE CAUSE OF ACTION ASSERTED OR WHETHER THE DISPUTE IS BETWEEN YOU AND AN AFFILIATE OF FRANCHISOR) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES AGREE THAT, WITH RESPECT TO ANY SUCH CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, ANY SUCH CONTROVERSIES, DISPUTES, OR ACTIONS SHALL BE BROUGHT, MAINTAINED, AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION. YOU, FOR YOURSELF AND YOUR SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, (B) WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT YOU MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SET FORTH ABOVE; AND, (C) WAIVE ANY OBJECTION YOU MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. YOU HEREBY IRREVOCABLY AGREE THAT SERVICE OF PROCESS MAY BE MADE UPON YOU IN ANY LEGAL PROCEEDING RELATING TO ANY DISPUTE BY ANY MEANS ALLOWED BY TEXAS LAW. You and Franchisor acknowledge that the parties' agreement regarding applicable state law and forum set forth herein provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any Dispute covered herein. You and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit. Notwithstanding the foregoing, the parties acknowledge and agree that either party may institute legal action for injunctive relief in any court of competent jurisdiction as set forth in Article 14.C above.**

**F. JURY TRIAL WAIVER. TO THE EXTENT PERMITTED UNDER APPLICABLE STATE LAW, YOU AND FRANCHISOR IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN**

**EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.**

**G. WAIVER OF PUNITIVE AND EXEMPLARY DAMAGES. EXCEPT FOR YOUR INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9.D, YOUR FAILURE TO COMPLY WITH YOUR CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 5.B.5 AND NON-COMPETITION OBLIGATIONS UNDER ARTICLE 8, AND EXCEPT FOR PUNITIVE DAMAGES AVAILABLE TO EITHER PARTY UNDER FEDERAL LAW, THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF COMPENSATORY DAMAGES SUFFERED BY THE PARTY.**

H. You and Franchisor acknowledge that the parties' agreement regarding applicable state law and forum set forth in Article 14.E provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any Dispute. You and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit. Notwithstanding the foregoing, the provisions of this Article 14.H shall only apply to the extent permitted under applicable state law.

I. **INDIVIDUAL CAPACITY.** In the event that an action in court is permitted, any legal action commenced by either party shall be brought in an individual capacity, and not on a class-wide basis. **All parties waive their rights to initiate a class-action lawsuit in any court.**

J. **STATUTE OF LIMITATIONS.** Except where not permitted by law, any claim or cause of action asserted by either party arising out of or related to use of this Agreement or the relationship of the parties must be filed within 2 years after such claim or cause of action arose or be forever barred when the applicable statute of limitations is greater than 2 years. This provision does not affect or apply to any claim or cause of action where the applicable statute of limitations is less than 2 years.

## **ARTICLE 15 ACKNOWLEDGMENTS**

A. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that the success of this business venture involves substantial business risks and will largely depend upon your ability. Franchisor expressly disclaims making and you acknowledge that it has not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement. You acknowledge that you have completed and submitted to Franchisor the Developer Questionnaire, in the form of **Attachment C**, and that your responses were truthful and well considered.

B. You acknowledge that you have received, read and understand this Agreement and the related Attachments and agreements and that Franchisor has accorded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

C. You acknowledge that you received from Franchisor a complete copy of Franchisor's Franchise Disclosure Document (the "Disclosure Document"), this Agreement and the related attachments and agreements at least fourteen (14) calendar days prior to the date on which this Agreement was executed and the date on which you first made any payments to Franchisor or an affiliate in connection



with any transaction contemplated by this Agreement. You acknowledge that you received a copy of this Agreement and the related attachments and agreements in the form executed by you at least seven (7) calendar days prior to the date on which this Agreement was executed and you paid us the Development Fee.

D. You represent to Franchisor that neither Franchisor nor its agents or representatives have made any representations, and you have not relied on any representations made by Franchisor or its agents or representatives, concerning actual or potential sales or profits of a Restaurant.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year first above written.

**FRANCHISOR:**

VIRTUAL BRANDS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Senior Vice President of Franchise Relations

**YOU:**

\_\_\_\_\_,  
a \_\_\_\_\_

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

## SCHEDULE 1 TO DEVELOPMENT AGREEMENT

### CONSENT OF DEVELOPER'S INVESTORS

Each of the undersigned acknowledges and agrees as follows:

1. Each has read the terms and conditions of this Agreement and acknowledges that the execution of this guaranty and their undertakings as your Investors under the Agreement are in partial consideration for the granting of the development rights in the Development Agreement, and that Franchisor would not have granted such rights without the execution of this guaranty and these undertakings by each of the undersigned;

2. Each is included in the term "Investors" as described in Article 13.F of the Agreement;

3. Each individually, jointly and severally makes all of the covenants, representations, warranties and agreements of your Investors set forth in the Agreement (including without limitation the covenants set forth in Article 5.B.5 and Article 8) and is obligated to perform thereunder;

4. Each of the undersigned agrees that during the term of the Development Agreement and while the undersigned satisfies the definition of a "Investor" in Article 13.F, except as otherwise approved in writing by Franchisor, the undersigned shall not, either directly or indirectly, on behalf of the undersigned or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System; or

ii. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers chicken wings or chicken tenders as a primary or featured menu item located in the United States or any other jurisdiction in which Franchisor has registered or sought registration of its Proprietary Marks.

5. Each of the undersigned agrees that for a continuous uninterrupted period commencing upon: (a) the expiration or termination of the Franchise Agreement, (b) transfer of the franchisee's interest in the Franchise Agreement, (c) the time such individual or entity ceases to satisfy the definition of a "Investor" in Article 13.F (whichever is earliest to occur), and for two (2) years thereafter (which two-year period shall be tolled during any period of noncompliance), except as otherwise approved in writing by Franchisor, the undersigned shall not, either directly or indirectly, for yourselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System; or

ii. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts,

unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers chicken wings or chicken tenders as a primary or featured menu item, which business is, or is intended to be, located within a thirty (30)-mile radius of the location accepted hereunder or within a five (5)-mile radius of any Restaurant in existence or under construction as of date the time period set forth in Article 8.B.2 commences for you or your Investor, as applicable.

6. Each individually, jointly and severally, unconditionally, and irrevocably guarantees to Franchisor that all of your obligations under this Agreement will be punctually paid and performed. Upon default by you or upon notice from Franchisor, each will immediately make each payment and perform each obligation required of you under this Agreement. Without affecting the obligations of any of your Investors under this guaranty, Franchisor may, without notice to your Investors, waive, renew, extend, modify, amend or release any indebtedness or obligation of you or settle, adjust or compromise any claims that Franchisor may have against you. Each of your Investors waives all demands and notices of every kind with respect to the enforcement of this guaranty, including, without limitation, notice of presentment, demand for payment or performance by you, any default by you or any guarantor and any release of any guarantor or other security for this Agreement or your obligations hereunder. Franchisor may pursue its rights against any of your Investors without first exhausting its remedies against you and without joining any other guarantor hereto, and no delay on the part of Franchisor in the exercise of any right or remedy shall operate as a waiver of such right or remedy, and no single or partial exercise by Franchisor of any right or remedy shall preclude the further exercise of such right or remedy. Upon receipt by Franchisor of notice of the death of any of your Investors, the estate of the deceased will be bound by the foregoing guaranty, but only for defaults and obligations under this Agreement existing at the time of death, and in such event, the obligations of the remaining your Investors shall continue in full force and effect.

7. Each represents and warrants that, as of the date of this Agreement, each undersigned person executing this Agreement as an Owner/Operator has been designated as an Owner/Operator, and each such person meets all of the qualifications set forth in this Agreement for an Owner/Operator.

8. Additionally, with respect to the individual designated as Owner/Operator, Owner/Operator acknowledges that the undertakings by Owner/Operator under this Agreement are made and given in partial consideration of, and as a condition to, Franchisor's grant of rights to develop Restaurants as described herein. Owner/Operator individually, jointly and severally makes all of the covenants, representations and agreements of you and Owner/Operator set forth in this Agreement and is obligated to perform hereunder.

[SIGNATURE PAGE FOLLOWS]

**OWNER/OPERATOR:**

[Individual]

\_\_\_\_\_  
\_\_\_\_\_, an individual

**INVESTORS:**

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

**ATTACHMENT A**  
**VIRTUAL BRANDS, INC.**  
**FRANCHISE AGREEMENT**

[If Not Attached, See Exhibit A to Franchise Disclosure Document]

Attachment A

**ATTACHMENT B**

**STATEMENT OF OWNERSHIP INTERESTS**

<b>Name (Full Legal Name)</b>	<b>Address and Telephone No.</b>	<b>Type of Ownership Interest</b>	<b>Entity in which Ownership Interest is Held</b>	<b>Ownership %</b>
1.				
2.				
3.				
4.				

Attachment B

**ATTACHMENT C**

**DEVELOPER QUESTIONNAIRE**

Virtual Brands, Inc., a Texas corporation ("Franchisor") and you (the "Developer") are preparing to enter into a Development Agreement for the development of more than one Wing Boss restaurant franchise (the "Franchised Restaurants"). The purpose of this Questionnaire (herein so called) is to determine whether any statements or promises were made to you that Franchisor has not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions carefully and provide honest responses to each question.

1. Have you received and personally reviewed Franchisor’s Franchise Disclosure Document (the "Disclosure Document") provided to you?  
\_\_\_\_\_
2. Did you sign a receipt for the Disclosure Document indicating the date you received it?  
\_\_\_\_\_
3. Do you understand the information contained in the Disclosure Document and Development Agreement?  
\_\_\_\_\_
4. Have you received and personally reviewed the Development Agreement and each exhibit attached to it?  
\_\_\_\_\_
5. Do you understand your financial and other obligations under the Development Agreement?  
\_\_\_\_\_
6. Have you independently discussed the economic and business risks of developing, owning and operating the Franchised Restaurants with an attorney, accountant or other professional advisor?  
\_\_\_\_\_
7. Do you understand the economic and business risks associated with developing, owning and operating the Franchised Restaurants?  
\_\_\_\_\_
8. Do you understand that the success or failure of the Franchised Restaurants will depend in large part upon your ability to timely identify and open Franchised Restaurant locations in your territory, skills and abilities, the service you provide to your customers, competition, interest rates, the economy, inflation, labor and supply costs, lease terms, real estate and the marketplace?  
\_\_\_\_\_



9. Do you understand and agree that any disputes arising under the Development Agreement are subject to arbitration governed under Texas law, and that you are waiving your right to bring a class-action?

---

10. Do you understand and agree that no financial performance representation has been made by Franchisor in the Disclosure Document (including with regard to the performance of its franchised outlets or company-owned outlets and the potential performance of your outlet)?

---

11. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else regarding the amount of money you may earn in developing and operating the Franchised Restaurants?

---

12. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else concerning the total revenues the Franchised Restaurants may generate?

---

13. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else regarding the costs involved in developing and operating the Franchised Restaurants that are contrary to, or different from, the information contained in the Disclosure Document?

---

14. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else concerning the actual, average or projected profits or earnings or the likelihood of success that you should or might expect from developing and operating the Franchised Restaurants?

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15. Has any employee or other person speaking on behalf of Franchisor made any statement or promise to you or anyone else, other than those matters addressed in your Development Agreement that is contrary to, or different from, the information contained in the Disclosure Document?

---

16. Has any employee or other person speaking on behalf of Franchisor made any promises or agreements that is contrary to, different from, or in addition to, the matters set forth in the Development Agreement?

---

17. If you answered "Yes" to any of the questions 11 through 16, please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to

Attachment C-2

them below). If you answered "No" to each of the foregoing questions, please leave the following lines blank.

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---

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18. Do you understand that the Development Agreement and attachments to the Development Agreement contain the entire agreement between us and you concerning the franchise for the Development Agreement, meaning any prior oral or written statements not set out in the Development Agreement or the attachments to the Development Agreement will not be binding? When considering this question, please note that nothing in the Development Agreement or the attachments to the Development Agreement will disclaim or require you (the franchisee) to waive reliance on any representation that we made in our most recent franchise disclosure document (including its exhibits and amendments) delivered to you or your representative.

---

You understand that your answers are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

Further, by signing this Questionnaire, you agree that Franchisor has properly provided you with all of the appropriate franchise disclosures and has not made any financial claims or representations to you. You agree to hold harmless and release Franchisor and its affiliates, shareholders, officers, directors, agents, attorneys, successors and assigns from any and all liability in connection with the sale of the franchise to the extent that any statement or representation made herein is determined to be false and misleading and to the extent permitted under applicable law.

The following language applies to franchises to be located in Maryland or to be granted to Maryland residents:

The general release included in this questionnaire shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

The acknowledgements or representations of the developer in this questionnaire which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

**DEVELOPER:**

\_\_\_\_\_,  
a \_\_\_\_\_

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

**ATTACHMENT D**  
**STATE ADDENDA**

Attachment D-1

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
ILLINOIS FRANCHISE DISCLOSURE ACT**

The following provisions supersede and control any conflicting provisions of the Development Agreement:

1. Illinois law applies to this Agreement and supersedes any conflicting provision of the Development Agreement.

2. Subject to the parties' arbitration obligation in Article 14 of the Development Agreement, all litigation by or between you and us, arising directly or indirectly from the franchise relationship, shall be commenced and maintained, at our election, in the state courts of Illinois or the United States District Court for Illinois with the specific venue, in either court system, determined by appropriate jurisdiction and venue requirements.

3. If any of the provisions of the Development Agreement are inconsistent with applicable state law, then the state law shall apply to the extent such law is constitutional and valid as applied.

4. Pursuant to 815 IL 705/41, no release or waiver language set forth in the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the Illinois Franchise Disclosure Act or any other law of the State of Illinois.

5. All other rights, obligations, and provisions of the Development Agreement shall remain in full force and effect. Only the Articles specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Development Agreement for the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

1. Any general release required to be executed by you as a condition to renewal, sale, transfer and/or assignment of this Agreement will not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

2. Any acknowledgements or representations of the developer that disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

3. A developer (you) may bring an arbitration action in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

4. Any provision of this Agreement which purports to limit or reduce the time in which you may assert a claim against Franchisor shall not reduce the statute of limitations afforded to you for bringing a claim arising under the Maryland Franchise Registration and Disclosure Law. Any claim arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.

5. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede any conflicting provisions in the Development Agreement:

1. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the developer to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Development Agreement can abrogate or reduce any of the developer's rights as provided for in Minnesota Statutes, Chapter 80C, or the developer's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.
2. Minnesota law provides developers with certain termination rights and non-renewal rights. Minnesota Statutes, Section 80C.14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a developer be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the development agreement.
3. No release language set forth in the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the state of Minnesota.
4. Notwithstanding any provisions of the Development Agreement to the contrary, to the extent required under applicable Minnesota law, a court of competent jurisdiction will determine whether Franchisor will be required to post a bond or other security, and the amount of such or other security, in any injunctive proceeding commenced by Franchisor against you, your shareholders/investors or the guarantors of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

Attachment D-4

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
NEW YORK FRANCHISE REGISTRATION AND DISCLOSURE LAW**

1. Article 6 is amended by adding the following statement:

However, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the related regulations shall remain in force; it being the intent of this proviso to satisfy the non-waiver provisions of GBL, Sections 687.4 and 687.5. Nothing in this Article 6 prevents you from asserting your rights under common law to terminate the Development Agreement if we commit a material breach of the Development Agreement.

2. Article 7 is amended by adding the following statement:

No assignment shall be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Agreement.

3. Article 14 is amended by adding the following statement:

The foregoing choice of law should not be considered a waiver of any right conferred upon you by the GBL of the State of N.Y., Article 33.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede any conflicting provisions in the Development Agreement:

1. The Development Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Development Agreement which designates jurisdiction or venue, or requires the developer to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from any Development Agreement issued in the State of North Dakota.

2. No release language set forth in the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws of the State of North Dakota.

3. Any provisions in the Development Agreement which require the developer to waive the right to a jury trial or to exemplary or punitive damages are deleted from any Development Agreements issued in the State of North Dakota.

4. Notwithstanding anything in Article 2 to the contrary, based upon our financial condition, the State of North Dakota has required a financial assurance. Therefore, all initial fees and payments owed by you shall be deferred until we complete our pre-opening obligations under the Development Agreement and you commence doing business.

5. Article 8 of the Development Agreement is amended by adding the following at the end of that Article:

“Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota.”

6. Notwithstanding anything to the contrary contained in Article 14 of the Development Agreement, the site of any arbitration or mediation between the parties shall be agreeable to all parties and may not be held at a site which is remote from the franchisee’s principal place of business.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)



**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
WASHINGTON FRANCHISE INVESTMENT LAW**

In recognition of the requirements by the Washington Franchise Investment Protection Act and the Rules and Regulations promulgated thereunder (the “Act”), the Development Agreement of VIRTUAL BRANDS, INC. shall be modified as follows:

Article 15.A of the Development Agreement is revised to read as follows:

You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that the success of this business venture involves substantial business risks and will largely depend upon your ability. You acknowledge that you have completed and submitted to Franchisor the Developer Questionnaire, in the form of **Attachment C**, and that your responses were truthful and well considered.

Article 15.D of the Development Agreement is hereby deleted in its entirety.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the Development Agreement in your relationship with the us including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Development Agreement in your relationship with us including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the Development Agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the Development Agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

Attachment D-7

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the Development Agreement or elsewhere are void and unenforceable in Washington. IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

In accordance with RCW 19.100.050 and WAC 460-80-400, the Washington State Department of Financial Institutions is requiring a financial assurance condition. Therefore, we have posted a surety bond in the amount of \$100,000 to satisfy the condition. A copy of the surety bond is on file with the Washington State Department of Financial Institutions, Securities Division.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**EXHIBIT C**  
**GENERAL RELEASE**

Ex. C

**VIRTUAL BRANDS, INC.**  
**GRANT OF FRANCHISOR CONSENT AND FRANCHISEE RELEASE**

**VIRTUAL BRANDS, INC.** (“we,” “us,” “our,” or “Franchisor”) and the undersigned franchisee, \_\_\_\_\_ (“you,” “your,” or “Franchisee”), currently are parties to a certain franchise agreement dated \_\_\_\_\_ (the “Franchise Agreement”). You have asked us to take the following action or to agree to the following request: [insert as appropriate for renewal or transfer situation] \_\_\_\_\_

\_\_\_\_\_. We have the right under the Franchise Agreement to obtain a general release from you (and, if applicable, your owners) as a condition of taking this action or agreeing to this request. Therefore, we are willing to take the action or agree to the request specified above if you (and, if applicable, your owners) give us the release and covenant not to sue provided below in this document. You (and, if applicable, your owners) are willing to give us the release and covenant not to sue provided below as partial consideration for our willingness to take the action or agree to the request described above.

Consistent with the previous introduction, you, on your own behalf and on behalf of your successors, heirs, personal representatives, executors, administrators, personal representatives, agents, contractors, assigns, partners, shareholders, members, directors, officers, members, principals, employees, parents, subsidiaries, and affiliated entities (collectively, the “Releasing Parties”), hereby forever release and discharge us and our affiliates, our and their current and former officers, directors, shareholders, members, principals, employees, agents, representatives, contractors, parents, subsidiaries, affiliated entities, successors, heirs, and assigns (collectively, the “Franchisor Parties”) from any and all claims, damages (known and unknown), demands, causes of action, suits, duties, liabilities, and agreements of any nature and kind (collectively, “Claims”) that you and any of the other Releasing Parties now has, ever had, or, but for this document, hereafter would or could have against any of the Franchisor Parties arising out of or related to (1) the Franchisor Parties’ obligations under the Franchise Agreement, (2) the offer, sale, administration, performance, default, and any termination, if applicable, of the Franchise Agreement, (3) our own negligence, fraud, misrepresentation(s), or deceptive trade practices regarding any and all past, present, or future claims and causes of action that arise from the purchase and operation of your Wing Boss Restaurant or arising out of the Franchise Agreement, or (4) otherwise arising from or related to your and the other Releasing Parties’ relationship, from the beginning of time to the date of your signature below, with any of the Franchisor Parties. You, on your own behalf and on behalf of the other Releasing Parties, further covenant not to sue any of the Franchisor Parties on any of the Claims released by this paragraph and represent that you have not assigned any of the Claims released by this paragraph to any individual or entity that is not bound by this paragraph.

We also are entitled to a release and covenant not to sue from your owners. By his, her, or their separate signatures below, your transferring owners likewise grant to us the release and covenant not to sue provided above.

The following language applies to franchises to be located in Maryland or to be granted to Maryland residents:

This general release shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Sample Form of General Release - 1

**VIRTUAL BRANDS, INC.**  
a Texas corporation

**FRANCHISEE,**  
a/an \_\_\_\_\_

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

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

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

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

## EXHIBIT D

### STATE FRANCHISE REGULATORY AUTHORITIES

The following list contains names, addresses and telephone numbers of state and federal agency personnel having responsibility for franchising disclosure/registration laws and selected business opportunity laws. Entries for the Federal Trade Commission appear at the end of the list.

#### **CALIFORNIA**

Department of Financial Protection and  
Innovation

*Los Angeles*

320 West 4<sup>th</sup> St., Suite 750

Los Angeles, CA 90013-2344

(213) 576-7500 (866) 275-2677

*San Diego*

1455 Frazee Road., Suite 315

San Diego, CA 92108

(619) 610-2093

*San Francisco*

One Sansome Street, Suite 600

San Francisco, CA 94105-2980

(415) 972-8565

*Sacramento*

2101 Arena Boulevard

Sacramento, CA 95834

(916) 445-7205

#### **HAWAII**

Commissioner of Securities  
Business Regulation Division

Dept. of Commerce and Consumer Affairs

335 Merchant Street, Rm 205

Honolulu, HI 96813

(808) 586-2722

#### **ILLINOIS**

Franchise Bureau

Office of Attorney General

500 South Second Street

Springfield, IL 62706

(217) 782-4465

#### **INDIANA**

Indiana Securities Division

Franchise Section

Indiana Government Center South

302 West Washington, Room E-111

Indianapolis, IN 46204

(317) 232-6681

#### **MARYLAND**

Office of Attorney General

Securities Division

200 Saint Paul Place

Baltimore, MD 21202-2020

(410) 576-6360

#### **MICHIGAN**

Department of Attorney General

Consumer Protection Division

Antitrust and Franchise Unit

670 Law Building

Lansing, MI 48913

(517) 373-7117

#### **MINNESOTA**

Minnesota Department of Commerce

85 7<sup>th</sup> Place East, Suite 280

St. Paul, MN 55101-21198

(651) 539-1500

#### **NEW YORK**

Office of Attorney General

Franchise Section

28 Liberty Street, 21st Floor

New York, NY 10005

(212) 416-8222

**NORTH DAKOTA**

Securities Department  
600 E. Boulevard Ave.  
State Capitol - 5<sup>th</sup> Floor  
Bismarck, ND 58505-0510  
(701) 328-2910

**OREGON**

Department of Consumer and Business Services  
Division of Finance and Corporate Securities  
Labor and Industries Building  
Salem, OR 97310  
(503) 378-4140

**RHODE ISLAND**

Department of Business Regulation  
Securities Division  
John O. Pastore Complex  
1511 Pontiac Avenue, Bldg. 69-1  
Cranston, RI 02910  
(401) 222-3048

**SOUTH DAKOTA**

Division of Insurance  
Securities Regulation  
124 S. Euclid Ave., Suite 104  
Pierre, SD 57501  
(605) 773-3565

**VIRGINIA**

State Corporation Commission  
Division of Securities and Retail Franchising  
1300 East Main Street, 9<sup>th</sup> Floor  
Richmond, VA 23219  
(804) 371-9051

**WASHINGTON**

Department of Financial Institutions  
Securities Division  
P.O. Box 9033  
Olympia, WA 98507-9033  
(360) 902-8760

**WISCONSIN**

Division of Securities  
Department of Financial Institutions  
P.O. Box 1768  
Madison, WI 53701  
(608) 266-8557

Ex. D

## EXHIBIT E

### AGENTS FOR SERVICE OF PROCESS

- California: Commissioner, Department of Financial Protection and Innovation, 320 West 4th Street, Suite 750, Los Angeles, California 90013
- Connecticut: The Banking Commissioner, The Department of Banking, Securities and Business Investment Division, 260 Constitution Plaza, Hartford, CT 06103, Phone: (860) 240-8299
- Hawaii: Commissioner of Securities, Business Registration Division, Department of Commerce and Consumer Affairs, 335 Merchant Street, Room 205, Honolulu, Hawaii 96813
- Illinois: Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706
- Indiana: Indiana Secretary of State, 201 State House, 200 West Washington Street, Indianapolis, Indiana 46204
- Maryland: Maryland Securities Commissioner at the Office of Attorney General-Securities Division, 200 St. Paul Place, Baltimore, Maryland 21202
- Minnesota: Commissioner of Commerce, 85 7th Place East, Suite 280, St. Paul, Minnesota 55155
- New York: New York Secretary of State, 99 Washington Ave., 6th Floor, Albany, New York 12231
- North Dakota: Securities Commissioner, 600 East Boulevard, Fifth Floor, Bismarck, North Dakota 58505
- Rhode Island: Director of the Rhode Island Department of Business Regulation, Securities Division, 233 Richmond Street, Providence, Rhode Island 02903
- South Dakota: Division of Insurance, Securities Regulation, 124 S. Euclid Ave., Suite 104, Pierre, SD 57501
- Virginia: Clerk of the State Corporation Commission, 1300 East Main Street, First Floor, Richmond, Virginia 23219
- Washington: Director of Department of Financial Institutions, Securities Division, 150 Israel Road SW, Tumwater, Washington 98501
- Wisconsin: Commissioner, Division of Securities, 345 West Washington Avenue, 4<sup>th</sup> Floor, Madison, Wisconsin 53701-1768

Ex. E



**EXHIBIT F**

**STATE ADDENDA TO DISCLOSURE DOCUMENT**

Ex. F

## **ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO CALIFORNIA FRANCHISE INVESTMENT LAW**

1. The California franchise investment law requires that a copy of all proposed agreements relating to the sale of the franchise be delivered together with the Disclosure Document.
2. The following are added as additional RISK FACTORS to the State Cover Page of the Disclosure Document:

THE TERRITORY IS NOT EXCLUSIVE. YOU MAY FACE COMPETITION FROM OTHER FRANCHISEES, FROM FRANCHISOR OWNED OUTLETS OR FROM OTHER CHANNELS OF DISTRIBUTION OR COMPETITIVE BRANDS FRANCHISOR CONTROLS.

THE FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT CONTAIN PROVISIONS THAT LIMIT FRANCHISEE'S RIGHTS AND MAY NOT BE ENFORCEABLE IN CALIFORNIA INCLUDING BUT NOT LIMITED TO A TIME LIMIT TO RAISE CLAIMS AGAINST THE FRANCHISOR, LIMITATION OF DAMAGES AND WAIVER OF JURY TRIAL.

3. Item 5 of the Disclosure Document is amended to state that "The Department of Financial Protection and Innovation requires that the franchisor defer the collection of all initial fees from California franchisees until the franchisor has completed all its pre-opening obligations and franchisee is open for business."
4. The row entitled "Interest" in Item 6 of the Disclosure Document is amended to state that the maximum interest rate in California currently is 10% annually.
5. The California Business and Professions Code Sections 20000 through 20043 provide rights to franchisees concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.
6. The Franchise Agreement and Development Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).
7. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
8. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the Franchise and indemnification for the indemnitied's own negligence, breach of contract, breach of warranty, and strict liability. These provisions may not be enforceable under California law.
9. Neither we nor any officer identified in Item 2 of this Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A 78a et seq., suspending or expelling such persons from membership in such association or exchange.
10. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of the Franchise Agreement restricting venue to a forum outside the State of California.

11. The Franchise Agreement requires the application of the laws of Texas. This provision may not be enforceable under California law.
12. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
13. You must sign a general release if you renew or transfer your Franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).
14. Website:

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT [WWW.DFPI.CA.GOV](http://WWW.DFPI.CA.GOV).

## **ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO THE CONNECTICUT BUSINESS OPPORTUNITY ACT**

The State of Connecticut does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

SELLER: VIRTUAL BRANDS, INC.

ISSUANCE DATE: October 4, 2021

### Additional Risk Factors:

1. FRANCHISOR has offered these franchises since December 2020.
2. FRANCHISOR was recently formed, in November 2020.
3. You should understand that this business involves substantial risks, which are inherent and cannot be eliminated. Success is primarily dependent on your ability and efforts as an independent business operator, as well as the degree to which you follow the System. The purchase of any franchise is a speculative investment, and significant investment beyond that outlined in this Disclosure Document may be required to succeed. There are no guarantees of success and the most important factors in the success of any franchised business, including yours, are your personal business, marketing, management, judgment and other skills and your (or your owners') willingness to work hard.
4. You will compete with other restaurants.
5. Every state and many local jurisdictions have enacted laws, rules, regulations and ordinances that may apply to the operation of your franchised restaurant, including those that: (a) establish general standards, specifications and requirements for the construction, design and maintenance of the restaurant; (b) regulate matters affecting the health, safety and welfare of your customers, such as general health and sanitation requirements, restrictions on smoking; (c) set standards pertaining to employee health and safety; and (d) set standards and requirements for fire safety and general emergency preparedness.
6. You should investigate whether there are regulations and requirements that may apply in the geographic area in which you are interested in locating your restaurant and should consider both their effect and cost of compliance.
7. There may be other specific laws or regulations in your state or municipality regarding the operation of this business opportunity. You should also familiarize yourself with federal, state and local laws of a more general nature, which may affect the operation of your business opportunity. You must comply with employment, health and safety, workers' compensation, insurance, licensing, and similar laws and regulations. The laws in your state or municipality may be more or less stringent. You should examine these laws before purchasing a franchise from us.
8. We encourage you to seek the advice of your attorney and investigate the laws of the state in which you are considering establishing a franchised restaurant.
9. We urge you to carefully review all documents with independent advisors who can provide legal, business and/or economic guidance, such as a lawyer and/or accountant.
10. We have the right to award or not award a franchise to you, regardless of the stage of the franchise award process, costs expended by you or otherwise.

Note: FRANCHISOR is not required by the Connecticut Business Opportunity Investment Act to secure a bond or establish a trust deposit.

### **ITEM 3 LITIGATION**

Except as otherwise shown in Item 3 of the Disclosure Document, neither Franchisor nor any person named in Item 2 of the Disclosure Document has at any time during the previous ten (10) fiscal years been convicted of a felony; pleaded nolo contendere to a felony charge; been convicted of a misdemeanor; pleaded nolo contendere to a misdemeanor charge; been held liable in a civil action by final judgment; or, been a party to any civil action, if such felony conviction or charge, misdemeanor conviction or charge or civil action (i) involved allegations of fraud, including, but not limited to, violation of any business opportunities law, franchise law, securities law, unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property, restraint of trade or comparable allegations, or (ii) in the case of civil actions, was brought by a present or former purchaser-investor and which involves or involved the business opportunity relationship.

Except as otherwise shown in Item 3 of the Disclosure Document, neither FRANCHISOR nor any person named in Item 2 of the Disclosure Document is subject to any currently effective state, federal agency or court injunctive or restrictive order or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunity activities, the seller-purchaser-investor relationship, franchises in general or the franchise offered hereby, or involving fraud, including but not limited to, a violation of any business opportunity law, franchise law, securities law, or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of trade.

### **ITEM 4 BANKRUPTCY**

Except as otherwise shown in Item 4 of the Disclosure Document, neither FRANCHISOR nor any person named in Item 2 of the Disclosure Document have, during the ten (10) fiscal years immediately preceding the date of this Disclosure Document, filed in bankruptcy, been adjudged bankrupt or reorganized due to insolvency or been a principal, director, executive officer, or partner of any other person that was adjudged bankrupt or reorganized due to insolvency during or within one year after the period that such person held such position with such other person.

### **ITEM 5 INITIAL FEES**

Franchise Fee: The last sentence of the first paragraph of Item 5 which reads, “The Franchise Fee is non-refundable.” is modified to read:

“The Franchise Fee is non-refundable, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Development Fee: The last sentence of the third paragraph of Item 5 which reads, “The Development Fee is non-refundable.” is modified to read:

“The Development Fee is non-refundable, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled as to any undeveloped units.”

Restaurant Opening Fee: The last sentence of the fourth paragraph of Item 5 which reads, “The Restaurant Opening Fee is payable in a lump sum and is non-refundable.” is modified to read:

“The Restaurant Opening Fee is payable in a lump sum and is non-refundable, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Inspection Reimbursement: The last sentence of the fifth paragraph of Item 5 which reads, “The Inspection Reimbursement is payable in a lump sum and is non-refundable.” is modified to read:

“The Inspection Reimbursement is payable in a lump sum and is non-refundable, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Training Fee: The first sentence of the sixth paragraph of Item 5 which reads, “If this is your first Restaurant, then you must pay a non-refundable \$2,900 Training Fee to us for initial training at the Virtual Brands Training Program which your Owner/Operator will attend in Dallas Texas.” is modified to read:

“If this is your first Restaurant, then you must pay a non-refundable \$2,900 Training Fee to us for initial training at the Virtual Brands Training Program which your Owner/Operator will attend in Dallas Texas, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

The first sentence of the seventh paragraph of Item 5 which reads, “If you are an existing Restaurant franchisee and your Owner/Operator has already attended and completed our Virtual Training Program to our satisfaction, you are only required to pay a non-refundable Training Fee of \$1,750 to us at least 30 days before your Franchised Restaurant opens.” Is modified to read:

“If you are an existing Restaurant franchisee and your Owner/Operator has already attended and completed our Virtual Training Program to our satisfaction, you are only required to pay a non-refundable Training Fee of \$1,750 to us at least 30 days before your Franchised Restaurant opens, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Day One Deposit: The last sentence of the ninth paragraph of Item 5 which reads, “The Day One Deposit is payable in a lump sum and is non-refundable.” is modified to read:

“The Day One Deposit is payable in a lump sum and is non-refundable, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Technology Support Setup Fee: The first sentence of the eleventh paragraph of Item 5 which reads, “You must pay us or our designee a one-time, non-refundable initial fee between \$575 and \$2,227 for certain required equipment necessary to support required cybersecurity services.” is modified to read:

“You must pay us or our designee a one-time, non-refundable initial fee between \$575 and \$2,227 for certain required equipment necessary to support required cybersecurity services, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Spark Online Ordering Setup Fee: The first sentence of the twelfth paragraph of Item 5 which reads, “You must purchase a subscription to Spark’s Online Ordering system and pay a one-time, non-refundable initial installation fee of \$125.” is modified to read:

“You must purchase a subscription to Spark’s Online Ordering system and pay a one-time, non-refundable initial installation fee of \$125, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Spark POS SaaS Setup Fee: The first sentence of the thirteenth paragraph of Item 5 which reads, “You must purchase a subscription to Spark’s POS system and pay a one-time non-refundable initial installation fee of \$125.” is modified to read:

“You must purchase a subscription to Spark’s POS system and pay a one-time non-refundable initial installation fee of \$125, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

Insurance Fee: The second to last sentence of the fourteenth paragraph of Item 5 which reads, “The Insurance Fee is non-refundable.” is modified to read:

“The Insurance Fee is non-refundable, except that if we fail to deliver the products, equipment or supplies or fail to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify us in writing and demand that the contract be canceled.”

## **ITEM 11 FRANCHISOR'S OBLIGATIONS**

NOTE: If the Seller/Franchisor fails to deliver the products, equipment or supplies or fails to render the services necessary to begin substantial operation of the business within forty-five (45) days of the delivery date stated in your contract, you may notify the Seller/Franchisor in writing and demand that the contract be canceled.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO GEORGIA MULTILEVEL  
DISTRIBUTION AND SALE OF BUSINESS OPPORTUNITY STATUTE**

The State of Georgia has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.



**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE ILLINOIS FRANCHISE DISCLOSURE ACT**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Illinois:

1. Illinois law applies to this transaction and supersedes any conflicting provisions of the Franchise Agreement and Development Agreement, to the extent the application of such law is constitutional and is valid as applied.
2. The provisions of Article 27.5 of the Franchise Agreement and Article 14 of the Development Agreement which designate jurisdiction or venue in a forum outside of the State of Illinois shall not be effective for Franchise Agreements and Development Agreements entered into in Illinois.
3. Pursuant to 815 IL 705/41, no release or waiver language set forth in the Franchise Agreement or the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the Illinois Franchise Disclosure Act or any other law of the State of Illinois.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE INDIANA FRANCHISE DISCLOSURE LAW  
AND THE INDIANA DECEPTIVE FRANCHISE PRACTICES ACT**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of this Disclosure Document, the Franchise Agreement, the other agreements or Texas law if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, shall supersede the provisions of Article 16 of the Franchise Agreement in the State of Indiana, but only to the extent that may be inconsistent with such prohibition.
3. Notwithstanding the Franchise Agreement, you recognize that in the event of any use of the System not in accord with that Agreement, we shall be entitled to seek injunctive and other relief.
4. No release language set forth in the Disclosure Document, Franchise Agreement, or Development Agreement including but limited to Item 17, Articles 2.2, 9.5, or 15.2 of the Franchise Agreement, or Article 7 of the Development Agreement respectively, shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
5. Article 27.5 of the Franchise Agreement and Article 14 of the Development Agreement, is amended to provide that each such agreement (as applicable) will be construed in accordance with the laws of the State of Indiana.
6. Any provision in the Disclosure Document, Franchise Agreement, or Development Agreement which designates jurisdiction or venue, or requires franchisee to agree to jurisdiction or venue, in a forum outside of Indiana, may not be enforceable.
7. Article 27.6 (Jury Trial Waiver) of the Franchise Agreement is deleted from all Agreements entered into in Indiana.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Maryland.

1. The following risk factor is included on the Special Risks page:

**Unregistered Trademark.** The primary trademark that you will use in your business is not federally registered. If the franchisor's right to use this trademark in your area is challenged, you may have to identify your business and its products or services with a name that differs from that used by other franchisees or the franchisor. This change can be expensive and may reduce brand recognition of the products or services you offer.

2. Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.
3. A franchisee may bring an arbitration action in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any such arbitration action must be brought within 3 years after the grant of the franchise.
4. Item 17 of the Disclosure Document states that the Franchise Agreement and the Development Agreement will automatically terminate upon the bankruptcy of franchisee. These provisions may not be enforceable under current Federal bankruptcy law (11 U.S.C. Section 101 et seq.)
5. Any general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
6. The acknowledgements or representations of the franchisee made in the franchise agreement which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Minnesota:

1. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, injunctive relief, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreement(s) 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.
2. Minnesota law provides franchisees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C.14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement.
3. No release language set forth in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the state of Minnesota.
4. Pursuant to Minnesota Statutes, Section 80C.12, Subdivision 1(g), the Franchise Agreement and Item 13 of the Disclosure Document are amended to state that the franchisor will protect the franchisee’s right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of franchisor’s name.
5. The Item 6 chart row entitled “Insufficient Funds Processing Fee” is replaced with the following to meet the requirements of Minnesota Statute 604.113 regarding the maximum allowable amount of the fee chargeable for insufficient payments:

Insufficient Funds Processing Fee	\$30	Upon billing	Payable if you have insufficient funds in your account, or, if you pay by check, a check is returned for insufficient funds
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**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
ARTICLE 33 OF THE NEW YORK GENERAL BUSINESS LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of New York:

1. The following is added to the State Cover Page of the Franchise Disclosure Document as additional Risk Factors:

**Franchisor's Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's ability to provide services and support to you.

**Initial Investment Costs.** The information in Item 7 and the FTC Cover Page assumes that you can negotiate a six-month rent abatement and an allowance from the landlord for tenant improvements. You may not be able to negotiate the same or any allowances or abatements. Your initial investment costs could be significantly higher.

2. The following paragraphs are added to the end of the State Cover Page:

THIS OFFERING PROSPECTUS IS PROVIDED FOR YOUR OWN PROTECTION AND CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THIS OFFERING PROSPECTUS AND ALL CONTRACTS OR AGREEMENTS SHOULD BE READ CAREFULLY IN THEIR ENTIRETY FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

ALTHOUGH THESE FRANCHISES HAVE BEEN ACCEPTED FOR FILING, SUCH FILING UNDER GENERAL BUSINESS LAW, ARTICLE 33 OF THE STATE OF NEW YORK DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE NEW YORK STATE DEPARTMENT OF LAW THAT THE INFORMATION PROVIDED HEREIN IS TRUE. THE DEPARTMENT'S REVIEW DID NOT INCLUDE A DETAILED EXAMINATION OF THE MATERIALS SUBMITTED. A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT MAY CONSTITUTE A VIOLATION OF BOTH FEDERAL AND STATE LAW, AND SHOULD BE REPORTED TO BOTH THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C., 20580 AND THE NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005.

GENERAL BUSINESS LAW, ARTICLE 33 OF THE STATE OF NEW YORK MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE A COPY OF THE OFFERING PROSPECTUS, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE AT THE EARLIER OF (a) THE FIRST PERSONAL MEETING BETWEEN THE FRANCHISOR OR ITS AGENT AND THE PROSPECTIVE FRANCHISEE, (b) AT LEAST TEN BUSINESS DAYS PRIOR TO THE EXECUTION OF A BINDING FRANCHISE OR OTHER AGREEMENT OR (c) AT LEAST TEN BUSINESS DAYS PRIOR TO THE RECEIPT OF ANY CONSIDERATION IN CONNECTION WITH THE SALE OR PROPOSED SALE OF A FRANCHISE.

THE FRANCHISOR MAY NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THIS PROSPECTUS. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON YOU TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS PROSPECTUS.

3. Item 3 is amended by adding the following language to the beginning of such Item:

To the best of our knowledge, except as otherwise disclosed below, neither we, our predecessor, nor any other person or franchise sales agent identified in Item 2 of this Disclosure Document:

- a) Has pending any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) alleging a violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations;
- b) Has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the date of this Disclosure Document, been convicted of a misdemeanor or pleaded nolo contendere to a misdemeanor charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding if such misdemeanor conviction or charge or civil action, complaint or other legal proceeding involved violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations; or
- c) Is subject to any injunctive or restrictive order or decree relating to franchises or under any Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency.

4. Item 4 is amended by adding the following language to the beginning of such Item:

To the best of our knowledge, except as otherwise disclosed below, neither we, our affiliates, our predecessor, or our officers, during the ten year period immediately before the date of this Disclosure Document:

- a) Has filed as debtor (or had filed against it) a petition to start an action under the United States Bankruptcy Code;
- b) Has obtained a discharge of its debts under the United States Bankruptcy Code; or
- c) Was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the United States Bankruptcy Code or that obtained a discharge of its debts under the United States Bankruptcy Code during or within one year after the officer or general partner of the franchisor held this position in the company or partnership.

5. Item 5 is amended by adding the following new paragraph at the end of the Item:

The initial franchise fee and the development fee paid under the Development Agreement are not used for any specific purpose.

6. Item 11 is amended by adding the following sentence at the end of the Operations Manual section:

We may modify the Operations Manual. However, no change to the Operations Manual will be made which would impose an unreasonable economic burden on you, unreasonably increase your obligations, or materially alter your status or rights under the Franchise Agreement.

7. Item 17 is amended by adding the following language at the beginning of the Item:

THIS TABLE LISTS CERTAIN IMPORTANT PROVISIONS OF THE FRANCHISE AND RELATED AGREEMENTS PERTAINING TO RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION. YOU SHOULD READ THESE PROVISIONS IN THE AGREEMENTS ATTACHED TO THIS DISCLOSURE DOCUMENT.

8. Row (d) of Item 17 entitled “Termination by you” is amended by adding the following language to the Summary column:

You may terminate the Agreement on any grounds available by law.

9. Row (j) of Item 17 entitled “Assignment of contract by us” is amended by adding the following to the Summary column:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

10. Row (w) of Item 17 entitled “Choice of law” is amended by adding the following to the Summary Section:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

11. The following is added immediately preceding Item 23:

We represent that this prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

## **DISCLOSURES REQUIRED BY NORTH CAROLINA LAW**

The State of North Carolina has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

If the seller fails to deliver the product(s), equipment or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be cancelled.



**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of North Dakota:

1. The Franchise Agreement and Development Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Franchise Agreement or Development Agreement which designates jurisdiction or venue, or requires the franchisee or developer to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from any Franchise Agreement or Development Agreement issued in the State of North Dakota.
2. Any non-competition covenants contained in the Franchise Agreement or Development Agreement shall be subject to the North Dakota laws on franchising. Covenants not to compete such as those mentioned in Article 18 of the Franchise Agreement or in the Consent of Developer's Investors may be considered unenforceable in the State of North Dakota.
3. Liquidated damages are prohibited by law in the State of North Dakota. Article 17.1 of the Franchise Agreement and Article 6.D.1 of the Development Agreement are deleted.
4. No release language set forth in the Franchise Agreement or Development Agreement (including but not limited to Articles 2.2, 9.5, or 15.2 of the Franchise Agreement, or Article 7 of the Development Agreement) shall relieve us or any other person, directly or indirectly, from liability imposed by the laws of the State of North Dakota.
5. Any provisions in the Franchise Agreement (including but not limited to Articles 27.6 and 27.7) and any provisions of the Development Agreement (including but not limited to Articles 14.G and 14.H) which require the franchisee or developer to waive the right to a jury trial or to exemplary or punitive damages are deleted from any Agreements issued in the State of North Dakota.
6. Any arbitration or mediation authorized under Articles 27.1 and 27.2 of the Franchise Agreement or Article 14 of the Development Agreement shall be held at a site agreeable to all parties.

To the extent this Addendum is inconsistent with any terms or conditions of the Franchise Agreement or exhibits or attachments thereto, or the Disclosure Document, the terms of this Addendum shall govern.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE VIRGINIA RETAIL FRANCHISING ACT**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Virginia:

1. The following is added to Item 17 h:
  - a) Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act (the "Virginia Act"), it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement and/or the Development Agreement do not constitute reasonable cause, as that term may be defined in the Virginia Act or the laws of Virginia, that provision may not be enforceable.
2. The proposed agreements described in Item 22, including all agreements that a franchisee must sign, are accurately presented in this Disclosure Document.

## **ADDENDUM TO DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF WASHINGTON**

In recognition of the requirements of the Washington Investment Protection Act at RCW 19.100.010 to RCW 19.100.940, the Franchise Disclosure Document for Virtual Brands, Inc. (“we”, “our” or “us”) for use in the State of Washington shall be amended as follows:

1. The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with us including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with us including the areas of termination and renewal of your franchise.
2. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
3. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
4. Transfer fees are collectable to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer.
5. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act at RCW 19.100.010 to RCW 19.100.940, are met independently without reference to this Addendum to the Disclosure Document.
6. The following are added to the State Cover Page of the Franchise Disclosure Document as additional Risk Factors:

**Use of Franchise Brokers.** The franchisor may use the services of franchise brokers to assist it in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor’s current and former franchisees to ask them about their experience with the franchisor.

**Primary Trademark.** The primary trademark that you will use in your business is not federally registered. If the franchisor’s right to use this trademark in your area is challenged, you may have to identify your business and its products or services with a name that differs from that used by other franchisees or the franchisor. This change can be expensive and may reduce brand recognition of the products or services you offer.

**Liquidated Damages.** The franchise agreement contains a liquidated damages provision that takes into account the number of months remaining in the term of the franchise agreement. If the franchise agreement is terminated prior to its expiration, you may be required to pay the franchisor liquidated damages equal to the average royalty fees for the number of months remaining in the term of the franchise agreement.

7. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

8. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

9. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

10. The second paragraph of the "Restaurant Opening Fee" section of Item 5 of the Franchise Disclosure Document is amended to add the following sentence to the end of that paragraph:

Franchisees, their employees, and employees of our approved vendors may be required to register as franchise brokers in Washington should they receive fees in connection with our referral fee program.

11. In accordance with RCW 19.100.050 and WAC 460-80-400, the Washington State Department of Financial Institutions is requiring a financial assurance condition. Therefore, we have posted a surety bond in the amount of \$100,000 to satisfy the condition. A copy of the surety bond is on file with the Washington State Department of Financial Institutions, Securities Division.

**EXHIBIT G**

**FORM OF NON-DISCLOSURE AGREEMENT FOR PROSPECTIVE FRANCHISEES**

Ex. G

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “Agreement”) is between Virtual Brands, Inc. (“Franchisor”) and \_\_\_\_\_, (the “Prospect”). The parties desire to explore the offering of a Wing Boss restaurant franchise from Franchisor to the Prospect (the “Business Purpose”). The parties have disclosed or will disclose Protected Information to the other party to this Agreement.

The parties agree as follows:

1. **PROTECTED INFORMATION.** For purposes of this Agreement, “Protected Information” means all information relating to the business of any party, whether or not written, that is not generally known or available to the public, including, but not limited to, recipes, operating and training methods, marketing strategies, financial models and projections, demographic and other site selection information, and other protected information for operation of a Wing Boss franchise, including the fact that the Prospect and Franchisor are engaged in discussions concerning the Business Purpose. Protected Information does not include: (a) information that is generally known or available to the public, through no act of the receiving party; (b) information that is received by a party in good faith from an independent source that has no duty of nondisclosure with respect to the information; or (c) information that the receiving party can document is already known to the receiving party and not otherwise required to be kept protected, or that is independently developed by the receiving party without reference to Protected Information.

2. **PROTECTION OF PROTECTED INFORMATION.** Except as agreed to by the parties in writing, or as otherwise required by law, each party to this Agreement (a) shall hold in confidence and shall not disclose to any third party any Protected Information of the other party; (b) shall take reasonable security precautions, with respect to the Protected Information, which shall be at least as great as the precautions it takes to protect its own Protected Information; (c) shall not use the Protected Information for any purpose other than the Business Purpose; and (d) shall disclose the Protected Information only to those persons (each is a “Representative”) that need to know the information in connection with discussions regarding the Business Purpose. Each party to this Agreement shall ensure that its Representatives comply with the terms of this Agreement. Each party agrees to be responsible for any breach of this Agreement by that party’s Representative. In the event the employment or engagement of a Representative is terminated, the party that employed or engaged the Representative agrees to use commercially reasonable efforts to recover all Protected Information from the Representative’s custody or control.

3. **TERM.** This term of this Agreement shall commence on the Effective Date and shall continue in effect until (i) any party terminates this Agreement by written notice to the other party to this Agreement, or (ii) the parties’ discussions regarding the Business Purpose terminate. Each party’s obligations under this Agreement with respect to Protected Information it receives prior to the effective date of termination shall survive after termination of this Agreement. In addition, the Non-Compete obligations under Section 6 of this Agreement shall survive after termination of this Agreement pursuant to the time frames set forth in Section 6.

4. **RETURN OR DESTRUCTION.** Upon written request, the receiving party will promptly return to the disclosing party, all tangible items containing or made from the disclosing party’s Protected Information, destroy all electronic or other similar copies, and certify destruction by a duly authorized officer, upon written request of the disclosing party.

5. **NO FURTHER RIGHTS.** Nothing in this Agreement shall confer any rights to the Protected Information or any right to receive additional Protected Information. The disclosure of Protected Information and any discussions held in connection with the Business Purpose shall not obligate either party to this Agreement to (i) continue discussions with the other party, (ii) take or forego any action with

respect to the Business Purpose, (iii) enter into any arrangement with respect to the Business Purpose, (iv) forego discussions with any third party regarding any arrangement similar to the Business Purpose, or (v) forego entering into any arrangement with a third party. Each party shall bear its own expenses with respect to the Business Purpose. Neither party makes any representation or warranty express or implied, as to the accuracy or completeness of Protected Information disclosed hereunder. The disclosing party shall have no liability or responsibility for errors or omissions in, or any decisions made by the receiving party in reliance on Protected Information disclosed under this Agreement.

## 6. NON-COMPETE.

6.1. **SOURCES OF FINANCING.** During the term of this Agreement and for a period of two (2) years after its expiration or termination, a party, and all entities and persons that have a direct or indirect financial interest in that party, shall not approach or contact any existing sources of financing disclosed by the other party, regardless of geographic location of the source of financing, for the purpose of financing the Business Purpose or any other similar commercial endeavor.

6.2. **NON-COMPETE.** During the Term of this Agreement and for two years (2 years) after its termination, the Prospect will not engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with any business that offers chicken wings or chicken tenders as a primary or featured menu item, anywhere in the United States; provided, however, that the Prospect may purchase or otherwise acquire less than one percent (1%) of any class of securities of any enterprise (but without otherwise participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934.

7. **REPRESENTATIONS AND REMEDIES.** The Prospect does not have prior experience owning and operating a restaurant that offers chicken wings or chicken tenders as a primary or featured menu item. In connection with exploring the Business Purpose, the Prospect will be shown the Franchisor's systems for operating, marketing and other important information for ownership and operation of a restaurant that offers chicken wings and chicken tenders as primary/featured menu items. The Prospect agrees that Franchisor will be at a substantial competitive disadvantage if the Prospect fails to abide by the terms of this Agreement. The Prospect willingly enters into this Agreement and acknowledges and agrees that the restrictions in this Agreement are reasonable in light of the nature of information being furnished to the Prospect. The Prospect will directly benefit if it enters into a definitive franchising agreement with Franchisor. The provisions of this Agreement are reasonable and necessary to prevent the improper use or disclosure of Protected Information. This Agreement imposes a reasonable restraint in scope, geographic area, and time limitations on the Prospect, in light of the activities and business of Franchisor. The scope, geographic area, and time limitations contained in this Agreement are necessary for the protection of Franchisor's business interests. The provisions contained in this Agreement will not interfere with or prohibit the Prospect from earning an adequate livelihood. Each party acknowledges and agrees that any disclosure or use of Protected Information not authorized under this Agreement, or any breach of Section 7, will constitute a material breach of this Agreement and result in irreparable harm to the non-breaching party, for which monetary damages would be an inadequate remedy. Each party acknowledges and agrees that the lack of immediate relief from any material breach of this Agreement also results in irreparable harm to the non-breaching party. In addition to the rights and remedies otherwise available at law, the non-breaching party will be entitled to equitable relief, including injunction without the necessity of posting a bond, in the event of any breach or threatened breach of this Agreement, and to recover its reasonable attorney fees. Each party agrees to be responsible for any breach of this Agreement by any Representative, including the payment of court costs and legal fees.

8. **NOTICES.** Any notice or demand delivered hereunder shall be in writing and shall be deemed given upon personal delivery or, if not personally delivered, when sent by U.S. Mail registered or certified, postage prepaid, return receipt requested, by overnight courier service such as Federal Express or Airborne Express, or by electronic mail with confirmation of receipt by electronic mail from the recipient, and shall be addressed to the recipient party at the address indicated on the signature page of this Agreement, or at any other address a party shall indicate in a notice to the other parties sent in accordance with this Section 8.

9. **LAW.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings or agreements. Any changes or amendments to this Agreement must be in writing and signed by both parties. This Agreement shall not be assignable by either party without the prior written consent of the other party. Otherwise, this Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties. A waiver by either party of any term or condition of this Agreement shall not be deemed or construed as a waiver of the term or condition in the future, or a waiver of any subsequent breach of the Agreement. This Agreement shall be governed by the laws of the State of Texas. The headings in this Agreement are for convenience only, and shall not affect the construction or enforcement of this Agreement. This Agreement shall be construed according to its fair meaning and not strictly for or against either party. If any part of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. In the event of any dispute arising under this Agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs. The parties waive all rights to a trial by jury.

Dated: \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date")

**VIRTUAL BRANDS, INC.:**

**PROSPECT:** \_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_



**EXHIBIT H**

**MANAGEMENT CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

Ex. H

## **MANAGEMENT CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

The undersigned Wing Boss Restaurant on-premises manager (“Manager”), in consideration of the access to training and confidential information he or she has received or will receive from Virtual Brands, Inc., a Texas corporation, and/or its affiliates (collectively, the “Company”) in connection with Manager’s employment with the Company’s franchisee named below (the “Franchisee”), hereby covenants and agrees as follows:

1. **Confidentiality Agreement.** Manager acknowledges that, while employed by the Franchisee, Manager has and will receive certain confidential information and knowledge concerning the Wing Boss Restaurant business of the Company which the Company wishes to protect, including (without limitation) information, knowledge, know-how, recipes, formulae, materials, equipment, techniques, systems, and other data relating to or comprising the Wing Boss Restaurant franchise system. Confidential information includes the Operations Manual and other materials and information supplied by Company to the Franchisee that is identified as confidential at the time of disclosure or before. Manager shall not reveal that confidential information to any other party, except the Company’s or the Franchisee’s independent public accountants, Manager’s legal counsel (if that counsel also agrees to maintain the confidentiality of the confidential information), or as otherwise required by law. Manager shall not use or disclose the confidential information at any time for the purpose of competition with the Company, its successors and assigns, or Franchisee. When Manager’s employment with Franchisee terminates for any reason, the Manager promptly shall surrender to Franchisee all papers, documents, writings and other property produced by Manager or coming into Manager’s possession by or through Manager’s employment with the Franchisee containing confidential information or related in any way to confidential information. All of the foregoing materials shall remain the property of the Company, its successors, or its assigns.
2. **Covenant Not to Compete.** During the term of Manager’s employment with the Franchisee and for a period of 24 months after the termination of Manager’s employment with the Franchisee for any reason, Manager shall not engage in, directly or indirectly as a principal, agent, trustee, employee, consultant, independent contractor or through any corporation, partnership, association, or other entity, any business or be employed in a restaurant or prepared food retailer that is the same or similar to a Wing Boss Restaurant at any location within a 10-mile radius of any Wing Boss Restaurant location at which Manager worked or within a 10-mile radius of any then existing Wing Boss Restaurant location.
3. **Indemnification and Injunctive Relief.** Manager shall indemnify and hold the Company and the Franchisee harmless against any losses, damages, costs, expenses, claims or actions, including attorneys’ fees and costs, proximately caused by any breach of this Agreement by Manager. Manager shall pay to the Company any compensation, profits or economic benefits realized by the Manager resulting from any breach of this Agreement. The Company shall have the right to injunctive and other equitable relief prohibiting the Manager from any violation or threatened violation of this Agreement, without posting any bond or security.
4. **Governing Law.** The laws of Texas shall govern this Agreement.
5. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the subject matter of this Agreement and replaces and supersedes all other written and oral agreements and statements of the parties relating to the subject matter of this Agreement.
6. **Limitations.** This is not a contract of employment and this creates no employment relationship between Manager and the Company. Manager is not a third party beneficiary of any contract between the Company and the Franchisee. Franchisee remains the sole employer of Manager and is solely responsible

for the recruitment, selection, training, supervision, compensation, benefits, insurance, worker's compensation, discipline and termination of Manager. During any period of on the job training of Manager by the Company, Franchisee shall remain the sole employer of Manager and shall be responsible for controlling all aspects of Manager's employment.

Executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Manager:** \_\_\_\_\_

Signature

\_\_\_\_\_  
Printed Name

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

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT I**

**FINANCIAL STATEMENTS**

**This exhibit includes DCG's audited financial statements for the fiscal years ended May 31, 2019, 2020 and 2021, and DCG's unaudited balance sheet as of August 31, 2021 and related unaudited income statement and statement of cash flows for the period from May 31, 2021 to August 31, 2021.**

Ex. I



**Dickey's Capital Group, Inc.**

**CONSOLIDATED FINANCIAL STATEMENTS**

**May 31, 2021 and 2020**

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# REPORT



## **INDEPENDENT AUDITORS' REPORT**

**To the Board of Directors and Stockholder  
Dickey's Capital Group, Inc.**

### **Opinion**

We have audited the accompanying consolidated financial statements of Dickey's Capital Group, Inc. (a Texas corporation) and its Subsidiaries (the "Company"), which comprise the consolidated balance sheets as of May 31, 2021 and 2020, and the related consolidated statements of income (loss), stockholder's equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Dickey's Capital Group, Inc. and Subsidiaries as of May 31, 2021 and 2020, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of Dickey's Capital Group, Inc. and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Adjustment of Prior Period Consolidated Financial Statements**

As discussed in Note 3 to the consolidated financial statements, certain misstatements regarding the year ended May 31, 2020, were discovered by management of the Company during the current year. Accordingly, amounts reported for due from related parties and selling and administrative expenses have been restated in the 2020 consolidated financial statements now presented, and an adjustment has been made to retained earnings as of May 31, 2020, to correct the misstatement. Our opinion is not modified with respect to this matter.

### **Responsibilities of Management for the Consolidated Financial Statements**

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



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

### **Auditors' Responsibilities for the Audit of the Consolidated Financial Statements**

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

In performing an audit in accordance with GAAS, we:

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

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

*Carr, Riggs & Ingram, L.L.C.*

**CARR, RIGGS & INGRAM, LLC**

Dallas, Texas

September 29, 2021



# FINANCIAL STATEMENTS



**Dickey's Capital Group, Inc.**  
**Consolidated Balance Sheets**

<i>May 31,</i>	<b>2021</b>	2020 (Restated)
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 15,496,291	\$ 2,412,791
Cash - restricted	-	5,567
Accounts receivable, net	3,802,142	3,378,405
Prepaid expenses and other current assets	594,286	979,520
Inventory	1,826,409	1,536,712
Income taxes receivable	1,235,891	1,126,027
Total current assets	<b>22,955,019</b>	9,439,022
Noncurrent assets		
Notes receivable	196,333	245,068
Due from related parties	1,199,742	717,460
Property and equipment, net	8,102,070	8,257,754
Deferred tax asset	261,250	599,329
Goodwill, net	10,631,487	12,766,424
Intangible assets, net	14,556,521	15,704,065
Other assets	44,891	44,891
Total noncurrent assets	<b>34,992,294</b>	38,334,991
Total assets	<b>\$ 57,947,313</b>	\$ 47,774,013

*The accompanying notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Balance Sheets**  
**(Continued)**

<i>May 31,</i>	<b>2021</b>	2020 (Restated)
<b>Liabilities and Stockholder's Equity</b>		
Current liabilities		
Accounts payable	\$ 3,169,979	\$ 4,045,916
Accrued expenses and other current liabilities	3,760,988	2,207,549
Lines of credit	485,100	1,161,560
Due to related parties	-	-
Current maturities of capital lease obligations	136,337	169,929
Current maturities of notes payable	-	2,245,487
Total current liabilities	<b>7,552,404</b>	<b>9,830,441</b>
Noncurrent liabilities		
Capital lease obligations, less current maturities	-	133,158
Notes payable, less current maturities, net of debt issuance cost, of \$540,000 and \$154,045, respectively	29,460,000	12,176,607
Contract liability	1,151,111	748,719
Deferred incentive income	140,049	194,632
Paycheck protection program loans	6,470,200	3,378,800
Total noncurrent liabilities	<b>37,221,360</b>	<b>16,631,916</b>
Total liabilities	<b>44,773,764</b>	<b>26,462,357</b>
Stockholder's equity		
Common stock, \$.001 par value, 5,000 shares authorized; 1,000 issued, and outstanding	1	1
Additional paid-in capital	2,487,723	2,487,723
Retained earnings	9,910,105	18,088,146
Total stockholder's equity	<b>12,397,829</b>	<b>20,575,870</b>
Noncontrolling interests	775,720	735,786
Total noncontrolling interests	<b>13,173,549</b>	<b>21,311,656</b>
Total liabilities and stockholder's equity	<b>\$ 57,947,313</b>	<b>\$ 47,774,013</b>

*The accompanying notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Income (Loss)**

<i>For the years ended May 31,</i>	<b>2021</b>	2020 (Restated)
<b>Revenue</b>		
Operating income	\$ 21,919,230	\$ 19,685,772
Franchise fees	1,436,233	1,705,108
Advertising income	8,786,145	8,804,739
Barbecue and related supplies sales	30,951,709	24,146,356
Other	244,000	237,161
Total revenue	<b>63,337,317</b>	54,579,136
<b>Cost of Revenue</b>		
Franchise setup costs	956,859	1,132,415
Franchise maintenance costs	2,264,153	1,931,972
Cost of barbecue and supplies	19,535,643	15,783,288
Total cost of revenue	<b>22,756,655</b>	18,847,675
Gross profit	<b>40,580,662</b>	35,731,461
<b>Selling and Administrative Expenses</b>	<b>46,283,404</b>	39,577,773
Income (loss) from operations	<b>(5,702,742)</b>	(3,846,312)
<b>Other Income (Expense)</b>		
Interest income	22,632	15,006
Interest expense	(662,388)	(930,383)
Loss on sale of property and equipment	(51,704)	(61,812)
Gain on forgiveness of paycheck protection program loans	324,100	-
Other	32,851	74,293
Total other income (expense)	<b>(334,509)</b>	(902,896)
Income (loss) before income taxes	<b>(6,037,251)</b>	(4,749,208)
<b>Provision for Income Taxes</b>	<b>975,558</b>	31,546
<b>Consolidated Net Income (Loss)</b>	<b>(7,012,809)</b>	(4,780,754)
Less income attributable to the noncontrolling interests	<b>(283,284)</b>	(65,596)
<b>Net Income (Loss) Attributable to Stockholder</b>	<b>\$ (7,296,093)</b>	<b>\$ (4,846,350)</b>

*The accompanying notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Stockholder's Equity**

	Common Stock		Additional Paid-In Capital	Retained Earnings	Total Stockholder's Equity	Noncontrolling Interests	Total Equity
	Shares	Amount					
May 31, 2019	1,000	\$ 1	\$ 2,487,723	\$22,934,496	\$25,422,220	\$ 839,850	\$26,262,070
Contributions	-	-	-	-	-	71,576	71,576
Dividends and distributions	-	-	-	-	-	(241,236)	(241,236)
Net income (loss) (Restated)	-	-	-	(4,846,350)	(4,846,350)	65,596	(4,780,754)
May 31, 2020 (Restated)	1,000	1	2,487,723	18,088,146	20,575,870	735,786	21,311,656
Adoption of ASC 606 (Note 2)	-	-	-	(881,948)	(881,948)	-	(881,948)
Contributions	-	-	-	-	-	60,756	60,756
Dividends and distributions	-	-	-	-	-	(304,106)	(304,106)
Net income (loss)	-	-	-	(7,296,093)	(7,296,093)	283,284	(7,012,809)
May 31, 2021	1,000	\$ 1	\$ 2,487,723	\$ 9,910,105	\$12,397,829	\$ 775,720	\$13,173,549

*The accompanying notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Cash Flows**

<i>For the years ended May 31,</i>	<b>2021</b>	2020 (Restated)
<b>Operating Activities</b>		
Net loss	\$ (7,012,809)	\$ (4,780,754)
Adjustments to reconcile net loss to net cash provided (used) by operating activities		
Depreciation expense	719,301	682,871
Amortization expense	3,230,688	3,229,622
Amortization of debt issuance costs	60,000	111,925
Bad debt expense	-	(214,660)
Deferred tax provision	338,079	(83,428)
Loss on sale of property and equipment	51,704	58,033
Gain on forgiveness of paycheck protection program loan	(324,100)	-
Change in operating assets and liabilities		
Accounts receivable	(423,737)	1,344,549
Inventory	(289,697)	133,501
Prepaid expenses and other current assets	385,234	(137,680)
Other assets	-	(35,975)
Accounts payable	(875,937)	693,809
Accrued expenses and other current liabilities	1,553,439	(194,460)
Income tax payable	(109,864)	(859,355)
Contract liability	(479,556)	-
Deferred incentive income	(54,583)	112,637
Cash provided (used) by operating activities	<b>(3,231,838)</b>	60,635
<b>Investing Activities</b>		
Purchase of property and equipment	(563,528)	(1,408,812)
Collections on notes receivable	48,735	46,007
Proceeds from sale of property and equipment	-	294,182
Cash provided (used) by investing activities	<b>(514,793)</b>	(1,068,623)
<b>Financing Activities</b>		
Borrowings from notes payable	30,000,000	15,000,024
Principal payments on notes payable	(14,422,094)	(16,048,799)
Payment of debt issuance costs	(600,000)	-
Paycheck protection program loans proceeds	3,415,500	3,378,800
Lines of credit, net	(676,460)	673,842
Principal payments on capital leases	(166,750)	(292,324)
Contributions	60,756	71,576
(Advances) payments due from/to related parties	(482,282)	61,903
Dividends and distributions	(304,106)	(241,236)
Cash provided (used) by financing activities	<b>16,824,564</b>	2,603,786
<b>Net Increase (Decrease) in Cash</b>	<b>13,077,933</b>	1,595,798
<b>Cash at Beginning of Year</b>	<b>2,418,358</b>	822,560
<b>Cash at End of Year</b>	<b>\$ 15,496,291</b>	<b>\$ 2,418,358</b>

*The accompanying notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Cash Flows**  
**(Continued)**

<i>For the years ended May 31,</i>	<b>2021</b>	2020
<b>Reconciliation to Consolidated Balance Sheet</b>		
Cash and cash equivalents	\$ 15,496,291	\$ 2,412,791
Cash - restricted	-	5,567
	<b>\$ 15,496,291</b>	<b>\$ 2,418,358</b>
<b>Supplemental Disclosure of Cash Flow Information</b>		
<b>Cash Paid During the Year for</b>		
Interest	\$ 454,909	\$ 681,359
Income taxes	\$ 109,864	\$ 859,355

*The accompanying notes are an integral part of these consolidated financial statements.*



## Dickey's Capital Group, Inc. Notes to Consolidated Financial Statements

### NOTE 1: ORGANIZATION AND NATURE OF OPERATIONS

Dickey's Capital Group, Inc. (the "Company") was incorporated in 2016 under the laws of the state of Delaware. The Company was formed for the purpose of holding interests in entities pertaining to the franchising, operating, marketing, and supplying of Dickey's barbecue restaurants. At May 31, 2021, the Company had 484 operating franchises (including 8 stores owned by related parties), 134 of the operating franchises were located in Texas, with the remainder operating in approximately 43 other states and 5 international locations. The Company's management team has successfully operated barbecue restaurants at various locations since 1941. In addition to the franchised barbecue restaurants, in 2021 Virtual Brands, Inc. (a majority-owned subsidiary of Dickey's Barbecue Restaurants, Inc.) franchised 22 virtual franchises named Big Deal Burger (which includes 5 stores owned by related parties) as well as 46 virtual franchises named Wing Boss (which includes 4 stores owned by related parties).

The Company and its ownership group commonly owned interests in the following corporations as of May 31, 2021:

100%	Dickey's Barbecue Restaurants, Inc. and Subsidiaries
100%	Dickey's Barbecue Pit, Inc.
66.7%	Wycliff Douglas Foods, Inc.
91%	Stanford Sonoma Corp.

The Company and its ownership group owned interests in the following partnerships and limited liability companies as of May 31, 2021:

99%	Dickey's Corsicana, Ltd.
100%	Dickey's Capital Properties, LLC
66.7%	Dickey's Central Products Company, LLC
60%	Dickey's Love Field JV, LLC
60%	Dickey's DFW Terminal C JV, LLC

### NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### *Principles of Consolidation*

The consolidated financial statements include the accounts of Dickey's Capital Group, Inc. as well as its subsidiaries and the commonly-controlled entities discussed in Note 1. All significant intercompany transactions and accounts have been eliminated.

#### *Basis of Accounting*

The accompanying consolidated financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The Financial Accounting Standards Board (FASB) provides authoritative guidance regarding U.S. GAAP through the Accounting Standards Codification (ASC) and related Accounting Standards Updates (ASUs).

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Use of Estimates***

The preparation of U.S. GAAP financial statements requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and changes therein, and disclosure of contingent assets and liabilities and the reported amounts of revenue and expenses. Actual results could differ from those estimates. Estimates that are particularly susceptible to significant change in the near term are related to goodwill and other intangible assets.

***Fair Value of Financial Instruments***

The Company defines the fair value of a financial instrument as the amount at which the instrument could be exchanged in a current transaction between willing parties. Financial instruments included in the Company's consolidated financial statements include cash and cash equivalents, restricted cash, trade accounts receivable, other assets and trade accounts payable. Unless otherwise disclosed in the notes to the consolidated financial statements, the carrying value of financial instruments is considered to approximate fair value due to the short maturity and characteristics of those instruments. The carrying value of capital leases approximates fair value since terms approximate those currently available for similar type instruments.

***Cash and Cash Equivalents***

The Company includes all cash accounts, which are not subject to withdrawal restrictions or penalties, and all highly liquid debt instruments purchased with an original maturity of three months or less, as cash and cash equivalents in the accompanying consolidated financial statements. Cash balances related to the Marketing Fund discussed in the advertising and marketing policy note are considered restricted cash.

***Accounts Receivable***

Trade accounts receivable are reported at the amount management expects to collect from outstanding balances. Differences between the amount due and the amount management expects to collect are reported in the results of operations of the year in which those differences are determined, with an offsetting entry to a valuation allowance for trade accounts receivable. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable.

The Company estimates the allowance based on analysis of specific customers, taking into consideration the age of past due amounts and an assessment of the customer's ability to pay. Because of the credit risk involved, management has provided an allowance for doubtful accounts of approximately \$30,000 and \$30,000 as of May 31, 2021 and 2020, respectively.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Inventory***

Inventory, consisting primarily of barbecue and related supplies, is stated at the lower of cost (average cost) or net realizable value. The Company uses significant estimates and assumptions when determining the realizable value of inventories at its balance sheet dates. Management has determined that the Company does not require a net realizable value adjustment as of May 31, 2021 and 2020.

***Notes Receivable***

The Company, in the normal course of business, occasionally extends credit to franchisees. The notes receivable are stated at the unpaid principal balances. The notes receivable have various terms, requiring monthly payments with the final maturity within 5 to 15 years, and interest is charged monthly at annual rates of 3.5%. Interest income is recognized in accordance with the terms of the individual note agreements and accrued as applicable. Substantially all of the notes receivable are collateralized in accordance with the terms of the agreements. Notes receivable are reviewed on a regular basis and uncollectible amounts are written off. Management has determined that the Company does not require an allowance for doubtful accounts as of May 31, 2021 and 2020.

***Property and Equipment***

Property and equipment are stated at cost less accumulated depreciation. Expenditures for major additions and improvements are capitalized, and minor replacements, maintenance, and repairs are charged to expense as incurred. The Company provides depreciation using the straight-line method based on the estimated useful lives of the individual assets as follows:

Vehicles	5 years
Equipment	2-7 years
Software	3-5 years
Furniture and fixtures	5-7 years
Leasehold improvements	1-27 years
Buildings	39 years

***Long-Lived Assets***

The Company evaluates its long-lived assets for financial impairment on a regular basis in accordance with FASB ASC 360-10, *Accounting for the Impairment or Disposal of Long-Lived Assets*. The Company evaluates the recoverability of long-lived assets not held for sale by measuring the carrying amount of the assets against the estimated discounted future cash flows associated with them. When the evaluations indicate that the future discounted cash flows of long-lived assets are not sufficient to recover the carrying values, the assets are adjusted to their fair values.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Goodwill and Other Intangible Assets***

Intangible assets consist of goodwill, franchise agreements, incentive agreements, trademarks and website domains. Other than the trademarks and website domains, which have indefinite lives, intangible assets are amortized using the straight-line method over their estimated useful lives as follows: goodwill – 10 years; franchise agreements and incentive agreements – 15 years.

The Company accounts for its recorded goodwill in accordance with FASB ASU 2014-02, *Intangibles-Goodwill and Other* (Topic 350): *Accounting for Goodwill*. Accordingly, goodwill is amortized on a straight-line basis over 10 years and only tested for impairment at the reporting unit level upon the occurrence of any triggering events that would suggest the fair value of the reporting unit may be below its carrying amount, see Note 16.

***Income Taxes***

The Company owns interest in partnerships, limited liability companies and corporations. Income reported by the corporations is subject to both federal and state income taxes and income reported by the partnerships and limited liability companies is subject to Texas franchise taxes. For income subject to corporate income taxes, deferred income taxes are determined utilizing the asset and liability approach, whereby deferred tax assets are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion of the deferred tax assets will not be realized. As of May 31, 2021, a valuation allowance of approximately \$1,146,000, was established by management to offset this deferred tax asset due to uncertainties regarding the Company's ability to utilize this net operating loss, see Note 12. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Management has determined that the Company does not have any uncertain tax positions and associated unrecognized benefits that materially impact the consolidated financial statements or related disclosures. Since tax matters are subject to some degree of uncertainty, there can be no assurance that the Company's tax returns will not be challenged by the taxing authorities and that the Company will not be subject to additional tax, penalties, and interest as a result of such challenge. As of May 31, 2021, the Company's tax returns for fiscal years ended May 31, 2016, and thereafter remained subject to federal income tax examination. The fiscal year ended May 31, 2016, is currently being audited by the Internal Revenue Service (IRS) as of the date of this report.

***Revenue and Cost of Revenue Recognition***

Revenue within the scope of ASC 606, *Revenue from Contracts with Customers* (ASC 606), is recognized when performance obligations under the terms of contracts with customers are satisfied. Prior to the adoption of ASC 606, the Company recognized revenue when persuasive evidence of an arrangement existed, delivery of products had occurred, the sales price was fixed or determinable and collectability was reasonably assured.

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Revenue and Cost of Revenue Recognition (Continued)***

**Franchise Revenues**

The Company franchises barbecue restaurant and other concepts. The franchise arrangement is documented in the form of a franchise agreement and, in some cases, a development agreement. The franchise arrangement between the Company as the franchisor and the franchisee as the customer requires the Company to perform various pre-opening related services for the customer, to support the brand and a variety of other interrelated services. The Company applies the practical expedient in accordance with ASU 2021-02, *Franchisors- Revenue from Contracts with Customers*, whereby they account for pre-opening services provided to a franchisee as distinct from the franchise license as a single performance obligation. These pre-opening services include assistance with site selection, real estate, lease, finance, training, information technology and other services. Accordingly, the Company considers the franchise agreements to represent two performance obligations, the pre-opening services and the transfer of the franchise license combined with its other interrelated services. The intellectual property subject to the franchise license is symbolic intellectual property as it does not have significant standalone functionality, and substantially all the utility is derived from its association with the Company's past or ongoing activities. The nature of the Company's promise in granting the franchise license is to provide the franchisee with access to the brand's symbolic intellectual property over the term of the license. The additional services provided by the Company are highly interrelated with the franchise license and as such are considered to represent a single additional performance obligation.

The transaction price in a standard franchise arrangement for both brands primarily consists of (a) initial franchise/development fees; (b) continuing franchise fees (royalties); and (c) advertising fees and to a lesser extent various other recurring fees. Since the Company considers the licensing of the franchising right to be two performance obligations, an allocation of the transaction price is made between pre-opening activities and the franchise license. Additionally, all franchise agreements require franchisees to purchase proprietary items from other related entities.

The Company recognizes the primary components of the transaction price as follows:

- Franchise and development fees are recognized as revenues ratably on a straight-line basis over the term of the franchise agreement commencing with the restaurant opening date. As these fees are typically received in cash at or near the beginning of the franchise term, the cash received is initially recorded as a contract liability until recognized as revenue over time. These revenues are included as franchise fees in the accompanying consolidated statements of income (loss);

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Revenue and Cost of Revenue Recognition (Continued)***

**Franchise Revenues (Continued)**

- The Company is entitled to royalties and advertising fees based on a percentage of the franchisee's gross sales as defined in the franchise agreement. Royalty and advertising revenues are recognized when the franchisee's reported sales occur. Depending on timing within a fiscal period, the recognition of revenue results in either a contract asset (unbilled receivable) or, once billed, accounts receivable, on the balance sheet. Royalty revenues are included in operating income and advertising fee revenues in advertising income in the accompanying consolidated statements of income (loss);
- The Company is entitled to various other minor one-time and monthly recurring fixed fees related to technology set-up and ongoing services provided. These revenues are recognized monthly as the related services are performed. Depending on timing within a fiscal period, the recognition of revenue results in either a contract asset (unbilled receivable) or, once billed, accounts receivable, on the balance sheet. These additional revenues are included in operating income in the accompanying consolidated statements of income (loss).

In determining the amount and timing of revenue from contracts with customers, the Company exercises significant judgment with respect to collectability of the amount; however, the timing of recognition does not require significant judgment as it is based on either the franchise term or the month of sale as reported by the franchisee, neither of which require estimation.

The Company does not incur a significant amount of contract acquisition costs in conducting its franchising activities. The Company believes its franchising arrangements do not contain a significant financing component.

During the year ended May 31, 2020, management temporarily reduced the contractual royalty rates due to the Company to provide financial assistance to its franchisees.

In some instances where contractual agreements exist, commissions for new franchises are paid to third parties. These commissions are generally recognized as an expense when the related franchise fee revenue is earned.

**Barbecue and Related Supplies Sales**

The Company recognizes barbecue sales at a point in time, at the point of sale to customers. Revenue from the sale of barbecue related supplies is recognized when the performance obligations under the terms of the contracts with customers are satisfied, which occurs at a point in time, upon shipment to the customer. The Company does not retain any performance obligations once products have been delivered.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Revenue and Cost of Revenue Recognition (Continued)***

**Gift Card Breakage Revenues**

The portion of gift cards sold to customers which are never redeemed is commonly referred to as gift card breakage. Gift card breakage revenues are recognized at the time of the gift card redemption using an estimated breakage rate based on historical redemption rates and the liability for the estimated future redemption is recorded as a contract liability until the gift card is redeemed. These revenues are included in operating income in the accompanying consolidated statements of income (loss). See further discussion of *gift card liability* below.

Revenues outside of the scope of ASC 606 are recognized as follows:

**Rental Income**

The Company recognizes rental income as earned on a straight-line basis under the terms of the lease agreements. On occasion, the Company will agree to temporary reductions of the contractual rent. In these situations, the rental income recognized will be reduced for these adjustments.

**Vendor Incentive Revenues**

The Company recognizes vendor incentive income monthly as earned from the vendors related to rebates provided based on the volume of goods purchased from the vendor during the month. These revenues are included in operating income in the accompanying consolidated statements of income (loss).

**Interest Income**

The Company recognizes interest income on notes receivable monthly on an accrual basis in accordance with the terms of the related note agreements.

***Cost of Barbecue and Supplies***

Cost of barbecue and supplies includes the cost of food products sold, food spoilage, shipping costs, handling costs and supplies.

***Advertising and Marketing***

The Company maintains a Marketing Fund, which includes contractual advertising and marketing fees paid monthly by franchisees. Production costs of advertising, TV or radio commercials, programming and other marketing activities are paid out of the Marketing Fund and charged to operations as incurred. The total of such expenses for the years ended May 31, 2021 and 2020, were approximately \$8,132,000 and \$7,949,000, respectively.



**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Advertising and Marketing (Continued)***

The franchise agreements generally require a predetermined percentage of the franchisee's gross monthly revenue to be paid to the Marketing Fund for related advertising and marketing. For franchise agreements entered into between December 21, 2020 and October 3, 2021, the predetermined percentage of the franchisee's gross monthly revenue varies by contract and ranges up to 4%. For franchise agreements entered into between October 4, 2021 and the issuance date of the 2022 franchise disclosure document, the predetermined percentage of the franchisee's gross monthly revenue varies by contract and will range up to 3%. Funds collected for advertising and marketing under the franchise agreements that are restricted for that purpose are recorded as deferred revenue and are recognized as revenue once the related advertising costs are expensed. A receivable from franchises is recognized in cases where the advertising expenses incurred by the Company exceed marketing fee collections in a given period. In either case, no profit is recognized from advertising and marketing fees collected in accordance with the franchise agreement.

***Taxes Collected***

The Company collects sales taxes assessed by governmental authorities imposed on certain franchise related revenues. Sales taxes collected are excluded from revenues; net amounts due are reported as a liability on the Company's consolidated balance sheets.

***Gift Card Liability***

Gift card discounts are expensed in the period of sale as the Company does not realize revenue upon redemption of the associated gift cards. Gift card breakage revenue is recognized as gift cards are sold based on an estimated redemption rate that has ranged from 95% at the beginning of the program to 86% for the year ended May 31, 2021, based on indicators from historical data. The gift card liability at May 31, 2021 and 2020 was approximately \$673,000 and \$765,000, respectively, and is included in accrued expenses and other current liabilities in the accompanying consolidated balance sheets. During the years ended May 31, 2021 and 2020, breakage revenue totaled approximately \$298,000 and \$441,000, respectively.

***Subsequent Events***

Management has evaluated subsequent events through the date that the consolidated financial statements were available to be issued, September 29, 2021. See Note 18 for relevant disclosures. No subsequent events occurring after this date have been evaluated for inclusion in these consolidated financial statements.

***Recent Accounting Pronouncements***

In May 2014, the FASB issued ASU 2014-09, ASC 606. This guidance specifies that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This ASU and its amendments supersede the revenue recognition requirements in Topic 605, *Revenue Recognition*, and most industry specific guidance.



**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Recent Accounting Pronouncements (Continued)***

Effective June 1, 2020, the Company adopted ASC 606, using the modified retrospective method. This method allows the standard to be adopted retrospectively through a cumulative adjustment to retained earnings recognized upon adoption. Therefore, the 2020 consolidated financial statements have not been restated and continue to be reported under the accounting standards in effect for that year. Accordingly, an adjustment in the amount of \$881,948 to decrease retained earnings was recorded upon adoption of ASC 606 on June 1, 2020.

***Accounting Guidance Not Yet Adopted***

In February 2016, the FASB issued ASU 2016-02, *Leases* (Topic 842). The guidance in this ASU and its amendments supersedes the leasing guidance in Topic 840, entitled *Leases*. Under the guidance, lessees are required to recognize lease assets and lease liabilities on the statement of financial position for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of activities. For nonpublic entities, the standard is effective for fiscal years beginning after December 15, 2021. The Company is currently evaluating the impact of the guidance on its consolidated financial statements for all leasing arrangements.

**NOTE 3: PRIOR PERIOD RESTATEMENT**

During the year ended May 31, 2021, the Company determined that certain intercompany consulting expenses and related intercompany eliminations were not properly recorded, leading to understatements of selling and administrative expenses and overstatements of due from related parties, during year ending May 31, 2020. Accordingly, the Company has restated its results for the year ended May 31, 2020. The restatements resulted in a decrease to beginning retained earnings of \$425,562.

The effect of these corrections on the consolidated financial statements is as follows:

<i>As of and for the year ended May 31,</i>	<i>2020</i>
<hr/>	
Consolidated net income (loss)	
As previously reported	\$ (4,355,192)
As restated	\$ (4,780,754)
<hr/>	
Retained earnings	
As previously reported	\$ 18,513,708
As restated	\$ 18,088,146
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Due from related parties	
As previously reported	\$ 1,143,022
As restated	\$ 717,460
<hr/>	

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 4: PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following:

<i>May 31,</i>	<b>2021</b>	2020
Vehicles	\$ 203,586	\$ 203,635
Equipment	5,847,939	5,533,056
Software	737,128	713,494
Furniture and fixtures	236,881	229,669
Leasehold improvements	2,867,355	2,815,938
Buildings	1,714,051	1,714,051
Construction in progress	114,730	-
Land	3,448,551	3,448,551
	<b>15,170,221</b>	14,658,394
Less accumulated depreciation	<b>(7,068,151)</b>	(6,400,640)
<b>Property and equipment, net</b>	<b>\$ 8,102,070</b>	<b>\$ 8,257,754</b>

Depreciation expense for the years ended May 31, 2021 and 2020, was approximately \$719,000, and \$683,000, respectively.

**NOTE 5: GOODWILL**

Goodwill consisted of the following:

<i>May 31,</i>	<b>2021</b>	2020
Goodwill	\$ 21,283,752	\$ 21,283,752
Less accumulated amortization	<b>(10,652,265)</b>	(8,517,328)
<b>Goodwill, net</b>	<b>\$ 10,631,487</b>	<b>\$ 12,766,424</b>

Amortization expense related to goodwill was approximately \$2,128,000, for the years ended May 31, 2021 and 2020. Future amortization of goodwill is approximately \$2,128,000 per year for fiscal years 2022 through 2026 and approximately \$3,000, thereafter.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 6: OTHER INTANGIBLE ASSETS**

Other intangible assets consisted of the following:

<i>May 31,</i>	<b>2021</b>	2020
Franchise agreements	\$ <b>10,187,775</b>	\$ 10,187,775
Incentive agreements	<b>6,248,502</b>	6,248,502
Trademarks	<b>3,549,003</b>	3,549,003
Website domains	<b>50,000</b>	50,000
	<b>20,035,280</b>	20,035,280
Less accumulated amortization	<b>(5,478,759)</b>	(4,331,215)
Intangible assets, net	<b>\$ 14,556,521</b>	\$ 15,704,065

Amortization expense related to other intangible assets was approximately \$1,096,000 for the years ended May 31, 2021 and 2020. All assets of the Company, including the intangibles above – as well as all accessions and proceeds of any and all of the foregoing assets serve as collateral on The First National Bank of McGregor note payable and line of credit (see Note 8). Future amortization of other intangible assets is approximately \$1,096,000 per year for fiscal years 2022 through 2026 and approximately \$5,477,000, thereafter. The weighted average remaining amortization period for other intangible assets at May 31, 2021, is 10 years.

**NOTE 7: ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES**

Accrued expenses and other current liabilities consisted of the following:

<i>May 31,</i>	<b>2021</b>	2020
Gift card liability	\$ <b>672,817</b>	\$ 765,134
Due to franchisees	<b>1,497,816</b>	506,396
Personnel related accruals	<b>177,922</b>	257,683
Other accrued liabilities	<b>1,412,433</b>	678,336
Accrued expenses and other current liabilities	<b>\$ 3,760,988</b>	\$ 2,207,549

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 8: LINES OF CREDIT AND NOTES PAYABLE**

Notes payable consisted of the following:

<u>May 31,</u>	<u>2021</u>	<u>2020</u>
Note payable to CrossFirst Bank, \$178,571 principal plus interest at the lesser of the highest lawful rate or the five-year Treasury rate plus 2.65% payable monthly, secured by substantially all of the Company's assets, due September 9, 2024. Repaid during 2021.	\$ -	\$ 13,928,571
Note payable to AccessBank Texas, \$11,554 principal and interest payments at the lesser of the highest lawful rate or the one-month Wall Street Journal rate plus 1.50% payable monthly, secured by substantially all of the Company's assets, due October 15, 2022. Repaid during 2021.	-	647,568
Note payable to The First National Bank of McGregor, interest payments at the lesser of the highest lawful rate or the three-month Eurodollar rate plus 3.00% payable monthly beginning January 1, 2022, principal payments payable beginning December 2023, secured by substantially all of the Company's assets, due December 1, 2025.	<b>30,000,000</b>	-
	<b>30,000,000</b>	14,576,139
Less debt issuance cost	<b>(540,000)</b>	(154,045)
Less current maturities	-	(2,245,487)
<b>Long-term debt, less current portion</b>	<b>\$ 29,460,000</b>	<b>\$ 12,176,607</b>

On October 8, 2010, a subsidiary of the Company obtained a \$1,360,000 term loan from AccessBank Texas bank. The loan bore interest at Prime plus 1.50%, required monthly payments of principal and interest of \$11,554, and was collateralized by real property. All unpaid principal and interest was due October 15, 2025. In December 2020, the revolving credit facility and term loan were paid in full from proceeds from The First National Bank of McGregor note payable discussed below.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 8: LINES OF CREDIT AND NOTES PAYABLE (Continued)**

On May 26, 2016, the Company entered into a \$30,000,000 Credit Agreement with Wells Fargo Bank comprised of a \$10,000,000 revolving credit facility and a \$20,000,000 term loan, which bore interest at the Base Rate plus the Applicable Margin or the LIBOR Rate plus the Applicable Margin, and were collateralized by all assets of the Company – including the intangibles (see Note 6) – as well as all accessions and proceeds of any and all of the foregoing assets. That Agreement required the Company to adhere to financial and other covenants. On May 23, 2018, the Company executed the Second Amendment to the Credit Agreement and Waiver, which converted the term loan to \$18,500,000, altered principal repayment terms, set the maturity date at May 26, 2020, amended the Applicable Margin and Consolidated Post-Distribution Fixed Charge Coverage Ratio, and terminated the Revolving Credit Commitment. In May 2020, the revolving credit facility and term loan were paid in full from proceeds from the CrossFirst Bank Credit Agreement discussed below.

On September 11, 2019, the Company entered into a \$15,000,000 revolving credit facility and term note Credit Agreement with CrossFirst Bank. The revolving credit facility matured on September 9, 2022, bore interest at the LIBOR Rate plus 2.25%. The term loan matured on September 9, 2024, bore interest at the five-year Treasury Rate plus 2.65%. Both were collateralized by all assets of the Company – including the intangibles (see Note 5) – as well as all accessions and proceeds of any and all of the foregoing assets. That Agreement required the Company to adhere to financial and other covenants. In December 2020, the revolving credit facility and term loan were paid in full from proceeds from The First National Bank of McGregor note payable discussed below.

On December 1, 2020, in connection with the Main Street Priority Loan Facility program, the Company entered into a \$30,000,000 note payable agreement with The First National Bank of McGregor. The note payable bears interest at the three-month LIBOR Rate plus the Applicable Margin (3.15% at May 31, 2021), payable monthly beginning January 1, 2022, with principal payments of \$4,645,440 due December 1, 2023 and 2024, and remaining principal and interest due at maturity on December 1, 2025. The note payable is collateralized by all assets of the Company – including the intangibles (see Note 6) – as well as all accessions and proceeds of any and all of the foregoing assets. The agreement requires the Company to adhere to certain financial and other covenants.

During May 2021, a subsidiary of the Company entered into a line of credit agreement with CrossFirst Bank. The agreement provides for borrowings up to \$500,000 and bears 3.75% interest and is collateralized by accounts receivable, inventory, and equipment. The line expires May 2022, and had a balance of \$485,100 at May 31, 2021.

Future maturities of notes payable were as follows at May 31, 2021:

<i>For the years ending May 31,</i>	Amount
2022	\$ -
2023	4,645,440
2024	4,645,440
2025	20,709,120
	\$ 30,000,000

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 9: PAYCHECK PROTECTION PROGRAM LOANS**

During April 2020, January 2021 and February 2021, the Company received \$3,378,800, \$2,217,800 and \$1,197,700, respectively, in Paycheck Protection Program (PPP) loans funds which were loans established by the CARES Act and implemented by the Small Business Administration (SBA) and backed by the United States Treasury. The PPP provides for forgivable loans to qualifying organizations. The loans and accrued interest are forgivable as long as the borrower uses the loans proceeds for eligible purposes, including payroll costs, rent and utilities and the borrower maintains specified levels of payroll and employment.

Any unforgiven portion of the PPP loans is payable over two years at an interest rate of 1%, with a deferral of payments for the first six months. Monthly principal and interest payments on the loans commence on the date the SBA remits the borrower's loan forgiveness amount to the lender or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period through the loan maturity date of April 2022. Legislation issued subsequent to the execution of the loans and has extended the maturity to 5 years.

The Company used the PPP loans funds for its payroll and benefits costs, rent, and utilities, purposes consistent with the PPP. During January 2021, the SBA forgave one of the PPP loans in the amount of \$324,100, and paid the lender on behalf of the Company. The Company recorded a gain of \$324,100, which is included in other income (expense) on the accompanying consolidated statements of income (loss). Management believes that its payroll and benefits costs, rent, and utility payments accumulated during the "Debt Forgiveness" period were sufficient to have the remaining loans and accrued interest forgiveness and that forgiveness is highly probable. At May 31, 2021 and 2020, the balance of these loans were \$6,470,200 and \$3,378,800, respectively.

Subsequent to May 31, 2021, the SBA forgave a PPP loan, with a principle amount of \$3,054,800, and \$40,900 of accrued interest, and paid the lender on behalf of the Company.

**NOTE 10: RELATED PARTY TRANSACTIONS**

Related party transactions with companies directly or indirectly owned and/or controlled by the Company's officers included approximately \$2,258,000 and \$1,597,000 in management and consulting fees incurred for the fiscal years ending May 31, 2021 and 2020, respectively.

The Company had unsecured notes receivable from the Company's officers of approximately \$740,000 and \$795,000 at May 31, 2021 and 2020, respectively, which are included in due from related parties in the accompanying consolidated balance sheets.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 11: REVENUE**

The Company sells individual franchises as well as territory agreements that grant the right to develop restaurants in designated areas. The franchise agreements and territory agreements typically require the franchisee to pay initial nonrefundable franchise fees prior to opening the respective restaurants and continuing fees and royalties on a monthly and weekly basis based upon a percentage of franchisee gross sales or a flat monthly fee. The Company's customers are primarily franchisees customers located throughout the United States and to a lesser extent outside the United States. The Company's franchise agreements generally have an initial term of 240 months. Under its contracts with customers, the Company stands ready to deliver its services as needed for its franchisee customers.

***Disaggregated Revenue***

Disaggregated revenue for the year ended May 31, 2021, were as follows:

<i>For the year ended May 31,</i>	<i>2021</i>
Operating income	
Royalty fees	\$ 12,560,829
Gift card breakage fees	297,650
Vendor incentives	5,567,978
Other miscellaneous fees	3,492,773
Total operating income	21,919,230
Franchise fees	
Pre-opening services	785,100
Franchise license fees	651,133
Total franchise fees	1,436,233
Advertising income	8,786,145
Barbecue and related supplies sales	
Food and drink sales	7,808,467
Sauce and spice sales	19,484,223
Furniture sales	3,376,121
Other related supplies sales	282,898
Total barbecue and related supplies sales	30,951,709
Other income	244,000
Total revenue	\$ 63,337,317

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 11: REVENUE (Continued)**

***Contract Assets and Liabilities***

Contract assets represent revenues earned prior to billing to the customers. There were no contract assets as of May 31, 2021, 2020, and June 1, 2019, respectively.

Contract liabilities represent payments received in advance of revenue earned and consist of deferred franchise fees. Contract liabilities were \$1,151,111, \$1,630,667, and \$478,813, as of May 31, 2021, 2020, and June 1, 2019, respectively.

Contract liabilities consisted of the following:

<i>May 31,</i>	2021
Contract liabilities	
Deferred franchise fees	\$ 1,054,637
Barbecue and related supplies customer advances	96,474
<b>Total contract liabilities</b>	<b>\$ 1,151,111</b>

Changes in deferred franchise fees during the year ended May 31, 2021, were as follows:

<i>For the year ended May 31,</i>	2021
Deferred franchise fees at beginning of the year (Note 2)	\$ 881,948
Deferred franchise fees during the year	1,060,125
Less revenue recognized during the year	(887,436)
<b>Deferred franchise fees at end of the year</b>	<b>\$ 1,054,637</b>

**NOTE 12: INCOME TAXES**

The provision for income taxes consisted of the following:

<i>For the years ended May 31,</i>	2021	2020
Current payable		
Federal	\$ 228,079	\$ (53,631)
State taxes	409,370	215,877
Deferred		
Federal	338,109	(130,700)
	<b>\$ 975,558</b>	<b>\$ 31,546</b>



**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 12: INCOME TAXES (Continued)**

The tax effects of temporary differences that gave rise to the deferred tax assets and liabilities are presented below:

<i>May 31,</i>	<b>2021</b>	<b>2020</b>
Deferred tax assets		
Accrued expenses	\$ 55,242	\$ 55,253
Net operating loss carryforward	1,145,789	1,010,763
Contract liabilities	221,474	-
Allowance for doubtful accounts	6,315	6,315
Less valuation allowance	(1,145,789)	(457,949)
Gross deferred tax assets	<b>283,031</b>	614,382
Deferred tax liabilities		
Accumulated depreciation and amortization	(21,781)	(15,053)
Net deferred tax asset (liability)	<b>\$ 261,250</b>	\$ 599,329

Additionally, tax expense for the year ended May 31, 2021 includes \$527,167 as a result of a valuation allowance recorded against the net operating losses of Stanford Sonoma Corp. in the current year. The effective tax rate for the years ended May 31, 2021 and 2020, differs from the amount that would be expected by applying the statutory rate due primarily to permanent differences and due to income from consolidated entities that are pass through entities for tax purposes.

The Company has a net operating loss carryforward of approximately \$2,540,000 which begins to expire in 2036. A valuation allowance has been established to offset this deferred tax asset due to uncertainties regarding the Company's ability to utilize this net operating loss. Additionally, Stanford Sonoma Corp., which files a separate tax return has a federal net operating loss carryforward of approximately \$2,900,000, which begins to expire in May 2038. A valuation allowance has been established to offset this deferred tax asset due to uncertainties regarding Stanford Sonoma Corp's ability to utilize this net operating loss.

**NOTE 13: OPERATING LEASE COMMITMENTS**

The Company leases office space, office equipment and certain vehicles under lease agreements classified as operating leases through August 2031.

Related rent expense for the years ended May 31, 2021 and 2020, was approximately \$2,486,000 and \$2,144,000, respectively.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 13: OPERATING LEASE COMMITMENTS (Continued)**

Future minimum lease payments required under operating leases that have initial or remaining non-cancelable lease term in excess of one year were as follows at May 31, 2021:

<i>For the years ending May 31,</i>	Amount
2022	\$ 1,554,112
2023	1,090,846
2024	632,658
2025	594,534
2026	503,872
Thereafter	244,900
	\$ 4,620,922

**NOTE 14: CAPITAL LEASES**

The Company has entered into five lease agreements as lessee for the financing and acquisition of computer hardware. The agreements require monthly payments through December 2021 and bear interest at approximately 4.5%. The agreements qualify as capital leases and have been recorded at the present value of the future minimum lease payments as of the acquisition date. Amortization of assets under capital leases is included in depreciation expense. At May 31, 2021, the net book value of the underlying equipment acquired under capital leases was \$0.

The following is a schedule of future minimum lease payments under capital leases and the net present value as of May 31, 2021:

<i>For the year ending May 31,</i>	Amount
2022	\$ 136,337
Total lease payments	136,337
Less amount representing interest	(2,748)
Present value of future minimum lease payments	133,589
Less current maturities	(133,589)
Capital lease obligations, net of current portion	\$ -

**NOTE 15: RETIREMENT PLAN**

The Company maintains a 401(k) plan for all eligible employees. In addition to the employee's elective deferral, the Company matches an amount not exceeding 3% of the employee's gross compensation. Contributions made for the years ended May 31, 2021 and 2020, were approximately \$186,000 and \$133,000, respectively.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 16: CONTINGENCIES AND UNCERTAINTIES**

***Contingent Liabilities***

From time to time, the Company is a party to various claims, legal actions and complaints arising in the ordinary course of business. In the opinion of management, the disposition of such matters when they arise will not have a material adverse effect on the Company's consolidated financial position or results of operations.

***COVID-19 Pandemic***

In March 2020, the World Health Organization made the assessment that the outbreak of a novel coronavirus (COVID-19) can be characterized as a pandemic. As a result, uncertainties have arisen that may have a significant negative impact on the operating activities and results of the Company. Possible effects may include, but are not limited to, disruption to the Company's franchisee locations and declines in value of property and equipment and goodwill. The occurrence and extent of such an impact will depend on future developments, including (i) the duration and spread of the virus, (ii) government quarantine measures, (iii) voluntary and precautionary restrictions on travel or meetings, (iv) the effects on the financial markets, and (v) the effects on the economy overall, all of which are uncertain.

**NOTE 17: CONCENTRATIONS**

***Concentration of Credit Risk***

At May 31, 2021, the Company maintained cash balances in banking institutions of approximately \$13,174,000 in excess of the Federal Deposit Insurance Corporation (FDIC) amounts of \$250,000 for each institution. These balances are before considering reconciling items.

***Concentration of Business – Major Customers***

For the year ended May 31, 2021, one customer accounted for approximately 30% of the Company's revenue and at May 31, 2021, amounts due from this customer was approximately \$1,539,000. For the year ended May 31, 2020, one customer accounted for approximately 31% of the Company's revenue and at May 31, 2020, amounts due from this customer was approximately \$1,733,000.

**NOTE 18: SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through September 29, 2021, the date which the consolidated financial statements were available to be issued. See Note 9 regarding forgiveness of a PPP loan. There were no events that would require adjustment to or disclosure in the consolidated financial statements.

**Dickey's Capital Group, Inc.**  
**CONSOLIDATED FINANCIAL STATEMENTS**  
May 31, 2020 and 2019



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**Dickey's Capital Group, Inc.**  
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**REPORT**



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## **INDEPENDENT AUDITORS' REPORT**

### **To the Board of Directors and Stockholder of Dickey's Capital Group, Inc.**

We have audited the accompanying consolidated financial statements of Dickey's Capital Group, Inc. (a Texas corporation) and its subsidiaries (the "Company"), which comprise the consolidated balance sheets as of May 31, 2020 and 2019, and the related consolidated statements of income, stockholder's equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

### **Management's Responsibility for the Financial Statements**

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

### **Auditors' Responsibility**

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Dickey's Capital Group, Inc. and its subsidiaries as of May 31, 2020 and 2019, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

*Carr, Riggs & Ingram, L.L.C.*

**CARR, RIGGS & INGRAM, LLC**

Dallas, Texas

September 30, 2020





## FINANCIAL STATEMENTS

**Dickey's Capital Group, Inc.**  
**Consolidated Balance Sheets**

<i>May 31,</i>	<b>2020</b>	<b>2019</b>
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 2,412,791	\$ 762,570
Cash - restricted	5,567	59,990
Accounts receivable, net	3,378,405	4,508,294
Prepaid expenses and other current assets	979,520	841,840
Inventory	1,536,712	1,670,213
Income taxes receivable	1,126,027	266,672
Total current assets	9,439,022	8,109,579
Noncurrent assets		
Notes receivable	245,068	291,075
Due from related parties	1,143,022	834,368
Property and equipment, net	8,257,754	7,937,488
Deferred tax asset	599,329	515,901
Goodwill, net	12,766,424	14,898,627
Intangible assets, net	15,704,065	16,748,024
Other assets	44,891	8,916
Total noncurrent assets	38,760,553	41,234,399
Total assets	\$ 48,199,575	\$ 49,343,978

*The accompany notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Balance Sheets**  
**(Continued)**

<i>May 31,</i>	2020	2019
<b>Liabilities and stockholder's equity</b>		
Current liabilities		
Account payable	\$ 4,045,916	\$ 3,352,107
Accrued expenses and other current liabilities	2,207,549	2,402,009
Lines of credit	1,161,560	487,718
Due to related parties	-	55,005
Current maturities of capital lease obligations	169,929	292,382
Current maturities of notes payable	2,245,487	14,720,513
Total current liabilities	9,830,441	21,309,734
Noncurrent liabilities		
Capital lease obligations, less current maturities	133,158	303,029
Notes payable, less current maturities, net of debt issuance cost	12,176,607	638,431
Deferred incentive income	943,351	830,714
Paycheck protection program loan	3,378,800	-
Total noncurrent liabilities	16,631,916	1,772,174
Total liabilities	26,462,357	23,081,908
Stockholder's equity		
Common stock, \$.001 par value, 5,000 shares authorized; 1,000 issued, and outstanding	1	1
Additional paid in capital	2,487,723	2,487,723
Retained earnings	18,513,708	22,934,496
Total stockholder's equity	21,001,432	25,422,220
Noncontrolling interests	735,786	839,850
Total liabilities and stockholder's equity	21,737,218	26,262,070
Total liabilities and stockholder's equity	\$ 48,199,575	\$ 49,343,978

*The accompany notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Income**

<i>For the years ended May 31,</i>	<b>2020</b>	<b>2019</b>
<b>Revenue</b>		
Franchisor operating income	\$ 19,685,772	\$ 25,157,036
Franchise fees	1,705,108	2,124,962
Advertising income	8,804,739	10,725,880
Barbecue and related supplies sales	24,146,356	27,220,750
Other	237,161	202,750
Total revenue	54,579,136	65,431,378
<b>Cost of revenue</b>		
Franchise setup costs	1,132,415	1,386,620
Franchise maintenance costs	1,931,972	2,288,899
Cost of barbecue and supplies	15,783,288	19,193,413
Total cost of revenue	18,847,675	22,868,932
Gross profit	35,731,461	42,562,446
<b>Selling and administrative expenses</b>	<b>39,152,211</b>	<b>37,049,943</b>
Income (loss) from operations	<b>(3,420,750)</b>	5,512,503
<b>Other income (expense)</b>		
Interest income	15,006	15,583
Interest expense	(930,383)	(1,156,654)
Gain on sale of property and equipment	(61,812)	7,266
Other	74,293	93,244
Total other income (expense)	(902,896)	(1,040,561)
Income (loss) before income taxes	(4,323,646)	4,471,942
<b>Provision for income taxes</b>	<b>31,546</b>	<b>1,595,714</b>
<b>Consolidated net income (loss)</b>	<b>(4,355,192)</b>	<b>2,876,228</b>
Less income attributable to the noncontrolling interests	(65,596)	(456,243)
<b>Net income (loss) attributable to stockholder</b>	<b>\$ (4,420,788)</b>	<b>\$ 2,419,985</b>

*The accompany notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Stockholder's Equity**

	Common stock		Additional paid-in capital	Retained earnings	Total stockholder's equity	Noncontrolling interests	Total equity
	Shares	Amount					
May 31, 2018	1,000	\$ 1	\$ 2,487,723	\$ 20,514,511	\$ 23,002,235	\$ 663,832	\$ 23,666,067
Contributed capital	-	-	-	-	-	84,984	84,984
Dividends and distributions	-	-	-	-	-	(365,209)	(365,209)
Net income	-	-	-	2,419,985	2,419,985	456,243	2,876,228
May 31, 2019	1,000	1	2,487,723	22,934,496	25,422,220	839,850	26,262,070
Contributed capital	-	-	-	-	-	71,576	71,576
Dividends and distributions	-	-	-	-	-	(241,236)	(241,236)
Net income (loss)	-	-	-	(4,420,788)	(4,420,788)	65,596	(4,355,192)
May 31, 2020	1,000	\$ 1	\$ 2,487,723	\$ 18,513,708	\$ 21,001,432	\$ 735,786	\$ 21,737,218

*The accompany notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Cash Flows**

<i>For the years ended May 31,</i>	<b>2020</b>	<b>2019</b>
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ (4,355,192)	\$ 2,876,228
Adjustments to reconcile net income (loss) to net cash provided (used) by operating activities		
Depreciation expense	682,871	1,308,546
Amortization expense	3,229,622	3,229,126
Amortization of debt issuance costs	111,925	132,984
Bad debt expense	(214,660)	187,126
Deferred tax provision	(83,428)	(49,219)
(Gain) loss on sale of property and equipment	58,033	(7,266)
Change in operating assets and liabilities		
Accounts receivable	1,344,549	(1,373,168)
Inventory	133,501	87,793
Prepaid expenses and other current assets	(137,680)	(326,568)
Other assets	(35,975)	153,433
Accounts payable	693,809	(135,668)
Accrued expenses and other current liabilities	(194,460)	(2,450,066)
Income tax payable	(859,355)	(1,238,863)
Deferred incentive income	112,637	483,746
Cash provided (used) by operating activities	<b>486,197</b>	<b>2,878,164</b>
<b>Cash flows from investing activities</b>		
Purchase of property and equipment	(1,408,812)	(1,109,036)
Collections on notes receivable	46,007	150,044
Proceeds from sale of property and equipment	294,182	19,296
Cash provided (used) by investing activities	<b>(1,068,623)</b>	<b>(939,696)</b>
<b>Cash flows from financing activities</b>		
Borrowings from notes payable	15,000,024	-
Principal payments on notes payable	(16,048,799)	(3,700,830)
Paycheck protection program loan proceeds	3,378,800	-
Lines of credit, net	673,842	39,774
Principal payments on capital leases	(292,324)	(721,489)
Contributed capital	71,576	84,984
(Advances) payments due from/to related parties	(363,659)	(379,261)
Dividends and distributions	(241,236)	(365,209)
Cash provided (used) by financing activities	<b>2,178,224</b>	<b>(5,042,031)</b>
<b>Net increase (decrease) in cash</b>	<b>1,595,798</b>	<b>(3,103,563)</b>
<b>Cash at beginning of period</b>	<b>822,560</b>	<b>3,926,123</b>
<b>Cash at end of period</b>	<b>\$ 2,418,358</b>	<b>\$ 822,560</b>

*The accompany notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Consolidated Statements of Cash Flows**  
**(Continued)**

<i>For the years ended May 31,</i>	<b>2020</b>	<b>2019</b>
<b>Reconciliation to consolidated balance sheet</b>		
Cash and cash equivalents	\$ 2,412,791	\$ 762,570
Cash - restricted	5,567	59,990
	<b>\$ 2,418,358</b>	<b>\$ 822,560</b>
<b>Supplemental disclosure of cash flow information</b>		
<b>Cash paid during the year for</b>		
Interest	\$ 681,359	\$ 1,174,954
Income taxes	\$ 859,355	\$ 1,189,267

*The accompany notes are an integral part of these consolidated financial statements.*

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 1: ORGANIZATION AND NATURE OF OPERATIONS**

Dickey's Capital Group, Inc. (the "Company") was incorporated in 2016 under the laws of the State of Delaware. The Company was formed for the purpose of holding interests in entities pertaining to the franchising, operating, marketing, and supplying of Dickey's barbecue restaurants. At May 31, 2020 the Company had 473 operating franchises (including 7 stores owned by related parties), 130 of the operating franchises were located in Texas, with the remainder operating in approximately 40 other states and 3 international locations. The Company's management team has successfully operated barbecue restaurants at various locations since 1941.

The Company and its ownership group commonly owned interests in the following corporations as of May 31, 2020:

100%	Dickey's Barbecue Restaurants, Inc.
100%	Dickey's Barbecue Pit, Inc.
66.7%	Wycliff Douglas Foods, Inc.
91%	Stanford Sonoma Corp.

The Company and its ownership group owned interests in the following partnerships and limited liability companies as of May 31, 2020:

99%	Dickey's Corsicana, Ltd.
100%	Dickey's Capital Properties, LLC
66.7%	Dickey's Central Products Company, LLC
60%	Dickey's Love Field JV, LLC
60%	Dickey's DFW Terminal C JV, LLC

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Principles of consolidation***

The consolidated financial statements include the accounts of Dickey's Capital Group, Inc. as well as its subsidiaries and the commonly-controlled entities discussed in Note 1. All significant intercompany transactions and accounts have been eliminated.

***Basis of accounting***

The accompanying consolidated financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The Financial Accounting Standards Board (FASB) provides authoritative guidance regarding U.S. GAAP through the Accounting Standards Codification (ASC) and related Accounting Standards Updates (ASUs).



Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Use of estimates***

The preparation of U.S. GAAP financial statements requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and changes therein, and disclosure of contingent assets and liabilities and the reported amounts of revenue and expenses. Actual results could differ from those estimates. Estimates that are particularly susceptible to significant change in the near term are related to goodwill and other intangible assets.

***Fair value of financial instruments***

The Company defines the fair value of a financial instrument as the amount at which the instrument could be exchanged in a current transaction between willing parties. Financial instruments included in the Company's consolidated financial statements include cash and cash equivalents, restricted cash, trade accounts receivable, other assets and trade accounts payable. Unless otherwise disclosed in the notes to the consolidated financial statements, the carrying value of financial instruments is considered to approximate fair value due to the short maturity and characteristics of those instruments. The carrying value of capital leases approximates fair value since terms approximate those currently available for similar type instruments.

***Cash and cash equivalents***

The Company includes all cash accounts, which are not subject to withdrawal restrictions or penalties, and all highly liquid debt instruments purchased with an original maturity of three months or less, as cash and cash equivalents in the accompanying financial statements. Cash balances related to the Marketing Fund discussed in the advertising and marketing policy note are considered restricted cash.

***Accounts receivable***

Trade accounts receivable are reported at the amount management expects to collect from outstanding balances. Differences between the amount due and the amount management expects to collect are reported in the results of operations of the year in which those differences are determined, with an offsetting entry to a valuation allowance for trade accounts receivable. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable.

The Company estimates the allowance based on analysis of specific customers, taking into consideration the age of past due amounts and an assessment of the customer's ability to pay. Because of the credit risk involved, management has provided an allowance for doubtful accounts of approximately \$30,000 and \$245,000 as of May 31, 2020 and 2019, respectively.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Inventory***

Inventory, consisting primarily of barbecue and related supplies, is stated at the lower of cost (average cost) or net realizable value. The Company uses significant estimates and assumptions when determining the realizable value of inventories at its balance sheet dates. Management has determined that the Company does not require a net realizable value adjustment as of May 31, 2020 and 2019.

***Notes receivable***

The Company, in the normal course of business, occasionally extends credit to franchisees. The notes receivable are stated at the unpaid principal balances. The notes receivable have various terms, requiring monthly payments with the final maturity within 5 to 15 years, and interest is charged monthly at annual rates of 3.5%. Interest income is recognized in accordance with the terms of the individual note agreements and accrued as applicable. Substantially all of the notes receivable are collateralized in accordance with the terms of the agreements. Notes receivable are reviewed on a regular basis and uncollectible amounts are written off. Management has determined that the Company does not require an allowance for doubtful accounts as of May 31, 2020 and 2019.

***Property and equipment***

Property and equipment are stated at cost less accumulated depreciation. Expenditures for major additions and improvements are capitalized, and minor replacements, maintenance, and repairs are charged to expense as incurred. The Company provides depreciation using the straight-line method based on the estimated useful lives of the individual assets as follows:

Vehicles	5 years
Equipment	2-7 years
Software	3-5 years
Furniture and fixtures	5-7 years
Leasehold improvements	1-27 years
Buildings	39 years

***Long-lived assets***

The Company evaluates its long-lived assets for financial impairment on a regular basis in accordance with FASB ASC 360-10, *Accounting for the Impairment or Disposal of Long-Lived Assets*. The Company evaluates the recoverability of long-lived assets not held for sale by measuring the carrying amount of the assets against the estimated discounted future cash flows associated with them. When the evaluations indicate that the future discounted cash flows of long-lived assets are not sufficient to recover the carrying values, the assets are adjusted to their fair values.

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Goodwill and other intangible assets***

Intangible assets consist of goodwill, franchise agreements, incentive agreements, trademarks and website domains. Other than the trademarks and website domains, which have indefinite lives, intangible assets are amortized using the straight-line method over their estimated useful lives as follows: goodwill – 10 years; franchise agreements and incentive agreements – 15 years.

The Company accounts for its recorded goodwill in accordance with FASB ASU 2014-02, *Intangibles-Goodwill and Other* (Topic 350): *Accounting for Goodwill*. Accordingly, goodwill is amortized on a straight-line basis over 10 years and only tested for impairment at the reporting unit level upon the occurrence of any triggering events that would suggest the fair value of the reporting unit may be below its carrying amount, see Note 13.

***Income taxes***

Deferred income taxes are determined utilizing the asset and liability approach, whereby deferred tax assets are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion of the deferred tax assets will not be realized. As of May 31, 2020, a valuation allowance of approximately \$458,000, was established by management to offset this deferred tax asset due to uncertainties regarding the Company's ability to utilize this net operating loss (see Note 9). Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Management has determined that the Company does not have any uncertain tax positions and associated unrecognized benefits that materially impact the consolidated financial statements or related disclosures. Since tax matters are subject to some degree of uncertainty, there can be no assurance that the Company's tax returns will not be challenged by the taxing authorities and that the Company will not be subject to additional tax, penalties, and interest as a result of such challenge. As of May 31, 2020, the Company's tax returns for fiscal years ended May 31, 2016, and thereafter remained subject to federal income tax examination. The fiscal year ended May 31, 2016, is currently being audited by the Internal Revenue Service (IRS) as of the date of this report.

***Revenue and cost of revenue recognition***

Franchisor operating income consists of contractual franchise royalties based on a percentage of monthly sales as well as revenue from other contractual agreements, which are recognized as revenue in the month earned.

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Revenue and cost of revenue recognition (Continued)***

During the year ended May 31, 2020 management temporarily reduced the contractual royalty rates due to the Company to provide financial assistance to its franchisees.

Initial franchise fees are recognized as revenue once substantially all of the initial services of the Company required by the franchise agreement have been performed and no other material conditions or obligations related to the determination of substantial performance exist. For the years ended May 31, 2020 and 2019, there were approximately \$1,318,000 and \$1,829,000, respectively, in initial franchise fees.

Advertising income consists of contractual franchise amounts based on a percentage of monthly sales which are recognized as revenue in the month earned.

Franchise owners receive assistance in such areas as real estate site selection, construction consulting, purchasing and marketing from Company personnel. The costs of providing such assistance, whether in pre or post opening phases, are expensed as incurred.

In some instances where contractual agreements exist, commissions for new franchises are paid to third parties. These commissions are generally recognized as an expense when the related franchise fee revenue is earned.

Barbecue and related supplies sales and the associated cost of sales are recognized as items are shipped to the customer.

***Taxes collected***

The Company collects sales taxes assessed by governmental authorities imposed on certain franchise related revenues. Sales taxes collected are excluded from revenues; net amounts due are reported as a liability on the Company's consolidated balance sheets.

***Advertising and marketing***

The Company maintains a Marketing Fund, which includes contractual advertising and marketing fees paid monthly by franchisees. Production costs of advertising, TV or radio commercials, programming and other marketing activities are paid out of the Marketing Fund and charged to operations as incurred. The totals of such expenses for the years ended May 31, 2020 and 2019 were approximately \$7,949,000 and \$9,320,000, respectively.

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Advertising and marketing (Continued)***

The franchise agreements generally require a predetermined percentage of the franchisee's gross monthly revenue to be paid to the Marketing Fund for related advertising and marketing. The predetermined percentage of the franchisee's gross monthly revenue varies by contract and ranges up to 4%. Funds collected for advertising and marketing under the franchise agreements that are restricted for that purpose are recorded as deferred revenue and are recognized as revenue once the related advertising costs are expensed. A receivable from franchises is recognized in cases where the advertising expenses incurred by the Company exceed marketing fee collections in a given period. In either case, no profit is recognized from advertising and marketing fees collected in accordance with the franchise agreement.

***Gift card liability***

Gift card discounts are expensed in the period of sale as the Company does not realize revenue upon redemption of the associated gift cards. Gift card breakage revenue is recognized as gift cards are sold based on an estimated redemption rate that has ranged from 95% at the beginning of the program to 85% for the year ended May 31, 2020, based on indicators from historical data. The gift card liability at May 31, 2020 and 2019 was approximately \$765,000 and \$1,125,000, respectively, and is included in accrued expenses and other current liabilities in the accompanying consolidated balance sheets. During the year ended May 31, 2019, the Company determined that an adjustment to its gift card liability and breakage revenue estimate was necessary based on historical data and anticipated trends to be experienced by the Company in future periods. During the year ended May 31, 2019, the Company reduced its gift card liability and recorded additional breakage revenue of approximately \$1,426,000, respectively, related to this change in estimate. During the years ended May 31, 2020 and 2019, breakage revenue totaled approximately \$441,000 and \$1,823,000, respectively.

***Subsequent events***

Management has evaluated subsequent events through the date that the consolidated financial statements were available to be issued, September 30, 2020, and determined there were no events that occurred that require disclosure. No subsequent events occurring after this date have been evaluated for inclusion in these consolidated financial statements.

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Recent accounting pronouncements***

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606). This guidance specifies that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This ASU and its amendments will supersede the revenue recognition requirements in Topic 605, *Revenue Recognition*, and most industry specific guidance. For nonpublic entities, these amendments are effective for annual reporting periods beginning after December 15, 2019. Early adoption with certain restrictions is permitted for nonpublic entities. The Company is currently evaluating the impact of the guidance on its consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases* (Topic 842). The guidance in this ASU and its amendments supersedes the leasing guidance in Topic 840, entitled *Leases*. Under the guidance, lessees are required to recognize lease assets and lease liabilities on the statement of financial position for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of activities. For nonpublic entities, the standard is effective for fiscal years beginning after December 15, 2021. The Company is currently evaluating the impact of the guidance on its consolidated financial statements for all leasing arrangements.

**NOTE 3: PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following:

<i>May 31,</i>	<b>2020</b>	<b>2019</b>
Vehicles	\$ 203,635	\$ 203,586
Equipment	5,533,056	5,138,745
Software	713,494	713,494
Furniture and fixtures	229,669	107,864
Leasehold improvements	2,815,938	1,787,450
Buildings	1,714,051	1,954,832
Construction in progress	-	228,332
Land	3,448,551	3,599,676
	<b>14,658,394</b>	<b>13,733,979</b>
Less accumulated depreciation	<b>(6,400,640)</b>	<b>(5,796,491)</b>
<b>Property and equipment, net</b>	<b>\$ 8,257,754</b>	<b>\$ 7,937,488</b>

Depreciation expense for the years ended May 31, 2020 and 2019, was approximately \$683,000, and \$1,309,000, respectively.



**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 4: GOODWILL**

Goodwill consisted of the following:

<u>May 31,</u>	<u>2020</u>	<u>2019</u>
Goodwill	\$ 21,283,752	\$ 21,283,752
Less accumulated amortization	(8,517,328)	(6,385,125)
<b>Goodwill, net</b>	<b>\$ 12,766,424</b>	<b>\$ 14,898,627</b>

Amortization expense related to goodwill was approximately \$2,128,000, for the years ended May 31, 2020 and 2019. Future amortization of goodwill is approximately \$2,128,000 per year for fiscal years 2021 through 2025 and approximately \$2,131,000, thereafter.

**NOTE 5: OTHER INTANGIBLE ASSETS**

Other intangible assets consisted of the following:

<u>May 31,</u>	<u>2020</u>	<u>2019</u>
Franchise agreements	\$ 10,187,775	\$ 10,187,775
Incentive agreements	6,248,502	6,248,502
Trademarks	3,549,003	3,549,003
Website domains	50,000	50,000
	<u>20,035,280</u>	<u>20,035,280</u>
Less accumulated amortization	(4,331,215)	(3,287,256)
<b>Intangible assets, net</b>	<b>\$ 15,704,065</b>	<b>\$ 16,748,024</b>

Amortization expense related to other intangible assets was approximately \$1,096,000 for the years ended May 31, 2020 and 2019. All assets of the Company, including the intangibles above – as well as all accessions and proceeds of any and all of the foregoing assets serve as collateral on the CrossFirst Bank note payable and line of credit (see Note 7). Future amortization of other intangible assets is approximately \$1,096,000 per year for fiscal years 2021 through 2025 and approximately \$6,573,000, thereafter. The weighted average remaining amortization period for other intangible assets at May 31, 2020 is 11 years.

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 6: ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES**

Accrued expenses and other current liabilities consisted of the following:

<u>May 31,</u>	<u>2020</u>	<u>2019</u>
Gift card liability	\$ 765,134	\$ 1,125,246
Due to franchisees	506,396	466,550
Personnel related accruals	257,683	307,904
Other accrued liabilities	678,336	502,309
Accrued expenses and other current liabilities	<u>\$ 2,207,549</u>	<u>\$ 2,402,009</u>

**NOTE 7: LINES OF CREDIT AND NOTES PAYABLE**

Notes payable consisted of the following:

<u>May 31,</u>	<u>2020</u>	<u>2019</u>
Note payable to Wells Fargo Bank, \$300,000 principal plus interest at the lesser of the highest lawful rate or the one-month Eurodollar rate plus 3.75% payable monthly, secured by substantially all of the Company's assets, due May 26, 2020.	\$ -	\$ 14,900,000
Note payable to CrossFirst Bank, \$178,571 principal plus interest at the lesser of the highest lawful rate or the five-year Treasury rate plus 2.65% payable monthly, secured by substantially all of the Company's assets, due September 9, 2024.	13,928,571	-
Note payable to AccessBank Texas, \$11,554 principal and interest payments at the lesser of the highest lawful rate or the one-month Wall Street Journal rate plus 1.5% payable monthly, secured by substantially all of the Company's assets, due October 15, 2022.	647,568	734,914
Less debt issuance cost	(154,045)	(275,970)
Less current maturities, net of debt issuance costs	(2,245,487)	(14,720,513)
Long-term debt, less current portion	<u>\$ 12,176,607</u>	<u>\$ 638,431</u>



Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 7: LINES OF CREDIT AND NOTES PAYABLE (Continued)**

On May 26, 2016, the Company entered into a \$30,000,000 Credit Agreement with Wells Fargo Bank comprised of a \$10,000,000 revolving credit facility and a \$20,000,000 term loan. Both mature on May 26, 2021, bear interest at the Base Rate plus the Applicable Margin or the LIBOR Rate plus the Applicable Margin (5.98% at May 31, 2020), and are collateralized by all assets of the Company – including the intangibles (see Note 5) – as well as all accessions and proceeds of any and all of the foregoing assets. The Agreement requires the Company to adhere to financial and other covenants. On May 23, 2018, the Company executed the Second Amendment to the Credit Agreement and Waiver, which converted the term loan to \$18,500,000, altered principal repayment terms, set the maturity date at May 26, 2020, amended the Applicable Margin and Consolidated Post-Distribution Fixed Charge Coverage Ratio, and terminated the Revolving Credit Commitment. In May 2020, the revolving credit facility and term loan were paid in full from proceeds from the CrossFirst Bank Credit Agreement discussed below.

On September 11, 2019, the Company entered into a \$15,000,000 revolving credit facility and term note Credit Agreement with CrossFirst Bank. The revolving credit facility matures on September 9, 2022, bears interest at the LIBOR Rate plus 2.25% (2.44% at May 31, 2020). The term loan matures on September 9, 2024, bears interest at the five-year Treasury Rate plus 2.65% (3.0% at May 31, 2020). Both are collateralized by all assets of the Company – including the intangibles (see Note 5) – as well as all accessions and proceeds of any and all of the foregoing assets. The Agreement requires the Company to adhere to financial and other covenants.

On October 8, 2010, a subsidiary of the Company obtained a \$1,360,000 term loan from AccessBank Texas bank. The loan bears interest at Prime plus 1.5% (6% at May 31, 2020), requires monthly payments of principal and interest of \$11,554, and is collateralized by real property. All unpaid principal and interest is due October 15, 2025.

A subsidiary of the Company maintains a \$500,000 line of credit with JPMorgan Chase Bank that bears 6.25% interest and is collateralized by accounts receivable, inventory, and equipment. The line does not have an expiration and had a balance of \$0 at May 31, 2020.

Future maturities of notes payable were as follows at May 31, 2020:

<i>For the year ending May 31,</i>	Amount
2021	\$ 2,245,487
2022	2,251,908
2023	2,258,730
2024	2,265,942
2025	5,487,964
Thereafter	66,108
	<u>\$ 14,576,139</u>

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 8: RELATED PARTY TRANSACTIONS**

Related party transactions with companies directly or indirectly owned and/or controlled by the Company's officers included approximately \$1,597,000 and \$1,806,000 in management and consulting fees incurred for the fiscal year ending May 31, 2020 and 2019, respectively.

The Company had unsecured notes receivable from the Company's officers of approximately \$795,000 and \$827,000 at May 31, 2020 and 2019, respectively, which are included in due from related parties in the accompanying consolidated balance sheets.

**NOTE 9: INCOME TAXES**

The provision for income taxes consisted of the following:

<i>For the years ended May 31,</i>	<b>2020</b>	<b>2019</b>
Current payable		
Federal	\$ (53,631)	\$ 1,309,422
State taxes	215,877	254,399
Deferred		
Federal	(130,700)	31,893
	<b>\$ 31,546</b>	<b>\$ 1,595,714</b>

The tax effects of temporary differences that gave rise to the deferred tax assets and liabilities are presented below:

<i>For the years ended May 31,</i>	<b>2020</b>	<b>2019</b>
Deferred tax assets		
Accrued expenses	\$ 55,253	\$ 55,253
Net operating loss carryforward	1,010,763	856,827
Accumulated depreciation and amortization	-	6,242
Allowance for doubtful accounts	6,315	8,479
Less valuation allowance	(457,949)	(361,769)
Gross deferred tax assets	<b>614,382</b>	<b>565,032</b>
Deferred tax liabilities		
Accumulated depreciation and amortization	(15,053)	-
Cash to accrual conversion	-	(49,131)
Net deferred tax asset (liability)	<b>\$ 599,329</b>	<b>\$ 515,901</b>

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 9: INCOME TAXES (Continued)**

The effective tax rate for the years ended May 31, 2020 and 2019, differs from the amount that would be expected by applying the statutory rate due primarily to permanent differences and due to income from consolidated entities that are pass through entities for tax purposes.

The Company has a net operating loss carryforward of approximately \$1,347,000 which is expected to be carried back to years prior to 2016 which will expire in 2036. A valuation allowance has been established to offset this deferred tax asset due to uncertainties regarding the Company's ability to utilize this net operating loss. Additionally, Stanford Sonoma Corp., which files a separate tax return has a federal net operating loss carryforward of approximately \$2,600,000, which begins to expire in May 2038.

**NOTE 10: OPERATING LEASE COMMITMENTS**

The Company leases office space, office equipment and certain vehicles under lease agreements classified as operating leases through May 2022.

Future minimum lease payments required under operating leases that have initial or remaining non-cancelable lease term in excess of one year were as follows at May 31, 2020:

<i>For the year ending May 31,</i>	Amount
2021	\$ 1,341,512
2022	867,910
2023	74,253
2024	75,593
2025	76,969
	<u>\$ 2,436,237</u>

Related rent expense for the years ended May 31, 2020 and 2019, was approximately \$2,144,000 and \$1,820,000, respectively.

**NOTE 11: CAPITAL LEASES**

The Company has entered into five lease agreements as lessee for the financing and acquisition of computer hardware. The agreements require monthly payments through December 2021 and bear interest at approximately 4.5%. The agreements qualify as capital leases and have been recorded at the present value of the future minimum lease payments as of the acquisition date. Amortization of assets under capital leases is included in depreciation expense. At May 31, 2020, the net book value of the underlying equipment acquired under capital leases was \$0.

Dickey's Capital Group, Inc.  
Notes to Consolidated Financial Statements

**NOTE 11: CAPITAL LEASES (Continued)**

The following is a schedule of future minimum lease payments under capital leases and the net present value as of May 31, 2020:

<u>For the year ending May 31,</u>	<u>Amount</u>
2021	\$ 181,061
2022	135,905
<hr/>	
Total lease payments	316,966
Less amount representing interest	(13,879)
<hr/>	
Present value of future minimum lease payments	303,087
Less current maturities	(169,929)
<hr/>	
Capital lease obligations, net of current portion	\$ 133,158
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**NOTE 12: RETIREMENT PLAN**

The Company maintains a 401(k) plan for all eligible employees. In addition to the employee's elective deferral, the Company matches an amount not exceeding 3% of the employee's gross compensation. Contributions made for the years ended May 31, 2020 and 2019, were approximately \$133,000 and \$107,000, respectively.

**NOTE 13: CONTINGENCIES**

From time to time, the Company is a party to various claims, legal actions and complaints arising in the ordinary course of business. In the opinion of management, the disposition of such matters when they arise will not have a material adverse effect on the Company's consolidated financial position or results of operations.

**Dickey's Capital Group, Inc.**  
**Notes to Consolidated Financial Statements**

**NOTE 13: CONTINGENCIES (Continued)**

In March 2020, the World Health Organization made the assessment that the outbreak of a novel coronavirus (COVID-19) can be characterized as a pandemic. As a result, uncertainties have arisen that may have a significant negative impact on the operating activities and results of the Company and its franchisees. Possible effects may include, but are not limited to, disruption to the Company's customers and franchisees and related revenues, delays in collection of accounts receivable, impairment of property and equipment, goodwill and other intangible assets and declines in the value of inventory. Through the date of this report the Company has not experienced a significant negative impact on cash flows due to receipt of a Paycheck Protection Program (PPP) loan discussed below combined with various other actions taken by management to offset the reduced revenue from royalty rate reductions that occurred in the fiscal fourth quarter. The occurrence and extent of such an impact will depend on future developments, including (i) the duration and spread of the virus, (ii) government quarantine measures, (iii) voluntary and precautionary restrictions on travel or meetings (iv) the effects on the financial markets, and (v) the effects on the economy overall, all of which are uncertain.

During April 2020 the Company received \$3,378,800 in PPP loans funds which were loans established by the CARES Act and implemented by the Small Business Administration and backed by the United States Treasury. This program provides small business loans to pay certain payroll costs, interest on mortgages, rent and utilities for a specified amount of time to help address the impact of COVID-19. If certain conditions of the PPP are met, then amounts up to the full amount of loans provided may be forgiven. At May 31, 2020, the balance of these loans was \$3,378,800, and is included in Paycheck Protection Program loan on the accompanying consolidated balance sheets.

**NOTE 14: CONCENTRATION OF CREDIT RISK**

The Company maintains its cash and cash equivalents in bank deposit accounts in which the deposits are guaranteed by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000. Topic 825 of the FASB ASC, *Financial Instruments* identifies these accounts as a concentration of credit risk requiring disclosure regardless of the degree of risk. This risk is managed by maintaining deposits with high quality financial institutions. The uninsured cash balance in excess of FDIC coverage totaled approximately \$1,500,000 at May 31, 2020.

**NOTE 15: CONCENTRATIONS OF CUSTOMERS**

For the year ended May 31, 2020, one customer accounted for approximately 31% of the Company's revenue. For the year ended May 31, 2019, two customers accounted for approximately 31% of the Company's revenue. At May 31, 2020, one customer represented approximately 51% of accounts receivable and at May 31, 2019, one customer represented approximately 37% of accounts receivable.

**THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS OR HER OPINION WITH REGARD TO THEIR CONTENT OR FORM**

**Dickey's Capital Group**  
**Consolidated Balance Sheet - Unaudited**  
**as of Q1 FY2021**

	<u>8/31/2021</u>	<u>5/31/2021</u>
<b>Current Assets</b>		
Cash and cash equivalents	\$ 14,574,193	\$ 15,496,291
Accounts Receivable	4,266,556	3,802,142
Prepaid expenses and other current assets	636,369	594,286
Inventory	2,189,026	1,826,409
Income taxes receivable	<u>1,235,891</u>	<u>1,235,891</u>
<b>TOTAL Current Assets</b>	<u><b>22,902,035</b></u>	<u><b>22,955,019</b></u>
<b>Noncurrent Assets</b>		
Notes Receivable	185,068	196,333
Due from related parties	1,199,742	1,199,742
Property & Equipment net of accumulated depreciati	8,625,196	8,102,070
Deferred tax asset	261,250	261,250
Intangible assets, net of accumulated amortization	24,347,090	25,188,008
Other assets	<u>44,891</u>	<u>44,891</u>
<b>TOTAL Noncurrent Assets</b>	<u><b>34,663,237</b></u>	<u><b>34,992,294</b></u>
<b>TOTAL ASSETS</b>	<u><b>\$ 57,565,272</b></u>	<u><b>\$ 57,947,313</b></u>
<b>Current Liabilities</b>		
Accounts Payable	2,939,060	3,169,979
Accrued Expenses and other current liabilities	3,413,018	3,760,988
Lines of Credit	500,000	485,100
Income Tax payable	-	-
Current maturities of capital lease obligations	45,975	136,337
Current portion of notes payable	<u>-</u>	<u>-</u>
<b>TOTAL Current Liabilities</b>	<u><b>6,898,053</b></u>	<u><b>7,552,404</b></u>
<b>Long Term Liabilities</b>		
Capital lease obligations	-	-
Notes Payable, net of current portion	29,460,000	29,460,000
Contract Liability	1,151,111	1,151,111
PPP Loans	3,415,500	6,470,200
Deferred incentive income	<u>140,049</u>	<u>140,049</u>
<b>TOTAL Long Term Liabilities</b>	<u><b>34,166,660</b></u>	<u><b>37,221,360</b></u>
<b>Total liabilities</b>	<b>41,064,713</b>	<b>44,773,764</b>
<b>Stockholder Equity</b>		
Common Stock	1	1
Additional Paid in Capital	2,487,723	2,487,723
Retained Earnings	<u>13,193,875</u>	<u>9,910,105</u>
DCG stockholder equity	15,681,599	12,397,829
Non-controlling interest	<u>818,960</u>	<u>775,720</u>
<b>Total Equity</b>	<u><b>16,500,559</b></u>	<u><b>13,173,549</b></u>
<b>TOTAL Liabilities and Equity</b>	<u><b>\$ 57,565,272</b></u>	<u><b>\$ 57,947,313</b></u>

**Dickey's Capital Group**  
**Consolidated Income Statement - Unaudited**  
**For Quarter 1 - Ending 08/31/2021**

	<u>Current FY</u> <u>Q1</u>		<u>8/31/2020</u> <u>Prior FY</u> <u>Q1</u>	
<b>REVENUE</b>				
Franchisor operating income	\$ 6,098,614		\$ 5,860,585	
Franchise fees	925,917		409,250	
Advertising Income	2,560,424		2,250,621	
Barbecue and related supplies sales	8,224,191		6,598,457	
Other	38,370		51,250	
<b>TOTAL REVENUE</b>	<u>17,847,516</u>		<u>15,170,164</u>	
<b>COST OF SALES</b>				
Franchise setup costs	243,505		152,444	
Franchise maintenance costs	490,399		233,735	
Cost of barbecue and supplies	5,666,075		4,477,448	
<b>TOTAL COST OF SALES</b>	<u>6,399,979</u>	35.9%	<u>4,863,628</u>	32.1%
<b>GROSS PROFIT</b>	11,447,537	64.1%	10,306,536	67.9%
<b>SELLING AND ADMINISTRATIVE EXPENSES</b>	<u>11,078,312</u>	62.1%	<u>9,587,364</u>	63.2%
<b>INCOME FROM OPERATIONS</b>	<u>369,225</u>	2.1%	<u>719,172</u>	4.7%
<b>OTHER INCOME (EXPENSE)</b>				
Interest Expense	(236,250)	-1.3%	(77,059)	-0.5%
Interest Income	552	0.0%	4,686	0.0%
Gain/loss	3,054,700	17.1%	(1,636)	0.0%
Other	-	0.0%	3,529	0.0%
<b>Total other income (expense)</b>	<u>2,819,002</u>	15.8%	<u>(70,479)</u>	-0.5%
<b>NET INCOME BEFORE INCOME TAXES</b>	3,188,227	17.9%	648,693	4.3%
<b>PROVISION FOR INCOME TAXES</b>	26,697	0.1%	121,700	0.8%
<b>NET INCOME</b>	<u>\$ 3,161,530</u>		<u>\$ 526,993</u>	
Less income attributable to non-controlling interests	285,645		268,272	
<b>NET INCOME ATTRIBUTED TO DCG, INC.</b>	<u>\$ 2,875,885</u>		<u>\$ 258,722</u>	

Pre-tax Profit	3,188,227	648,693
Interest	235,698	68,844
Gain/Loss	(3,054,700)	(1,636)
Depreciation	65,020	188,854
Amortization	807,672	840,918
Management Fee	300,000	267,000
<b>EBITDA</b>	<b>1,541,917</b>	<b>2,012,673</b>



**Dickey's Capital Group**  
**Consolidated Statement of Cash Flows - Unaudited**  
**For the First Fiscal Quarter Ended 8/31/2021**

<b>Cash Flow from Ops</b>	<b>Q1</b>
Net Income	\$ 3,161,530

**Adjustments to reconcile net income to net cash provided (used) by operating activities**

Depreciation	188,854
Amortization	807,672
Amortization of debt issuance costs	33,246
Bad Debt Expense (Write-offs)	
Deferred tax provision	-
(Gain)/Loss on sale of P&E	(3,054,700)

**Change in operating assets and liabilities**

Accounts Receivable	(464,414)
Prepaid expenses and other assets	(42,083)
Inventory	(362,617)
Other Assets	-
Due from Related Parties	-
Notes receivable and other assets	11,265
Accounts Payable	(230,919)
Accrued expenses and other liabilities	(347,970)
Income tax payable	-
Deferred incentive income	-

<b>Cash provided (used) by Ops</b>	<b>(300,136)</b>
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**Cash Flow from Investing**

Purchase of property & equipment	(525,500)
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<b>Cash from Investing Activities</b>	<b>(525,500)</b>
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**Cash Flow from Financing**

Lines of credit, net	14,900
Payments (borrowings) on Notes Payable	-
Principal payments on capital leases	(90,362)
Dividends and Distributions	(21,000)

<b>Cash from Financing Activities</b>	<b>(96,462)</b>
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Cash at start of period	15,496,291
<b>Total Cash flow</b>	<b>(922,098)</b>
Cash at end of period	14,574,193

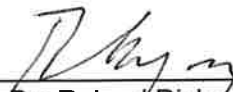
## GUARANTY OF PERFORMANCE

For value received, Dickey's Capital Group, Inc., located at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287 (the "Guarantor"), absolutely and unconditionally guarantees to assume the duties of Virtual Brands, Inc., located at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287 (the "Franchisor") under its franchise registration in each state where its franchise is registered or exempt from registration, as applicable, and under its Franchise Agreement as identified in its 2021 Franchise Disclosure Document, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended, from time to time. This guaranty continues until all such obligations of the Franchisor under the franchise registration or franchise exemption (as applicable) and Franchise Agreement are satisfied or until liability of the Franchisor under the Franchise Agreement has been completely discharged, whichever first occurs. Guarantor is not discharged from liability if a claim by the franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and on its successors and assigns.

The Guarantor signs this guarantee at Dallas, Texas on the 17 day of September, 2021.

Guarantor:

DICKEY'S CAPITAL GROUP, INC.



By: Roland Dickey, Jr.

Title: CEO, President & Secretary

**EXHIBIT J**

**NON-TRADITIONAL VENUE ADDENDUM**

Ex. J

**NON-TRADITIONAL VENUE ADDENDUM  
TO FRANCHISE AGREEMENT**

Virtual Brands, Inc., a Texas corporation ("Franchisor") and \_\_\_\_\_ ("Franchisee" or "you") agree to this Addendum (the "Addendum") to that certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_ between Franchisor and Franchisee for the development and operation of the Franchised Restaurant in a non-traditional venue, as follows. All capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Franchise Agreement.

**AGREEMENTS**

A. Franchisee acknowledges that this Addendum allows Franchisee to operate outside Franchisor's normal operational policies and procedures, as set forth herein.

B. Franchisee acknowledges that this Addendum allows Franchisor to impose additional obligations on Franchisee, as set forth herein. Franchisee also acknowledges that such additional obligations may deviate from the requirements set forth in Franchisor's normal operational policies and procedures.

C. Franchisee is not required to maintain a speaker system at the Restaurant. However, if Franchisee elects to maintain a speaker system, Franchisee must play music at the Restaurant in accordance with Franchisor's published operational policies and procedures.

D. Franchisee is not required to serve soft serve ice cream at the Restaurant. However, if Franchisee elects to serve soft serve ice cream at the Restaurant, Franchisee must do so in compliance with Franchisor's published operational policies and procedures.

E. Franchisee is not required to furnish the Franchised Restaurant with chairs and tables. However, if Franchisee elects to furnish the Franchised Restaurant with chairs and tables, Franchisee must do so in compliance with and pursuant to plans and specifications approved by Franchisor.

F. Franchisee acknowledges that Franchisor may require Franchisee to open the Franchised Restaurant to the public for hours in addition to the hours of operation set forth in Franchisor's published operational policies and procedures.

G. Franchisee acknowledges that Franchisor may require Franchisee to serve additional menu items not set forth in Franchisor's published operational policies and procedures, including, but not limited to, breakfast items.

H. Franchisee acknowledges that Franchisor may elect to impose signage requirements for the Franchised Restaurant that deviate from the requirements set forth in Franchisor's published operational policies and procedures.

I. Franchisee acknowledges that Franchisor may, in its sole discretion, elect to impose equipment, equipment installation requirements, and/or variations on design plans and specifications for

the Franchised Restaurant that deviate from the requirements set forth in Franchisor's published operational policies and procedures.

## **AMENDMENTS**

J. Amended Provisions of Franchise Agreement. Articles 1.3(6), 2.1, 4.1, 5.2, 5.8, and 8.25 of the Franchise Agreement are modified as follows:

### **ARTICLE 1. FRANCHISE**

**1.3(6) ASSIGNED AREA & PRIMARY AREA.** Subsection 1.3(6) of the Franchise Agreement is deleted and replaced with the following:

the right to, directly or indirectly, operate, license, or grant a franchise to operate a traditional full-size Restaurant located in a retail center or stand-alone building or any other food offering service within the Assigned Area and Primary Area;

### **ARTICLE 2. TERM AND RENEWAL**

**2.1 INITIAL TERM.** Except as otherwise provided herein, the initial term of this Agreement shall expire ten (10) years from the Effective Date of this Agreement.

### **ARTICLE 4. FRANCHISE FEE**

**4.1 FRANCHISE FEE.** You shall pay Franchisor an initial franchise fee ("Franchise Fee") in an amount equal to Fifteen Thousand Dollars (\$15,000.00) upon execution of the Agreement. **Such initial Franchise Fee shall be nonrefundable.** If a Development Agreement has been executed, the initial Franchise Fee will be payable according to its terms.

### **ARTICLE 5. ADVERTISING AND RELATED FEES**

**5.2 FRANCHISED RESTAURANT OPENING.** You shall carry out a Franchised Restaurant opening promotion relating to the opening of your Franchised Restaurant in accordance with the Manuals or as otherwise required by Franchisor. Any advertising and promotional campaigns used by you in connection with such Franchised Restaurant opening promotion must be approved by Franchisor prior to use. You shall comply with the direct and local advertising and promotional campaign for restaurant openings devised by Franchisor and adapted for your Assigned Area. When required, but not later than on or before the initial "orientation call" with us, you shall pay Franchisor (i) Five Thousand Dollars (\$5,000.00), or (ii) if your Franchised Restaurant is operated from a mobile unit, \$1,000 (the "Restaurant Opening Promotion Funds"), to be spent by Franchisor on your behalf in connection with such Franchised Restaurant opening promotion. The Restaurant Opening Promotion Funds will be used by Franchisor, in its discretion, to fund marketing materials, local advertising and promotional support related to the Franchised Restaurant pre-opening and grand opening campaigns, and in some cases post-opening campaigns. Upon your request, a full accounting of the Restaurant Opening Promotion Funds spent by Franchisor in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns will be provided. While Franchisor will exercise best efforts to spend the full amount of the Restaurant Opening Promotion

Funds in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, any remaining balance after the first six (6) months of the operation of your Franchised Restaurant will be deposited into the Marketing Fund and applied by Franchisor in accordance with the procedures described herein for the utilization of the proceeds of the Marketing Fund.

## **ARTICLE 8. FRANCHISED RESTAURANT OPERATIONS**

**8.25 CATERING.** You shall at all times offer catering services in accordance with Franchisor's policies and procedures. You shall be required to maintain at least one vehicle bearing the Franchisor's logo and other identifying trade dress and promotional information as required by Franchisor in order to perform such services. You shall participate in Franchisor's catering hotline centralizing catering orders and requests and comply with Franchisor's policies and procedures regarding the hotline. You acknowledge that Franchisor reserves the right to suspend or terminate your hotline and any other catering lead referrals and redirect them to other Restaurants for service if Franchisor determines that you (i) do not comply with Franchisor's policies and procedures, (ii) are not using suppliers approved by Franchisor for all items you are required to obtain from approved suppliers, or (iii) provide catering service that is deficient or is the subject of customer complaints Franchisor deems to be unacceptable. You also acknowledge that Franchisor reserves the right to direct any general catering request received through Franchisor's catering hotline to any franchisee based on such franchisee's experience, efficiency, relationship with or proximity to the customer placing the order.

K. **Conditional Agreements.** Franchisee and Franchisor hereby acknowledge and agree that any agreements and obligations granted herein are conditioned upon Franchisee's locating, executing a lease for, building out, and opening a Franchised Restaurant in a non-traditional venue or location. Should Franchisee execute a lease for, build out, open, or otherwise decide upon moving forward with a Franchised Restaurant in a traditional venue or location, immediately and without further writing, the above terms in this Addendum shall not apply, and all terms of the Franchise Agreement shall control, including, but not limited to, terms related to fees, development deadlines, restaurant operations, training, and management requirements.

L. **Entire Agreement.** This Addendum and the Franchise Agreement sets forth the entire agreement between the parties concerning Franchisee's request to operate the Non-Traditional Restaurant and incorporates all prior discussions, negotiations, agreements and understandings. Except for those permitted to be made unilaterally by Franchisor hereunder, no alteration, amendment, change or addition to this Addendum will be binding unless in writing and signed by all of the parties.

M. **Counterparts.** This Addendum may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Electronic and facsimile signatures, including scanned signatures or the use of a key pad, mouse, or other device to select an item, button, icon or similar act/action, will be considered as binding and conclusive as

if original; provided, however, that upon request of any other party hereto, the party so executing must use all commercially reasonable efforts to furnish to such other party a manually executed version of the Addendum at the earliest opportunity.

N. **RELEASE: Franchisee hereby releases and forever discharges Franchisor, any parent, subsidiary, related entity, shareholder, and affiliate of Franchisor, its respective officers, directors, members, employees, agents, contractors and its respective successors, assigns, heirs and personal representatives (the “Released Parties”) from any and all claims, demands, rights and causes of action of any kind that Franchisee now has or will have in the future, whether known or unknown, arising out of the offer, sale, administration, performance, default, and/or termination of the Franchise Agreement, including any claims or causes of action arising out of alleged misrepresentations, fraud, breaches of contract (based upon implied, express, estoppel, waiver, or alternative theories of contractual obligation), negligence, or breach of any alleged special, trust, agency or fiduciary relationship (if any), whether asserted or proposed to be asserted by way of claim, setoff, affirmative defense, counterclaim, cross-claim or third party claim. THIS RELEASE EXPRESSLY INCLUDES, BUT IS NOT LIMITED TO, ANY ACT OR OMISSION OF NEGLIGENCE, FRAUD, MISREPRESENTATIONS, BREACH OF FIDUCIARY DUTIES, BREACH OF WARRANTIES, BREACH OF CONTRACT, AND ANY EXTRA-CONTRACTUAL CLAIMS COMMITTED OR ALLEGEDLY COMMITTED BY THE RELEASED PARTIES, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS RELEASE IS INTENDED TO DISCLAIM OR REQUIRE FRANCHISEE TO WAIVE RELIANCE ON ANY REPRESENTATION THAT FRANCHISOR MADE IN THE FRANCHISE DISCLOSURE DOCUMENT THAT FRANCHISOR PROVIDED TO FRANCHISEE. This Release shall survive termination of the Franchise Agreement, as modified by this Addendum, and is in addition to any other release or similar agreement in the Franchise Agreement or other agreement between Franchisor and Franchisee. With regard to any acts or omissions covered under this Release, Franchisee agrees not to commence any action, lawsuit, or legal proceeding, or file any charge or complaint with any federal, state, or local agency, against the Released Parties.**

O. This Addendum does not modify the terms of the Franchise Agreement except as specifically stated herein. The parties acknowledge and agree that the Franchise Agreement, as modified by this Addendum, is ratified and shall continue in full force and effect.

P. The terms and conditions of this Addendum shall be confidential. Except as provided above or required by law or court order or the enforcement of the provisions hereof, the parties shall maintain in strict confidence and shall not disclose the existence of or any substance or contents of this

Addendum to any third party without prior written consent of the other party or parties herein. This confidentiality provision shall survive the termination of the Franchise Agreement and/or this Addendum and is in addition to any other confidentiality obligations or similar restrictions on Franchisee in the Franchise Agreement or other agreement between Franchisor and Franchisee.

Date:

**FRANCHISOR:**

VIRTUAL BRANDS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Name: Jeffrey Gruber  
Title: Senior Vice President of Franchise Relations

**FRANCHISEE:**

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



**EXHIBIT K**  
**MOBILE UNIT RIDER**

**MOBILE UNIT RIDER  
TO FRANCHISE AGREEMENT**

1. **Background.** This Mobile Unit Rider (this “Rider”) is made between **VIRTUAL BRANDS, INC.**, a Texas corporation (“Franchisor,” “we,” “us,” or “our”) and \_\_\_\_\_ (“you” or “your”). This Rider is attached to, and intended to be a part of, the Franchise Agreement that we and you have signed concurrently with signing this Rider for the operation of the Franchised Restaurant (the “Franchise Agreement”). We and you are signing this Rider because you want the right to operate the franchised business using a mobile vehicle within a certain geographic area, and we are willing to grant you that right if you comply with this Rider. Terms not defined herein shall be as defined in the Franchise Agreement.

2. **The Mobile Unit.** You shall operate the franchised business from a specially-designed motor vehicle containing both kitchen and serving facilities (the “Mobile Unit”), pursuant to the terms and conditions set forth in this Rider and subject to all of the terms and conditions contained in the Franchise Agreement. The vehicle identification number of the Mobile Unit is:  
\_\_\_\_\_.

3. **Plans, Specifications and Construction.** The Mobile Unit shall be a mobile vehicle constructed in accordance with our standards and specifications, as stated in the Operations Manual. You must submit a copy of the preliminary and final plans and specifications for the Mobile Unit to us for our written approval. We must approve the Mobile Unit before you may use it as a Franchised Restaurant under the Franchise Agreement. You shall use a supplier designated or approved by us for such design and constructing services. You shall submit to us, for our review and written approval, any changes to the preliminary and/or final plans and specifications for the Mobile Unit at least thirty (30) days prior to implementation of the plans. As a condition of approval, we may require, and you agree to provide, such additional information as we deem appropriate. The plans and specifications shall not thereafter be changed or modified without our prior written approval. You agree that we and our agents shall have the right to inspect the Mobile Unit to determine whether the construction complies with the final plans and specifications approved by us. You shall be solely responsible for the cost of constructing and equipping the Mobile Unit, and for any modifications thereto required to meet our standards and specifications. We shall be the sole owner of all plans and specifications for the construction and/or modification of the Mobile Unit, including the copyrights thereto, and you agree to execute any documents we deem necessary to implement this provision. Before hiring any person or company to construct or modify the Mobile Unit, you shall contact us to determine what documents, if any, are necessary to implement the provisions of this Section, and you shall obtain such parties’ signatures on the documents we require before any construction or modification to the Mobile Unit is commenced.

4. **Franchise Agreement.** The Parties agree that the provisions set forth in this Rider shall be in addition to, and not in place of (unless stated otherwise herein), the terms and conditions set forth in the Franchise Agreement, as applied to the operation of the Mobile Unit. You understand and acknowledge that we make no representations or warranties as to the success of the Mobile Unit. The following changes apply to the Franchise Agreement:

a. Whenever reference is made in the Franchise Agreement to (a) the business franchised thereunder (including, but not limited to, the terms “Franchised Restaurant,” or “franchised business”), the same shall be deemed to refer to the Mobile Unit; (b) “Accepted Location,” the same shall be deemed to refer to the Mobile Unit Territory (as defined below), except as provided under Subsection

b. below; and (c) the lease for the Franchised Restaurant premises, the same shall be deemed to refer to the lease for the Mobile Unit.

b. The references to “Accepted Location” in Sections 1 and 7 of the Franchise Agreement are changed to “Mobile Unit.”

5. **Operation of the Mobile Unit.** You agree to maintain and operate the Mobile Unit in strict conformity with the terms and conditions set forth in the Franchise Agreement, and those requirements that we may prescribe from time to time in the Operations Manual or otherwise in writing. In addition:

a. You shall ensure that the Mobile Unit is driven, moved, or otherwise transported with the highest degree of care and safety; and in connection therewith, you shall comply with such requirements that we may from time to time prescribe in the Operations Manual or otherwise in writing, including, but not limited to:

i. Obtaining and keeping current, and/or requiring that employees who are authorized to drive or move the Mobile Unit obtain and keep current, a valid driver’s permit or license which at all times meets all requirements pertaining to the operation of the Mobile Unit on public roads within the Mobile Unit Territory;

ii. Requiring that at least one (1) person having a driver’s license or permit, as described in this Section, be present in the Mobile Unit at all times; and

iii. Ensuring that the Mobile Unit is not moved or transported in any manner, except by persons having a valid driver’s license or permit, as described in this Section 5.a., and operating the Mobile Unit in a safe and prudent manner which is in full compliance with the regulations applicable to driving and operating such motor vehicle within the Mobile Unit Territory.

b. You shall ensure that the Mobile Unit is constructed and maintained in the highest degree of safety, repair, cleanliness, and appearance; and in connection therewith, you shall comply with such requirements that we may from time to time prescribe in the Manual or otherwise in writing, including, but not limited to, the following:

i. You shall maintain the Mobile Unit in excellent working condition. You accordingly agree, without limiting the foregoing, to promptly effect repairs to the Mobile Unit to remedy or remove any graffiti, bumper stickers (except required permits or parking stickers), collision damage, surface scratches, dents, or similar damage. If such damage occurs, the Mobile Unit shall not be operated until repairs are made, except to transport the Mobile Unit to a repair facility or unless we approve, at our sole option, of you temporarily operating the Mobile Unit at an already approved festival. We shall have the right to inspect the Mobile Unit from time to time and without prior notice to you to ensure that the Mobile Unit is maintained in accordance with the terms of the Franchise Agreement and this Rider.

ii. You shall keep the Mobile Unit clean, and shall wash the exterior surfaces of the Mobile Unit and any interior surfaces that can be seen by the public at the start and end of every day that the Mobile Unit is in use.

iii. You shall not make, or allow any other person or entity to make, modifications to the Mobile Unit without our prior written consent.

iv. In connection with any proposed modification of the Mobile Unit or construction of a replacement Mobile Unit, you shall submit to us, for our review and written approval, plans and specifications at least thirty (30) days prior to such proposed modification or construction. You shall also submit to us a statement identifying the person or entity that you propose to perform such modification or construction and describing such person's or entity's qualifications and financial responsibility. As a condition of approval, we may require, and you agree to provide, such additional information as we deem appropriate. You agree that we and our agents shall have the right to inspect the Mobile Unit at all reasonable times for the purpose of ascertaining that all modifications or construction work complies with the final plans and specifications approved by us.

c. You shall at your own expense obtain and maintain at all times the necessary permits and authorizations pertaining to the transportation and operation of the Mobile Unit (and the Surrounding Areas, as described in Section 5.g., below) within the Mobile Unit Territory.

d. You shall store the Mobile Unit and any equipment used in the Surrounding Areas, when not in use, at a secure location within the Mobile Unit Territory.

e. You shall use the Mobile Unit and any equipment used in the Surrounding Areas only for the purpose of selling and offering for sale the food and beverage products (including, but not limited to, the menu items, and any additional "local" menu items approved by us in writing) as have been expressly approved for sale in writing by us, and for no other purpose. You must refrain from any deviation from our standards and specifications without our prior written consent and to discontinue selling and offering for sale any food or beverage products which we may, in our discretion, disapprove in writing at any time.

f. You shall display the Proprietary Marks on the Mobile Unit in the size and manner specifically approved by Franchisor for use on the Mobile Unit. You also agree that you shall display no other logos, trademarks, service marks on the Mobile Unit without Franchisor's prior written consent.

g. You shall sell and offer for sale the food and beverage products (including, but not limited to, the menu items, and any additional "local" menu items approved by us in writing) as have been expressly approved for sale in writing by us from the Mobile Unit only at fixed locations we approve in advance. You agree (i) not to operate the Mobile Unit by driving in residential neighborhoods stopping at the request of customers (as in the manner of an ice cream truck), and (ii) not to drive from one work site to another to sell or offer for sale the food and beverage products (in the manner of a lunch truck), unless we approve, at our sole option, in writing of your doing so. For this purpose:

i. You shall provide us with at least fifteen (15) days' prior written notice (the "**Notice**") of every proposed location at which the Mobile Unit will be parked and selling or offering for sale the food and beverage products as have been expressly approved for sale in writing by us ("**Locations**"). The Notice shall be in such form as we may reasonably require, and shall include, without limitation, at least the following information relating to each Location: the exact address of the Location, a description of the position of the Mobile Unit at the Location, the proposed hours and days of operation, a description of any events anticipated to occur at or near the Location, and a description of all operations

at each Location that are ancillary to the operation of the Mobile Unit, including, but not limited to, the establishment of temporary seating areas, and signs directing the public to the Mobile Unit (the “**Surrounding Areas**”).

ii. If we do not provide to you written approval of the Location(s) and Surrounding Area(s) proposed in the Notice within seven (7) days after receipt of the Notice from you, then the Location(s) and Surrounding Area(s) proposed in the Notice shall be deemed approved. After approval of a Location by us, if there should be a change to the information provided in the Notice, you must obtain our prior written approval before operating the Mobile Unit at the Location.

6. **The Mobile Unit Territory.** You shall operate the Mobile Unit only within the territory designated on **Exhibit A** attached hereto (the “**Mobile Unit Territory**”), and subject to Subsection b. below and our (and our affiliates’) retained rights under Section 1.3 of the Franchise Agreement. The Mobile Unit Territory shall not be an exclusive territory. You acknowledge and agree that we have the right to establish, and license others to establish, Restaurants at any location (including within the Mobile Unit Territory), without granting you any rights therein, and notwithstanding the actual or threatened impact on sales at the Mobile Unit.

a. The Mobile Unit Territory shall not include the radius we designate from time to time from any Restaurant established at a location within the Mobile Unit Territory during the term of the Franchise Agreement.

b. Notwithstanding our rights to terminate the Franchise Agreement under Section 16.2 of the Franchise Agreement, if you operate the Mobile Unit outside of the Mobile Unit Territory or at any Location not approved by us under Section 5.g. above, we shall have the right to terminate the Franchise Agreement immediately upon notice to you, without any opportunity to cure.

7. **Assignment.** Your right to operate the Mobile Unit under this Rider is not assignable at all. This means that we will not under any circumstances allow the right to operate the franchised business from the Mobile Unit to be transferred. A transfer of the right to operate the Mobile Unit would be deemed to occur (and would be prohibited) if there is an assignment of the Franchise Agreement, a transfer of a controlling ownership interest in you, a transfer of this Rider separate and apart from the Franchise Agreement, a transfer of the Mobile Unit, or any other event attempting to transfer the Mobile Unit or assign the right to operate the franchised business from the Mobile Unit.

8. **Our Option to Purchase Assets.** Our option under Article 17 of the Franchise Agreement to purchase from you upon termination of the Franchise Agreement any or all of the equipment, signs and furniture related to the operation of the Franchised Restaurant shall include the Mobile Unit.

9. **Incorporation of Other Terms.** Sections 15.1 through 15.7, 16.1 through 16.4, 17, 18, 19, 20.1 through 20.6, 21, 22.1 through 22.4, 23, 25, 26.1 through 26.3 and 27.1 through 27.9 of the Franchise Agreement, entitled “Transfer by Franchisor,” “Transfer by You,” “Transfer for Convenience of Ownership,” “Right of First Refusal,” “Transfer upon Death or Permanent Disability,” “Nonwaiver of Claims,” “Offerings by You,” “Events of Default not Subject to Notice and Cure,” “Events of Default Subject to Notice but without Cure,” “Events of default Subject to 7-Day Notice and Cure,” “Obligations of Default Subject to 30 Day Notice and Cure,” “Obligations Upon Termination Or Expiration,” “Covenants,” “Taxes, Permits, Indebtedness,” No Fiduciary Relationship,” “Franchisee is an Independent

Contractor,” “No Authority to Bind Franchisor,” “Delivery Vehicles,” “No Assumption of Liability,” “Indemnification and Release,” “Prior Approval or Consent of Franchisor,” “No Warranties or Guarantee’s,” “Effect of Delay, Waiver, Omission or Forbearance,” “Rights and Remedies Cumulative,” “Force Majeure,” “Entire Agreement, No Reliance on Representations Outside of this Agreement, and Waiver of Certain Claims,” “Severability,” “No Additional Rights or Remedies,” “Construction,” “Applicable Law,” “Mediation,” “Arbitration,” “Certain Claims by Either Party,” “Acceptance of Agreement in Texas,” “Governing Law and Venue,” “Jury Trial Waiver,” “Waiver of Punitive and Exemplary Damages,” “Individual Capacity,” “Statute of Limitations,” respectively, are incorporated by reference in this Rider and will govern all aspects of this Rider and our and your relationship as if fully restated within the text of this Rider.

10. **Rider to Control.** Except as provided in this Rider, the Franchise Agreement remains in full force and effect as originally written, and the provisions of this Rider shall be in addition to, and not in place of, the provisions of the Franchise Agreement. If there is any inconsistency between the Franchise Agreement and this Rider, the terms of this Rider will control.

11. **Entire Agreement.** This Rider and the Franchise Agreement sets forth the entire agreement between the parties concerning Franchisee’s request to operate the Mobile Unit and incorporates all prior discussions, negotiations, agreements and understandings. Except for those permitted to be made unilaterally by Franchisor hereunder, no alteration, amendment, change or addition to this Rider will be binding unless in writing and signed by all of the parties.

12. **Counterparts.** This Rider may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Electronic and facsimile signatures, including scanned signatures or the use of a key pad, mouse, or other device to select an item, button, icon or similar act/action, will be considered as binding and conclusive as if original; provided, however, that upon request of any other party hereto, the party so executing must use all commercially reasonable efforts to furnish to such other party a manually executed version of the Rider at the earliest opportunity.

[Signatures on Following Page]

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

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.,**  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Senior Vice President of Franchise Operations

**YOU:**

\_\_\_\_\_,

a \_\_\_\_\_

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

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

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

**OWNER/OPERATOR:**

[Individual]

\_\_\_\_\_

\_\_\_\_\_, an individual

**INVESTORS:**

[Individual]

---

\_\_\_\_\_, an individual

[Individual]

---

\_\_\_\_\_, an individual

[Individual]

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\_\_\_\_\_, an individual



**EXHIBIT A**  
**TO MOBILE UNIT RIDER**

1. The Mobile Unit Territory shall be:

\_\_\_\_\_ (area within the attached map)

Date: \_\_\_\_\_, 20\_\_

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.,**  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Senior Vice President of Franchise Operations

**YOU:**

\_\_\_\_\_

a \_\_\_\_\_

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

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

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

**OWNER/OPERATOR:**

[Individual]

\_\_\_\_\_

\_\_\_\_\_, an individual

**INVESTORS:**

[Individual]

\_\_\_\_\_

\_\_\_\_\_, an individual

[Individual]

\_\_\_\_\_

\_\_\_\_\_, an individual

[Individual]

\_\_\_\_\_

\_\_\_\_\_, an individual

**[INSERT TERRITORY MAP]**

Exhibit A  
Page 10 of 10

**EXHIBIT L**

**DELIVERY-CARRYOUT VENUE ADDENDUM**

Ex. L

**DELIVERY-CARRYOUT VENUE ADDENDUM  
TO FRANCHISE AGREEMENT**

Virtual Brands, Inc., a Texas corporation ("Franchisor") and \_\_\_\_\_ ("Franchisee" or "you") agree to this Delivery-Carryout Venue Addendum (the "Addendum") to that certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_, between Franchisor and Franchisee for the development and operation of the Franchised Restaurant that features delivery-carryout, as follows. All capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Franchise Agreement.

**AGREEMENTS**

A. Franchisee acknowledges that this Addendum allows Franchisee to operate outside Franchisor's normal operational policies and procedures, as set forth herein.

B. Franchisee acknowledges that this Addendum allows Franchisor to impose additional obligations on Franchisee, as set forth herein. Franchisee also acknowledges that such additional obligations may deviate from the requirements set forth in Franchisor's normal operational policies and procedures.

C. Franchisee is not required to serve soft serve ice cream at the Franchised Restaurant. However, if Franchisee elects to serve soft serve ice cream at the Franchised Restaurant, Franchisee must do so in compliance with Franchisor's published operational policies and procedures.

D. Franchisee is not required to furnish the Franchised Restaurant with chairs and tables. However, if Franchisee elects to furnish the Franchised Restaurant with chairs and tables, Franchisee must do so in compliance with and pursuant to plans and specifications approved by Franchisor.

E. Franchisee acknowledges that Franchisor may require Franchisee to open the Franchised Restaurant to the public for hours in addition to the hours of operation set forth in Franchisor's published operational policies and procedures.

F. Franchisee acknowledges that Franchisor may require Franchisee to serve additional menu items not set forth in Franchisor's published operational policies and procedures, including, but not limited to, breakfast items.

G. Franchisee acknowledges that Franchisor may elect to impose signage requirements for the Franchised Restaurant that deviate from the requirements set forth in Franchisor's published operational policies and procedures.

H. Franchisee acknowledges that Franchisor may, in its sole discretion, elect to impose equipment, equipment installation requirements, and/or variations on design plans and specifications for the Franchised Restaurant that deviate from the requirements set forth in Franchisor's published operational policies and procedures.

## AMENDMENTS

I. Amended Provisions of Franchise Agreement. Articles 1.3(6), 2.1, 4.1, 5.2, and 5.8 of the Franchise Agreement are modified as follows:

### ARTICLE 1. FRANCHISE

**1.3(6) ASSIGNED AREA & PRIMARY AREA.** Subsection 1.3(6) of the Franchise Agreement is deleted and replaced with the following:

the right to, directly or indirectly, operate, license, or grant a franchise to operate a traditional full-size Restaurant located in a retail center or stand-alone building or any other food offering service within the Assigned Area and Primary Area;

### ARTICLE 2. TERM AND RENEWAL

**2.1 INITIAL TERM.** Except as otherwise provided herein, the initial term of this Agreement shall expire ten (10) years from the Effective Date of this Agreement.

### ARTICLE 4. FRANCHISE FEE

**4.1 FRANCHISE FEE.** You shall pay Franchisor an initial franchise fee ("Franchise Fee") in an amount equal to Fifteen Thousand Dollars (\$15,000.00) upon execution of the Agreement. **Such initial Franchise Fee shall be nonrefundable.** If a Development Agreement has been executed, the initial Franchise Fee will be payable according to its terms.

### ARTICLE 5. ADVERTISING AND RELATED FEES

**5.2 FRANCHISED RESTAURANT OPENING.** You shall carry out a Franchised Restaurant opening promotion relating to the opening of your Franchised Restaurant in accordance with the Manuals or as otherwise required by Franchisor. Any advertising and promotional campaigns used by you in connection with such Franchised Restaurant opening promotion must be approved by Franchisor prior to use. You shall comply with the direct and local advertising and promotional campaign for restaurant openings devised by Franchisor and adapted for your Assigned Area. When required, but not later than on or before the initial "orientation call" with us, you shall pay Franchisor Five Thousand Dollars (\$5,000.00) (the "Restaurant Opening Promotion Funds") to be spent by Franchisor on your behalf in connection with such Franchised Restaurant opening promotion. The Restaurant Opening Promotion Funds will be used by Franchisor, in its discretion, to fund marketing materials, local advertising and promotional support related to the Franchised Restaurant pre-opening and grand opening campaigns, and in some cases post-opening campaigns. Upon your request, a full accounting of the Restaurant Opening Promotion Funds spent by Franchisor in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns will be provided. While Franchisor will exercise best efforts to spend the full amount of the Restaurant Opening Promotion Funds in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, any remaining balance after the first six (6) months of the operation of your Franchised Restaurant will be deposited into the Marketing Fund and applied by Franchisor in accordance with the procedures described herein for the utilization of the proceeds of the Marketing Fund.

J. **Conditional Agreements.** Franchisee and Franchisor hereby acknowledge and agree that any agreements and obligations granted herein are conditioned upon Franchisee's locating, executing a lease for, building out, and opening a Franchised Restaurant in a delivery-carryout venue or location. Should Franchisee execute a lease for, build out, open, or otherwise decide upon moving forward with a Franchised Restaurant in a format other than a delivery-carryout venue or location, the above terms in this Addendum shall not apply, and all terms of the Franchise Agreement shall control, including, but not limited to, terms related to fees, development deadlines, restaurant operations, training, and management requirements.

K. **Entire Agreement.** This Addendum and the Franchise Agreement sets forth the entire agreement between the parties concerning Franchisee's request to operate the delivery-carryout venue and incorporates all prior discussions, negotiations, agreements and understandings. Except for those permitted to be made unilaterally by Franchisor hereunder, no alteration, amendment, change or addition to this Addendum will be binding unless in writing and signed by all of the parties.

L. **Counterparts.** This Addendum may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Electronic and facsimile signatures, including scanned signatures or the use of a key pad, mouse, or other device to select an item, button, icon or similar act/action, will be considered as binding and conclusive as if original; provided, however, that upon request of any other party hereto, the party so executing must use all commercially reasonable efforts to furnish to such other party a manually executed version of the Addendum at the earliest opportunity

M. **RELEASE:** Franchisee hereby releases and forever discharges Franchisor, any parent, subsidiary, related entity, shareholder, and affiliate of Franchisor, its respective officers, directors, members, employees, agents, contractors and its respective successors, assigns, heirs and personal representatives (the "Released Parties") from any and all claims, demands, rights and causes of action of any kind that Franchisee now has or will have in the future, whether known or unknown, arising out of the offer, sale, administration, performance, default, and/or termination of the Franchise Agreement, including any claims or causes of action arising out of alleged misrepresentations, fraud, breaches of contract (based upon implied, express, estoppel, waiver, or alternative theories of contractual obligation), negligence, or breach of any alleged special, trust, agency or fiduciary relationship (if any), whether asserted or proposed to be asserted by way of claim, setoff, affirmative defense, counterclaim, cross-claim or third party claim. **THIS RELEASE EXPRESSLY INCLUDES, BUT IS NOT LIMITED TO, ANY ACT OR OMISSION OF NEGLIGENCE, FRAUD, MISREPRESENTATIONS, BREACH OF FIDUCIARY DUTIES,**

**BREACH OF WARRANTIES, BREACH OF CONTRACT, AND ANY EXTRA-CONTRACTUAL CLAIMS COMMITTED OR ALLEGEDLY COMMITTED BY THE RELEASED PARTIES, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS RELEASE IS INTENDED TO DISCLAIM OR REQUIRE FRANCHISEE TO WAIVE RELIANCE ON ANY REPRESENTATION THAT FRANCHISOR MADE IN THE FRANCHISE DISCLOSURE DOCUMENT THAT FRANCHISOR PROVIDED TO FRANCHISEE. This Release shall survive termination of the Franchise Agreement, as modified by this Addendum, and is in addition to any other release or similar agreement in the Franchise Agreement or other agreement between Franchisor and Franchisee. With regard to any acts or omissions covered under this Release, Franchisee agrees not to commence any action, lawsuit, or legal proceeding, or file any charge or complaint with any federal, state, or local agency, against the Released Parties.**

N. This Addendum does not modify the terms of the Franchise Agreement except as specifically stated herein. The parties acknowledge and agree that the Franchise Agreement, as modified by this Addendum, is ratified and shall continue in full force and effect.

O. The terms and conditions of this Addendum shall be confidential. Except as provided above or required by law or court order or the enforcement of the provisions hereof, the parties shall maintain in strict confidence and shall not disclose the existence of or any substance or contents of this Addendum to any third party without prior written consent of the other party or parties herein. This confidentiality provision shall survive the termination of the Franchise Agreement and/or this Addendum and is in addition to any other confidentiality obligations or similar restrictions on Franchisee in the Franchise Agreement or other agreement between Franchisor and Franchisee.

**[Signature page follows]**



Date: \_\_\_\_\_, 20\_\_

**FRANCHISOR:**

VIRTUAL BRANDS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Senior Vice President of Franchise Relations

**FRANCHISEE:**

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

**EXHIBIT M**

**GHOST KITCHEN ADDENDUM TO FRANCHISE AGREEMENT**

Ex. M

## GHOST KITCHEN ADDENDUM TO FRANCHISE AGREEMENT

Virtual Brands, Inc., a Texas corporation ("**Franchisor**") and \_\_\_\_\_ ("**Franchisee**") agree to this Ghost Kitchen Addendum (the "**Addendum**") to that certain Franchise Agreement (the "**Franchise Agreement**") dated \_\_\_\_\_, 20\_\_, between Franchisor and Franchisee for the development and operation of a Wing Boss restaurant (the "**Restaurant**"), as follows. All capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Franchise Agreement.

WHEREAS, Franchisor is engaged in the business of operating and franchising a distinctive style of fast-casual restaurants utilizing the System, which includes certain standards, specifications, methods, procedures, identification schemes and Proprietary Marks and information;

WHEREAS, Franchisor permits franchisees to, in lieu of opening and operating prototypical freestanding Restaurants, sell Wing Boss menu items that are prepared in ghost kitchens located in commissary kitchens ("**Commissary Ghost Kitchens**") and the kitchens of restaurants operating under brands owned by Franchisor, one of its affiliates, and unrelated third-parties ("**Restaurant Ghost Kitchens**" and, together with Commissary Ghost Kitchens, "**Ghost Kitchens**");

WHEREAS, Ghost Kitchens operate and deliver Wing Boss menu items only through third party delivery vendors or via catering through Franchisor's website;

WHEREAS, Franchisee has requested, in lieu of opening and operating a prototypical freestanding Restaurant, the right to operate a Ghost Kitchen within [INSERT: the kitchen in Franchisee's "                    "-branded restaurant/the commercial kitchen] located at \_\_\_\_\_, with site plans as more particularly shown on **Exhibit A** attached hereto ("**Franchisee's Ghost Kitchen**"), and Franchisor is willing to accommodate Franchisee's request upon the terms and conditions contained in this Addendum; and

WHEREAS, in order to provide for Franchisee's operation of a Ghost Kitchen, Franchisor and Franchisee desire to amend the Franchise Agreement as set forth in this Addendum.

NOW, THEREFORE, in consideration of the premises and of the covenants contained herein, the parties, intending to be legally bound, mutually agree as follows:

1. All references to the "Franchised Restaurant" in the Franchise Agreement shall mean Franchisee's Ghost Kitchen as defined herein. Franchisor has approved Franchisee's Ghost Kitchen as an Approved Location under the Franchise Agreement and acknowledges that Franchisee's Ghost Kitchen is different from a prototypical freestanding Restaurant.

2. The right to operate Franchisee's Ghost Kitchen shall be limited to operation only at the location specified herein. The right to operate Franchisee's Ghost Kitchen shall not be deemed a granting of the right by Franchisor to Franchisee to operate any other Ghost Kitchens, either currently or in the future. If Franchisee operates a Restaurant Ghost Kitchen from within the kitchen of a restaurant that operates under a brand owned by Franchisor or one of its affiliates, then in addition to the Franchise Agreement and this Addendum, Franchisee must enter into a franchise agreement for the other restaurant in which the Restaurant Ghost Kitchen will operate.

3. Since the Franchise Agreement and this Addendum relate to Franchisee's Ghost Kitchen operated from within an existing kitchen, certain of Franchisor's pre-opening and opening obligations set forth in the Franchise Agreement that Franchisor designates in its sole discretion may not be applicable including, but not limited to, Sections 3.1 (Site Selection), 3.2 (Design Plans and Construction), 3.5 (Pre-

Opening, Opening and Operating Assistance), and 17.4 (Obligations on Termination or Expiration). In addition, depending on the type of Ghost Kitchen that Franchisee operates, Franchisor and Franchisee's obligations with respect to site selection, plans, and construction under Article 7 may be modified in Franchisor's sole discretion.

4. Notwithstanding anything to the contrary in Section 1.2 (Accepted Location) of the Franchise Agreement, Franchisee will be permitted to offer Wing Boss menu items to customers residing in the geographic area in which the applicable third party delivery company(ies) agree to deliver, unless otherwise determined by Franchisor in writing (the "Delivery Area"). Franchisee may not under any circumstances: (i) offer Wing Boss menu items for on-site dining, customer pickup or any other method of distribution, (ii) use a third-party delivery company that has not been approved by Franchisor to deliver Wing Boss menu items to customers, and/or (iii) offer, sell, or deliver Wing Boss menu items to customers located outside the Delivery Area.

5. Subsection 1.3(6) (Assigned Area and Primary Area) of the Franchise Agreement is deleted and replaced with the following:

(6) the right to, directly or indirectly, operate, license, or grant a franchise to operate a traditional full-size Restaurant located in a retail center or stand-alone building or any other food offering service within the Assigned Area and Primary Area;

6. Section 2.1(Initial Term) of the Franchise Agreement is deleted and replaced with the following:

**2.1 INITIAL TERM.** Except as otherwise provided herein, the initial term of this Agreement shall expire ten (10) years from the Effective Date of this Agreement.

7. Section 4.1 (Franchise Fee) of the Franchise Agreement is deleted and replaced with the following:

**4.1 FRANCHISE FEE.** You shall pay Franchisor an initial franchise fee ("Franchise Fee") in an amount equal to Fifteen Thousand Dollars (\$15,000.00) upon execution of the Agreement. **Such initial Franchise Fee shall be nonrefundable.** If a Development Agreement has been executed, the initial Franchise Fee will be payable according to its terms.

8. Section 5.2 (Franchised Restaurant Opening) of the Franchise Agreement is deleted and replaced with the following:

**5.2 FRANCHISED RESTAURANT OPENING.** You shall carry out an opening promotion for your Franchised Restaurant in accordance with the Manuals or as otherwise required by Franchisor. Any advertising and promotional campaigns used by you in connection with such Franchised Restaurant opening promotion must be approved by Franchisor prior to use. You shall comply with the direct and local advertising and promotional campaign for restaurant openings devised by Franchisor and adapted for your Assigned Area. When required, but not later than on or before the initial "orientation call" with us, you shall pay Franchisor Five Thousand Dollars (\$5,000.00) (the "Restaurant Opening Promotion Funds") to be spent by Franchisor on your behalf in connection with such Franchised Restaurant opening promotion. The Restaurant Opening Promotion Funds will be used by Franchisor, in its discretion, to fund marketing materials, local advertising

and promotional support related to the Franchised Restaurant pre-opening and grand opening campaigns, and in some cases post-opening campaigns. Upon your request, a full accounting of the Restaurant Opening Promotion Funds spent by Franchisor in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns will be provided. While Franchisor will exercise best efforts to spend the full amount of the Restaurant Opening Promotion Funds in connection with your Franchised Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, any remaining balance after the first six (6) months of the operation of your Franchised Restaurant will be deposited into the Marketing Fund and applied by Franchisor in accordance with the procedures described herein for the utilization of the proceeds of the Marketing Fund.

9. Notwithstanding anything to the contrary in Section 7.10 (Commence Operations) of the Franchise Agreement, Franchisee agrees to commence operation of Franchisee's Ghost Kitchen within: (i) ninety (90) days of the Effective Date if Franchisee's Ghost Kitchen is a Commissary Ghost Kitchen or a Restaurant Ghost Kitchen located in a restaurant operating under a brand owned by an unrelated third-party, or (ii) forty-five (45) days if your Ghost Kitchen is a Restaurant Ghost Kitchen located in a restaurant operating under a brand owned by us or one of our affiliates.

10. In addition to the requirements of Section 8.13 (Software and Hardware) of the Franchise Agreement, Franchisee must use any hardware, operating system(s), and software application(s) required by third party delivery company(ies) in connection with the offer and sale of Wing Boss menu items and the operation of Franchisee's Ghost Kitchen.

11. If Franchisee's Ghost Kitchen is located in a "Dickey's Barbecue Pit" branded restaurant, then to comply with the requirements set forth in Section 4.7 (Training Fee), 4.10 (Training Enrollment Fee), and 9.1 (Initial Training Program) of the Franchise Agreement with respect to training, Franchisee and/or those employees of Franchisee whom Franchisor, in its sole discretion, deems necessary and appropriate shall attend and satisfactorily complete Franchisor's Virtual Brands Training Program for Ghost Kitchens rather than Franchisor's standard Virtual Brands Training Program. Prior to Franchisee commencing operation of Franchisee's Ghost Kitchen, Franchisee and its employees must complete Franchisor's Virtual Brands Training Program for Ghost Kitchens. Franchisor will provide Franchisee and its employees with the required training programs and videos at Franchisor's corporate training center, at another operating restaurant or a location designated by Franchisor (which may be online).

12. Notwithstanding Section 8.7 (Use of Franchised Restaurant Premises) of the Franchise Agreement, Franchisee acknowledges and agrees that Franchisor may require Franchisee to open Franchisee's Ghost Kitchen to the public for hours in addition to the hours of operation set forth in Franchisor's published operational policies and procedures, including but not limited to in the Franchise Agreement and the Operations Manual.

13. Notwithstanding Section 8.10 (Products and Services) of the Franchise Agreement, Franchisee is not required to serve soft serve ice cream at the Franchised Restaurant. However, if Franchisee elects to serve soft serve ice cream at the Franchised Restaurant, Franchisee must do so in compliance with Franchisor's published operational policies and procedures. Franchisee also acknowledges and agrees that Franchisor may require Franchisee to serve additional menu items not set forth in Franchisor's published operational policies and procedures, including, but not limited to, breakfast items. Such items may be required to be offered under different branded names other than the Proprietary Marks. Franchisee further acknowledges and agrees that Franchisor may, in its sole discretion, elect to impose equipment, equipment installation requirements, and/or variations on design plans and specifications for Franchisee's Ghost

Kitchen that deviate from the requirements set forth in Franchisor's published operational policies and procedures, including but not limited to in the Franchise Agreement and the Operations Manual. Franchisee is not required to maintain a speaker system at the Franchised Restaurant. However, if Franchisee elects to maintain a speaker system, Franchisee must play music at the Franchised Restaurant in accordance with Franchisor's published operational policies and procedures.

14. Notwithstanding Sections 8.16 (Maintenance) and 8.17 (Remodeling and Redecoration of the Franchised Restaurant), because Franchisee is not permitted to offer on-site dining, Franchisee is not required to furnish the Franchised Restaurant with chairs and tables.

15. Notwithstanding Section 8.18 (Signage) of the Franchise Agreement, Franchisee acknowledges and agrees that Franchisor may elect to impose signage requirements for Franchisee's Ghost Kitchen that deviate from the requirements set forth in Franchisor's published operational policies and procedures, including but not limited to in the Franchise Agreement and the Operations Manual.

16. In addition to its rights of termination under the Franchise Agreement, Franchisor reserves the right to discontinue Franchisee's rights to operate Franchisee's Ghost Kitchen upon notice to Franchisee at any time upon: (a) any default by Franchisee under this Addendum or the Franchise Agreement, including Franchisee's failure to pay all requisite fees identified herein or in the Franchise Agreement; (b) any instances, in Franchisor's sole determination, of food safety, cleanliness or employee safety concerns; and (c) any such other circumstance that Franchisor deems to reflect negatively on or harm the Wing Boss brand, goodwill, and/or Proprietary Marks.

17. Ghost Kitchens are a new and unproven method of operation for the System that may include certain new equipment, food, logos, configurations, systems, and/or technology solutions (including, without limitation, hardware, software, and firmware). The actual costs, expenses, and financial and operational impact of Franchisee's Ghost Kitchen and the required components thereof have not yet been determined. Operation of Franchisee's Ghost Kitchen entails financial, operational and other risks that Franchisee agrees to assume. There is no assurance or guarantee as to the profitability or success of the operation of Franchisee's Ghost Kitchen, and Franchisor makes no representation of any kind in this regard. Franchisee represents that Franchisee has made its own independent assessment of the operation of Franchisee's Ghost Kitchen and assumes any and all financial and other risks associated therewith.

18. For Franchisor to gain valuable insight into the financial and operational impact of the operation of Franchisee's Ghost Kitchen, and for Franchisor to ensure that the operation of Franchisee's Ghost Kitchen satisfies Franchisor's high operating standards and specifications with respect to quality and service, the operation of Franchisee's Ghost Kitchen will be subject to extensive review and evaluation by Franchisor on a continuous and ongoing basis. Franchisee will fully cooperate with Franchisor in this regard.

19. Franchisee will operate Franchisee's Ghost Kitchen in strict conformity with the Franchise Agreement, the Operations Manual, and all such other standards and specifications prescribed by Franchisor. Franchisee shall fully implement all of the equipment and operational components necessary for the operation of Franchisee's Ghost Kitchen. Any proposed deviation from Franchisor's prescribed standards and specifications must be submitted in advance to Franchisor for its review and written approval, which approval may be withheld in Franchisor's sole discretion. Failure to comply with Franchisor's prescribed standards and specifications without specific prior written approval from Franchisor may result in a default under this Addendum and/or the Franchise Agreement, and may disqualify Franchisee from further participation in the operation of a Ghost Kitchen, in addition to any other rights or remedies Franchisor may have under the Franchise Agreement and this Addendum.

20. Franchisee is solely responsible for any and all costs associated with developing, constructing, opening and operating Franchisee's Ghost Kitchen and implementing, installing, maintaining and repairing all required equipment, systems, technology solutions, and other components thereof.

21. To the extent not already accessible to Franchisor through Franchisee's Point of Sale System, on a weekly or more frequent basis, as reasonably requested by Franchisor, Franchisee will provide to Franchisor, or allow Franchisor with direct access to, detailed sales, transaction log, product unit, price and mix information, profit and loss statements, product/ingredient usage and variance information, operational feedback and information, service time data, customer feedback, and other data and information that Franchisor may reasonably request relative to Franchisee's development, construction, opening and subsequent operation of Franchisee's Ghost Kitchen in a format acceptable to Franchisor.

22. Any plans and specifications prepared and submitted to Franchisor by or on behalf of Franchisee will become the property of Franchisor. Franchisor, its affiliates and other franchisees to whom Franchisor provides such plans and specifications may use them without owing Franchisee any compensation or being liable to Franchisee in any way.

23. Franchisor considers information related to Franchisee's Ghost Kitchen to be proprietary and confidential information. Franchisee and Franchisee's organization will keep this information in strict confidence in accordance with the confidentiality provisions contained in the Franchise Agreement and will not disclose such information to any third party without Franchisor's prior written consent, excepting only those parties reasonably requiring access to such information in order to design and construct Franchisee's Ghost Kitchen.

24. Franchisee assumes all risk of liability arising out of or otherwise connected with Franchisee's Ghost Kitchen, any equipment, configurations, systems, and/or technology solutions related to or specified for Franchisee's Ghost Kitchen, and the construction and operation of Franchisee's Ghost Kitchen. In addition to Franchisee's obligations under Article 20.6 of the Franchise Agreement, Franchisee hereby agrees to indemnify and hold harmless Franchisor, and each of its respective affiliates, successors, assigns, subsidiaries, officers, directors, employees and agents, from any and all claims, judgments, actions or expenses (including reasonable attorneys' fees), arising out of or otherwise connected with Franchisee's Ghost Kitchen and any delivery services provided therefrom, any equipment, configurations, systems, and/or technology solutions related to or specified for Franchisee's Ghost Kitchen, or the construction or operation of Franchisee's Ghost Kitchen.

25. This Addendum and the Franchise Agreement sets forth the entire agreement between the parties concerning Franchisee's request to operate Franchisee's Ghost Kitchen and incorporates all prior discussions, negotiations, agreements and understandings. Except for those permitted to be made unilaterally by Franchisor hereunder, no alteration, amendment, change or addition to this Addendum will be binding unless in writing and signed by all of the parties.

26. This Addendum may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Electronic and facsimile signatures, including scanned signatures or the use of a key pad, mouse, or other device to select an item, button, icon or similar act/action, will be considered as binding and conclusive as if original; provided, however, that upon request of any other party hereto, the party so executing must use all commercially reasonable efforts to furnish to such other party a manually executed version of the Addendum at the earliest opportunity.

27. **RELEASE: Franchisee hereby releases and forever discharges Franchisor, any parent, subsidiary, related entity, shareholder, and affiliate of Franchisor, its respective officers, directors,**

**members, employees, agents, contractors and its respective successors, assigns, heirs and personal representatives (the “Released Parties”) from any and all claims, demands, rights and causes of action of any kind that Franchisee now has or will have in the future, whether known or unknown, arising out of the offer, sale, administration, performance, default, and/or termination of the Franchise Agreement, including any claims or causes of action arising out of alleged misrepresentations, fraud, breaches of contract (based upon implied, express, estoppel, waiver, or alternative theories of contractual obligation), negligence, or breach of any alleged special, trust, agency or fiduciary relationship (if any), whether asserted or proposed to be asserted by way of claim, setoff, affirmative defense, counterclaim, cross-claim or third party claim. THIS RELEASE EXPRESSLY INCLUDES, BUT IS NOT LIMITED TO, ANY ACT OR OMISSION OF NEGLIGENCE, FRAUD, MISREPRESENTATIONS, BREACH OF FIDUCIARY DUTIES, BREACH OF WARRANTIES, BREACH OF CONTRACT, AND ANY EXTRA-CONTRACTUAL CLAIMS COMMITTED OR ALLEGEDLY COMMITTED BY THE RELEASED PARTIES, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS RELEASE IS INTENDED TO (1) DISCLAIM OR REQUIRE FRANCHISEE TO WAIVE RELIANCE ON ANY REPRESENTATION THAT FRANCHISOR MADE IN THE FRANCHISE DISCLOSURE DOCUMENT THAT FRANCHISOR PROVIDED TO FRANCHISEE OR (2) REQUIRE FRANCHISEE TO RELEASE CLAIMS WHICH CANNOT BE RELEASED PURSUANT TO AN APPLICABLE FRANCHISE LAW STATUTE. This Release shall survive termination of the Franchise Agreement, as modified by this Addendum, and is in addition to any other release or similar agreement in the Franchise Agreement or other agreement between Franchisor and Franchisee. With regard to any acts or omissions covered under this Release, Franchisee agrees not to commence any action, lawsuit, or legal proceeding, or file any charge or complaint with any federal, state, or local agency, against the Released Parties.**

28. This Addendum does not modify the terms of the Franchise Agreement except as specifically stated herein. The parties acknowledge and agree that the Franchise Agreement, as modified by this Addendum, is ratified and shall continue in full force and effect.

*[Signatures on Following Page]*



IN WITNESS WHEREOF, this Addendum is effective as of the date it is executed

\_\_\_\_\_.

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

**FRANCHISOR:**

VIRTUAL BRANDS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Sr. VP of Franchise Relations

**FRANCHISEE:**

By: \_\_\_\_\_  
\_\_\_\_\_, an individual

**OWNER/OPERATOR:**

By: \_\_\_\_\_  
\_\_\_\_\_, an individual

**INVESTORS:**

By: \_\_\_\_\_  
\_\_\_\_\_, an individual

**Exhibit A**

**EXHIBIT N**

**CO-BRAND ADDENDUM TO FRANCHISE AGREEMENT**

Ex. N

## CO-BRAND ADDENDUM TO FRANCHISE AGREEMENTS

THIS CO-BRAND ADDENDUM (the "Addendum") is entered into this \_\_\_\_ day of \_\_\_\_\_ 202\_\_, by and between Virtual Brands, Inc., a Texas corporation [("VBI") / ("Franchisor")] [, Dickey's Barbecue Restaurants, Inc., a Texas corporation ("DBRI" and together with VBI, "Franchisor")] and \_\_\_\_\_, a \_\_\_\_\_ ("Franchisee").

WHEREAS, currently with signing this Addendum, Franchisee has entered into the following franchise agreements (the "Franchise Agreements") for the operation of the following restaurants (the "Restaurants") (check applicable):

\_\_\_\_ a Franchise Agreement dated \_\_\_\_\_, 20\_\_ with VBI (the "**Big Deal Burger Franchise Agreement**") for the operation of a "Big Deal Burger"-branded restaurant offering hamburgers, sandwiches and related menu items ("**Big Deal Burger Restaurant**")

\_\_\_\_ a Franchise Agreement dated \_\_\_\_\_, 20\_\_ with VBI (the "**Wing Boss Franchise Agreement**") for the operation of a "Wing Boss"-branded restaurant offering chicken wings, chicken tenders and related menu items ("**Wing Boss Restaurant**")

\_\_\_\_ a Franchise Agreement dated \_\_\_\_\_, 20\_\_ with DBRI (the "**Dickey's Franchise Agreement**") for the operation of a "Dickey's Barbecue Pit"-branded restaurant offering barbecued meats, side dishes and related menu items ("**Dickey's Restaurant**")

[WHEREAS, Franchisee has also entered into a [Non-Traditional Restaurant Addendum/Delivery-Carryout Addendum/Ghost Kitchen Addendum/Mobile Unit Rider] with respect to each of the Franchise Agreements;]

WHEREAS, rather than operate the Restaurants as single-brand restaurants at separate locations, Franchisee has requested the right to open and operate the Restaurants at the same location as a co-branded restaurant (the "**Co-Brand Restaurant**"), and Franchisor is willing to agree to Franchisee's request upon the terms and conditions contained in this Addendum; and

WHEREAS, in order to provide for Franchisee's operation of the Co-Brand Restaurant, Franchisor and Franchisee desire to amend the Franchise Agreements as set forth in this Addendum.

NOW, THEREFORE, in consideration of the premises and of the covenants contained herein, the parties, intending to be legally bound, mutually agree as follows:

1. **Defined Terms.** All capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Franchise Agreements.

2. **Grant.** Franchisor hereby grants to Franchisee, upon the terms and conditions in this Addendum, the right and franchise, and Franchisee undertakes the obligation, to develop and operate the Co-Brand Restaurant at the Accepted Location.

3. **Site Selection/Plans and Construction.** Notwithstanding the provisions of Sections 3.1 (Site Selection) and 3.2 (Design Plans and Construction) and Article 7 (Site Selection, Plans and Construction) of the Franchise Agreements, Franchisee shall only be responsible for identifying, obtaining Franchisor's acceptance of, designing, and constructing a single Accepted Location for operation of the Co-Brand Restaurant.

4. **Initial Training, Pre-Opening, and Opening and Operating Assistance.** If Franchisee's Co-Brand Restaurant includes a Big Deal Burger Restaurant and a Wing Boss Restaurant, then Franchisee and each of its required attendees only need to attend and successfully complete the Virtual Brands Training Program once. If Franchisee's Co-Brand Restaurant includes a Dickey's Restaurant, then Franchisee and each of its required attendees must attend and successfully complete Barbecue University in order to satisfy the requirements set forth in Sections 3.3 (Training), 3.5 (Pre-Opening, Opening and Operating Assistance), and 9.1 (Initial Training Program) of the Dickey's Franchise Agreement. Franchisee must separately pay the fees under Sections 4.7 (Training Fee) and 4.10 (Training Enrollment Fee) of each of the Franchise Agreements.

5. **Internet Promotions.** Notwithstanding anything to the contrary set forth in Section 5.5 (Internet Promotions) of the Franchise Agreements, the name under which Franchisee must participate in and maintain a Facebook page or other relevant social media platform will contain the names of each of the brands operated at the Co-Brand Restaurant and the city and state in which Franchisee's Co-Brand Restaurant is located.

6. **Commencement of Business.** Franchisee agrees and acknowledges that Section 7.10 (Commence Business) of the Franchise Agreements applies to the opening and commencement of business of the Co-Brand Restaurant at the Accepted Location. Franchisee further agrees and acknowledges that it must commence business of each of the branded restaurants contemplated by this Addendum simultaneously, and must keep each of the branded restaurants contemplated by this Addendum open during the same business hours.

7. **Personnel.** Notwithstanding anything to the contrary in Section 8.8 (Personnel) of the Franchise Agreements, Franchisee's personnel working at the Co-Brand Restaurant are authorized and shall perform their functions with respect to each of the Restaurants operating in the Co-Brand Restaurant. Franchisee agrees to (1) maintain competent, conscientious, and trained personnel sufficient to operate the Co-Brand Restaurant and (2) comply with such dress code and/or to require its personnel to wear such uniforms as Franchisor may prescribe in the Manuals or otherwise.

8. **Menu Boards, Signage, Advertising and Promotional Materials, and Use of Proprietary Marks.** Notwithstanding the provisions of Sections 8.10 (Products and Services), 8.15 (Advertising and Promotional Materials), 8.18 (Signage), and Article 10 (Use of Proprietary Marks), Franchisee acknowledges and agrees that Franchisor's requirements set forth in published operational policies and procedures, including but not limited to those contained in the Franchise Agreements and the Operations Manual, may be revised to reflect that Franchisee is operating the Co-Brand Restaurant using multiple brands.

9. **Termination Rights.** In addition to its rights of termination under the Franchise Agreements, Franchisor reserves the right to discontinue Franchisee's rights to operate the Co-Brand Restaurant at any time upon: (a) any default by Franchisee under this Addendum or any of the Franchise Agreements, including Franchisee's failure to pay all requisite fees identified herein or in the Franchise Agreements; and (b) any such other circumstance that Franchisor deems to reflect negatively on or harm the brands under which the Co-Brand Restaurant operates, goodwill, and/or Proprietary Marks.

10. **Cross Default.** Any default or breach by Franchisee (or any of Franchisee's owners), or Franchisee's affiliate (or any of Franchisee's owner's affiliates) of one of the Franchise Agreements will be considered an event of default under all of the Franchise Agreements. Upon the termination of one of the Franchise Agreements, all of the Franchise Agreements shall automatically terminate.

11. **Financial and Operational Impact.** For Franchisor to gain valuable insight into the financial and operational impact of the operation of Franchisee's Co-Brand Restaurant, and for Franchisor to ensure that the operation of Franchisee's Co-Brand Restaurant satisfies Franchisor's high operating standards and specifications with respect to quality and service, the operation of Franchisee's Co-Brand Restaurant will be subject to extensive review and evaluation by Franchisor on a continuous and ongoing basis. Franchisee will fully cooperate with Franchisor in this regard.

12. **Strict Conformity.** Franchisee will operate Franchisee's Co-Brand Restaurant in strict conformity with the Franchise Agreements, the Operations Manuals, and all such other standards and specifications prescribed by Franchisor. Franchisee shall fully implement all of the equipment and operational components necessary for the operation of Franchisee's Co-Brand Restaurant. Any proposed deviation from Franchisor's prescribed standards and specifications must be submitted in advance to Franchisor for its review and written approval, which approval may be withheld in Franchisor's sole discretion. Failure to comply with Franchisor's prescribed standards and specifications without specific prior written approval from Franchisor may result in a default under this Addendum and/or the Franchise Agreements, and may disqualify Franchisee from further participation in the operation of a Co-Brand Restaurant, in addition to any other rights or remedies Franchisor may have under the Franchise Agreements and this Addendum.

13. **Plans and Specifications.** Any plans and specifications prepared and submitted to Franchisor by or on behalf of Franchisee will become the property of Franchisor. Franchisor, its affiliates and other franchisees to whom Franchisor provides such plans and specifications may use them without owing Franchisee any compensation or being liable to Franchisee in any way.

14. **Confidentiality.** Franchisor considers information related to Franchisee's Co-Brand Restaurant to be proprietary and confidential information. Franchisee and Franchisee's organization will keep this information in strict confidence in accordance with the confidentiality provisions contained in the Franchise Agreements and will not disclose such information to any third party without Franchisor's prior written consent, excepting only those parties reasonably requiring access to such information in order to design and construct Franchisee's Co-Brand Restaurant.

15. **Indemnification.** Franchisee assumes all risk of liability arising out of or otherwise connected with Franchisee's Co-Brand Restaurant, any equipment, configurations, systems, and/or technology solutions related to or specified for Franchisee's Co-Brand Restaurant, and the construction and operation of Franchisee's Co-Brand Restaurant. In addition to Franchisee's obligations under Article 20.6 of the Franchise Agreements, Franchisee hereby agrees to indemnify and hold harmless Franchisor, and each of its respective affiliates, successors, assigns, subsidiaries, officers, directors, employees and agents, from any and all claims, judgments, actions or expenses (including reasonable attorneys' fees), arising out of or otherwise connected with Franchisee's Co-Brand Restaurant and any delivery services provided therefrom, any equipment, configurations, systems, and/or technology solutions related to or specified for Franchisee's Co-Brand Restaurant, or the construction or operation of Franchisee's Co-Brand Restaurant.

16. **Effect of Addendum.** Franchisee acknowledges that this Addendum allows Franchisor to impose additional obligations on Franchisee, as set forth herein. Franchisee also acknowledges that such additional obligations may deviate from the requirements set forth in Franchisor's normal operational policies and procedures.

17. **Entire Agreement.** This Addendum and the Franchise Agreement sets forth the entire agreement between the parties concerning Franchisee's request to operate the Co-Brand Restaurant and incorporates all prior discussions, negotiations, agreements and understandings. Except for those permitted

to be made unilaterally by Franchisor hereunder, no alteration, amendment, change or addition to this Addendum will be binding unless in writing and signed by all of the parties.

18. **Counterparts.** This Addendum may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Electronic and facsimile signatures, including scanned signatures or the use of a key pad, mouse, or other device to select an item, button, icon or similar act/action, will be considered as binding and conclusive as if original; provided, however, that upon request of any other party hereto, the party so executing must use all commercially reasonable efforts to furnish to such other party a manually executed version of the Addendum at the earliest opportunity.

19. **RELEASE:** Franchisee hereby releases and forever discharges Franchisor, any parent, subsidiary, related entity, shareholder, and affiliate of Franchisor, its respective officers, directors, members, employees, agents, contractors and its respective successors, assigns, heirs and personal representatives (the “Released Parties”) from any and all claims, demands, rights and causes of action of any kind that Franchisee now has or will have in the future, whether known or unknown, arising out of the offer, sale, administration, performance, default, and/or termination of the Franchise Agreements, including any claims or causes of action arising out of alleged misrepresentations, fraud, breaches of contract (based upon implied, express, estoppel, waiver, or alternative theories of contractual obligation), negligence, or breach of any alleged special, trust, agency or fiduciary relationship (if any), whether asserted or proposed to be asserted by way of claim, setoff, affirmative defense, counterclaim, cross-claim or third party claim. **THIS RELEASE EXPRESSLY INCLUDES, BUT IS NOT LIMITED TO, ANY ACT OR OMISSION OF NEGLIGENCE, FRAUD, MISREPRESENTATIONS, BREACH OF FIDUCIARY DUTIES, BREACH OF WARRANTIES, BREACH OF CONTRACT, AND ANY EXTRA-CONTRACTUAL CLAIMS COMMITTED OR ALLEGEDLY COMMITTED BY THE RELEASED PARTIES, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS RELEASE IS INTENDED TO (1) DISCLAIM OR REQUIRE FRANCHISEE TO WAIVE RELIANCE ON ANY REPRESENTATION THAT FRANCHISOR MADE IN THE FRANCHISE DISCLOSURE DOCUMENTS THAT FRANCHISOR PROVIDED TO FRANCHISEE OR (2) REQUIRE FRANCHISEE TO RELEASE CLAIMS WHICH CANNOT BE RELEASED PURSUANT TO AN APPLICABLE FRANCHISE LAW STATUTE.** This Release shall survive termination of the Franchise Agreements, as modified by this Addendum, and is in addition to any other release or similar agreement in the Franchise Agreements or other agreement between Franchisor and Franchisee. With regard to any acts or omissions covered under this Release, Franchisee agrees not to commence any action, lawsuit, or legal proceeding, or file any charge or complaint with any federal, state, or local agency, against the Released Parties.

20. **Modification.** This Addendum does not modify the terms of the Franchise Agreements except as specifically stated herein. The parties acknowledge and agree that the Franchise Agreements, as modified by this Addendum, are ratified and shall continue in full force and effect.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, this Addendum is effective as of the date it is executed

\_\_\_\_\_.

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

**VBI:**

VIRTUAL BRANDS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Sr. VP of Franchise Relations

**[DBRI:**

DICKEY'S BARBECUE RESTAURANTS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Jeffrey Gruber, Sr. VP of Franchise Relations]

**FRANCHISEE:**

By: \_\_\_\_\_  
\_\_\_\_\_, an individual



**EXHIBIT O**

**SMOKESTACK CUSTOMER AGREEMENT**

Ex. O

## SMOKESTACK CUSTOMER AGREEMENT

The Smokestack System (“Smokestack”), proprietary to Spark Intelligence, Inc. (“Spark”), is provided to Customer under the terms of this agreement and any Spark operating rules or policies (collectively, the “Agreement”). Throughout this agreement, both Spark and Customer will be jointly referred to as the “Parties.”

### **CUSTOMER’S RIGHTS TO USE SMOKESTACK**

1.1 License & Customer’s Ownership of Data - In exchange for Customer’s payment, Customer is granted access to use Smokestack for its business or profession subject to all terms and conditions in this Agreement. Title and ownership of Smokestack remains Spark’s sole and exclusive property. Title and ownership of the data captured, entered into, uploaded, or otherwise acquired by Smokestack remain the sole and exclusive property of Customer. Customer grants Smokestack the right to use Customer’s data for any purpose, and to provide such data to Virtual Brands, Inc. (including its subsidiaries, affiliates, and related entities).

1.2 Acceptable Use of Smokestack – Neither Customer, nor anyone acting on Customer’s behalf, will: (a) modify, copy or otherwise reproduce Smokestack in whole or in a part; (b) reverse engineer, recompile, disassemble, or otherwise attempt to derive the source code form or structure of the software used in Smokestack; (c) distribute, sublicense, assign, share, timeshare, sell, rent, or lease Smokestack; (d) remove any proprietary notices or labels displayed on the Smokestack website; or (e) use Smokestack for any unlawful purpose. Spark reserves all rights not expressly granted to Customer.

1.3 Submitted Information - Customer is solely responsible for the content of and information submitted and uploaded to Smokestack. Customer warrants that any information submitted to Smokestack will not contain content that violates any third party’s personal, proprietary or intellectual property rights.

### **FEES AND PAYMENTS**

2.1 Spark Fees - Customer agrees to pay Spark in accordance with the fee schedule attached as Exhibit A. Spark reserves the right to change fees and to institute new fees. Any changes and new fees shall become effective upon 30 days’ notice.

2.2 Third-party Fees and Costs – Smokestack is available on the Internet. Customer is responsible for all expenses, equipment, and charges associated with accessing the Internet in order to connect to Smokestack.

2.3 Billings & Payments –On the first day of each month Spark will debit the total amount due from the Customer’s bank account via ACH debit, including any fees, applicable taxes, transaction charges, or other fees for the prior billing period. At Spark’s sole discretion, Spark may debit amounts owed hereunder on a pro-rated weekly basis, rather than monthly. Further, Spark’s debit of Customer’s bank account may occur in distinct individual charges or may be combined with other amounts hereunder or other amounts owed to Spark under separate written agreements between Spark and Customer. For purpose of identification and billing, Customer agrees to provide Spark with and maintain accurate Customer’s information, including Customer’s current bank account number, legal name, address, telephone number(s), and email address. In the event that Customer’s bank account is no longer valid or bank account contains insufficient funds at that time, Spark reserves the right to terminate use of the Smokestack.

## CUSTOMER'S USAGE

3.1 **Third-Party Service Provider & Release** – Customer acknowledges that Spark relies upon third-party service providers for certain functions and features in Smokestack. **CUSTOMER RELEASES SPARK FROM ANY AND ALL LOSSES, CLAIMS, CAUSES OF ACTION, ARISING OUT OF ANY ACT OR OMISSION OF ANY THIRD-PARTY SERVICE PROVIDERS USED BY SPARK, EVEN IF SUCH LOSSES OR CLAIMS ARE CAUSED IN PART BY THE NEGLIGENCE, BREACH OF WARRANTY, OR BREACH OF CONTRACT OF SPARK.**

3.2 **Security** – Spark uses encryption and firewalls relating to the security of Customer's information. Customer shall notify Spark immediately if Customer suspects that the security of the Customer's account has been compromised. However, Customer is not relying upon any promise or guarantee of security by Spark, and Spark does not warrant the security of Smokestack.

3.3 **Password** - As part of the registration process, Customer must select a password, and may not share the password with anyone else. Customer is responsible for maintaining the confidentiality of the password, and agrees that Spark has no obligations with regard to the use of such password by third parties. Customer agrees to notify Spark immediately if Customer has any reason to believe that the security of Customer's account has been compromised. Customer is responsible for any and all activities in the Customer's account with the use of Customer's password.

## SMOKESTACK'S AVAILABILITY

4.1 **Availability & Release** - Regarding the functions and services provided by Spark, and not the functions and services provided to Spark's by its third-party service providers, Spark shall use commercially reasonable efforts to maintain availability of Smokestack twenty-four (24) hours per day, seven (7) days per week. Customer acknowledges that scheduled and unscheduled interruptions of Smokestack may occur, and **RELEASES SPARK FROM ANY LIABILITY, LOSSES OR CAUSES OF ACTION RELATING TO SCHEDULED OR UNSCHEDULED INTERRUPTIONS.** Customer agrees to cooperate with Spark during all scheduled and unscheduled interruptions.

4.2 **Unscheduled Interruptions** - In the event that an unscheduled interruption occurs in Smokestack that is caused by Spark, and not caused by Spark's third-party service providers, Spark will use commercially reasonable internal and external resources to resolve the problem and return Smokestack to availability as soon as possible.

4.3 **Reliability** – Spark uses commercially reasonable practices, including redundancy, fail-over and backup practices, to provide the Smokestack with no unplanned interruptions of service and no loss of data. However, in the event that data is lost, Spark shall use commercially reasonable efforts to assist Customer with obtaining the most recent backup of the data or to otherwise recover the data.

4.4 During the term of this Agreement, Spark shall use reasonable efforts to provide technical support of the Spark Service according to its support policies. Technical support shall be available by email communication and shall be available from 8:30 a.m. to 5:30 p.m. (Central Standard Time) Monday – Friday.

## TERM AND TERMINATION

5.1 **Initial License Period** - Customer agrees to an initial license period of 12 months commencing with the date of execution of the Agreement pursuant to ¶ 6.12. Spark agrees to provide its services during the

initial license period according to the monthly license fee schedule in effect on the date this Agreement is executed.

5.2 **Renewal Period & Customer's Right Of Cancellation** - The Agreement shall extend and renew for one (1) year periods (each a "Renewal Term") under the same terms and conditions without further notice unless Customer gives written notice of its intention to terminate not less than ninety (90) days before the end of the then current term. The termination shall become effective at the end of the then-current term.

5.3 **Spark's Right Of Termination** – Spark may terminate this Agreement for any reason. If Spark exercises this right to terminate based on a reason other than Customer's breach, it will provide Customer 30 days' notice of such intent to terminate. Spark reserves the right to restrict, suspend or terminate Customer access to the Smokestack in whole or part and without liability in the event of a Customer breach, or threatened breach, of this Agreement. In the event of a termination based on Customers breach, Customer shall pay to Spark in a single lump-sum payment, as liquidated damages and not as a penalty, all sums owed for the remaining term of the Agreement.

## **MISCELLANEOUS PROVISIONS INCLUDING RELEASES, WAIVERS, & DISCLAIMERS**

**6.1 DISCLAIMER OF WARRANTY - SMOKESTACK AND ITS SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND (EXPRESS OR IMPLIED). CUSTOMER AGREES THAT ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, TITLE, SECURITY, ACCURACY, NON-INFRINGEMENT, AVAILABILITY, ACCURACY OR UNINTERRUPTED ACCESS. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OR OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTIOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.**

**6.2 LIMITATION OF LIABILITY - SPARK'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DATA LOSS, DELAYS, ERRORS OR DEFECTS IN SMOKESTACK SHALL IN NO EVENT EXCEED THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DATA LOSS DELAY, ERROR OR DEFECT IN THE SERVICES OCCURRED. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO SPARK, INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS), INCIDENTAL DAMAGES, PUNITIVE & EXEMPLARY DAMAGES, AND EXTRA-CONTRACTUAL DAMAGES (INCLUDING DECEPTIVE TRADE PRACTICES).**

**6.3 Arbitration** – Except for claims brought by Virtual Brands, Inc. to collect payments owed by Customer, all disputes arising out of this Agreement shall be submitted for binding arbitration to the office of the AAA located in Plano, Texas, on demand of either party. The arbitration proceedings shall be conducted in accordance with the then current commercial arbitration rules of the area. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid

amounts from the due date), specific performance and injunctive relief. However, the arbitrator may not consolidate more than one Customer's or person's claims, and may not otherwise preside over any form of a representative or class proceeding. Additionally, the Parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any consequential, punitive or exemplary damages, all of which are hereby waived by the Parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all Parties. Spark and Customer agree that arbitration shall be conducted on an individual, and not on a class-wide basis.

**6.4 No Reliance - Customer and Spark hereby acknowledge that they are not relying upon any information, representation or promise of the other, if any, except as may be expressly set forth in this Agreement. CUSTOMER FURTHER WAIVES ANY CLAIM OF NEGLIGENT MISREPRESENTATION OR FRAUDULENT INDUCEMENT.** This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement, and supersedes any other agreement, proposal, representation, statement or understanding, whether written or oral, concerning the Services.

**6.5 GOVERNING LAW & VENUE - THIS AGREEMENT IS EXECUTED AND DELIVERED IN CONNECTION WITH A TRANSACTION NEGOTIATED AND CONSUMMATED IN COLLIN COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. CUSTOMER AND SPARK AGREE THAT, WITH RESPECT TO ANY CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, ANY ACTION SHALL BE BROUGHT, MAINTAINED, AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION. YOU, FOR YOURSELF AND YOUR SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, AND (B) WAIVE ANY VENUE-BASED OBJECTION.**

**6.6 Statute of Limitations - The Parties agree that regardless of any statute or law to the contrary, any claim or cause of action asserted by either party arising out of or related to use of Smokestack or the relationship of the Parties must be filed within 2 years after such claim or cause of action arose or be forever barred.**

**6.7 Force Majeure - Spark shall not be liable for damages to the extent its performance is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; lack of available resources from persons other than parties to this Agreement; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; or federal, state or municipal action, statute, ordinance or regulation.**

**6.8 Waiver of Attorney's Fees – Except for any collection action brought by Spark for unpaid amounts, both Parties waive any rights to recover attorney's fees in any action arising out of this Agreement, including any statutory rights under Section 38.001 of the Texas Civil and Remedies Code or other similar statute.**

**6.9 Jury Trial Waiver – Both Parties waive a trial by jury of any or all issues arising in any action or proceeding in connection with this Agreement.**

6.10 Individual Capacity - Any legal action commenced by Customer shall be brought in an individual capacity, and not on a class-wide basis. Both Parties waive their rights to initiate a class-action lawsuit in any venue of forum.

6.11 No Assignment or Transfer- Except with the prior written consent of Spark, Customer shall not transfer or assign any rights, remedies, or obligations arising out of this Agreement. Any purported transfer or assignment in violation of this Section will be void. This Section shall not apply to Spark and prevent Spark from transferring or assigning any rights under this Agreement.

**6.12 RELATED ENTITIES' RIGHTS - SECTIONS 3.1, 4.1, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10 AND 6.11 SET FORTH IN THIS AGREEMENT SHALL APPLY TO SPARK'S PARENT CORPORATIONS, SUBSIDIARIES, AFFILIATES, RELATED ENTITIES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, SUBCONTRACTORS, AND SUPPLIERS.**

6.13 Headings - Headings in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

6.14 Severability - If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect. Payment obligations, and the rights and obligations of the Parties under Articles 6 shall survive the expiration or termination of this Agreement for any reason.

6.15 Counterparts - This Agreement may be executed in counterparts, and each copy so executed shall be deemed an original.

6.16 Effective Date - This Agreement shall not become effective until signed by Spark.

**Agreed to by:**

**CUSTOMER**

**SPARK INTELLIGENCE, INC.**

**Store #:** \_\_\_\_\_

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

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

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

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

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

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

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

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

### **Exhibit A – Pricing Schedule**

**Store Pricing** (all sums in USD, and do *not* include applicable sales or use tax):

Are you a current Owner/Operator? \_\_\_\_\_

If yes, please list your current store numbers: \_\_\_\_\_

You will be charged \$40 monthly via ACH debit for an additional store.

- Optional Manager access: **\$40 monthly per Manager debited monthly**

Please list the number of managers you desire: \_\_\_\_\_

If you are *not* an owner of an existing store and are opening your first store, then you will be charged **\$58.00** monthly via ACH debit for your first store.

- Optional Manager access: **\$40 monthly per Manager debited monthly**

Please list the number of managers you desire: \_\_\_\_\_

\*Customer is responsible for the payment of any sales or use taxes.

### **Required Fees**

- Infrastructure Support – required \$8.33 monthly fee per store to support data infrastructure related to data store, data transfers, POS integration and ZenDesk integration.

### **Optional Support Pricing**

- Data Interpretation & Trend Analysis - **\$50** for a 30 minute of phone support to provide guidance regarding the interpretation of store level or district level data.
- Broadcast Email Management Fee - **\$10** each time an email broadcast is created or modified.

**\*Please verify that all entries above are correct, as no refunds will be issued.**

**EXHIBIT P**

**SPARK POINT OF SALE PURCHASE AND ON-LINE SERVICES USER AGREEMENT**

Ex. P





# Spark POS User Agreement/ Purchase Order



## Spark Intelligence

18583 Dallas Parkway  
Suite 120  
Dallas, TX 75287  
972-248-9899

**Customer:**  
**Store Number(s):**  
(Licensed Locations)

**SHIP TO:**

This User Agreement is made by and between \_\_\_\_\_ (“Customer”) and Spark Intelligence, Inc. (“Spark”). This User Agreement shall take effect on the date that it has been countersigned by Spark’s authorized signatory as noted below (the “Effective Date”). By executing this User Agreement in the space provided below, Customer orders the services and hardware indicated below:

HARDWARE & SOFTWARE SETUP FEES		
QTY	DESCRIPTION	Estimated PRICE
	Network Kit Equipment Rental - Meraki firewall - Meraki Managed switch - AP (wifi access point)  (* If this option is selected, also select the corresponding Monthly Fee below *)	\$674
	Epson TM-T88VI Thermal Receipt Printer	\$500
	Spark POS - One Time Setup Fee (or Transfer Fee)	\$125

HARDWARE & SOFTWARE MONTHLY FEES		
ITEM #	DESCRIPTION	Estimated PRICE
	Network Kit Equipment Rental (Monthly Fee)	\$53 / month
	Technology Support Fee	\$237 / month
	Spark POS Fee	\$149 / month

1. The items listed above and provided by NuArx or other third parties are an estimate to use for reference. The applicable provider will provide you, the O/O, the final quote directly to approve and pay. The quantities selected above for equipment will be sent to them by us, on your behalf, for the final quote to be created. These items may be purchased by Spark Intelligence, Inc. on your behalf and billed via ACH.
2. The Epson Printer will be purchased by Spark Intelligence, Inc. on your behalf and billed via ACH.
3. Applicable Freight and handling charges as well as applicable sales tax will be added at the time of invoice.
4. Annual and recurring services will be invoiced in accordance with the Spark POS Terms and Conditions.
5. This User Agreement sets forth the current pricing. Spark or its designee will debit the total amount due from the Customer’s bank account via ACH debit, including any fees, transaction charges, or other fees. Spark’s or its designee’s debit of Customer’s bank account may occur in distinct individual charges or may be combined with other amounts hereunder or other amounts owed to Spark under separate written agreements between Spark and Customer. Customer shall complete and return the attached ACH Form (“Exhibit A”) upon execution of this User Agreement.
6. The products sold or licensed pursuant to this purchase order are subject to the Spark POS Terms and Conditions.

Customer acknowledges that by signing in the space below, Customer agrees to be bound by and comply with all applicable Terms and Conditions ("Exhibit B") attached and incorporated herein.

CUSTOMER:

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

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

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

SPARK INTELLIGENCE, INC.

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

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

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

EXHIBIT A



**AUTHORIZATION AGREEMENT FOR  
PREAUTHORIZED PAYMENTS**  
(ACH Debits)

**Point of Sale Purchase**

COMPANY NAME:		TAX ID NO.:	
I (we) hereby authorize Spark Intelligence, Inc., (or its designee) hereinafter called "Company", to initiate debit entries from my <input type="checkbox"/> Checking <input type="checkbox"/> Savings account (check one) indicated below and the depository named below, hereinafter called "Depository", to debit the same to such account.			
DEPOSITORY NAME:		BRANCH:	
CITY:	STATE:	ZIP:	
TRANSIT/ABA NO:		ACCOUNT NUMBER:	
This authority is to remain in full force and effect until Company has received notification from me (or either of us) of its termination in such time and in such manner as to afford Company and Depository a reasonable opportunity to act on it.			
NAME(S):		ID NO:(leave blank-SI use only)	
SIGNED:		DATE:	

## **EXHIBIT B**

### **Spark Intelligence, Inc. TERMS AND CONDITIONS FOR SPARK POS ("TERMS AND CONDITIONS")**

Spark Intelligence, Inc. ("Spark"), a Texas corporation, is the owner of software and related products and services. Spark and the company or individual named on Spark's purchase order ("you" or "Customer") referencing these Terms and Conditions for Spark POS ("Terms and Conditions") agree that these Terms and Conditions will apply to Spark's provision of the Software, Equipment and/or services (collectively, the "Product(s)") listed on the purchase order ("Order").

#### **1.0 DEFINITIONS.** The following terms shall have the meanings below:

- 1.1 Documentation means the operating and reference manuals related to the Software, Equipment, enhancements, modifications, or upgrades supplied by Spark to Customer pursuant to these Terms and Conditions.
- 1.2 Enhancement means any change to the Software that, when made, adds new functionality or improves the Software's utility, efficiency, functional capability or application, including without limitation all Error Corrections. Enhancement shall not include separately priced or separately marketed software, even if such software is designed to interface with the Software. All Enhancements are owned exclusively by Spark or its affiliates.
- 1.3 Equipment means computer equipment, parts and supplies which have been approved by Spark to be used with the Software, and which are purchased from an approved vendor.
- 1.4 Error means any failure of the Software to conform in all material respects to the Documentation.
- 1.5 Error Correction means either (i) a modification or supplement that, when made, establishes material conformity of the Software to the Documentation, or (ii) a procedure that helps eliminate the practical adverse effect of any Error.
- 1.6 Software means the specific version or release of Spark POS software programs that are licensed to Customer, together with all Upgrades and Enhancements provided to Customer by Spark in accordance with these Terms and Conditions. Unless otherwise expressly provided by Spark, Software does not include any source code. The Software licensed to Customer under these Terms and Conditions is listed on the Order.
- 1.7 Upgrade(s) means any new versions or new releases of the Software, which may include Enhancements, and which are generally distributed to Spark's customers for no additional license fee. Upgrades do not include new versions of the Software that are either (i) marketed as a new product which may contain new features and functionality, or (ii) contain a substantially new source code base.

**2.0 FEES AND PAYMENTS.** Customer shall pay Spark or its designee the activation and service fees as indicated on the Order referencing these Terms and Conditions. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law of 1.5% per month commencing with the date payment was due. All payment obligations hereunder are non-cancelable and non-refundable. The fees, charges and expenses payable by Customer hereunder do not include taxes, duties, customs fees and any similar charges or fees, including but not limited to sales, use, withholding, excise, value added, and ad valorem taxes. Customer shall at all times be responsible for the payment of any taxes, duties, customs fees and any similar charges or fees that may be assessed with respect to any goods or services specified herein. Customer shall pay any and all taxes and duties, customs fees and similar charges and fees, whether directly to the appropriate taxing authority, to Spark (or its designee) or by reimbursing Spark (or its designee) for payments it made on Customer's behalf. Spark may add new and/or increase the fees and charges specified herein at any time upon 60 days' notice to Customer; if Customer does not elect to terminate within said 60-day period, the new fees and charges will take effect. Additionally, Spark reserves the right to change its credit terms at any time, effective on written notice to Customer and Spark reserves the right to withhold performance of any obligations arising under these Terms and Conditions, in the event of Customer's non-payment when due of any undisputed amounts owed to Spark (or its designee). In the event you transfer your franchise agreement, the fees associated with the services associated with the Products will also transfer or terminate. Spark's (or its designee's) debit of Customer's bank account may occur in distinct individual charges or may be combined with other amounts hereunder or other amounts owed to Spark under separate written agreements between Spark and Customer.

#### **3.0 SOFTWARE LICENSE.**

3.1 Subject to these Terms and Conditions and payment of the applicable fees and charges set forth on the Order or herein, Spark grants to Customer the personal, limited, non-exclusive, revocable license to install the Software at the Customer locations authorized in writing by Spark as noted on the Order, but only for the internal, in-house use by Customer as it relates to your franchise agreement with Virtual Brands, Inc., and to use the Documentation in connection with the Software. Except as expressly set forth therein, all rights and licenses granted to Customer are nontransferable and non-assignable. With respect to third-party

software, approved for use by Spark with the Software (“Approved Third Party Software”), Customer acknowledges that its right to use any such Approved Third Party Software is specified on the license agreement provided by the appropriate licensor of such Approved Third Party Software.

3.2 Spark reserves all rights not expressly granted herein. Except as otherwise agreed to by Spark, no express or implied license or right of any kind is granted to Customer regarding the Software or Documentation, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, or adapt the Software or Documentation or create derivative works based on the Software or Documentation or any portions thereof, or obtain possession of any source code or other technical material relating to the Software. Further, Customer shall not decompile, reverse assemble, or otherwise reverse engineer the Software. Customer acknowledges and agrees that, except for Customer’s license expressly described in these Terms and Conditions, Customer has no right, title, and/or interest in the Spark Products, in any form, or in any copies thereof, including all worldwide copyrights, trade secrets, patent rights and any other Proprietary Information and Confidential Information rights therein.

3.3 The Software may not be interfaced to any unapproved third party application. Also, Customer may not, without the prior written consent of Spark, have read or write access to any Spark proprietary database repository that is used to store data as part of the functionality of the Software.

3.4 Customer may not use the Software in a manner or environment that does not comply with the applicable provisions of the Payment Card Industry (“PCI”) Data Security Standard or its successors. Additionally, you may not use any remote access application to access the Software, except as approved by Spark or a “Qualified Security Assessor” as defined and approved by the PCI Security Standards Council.

#### 4.0 SOFTWARE WARRANTIES.

4.1 Spark warrants that it has the right and authority to assign and transfer any license agreement for Approved Third Party Software which it may be required to assign and transfer to facilitate Customer’s use of such Approved Third Party Software. Alternatively, in the event that Spark is not assigning or transferring a license for any of the Approved Third Party Software that it is providing to Customer in conjunction with Software or Equipment, Spark warrants that Customer is authorized to use such Approved Third Party Software for at least that period of time that Customer continues to be licensed to use the Software.

4.2 Spark hereby assigns to Customer all assignable end user warranties received from the licensors of any Approved Third Party Software distributed by Spark to Customer under these Terms and Conditions.

4.3. Spark hereby warrants to Customer that the Software will conform in all material respects, when shipped to the Customer, to the Documentation for such Software, provided that the Software is properly used in an operating environment recommended by Spark. If Customer believes there is a defect in the Software such that it does not conform to this limited warranty, Spark must be notified immediately, but no later than 30 days following the delivery of the Software to the Customer. As Customer’s exclusive remedy and sole measure of any recoverable damages by Customer and any third party for breach of this limited express warranty with respect to such Software, Spark shall repair or replace, at Spark’s option and expense, the nonconforming elements of such Software. Any replacement of the non-conforming elements provided hereunder shall conform in all material respects to the Documentation and shall contain features and functionality substantially similar to the Software being replaced. Spark shall have no obligation under this section should the Software be modified, altered, merged or subjected to misuse, neglect, accident or improper use by Customer or any third party. Spark does not warrant that the Software will operate in conjunction with equipment or software that is not previously approved by Spark. Nor does Spark warrant that the operation of the Software will always be uninterrupted or problem and Error free.

4.4 CUSTOMER UNDERSTANDS AND AGREES THAT THE LIMITED EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4.0 ARE EXCLUSIVE AND SPARK DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY SOFTWARE AND THE SOFTWARE SUPPORT SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, PARTICULARLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED IN THESE TERMS AND CONDITIONS INCLUDING, WITHOUT LIMITATION, THE LIMITATIONS IN SECTION 4.0 AND 11.0, THE FEES AND CHARGES CHARGED BY SPARK FOR THE SOFTWARE AND THE SOFTWARE SUPPORT SERVICES WOULD BE HIGHER.

5.0 SOFTWARE OWNERSHIP. Customer acknowledges and agrees that, except for Customer’s license expressly described in these Terms and Conditions, Customer has no right, title, and interest in the Software, in any form, or in any copies thereof, including all worldwide copyrights, trade secrets, patent rights and any other proprietary information and confidential information rights therein. Customer agrees at all times hereafter to keep the Software free of all security interests, liens, encumbrances, mortgages and claims whatsoever,

and Customer agrees that neither it nor anyone at its direction shall file a financing statement, mortgage, notice of lien, deed of trust, security agreement or any other agreement or instrument creating or giving notice of an encumbrance or charge against the Software.

#### 6.0 EQUIPMENT PURCHASE.

6.1 Title to all Equipment purchased hereunder and risk of loss or damage pass to Customer upon delivery to the carrier at the place of shipment. Delivery will be made in accordance with the terms of the Order, subject to conditions beyond Spark's control. Spark assumes no liability for delays in or failure of delivery. The actual cost of shipping will be invoiced to Customer.

6.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY AND ALL EQUIPMENT IS PROVIDED "AS IS" WITHOUT A WARRANTY FROM SPARK. ACCORDINGLY, SPARK DISCLAIMS ALL WARRANTIES OF ANY NATURE WITH RESPECT TO ANY EQUIPMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.0 SUPPORT SERVICES. Spark will provide support services to Customer by telephone, email, and BOSS ticket. Support services by telephone are available 8:00 am to 10:00 pm Central Time, 7 days a week, except federal holidays. Support services by email are available at sparkpos@dickeys.com. Support services by BOSS can be accessed by submitting a BOSS ticket to "Spark POS."

8.0 PROFESSIONAL SERVICES. Customer may request, and Spark may provide, certain professional services to Customer during the term of these Terms and Conditions. At Spark's option, Spark may utilize subcontractors to perform any of the aforementioned services. All requests for professional services shall be submitted in a Customer-issued Order. Spark will not undertake any professional services until it has received and accepted an Order from Customer. Spark will invoice Customer in accordance with the applicable Order. Unless the Order provides otherwise, Customer shall pay all invoices within 30 days of issuance.

#### 9.0 NONDISCLOSURE AND CONFIDENTIALITY.

9.1. Each party may disclose to the other party certain Trade Secrets and Confidential Information of such party or its affiliates, suppliers, or customer. For purposes of these Terms and Conditions, "Trade Secrets" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, "Confidential Information" means information, other than Trade Secrets, that is of value to its owner and is treated as confidential; "Proprietary Information" means Trade Secrets and Confidential Information; "Owner" refers to the party disclosing Proprietary Information hereunder, whether such party is Spark or Customer, and "Recipient" refers to the party receiving any Proprietary Information hereunder, whether such party is Spark or Customer.

9.2 Recipient agrees to hold the Proprietary Information disclosed by Owner in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Owner to any third party (other than Spark subcontractors performing any services hereunder), or utilize the Proprietary Information disclosed by Owner for any purpose whatsoever other than as expressly contemplated by these Terms and Conditions. Customer acknowledges that Spark claims that the Software and Documentation are Proprietary Information, and Customer agrees to treat such information as Proprietary Information in accordance with the terms of these Terms and Conditions. With regard to the Trade Secrets, the obligations in this section shall continue for so long as such information constitutes a trade secret under applicable law. With regard to Confidential Information, the obligations in this section shall continue for the term of these Terms and Conditions and for a period of 5 years thereafter. The foregoing obligations shall not apply if and to the extent that: (a) the information communicated was already known to Recipient without obligations to keep such information confidential, at the time of Recipient's receipt from owner, as evidenced by documents in the possession of Recipient prepared or received prior to disclosure of such information; (b) the information communicated was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (c) the information communicated was publicly known at the time of Recipient's receipt from Owner or has become publicly known other than by a breach of the terms thereof; (d) Recipient establishes that the information was independently developed without reference to the Proprietary Information; (e) the Recipient obtains the prior written approval of Owner to disclose the information; or (f) the information is required to be disclosed by law, regulation, judicial process or order of a governmental authority, provided the Recipient gives the Owner prompt written notice of such requirement so that Owner may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this section. In addition, Spark may use aggregated/anonymized data derived from Customer's use of the Products for purpose of (a) analyzing and improving such Products, and (b) supplying such information to Virtual Brands, Inc. pursuant to any authorization directly from Customer to Virtual Brands, Inc. to receive such information.

#### 10.0 INFRINGEMENT CLAIMS.

10.1 Subject to the provisions of Section 10.4 below for patent claims, Spark will, at its expense, defend you against any IP Claim. Spark will also pay the damages, costs, and attorneys' fees that are awarded against you in a final, non-appealable court judgment for the IP Claim, or required to be paid by you or on your behalf in a settlement of the IP Claim that Spark has agreed to in writing. As used in this section, an "IP Claim" means a suit brought against you by a third party to the extent the suit alleges that your use of a Product infringes a valid U.S. patent or copyright of the third party.

10.2 Spark's obligations set forth in this section are subject to your: (a) providing Spark prompt written notice that the IP Claim has been threatened or brought, whichever is sooner (the "Claim Notice"); (b) providing Spark exclusive control of the defense, appeal and/or settlement of the IP Claim; (c) cooperating with Spark with respect to the defense, appeal, and/or settlement; and (d) complying with all court orders. If your delay in providing the Claim Notice causes detriment to Spark with respect to the defense or resolution of the IP Claim, the obligations set forth in this section will not apply to the IP Claim. Notwithstanding any other provision of these Terms and Conditions, Spark is not responsible for any fees (including attorneys' fees), expenses, costs, judgments, or awards that are incurred prior to Spark's receipt of the Claim Notice from Customer. Spark will have the exclusive right to select counsel. Customer may, at Customer's sole expense, engage additional counsel of Customer's choosing for purposes of conferring with Spark's counsel.

10.3 The obligations set forth in this section will not apply to an IP Claim if the alleged infringement is based on, caused by, or results from (a) Spark's compliance with any of Customer's designs, specifications, or instructions; (b) modification of the Product by a party other than Spark or its affiliates; (c) any product or service not provided by Spark to Customer; or (d) combination or use of the Product with any product or service not provided by Spark to Customer.

10.4 (a) In the event Spark or Customer learns of a patent or patentable right of a third party, whether the subject of a granted patent, pending patent application or otherwise (a "Third Party Patent Right") which the Products infringe, or Spark or Customer determines that there is a substantial likelihood that it may be found to infringe, or a claim is made by a third party that the Products infringe upon a Third Party Patent Right, then such Party shall promptly notify the other Party (a "Patent Claim Notice"). Within thirty (30) days of notice after the giving of such Patent Claim Notice, Spark shall elect either, at its option, to (a) procure a license for Customer or (b) supply Customer with a version of the affected Product(s) which does not infringe such Third Party Patent Right; provided that if neither such option is commercially practical, as determined by Spark in its reasonable discretion, then Spark may terminate this Agreement effective immediately upon written notice to Customer. (b) With respect to Third Party Patent Rights, Spark shall defend, indemnify and hold harmless Customer for all IP Claims arising out of any action brought by a third party asserting patent infringement, provided however, that Spark's obligations shall be limited to IP Claims, if any, directly relating to the period prior to the giving of a Patent Claim Notice (or the date on which Licensee should have given one). (c) The provisions of this Section 10.4 shall be Customer's sole and exclusive remedies hereunder with respect to Third Party Patent Rights.

10.5 THIS SECTION SETS FORTH SPARK'S ENTIRE OBLIGATIONS, AND YOUR EXCLUSIVE REMEDIES, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING ANY IP CLAIM.

#### 11.0 LIMITATION OF LIABILITY.

11.1 IN NO EVENT SHALL SPARK, ITS LICENSORS, PARENT CORPORATIONS, SUBSIDIARIES, AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES (COLLECTIVELY, THE "RELEASED PARTIES") BE LIABLE TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL IN ANY WAY RELATING TO THE ORDER, THESE TERMS AND CONDITIONS OR RESULTING FROM THE USE OF OR INABILITY TO USE THE PRODUCTS PROVIDED BY SPARK (INCLUDING, WITHOUT LIMITATION, THE SOFTWARE AND EQUIPMENT) OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, INCLUDING, WITHOUT LIMITATION, THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF SPARK HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

11.2 IN NO EVENT WILL THE RELEASED PARTIES' LIABILITY FOR ANY DAMAGES TO CUSTOMER, ANY LICENSED ENTITY, OR TO ANY OTHER PERSON OR ENTITY EVER EXCEED THE AMOUNT OF FEES AND CHARGES PAID BY CUSTOMER TO SPARK UNDER THESE TERMS AND CONDITIONS DURING THE IMMEDIATELY PRIOR TWELVE-MONTH PERIOD FOR THE APPLICABLE PRODUCT OR SERVICE GIVING RISE TO SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

11.3 The Released Parties shall not be held responsible for misuse or incorrect operation of the Software or Equipment, use of the Software or Equipment by untrained and/or unauthorized personnel or improper data entry, or modification of settings or other behavior affecting data security. Customer understands that the use of any Equipment outside the manufacturer's recommended

specifications may seriously affect the performance of the Software. THE RELEASED PARTIES SHALL NOT BE HELD LIABLE OR RESPONSIBLE FOR CONDITIONS BEYOND SPARK'S CONTROL THAT MAY AFFECT THE PERFORMANCE OF THE SOFTWARE OR EQUIPMENT OR THE DATA CONTAINED THEREIN, INCLUDING, BUT NOT LIMITED TO, LOSS OR INTERRUPTION OF POWER, CUSTOMER OPERATING ENVIRONMENT FACTORS, PROGRAM VIRUSES AND MALWARE, INTERNET SERVICE DISRUPTIONS, ENVIRONMENTAL CONDITIONS AND OTHER NATURAL EVENTS (INCLUDING FORCE MAJEURE EVENTS AS DESCRIBED IN SECTION 17.0 BELOW), AND UNAUTHORIZED ACCESS OR SYSTEM OR DATA SECURITY BREACHES.

12.0 PAYMENT CARD INDUSTRY. Spark participates in the Payment Card Industry ("PCI") Payment Application Data Security Standard (the "PA-DSS") program. The parties acknowledge that the PA-DSS is subject to revision and clarification regarding security standards for payment applications, and that validation against the PA-DSS is an annual activity. Spark shall use commercially reasonable efforts to gain annual validation against the PA-DSS. Customer agrees to promptly implement software enhancements, including installation of new versions, made by Spark or its affiliates to achieve and maintain validation against the PA-DSS. Customer acknowledges that it must remain current on software maintenance to receive new versions and updates to the Software, that Customer must use and configure the Software in a manner and in an environment that complies with the PA-DSS, and that Customer is responsible for its own PA-DSS compliance. Customer acknowledges that use of a PA-DSS validated payment application does not satisfy all of Customer's responsibilities to secure and protect Customer's network and information under the PA-DSS. Customer is strongly advised to engage the services of a Qualified Security Assessor as defined and approved by PCI to (i) ensure that no credit card tracking data is present on Customer's systems or network; (ii) determine Customer's level of PA-DSS compliance, and (iii) assist Customer with its PA-DSS compliance obligations and to mitigate any issues that may arise from Customer's non-compliance.

13.0 DATA SECURITY AND CYBERCRIME PREVENTION. Unless otherwise agreed in a separate writing signed by both parties, it is Customer's responsibility to have and maintain malware protection software and security for all of Customer's systems and data, which security includes properly configured hardware firewalls, unique, strong passwords per user, physical security, and access control policies. Customer acknowledges that the security and protection of its network and the data and applications on that network, including protections against unauthorized access, is solely and entirely Customer's responsibility. A properly configured firewall is required using a persistent connection to the public Internet or any private network where there is a potential for unauthorized access. Customer acknowledges that, to be effective, malware protection software, hardware firewalls, system passwords and other security software and hardware components require recurring, routine updates, which Customer must obtain or perform as necessary. THE RELEASED PARTIES DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE SOFTWARE OR CUSTOMER'S DATA WILL REMAIN MALWARE-FREE. Customer acknowledges that its failure to discharge its obligations to keep its systems secure may result in investigation fees, fines, penalties, charge backs and credit card fraud costs, and other losses as levied by credit card processors and other third parties. Customer waives any claims hereunder against the Released Parties for any costs or losses to the extent arising from Customer's failure to maintain a secure system, or to the extent arising as a result of a failure or breach of its security for its systems or data, or as a result of any unauthorized access to Customer's systems. In the event of a security breach of Customer's systems, Customer agrees to promptly notify Spark of such breach within 1 day; provide Spark with copies of any forensic reports related to such breach; and authorize any investigating entities to disclose all relevant information regarding their investigations, including investigations in progress, of such breach to Spark.

14.0 CUSTOMER'S ADDITIONAL RESPONSIBILITIES. Unless otherwise specified in these Terms and Conditions or in a separate writing signed by both parties, Customer shall be solely responsible for the following: (a) selection of the Software to achieve Customer's intended results; (b) evaluation of Spark's products relating to Customer's business requirements and technical environment; (c) the results obtained from use and operation of the Software and Equipment (if applicable); (d) providing cabling and all cabling services in preparation for the installation of the Software and Equipment (if applicable); (e) providing and maintaining that appropriate operating environment for the Software and/or Equipment, including related security and access controls, and maintaining back-up and disaster recovery procedures, facilities and equipment; (f) adherence to any applicable electronic payment processing standards or requirements; (g) all data entry and loading; (h) installing Upgrades provided by Spark and securely deleting previously stored Customer information or data, as necessary; (i) the content of all Customer information or data, the selection and implementation of controls on the access and use of such information or data, and the protection and back-up of the stored information or data; (j) the configuration of all required data parameters associated with use of the Software and its operating environment, including security-related parameters; (k) compliance with all applicable laws, rules and/or regulations affecting or governing Customer information or data configuration parameters in the Software; (l) providing all Customer-specific images other than those provided by Spark that are required to be loaded onto any Equipment, and (m) providing adequate training on the use and operation of the Software to Customer's employees and maintaining adequate supervision of such employees. Both Parties acknowledge and agree that the success of using any technology to achieve any particular business goal(s) depends upon a number of factors beyond the control of either party, and that no guarantee of any particular results is made from using the Products.



## 15.0 TERM AND TERMINATION.

15.1 These Terms and Conditions shall be valid as of the date on which an Order that has been signed by Customer is received and accepted by Spark and shall continue unless terminated by either party upon the giving of written notice: (a) by Spark, in the event that Customer fails to pay any amounts due to Spark, which, which failure is not cured within 10 days of Customer's receipt of written notice specifying that such amounts have not been timely paid; or (b) in the event that the other party fails to discharge any obligations or remedy any default (other than a payment default covered in subsection (a) above) hereunder for a period continuing more than 30 days after the aggrieved party shall have given the other party written notice specifying such failure and that such failure continues to exist as of the date upon which the aggrieved party gives such notice of termination; or (c) in the event that the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium, which in the case of any involuntary proceeding is not dismissed within 60 days of the initiation thereof. Customer also may terminate during the 60-day notice period for a price increase per Section 2.0 above.

15.2 Upon termination for any reason, all rights and licenses granted by Spark to Customer hereunder shall immediately cease, and Customer shall immediately return to Spark all Spark property affected by such termination including, but not limited to, the Software, Documentation, and all Proprietary Information of Spark, together with all copies thereof. Upon termination, Customer shall immediately pay Spark all amounts due to Spark.

15.3 Sections 9.0 (Nondisclosure and Confidentiality), 11.0 (Limitation of Liability), 16.0 (Dispute Resolution), and 21.0 (Governing Law), along with the provisions of any other Sections under these Terms and Conditions that expressly or by their nature contemplate surviving termination shall continue and survive in full force and effect.

## 16.0 DISPUTE RESOLUTION.

16.1 Except for claims brought by Spark to (a) collect payments owed by Customer, or (b) seek injunctive relief against violation of any intellectual property right, all disputes arising out of these Terms and Conditions, the Orders, and/or the Products shall be submitted for binding arbitration to the office of the American Arbitration Association ("AAA") located in Plano, Texas, on demand of either party. The arbitration proceedings shall be conducted in accordance with the then current commercial arbitration rules of the area. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. However, the arbitrator(s) may not consolidate more than one Customer's or entity's claims and may not otherwise preside over any form of a representative or class proceeding. Additionally, the parties stipulate and agree that the arbitrator(s) shall not provide for, and no arbitration award shall include, any consequential, punitive, or exemplary damages, all of which are hereby waived by both parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all parties. Spark and Customer agree that arbitration shall be conducted on an individual, and not on a class-wide basis.

16.2 Customer agrees to bring any dispute related to Spark invoices to Spark's attention in writing within 90 days from the date of the incident's occurrence. Customer's failure to raise the dispute with appropriate supporting documentation within 90 days from the date of the incident's occurrence, will result in the waiver of Customer's right to dispute the invoice at a future date. For any other type of claim, either Party must bring the claim within one (1) year from the date the claim arises.

16.3 Each party will bear its own attorneys' fees and other costs associated with the negotiation, mediation, and arbitration provided for by this section 16, except that costs and expenses of arbitration other than attorneys' fees will be paid as provided by the rules of the AAA. If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposes such proceedings will pay all associated costs, expenses, and attorneys' fees that are reasonably incurred by the other party.

16.4 Customer acknowledges that its breach of any term of these Terms and Conditions relating to the use or protection of Spark intellectual property will cause Spark and/or its affiliates irreparable harm, and Customer agrees that in the event of such breach, Spark and/or its affiliates will be entitled to immediate injunctive relief without the necessity of posting a bond, together with all other remedies available at law or in equity.

17.0 FORCE MAJEURE. Except for Customer's obligation to make payments when due, neither party shall be liable for failing to fulfill its obligations due to acts of God or government, civil commotion, military authority, war, riots, terrorism, strikes, fire, or other causes beyond its reasonable control. The party claiming excuse by Force Majeure shall immediately notify the other by writing and describe at a reasonable level of detail the circumstances causing such delay and/or default.

18.0 RELATIONSHIP OF PARTIES. These Terms and Conditions shall not be construed to create any employment relationship, partnership, joint venture, or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party.

19.0 BINDING EFFECT. These Terms and Conditions shall be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted under these Terms and Conditions.

20.0 ASSIGNMENT. Except as otherwise set forth herein, these Terms and Conditions and all rights and obligations may not be assigned in whole or in part by Customer without the prior written consent of Spark. A transfer of more than 50% of the voting stock or other ownership interest of Customer shall be deemed an assignment for the purposes of this section. Any purported assignment in violation of this section shall be null and void. Should Spark consent to a transfer per this section, Customer shall pay or cause the transferee to pay a reasonable transfer fee to Spark.

21.0 GOVERNING LAW. Texas law governs the Order and these Terms and Conditions, transactions occurring under it, and the relationships created by it, except for its laws regarding conflicts of law and arbitrability; the Federal Arbitration Act will govern all issues of arbitrability.

22.0 NOTICES. All notices made under the Order and Terms and Conditions shall be given in writing delivered by any means which provides written evidence of the date received, addressed as follows, if to Spark: Attn: Legal Department, Spark Intelligence, Inc., 4514 Cole Avenue, Suite 1015, Dallas, Texas 75205 and if to Customer: the billing address listed on the Order, or to such other address as may be designated from time to time in writing. All notices shall be deemed given at the time receipt is evidenced.

### 23.0 MISCELLANEOUS.

23.1 No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of these Terms and Conditions shall be valid and enforceable to the fullest extent permitted by applicable law. Customer agrees that Spark may revise these Terms and Conditions at any time during the term of these Terms and Conditions provided that Spark provides Customer with written notice of such changes. All notices shall be deemed given at the time receipt is evidenced.

23.2 Customer acknowledges that it has read and understands these Terms and Conditions and agrees to bound by the same. Further Customer agrees that the Order and these Terms and Conditions will be the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of these Terms and Conditions.

Spark Intelligence, Inc.  
On-Line Services User Agreement

This User Agreement is made by and between \_\_\_\_\_ (“Customer”) and Spark Intelligence, Inc. (“Spark”). This User Agreement shall take effect on the date that it has been countersigned by Spark’s authorized signatory as noted below (the “Effective Date”). By executing this User Agreement in the space provided below, Customer orders the services and hardware indicated below:

Store Nos. (“Licensed Location”)	Services	Applicable Fees* (per Licensed Location)
_____	On-Line Ordering Platform Consumer Facing Website	\$157/Per Store Monthly Fee
_____	Spark Installation Fee	\$125.00 One Time Fee

This User Agreement sets forth the current pricing. Spark or its designee will debit the total amount due from the Customer’s bank account via ACH debit, including any fees, transaction charges, or other fees. Spark’s (or its designee’s) debit of Customer’s bank account may occur in distinct individual charges or may be combined with other amounts hereunder or other amounts owed to Spark (or its designee) under separate written agreements between Spark and Customer. Customer shall complete and return the attached ACH Form (“Exhibit A”) upon execution of this User Agreement.

\* Fees include packing and shipping to User’s address, but do not include taxes, duties, customs fees and any similar charges or fees, including but not limited to sales, use, withholding, excise, value added, and ad valorem taxes that are applicable and may be added to the final charge to Customer’s account. Fees do not include any monthly credit card interchange and/or processing fees that may be charged by Spark (currently \$0.01) or a third-party for credit card processing related to the on-line ordering platform. These fees shall be charged pursuant to Customer’s agreement with the third-party credit card processor to be executed upon enrollment for use of the on-line platform. Such fees are subject to change based upon the variance interchange rates. In the event of a consumer dispute, the online platform will debit/credit any monies related to the dispute directly to and from the store’s bank account set up in the online ordering platform.

Customer acknowledges that by signing in the space below, Customer agrees to be bound by and comply with all applicable Terms and Conditions (“Exhibit B”) attached and incorporated herein.

CUSTOMER:

SPARK INTELLIGENCE, INC.

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

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

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

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

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

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

EXHIBIT A



**AUTHORIZATION AGREEMENT FOR PREAUTHORIZED  
PAYMENTS**  
(ACH Debits)

**On-Line Services  
and Equipment/Printer**

COMPANY NAME:		TAX ID NO.:	
I (we) hereby authorize Spark Intelligence, Inc., (or its designee) hereinafter called "Company", to initiate debit entries from my <input type="checkbox"/> Checking <input type="checkbox"/> Savings account (check one) indicated below and the depository named below, hereinafter called "Depository", to debit the same to such account.			
DEPOSITORY NAME:		BRANCH:	
CITY:	STATE:	ZIP:	
TRANSIT/ABA NO:		ACCOUNT NUMBER:	
This authority is to remain in full force and effect until Company has received notification from me (or either of us) of its termination in such time and in such manner as to afford Company and Depository a reasonable opportunity to act on it.			
NAME(S):		ID NO:(leave blank-SI use only)	
SIGNED:		DATE:	

EXHIBIT B

Spark Intelligence, Inc.  
TERMS AND CONDITIONS FOR ON-LINE SERVICES

("TERMS AND CONDITIONS")

A. These terms and conditions apply to your use of the on-line ordering platform that Spark makes available to you on a subscription basis "On-Line Services" and related applications and services provided by Spark Intelligence, Inc., or anyone of its affiliates (collectively "SPARK"). Your acceptance and use of any On-Line Services constitutes an unqualified acceptance of these Terms and Conditions.

B. DEFINITIONS. The following terms shall have the meanings described below:

Customer or You means the company or individual named on the attached User Agreement referencing these terms and conditions.

Customer Data means information (which may include Personal Information) that you transfer to Spark for processing and that is collected, stored, or maintained in the course of performing the On-Line Services specified in the User Agreement. Customer Data expressly excludes any data that does not connect or associate you or your employees or consumers to or with such data.

Customer Equipment means the Customer-owned equipment, Customer-managed networks, and Customer-managed systems and systems interfaces, including associated software.

Data Subject means the individual to whom any Personal Information contained in Customer Data refers.

Documentation means the operating, training and reference manuals relating to the use of the On-Line Services and any enhancements, modifications or upgrades thereto, supplied by SPARK to Customer pursuant to these Terms and Conditions.

Extreme Service Interruption Event means an event outside the reasonable control of SPARK or its subcontractors or agents that causes a System outage of significant enough nature to trigger SPARK's disaster recovery plan. Events of this type include, but are not limited to, acts of government agency, war, riot, civil unrest, work stoppages, strikes, flood, extreme weather, fire or other natural calamity or other Force Majeure Event (as defined in Section 14 of these Terms and Conditions). If such an event occurs, SPARK will use commercially reasonable efforts to restore service according to SPARK's disaster recovery plan.

Hosting Web Site means the internet web site identified by a unique uniform resource locator and operated by SPARK in connection with the On-Line Services.

Personal Information means information relating to an identified or identifiable natural person to the extent treated as such under applicable law.

Privacy Laws means all laws and regulations that govern the access, use, disclosure, or protection of Personal Information which are applicable to the On-Line Services. Scheduled

Downtime means any System downtime occurring within a planned System maintenance window as communicated to Customer. SPARK will provide Customer with notice of any Scheduled Downtime on SPARK's Hosting Web Site. When possible, SPARK will seek to minimize the impact of Scheduled Downtime or any unscheduled downtime to the Customer's business operations.

System means the infrastructure SPARK uses to enable Customer to access and use the On-Line Services via the internet.

System Downtime means any interruption of access to the Hosting Web Site. System Downtime specifically excludes (i) any Scheduled Downtime; (ii) inability to access the System resulting from failure in the internet backbone or networks not directly managed by SPARK or its subcontractors or agents; (iii) an Extreme Service Interruption Event; or (iv) any System Downtime caused by Customer.

Third Party Products means any third party products and/or services which are purchased by Customer from SPARK.

C. ON-LINE/THIRD PARTY PRODUCTS.

C.1. Access to On-Line Services. Subject to these Terms and Conditions and payment of the applicable fees and charges, SPARK authorizes Customer to: (i) access the On-Line Services via internet connection to the System for Customer's internal business requirements and performing administrative functions pertaining thereto solely for the number of authorized customer locations set forth on an Order (each a "Licensed Site"); (ii) use the Documentation in connection with such rights; and for no other purpose. Except as expressly set forth in these Terms and Conditions, all rights and licenses granted to Customer are nontransferable and non-assignable.

C.2. Installation and Use of SPARK Utility. In order to facilitate Customer's access to and use of the On-Line Services as permitted herein, SPARK shall use commercially reasonable efforts to remotely install, via the internet, certain SPARK proprietary application software, tools, or utilities (the "SPARK Utilities") on the Customer Equipment at each of the Licensed Sites. SPARK grants you a limited, non-exclusive license to use the Utilities solely in connection with authorized use of the On-Line Services. If the parties determine that, due to limitations imposed by the Customer Equipment, the SPARK Utilities cannot be effectively remotely installed via the Internet on the Customer Equipment at any Licensed Site(s), then you will be responsible for updating and/or upgrading Customer Equipment to allow for such installation. Customer acknowledges and agrees that from time to time, Customer may be required to upgrade or purchase additional hardware or software in order to gain access and use of the On-Line Services and service enhancements.

C.3. Access to Customer's Systems. You will provide SPARK access to your network, system, data, and relevant information as reasonably required to perform the On-Line Services and/or remove applications to address data security risks. Customer acknowledges that SPARK personnel may require, and Customer will provide, the ability to access and correct transaction or input data in the course of the On-Line Services. Customer will acquire and pay for necessary communication lines, and provide and maintain all required customer premise communications equipment, including computers, routers, modems, or other access devices, including SPARK approved high speed internet

#### EXHIBIT B

access. Customer acknowledges and agrees that SPARK may use its remote secure access product (or a successor product) in order to access Customer's system, and agrees that SPARK may load such product(s) and keep them updated on Customer's system as needed. SPARK may gather information about Customer's sites including, without limitation, hardware information, software versions and feature usage, and use such information for valid business purposes such as product analysis and billing information. Additionally, SPARK and/or SPARK subcontractors providing support services to Customer may access configuration and operational data in connection with providing such support services.

#### C.4. Exclusions and Limitations.

- C.4.1. Customer agrees that neither Customer nor its representatives shall attempt in any way to circumvent or otherwise interfere with any security precautions or measures of SPARK relating to the On-Line Services or the System. Any such attempts may, among other things, cause failure of, or disruption to, the System or the On-Line Services. Any failure of or disruption to the System or the On-Line Services resulting from a violation of this Section shall not be considered Scheduled Downtime. Customer will be responsible, and will indemnify SPARK, for any damage or service interruptions caused by Customer or its representatives in violation of this Section including, without limitation, any damage to any SPARK equipment, or equipment managed for SPARK by another third party in connection with the On-Line Services provided by SPARK hereunder. Customer agrees to compensate SPARK, at its then-current professional services rates, for all remedial services or losses resulting from any violations of this Section.
- C.4.2. SPARK does not control the flow of data to or from the network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the internet (or portions thereof). Although SPARK will use commercially reasonable efforts to take the action it deems appropriate to remedy and avoid such events, SPARK cannot guarantee that such events will not occur. Accordingly, SPARK disclaims any and all liability resulting from or related to such events to the extent such events are not directly caused by SPARK or any of its subcontractors or agents.
- C.4.3. SPARK is not responsible for unauthorized access to the On-Line Services through Customer maintained usernames and passwords provided such unauthorized access was not directly caused by SPARK or any of its subcontractors or agents.
- C.4.4. SPARK's performance obligations specifically exclude the following: (i) non-production or test web sites or systems, performance of public or private internet backbones or networks not directly managed by SPARK; (ii) outages or issues caused by Customer's negligence, by Customer's misuse or improper configuration of the On-Line Services, or by Customer's failure to follow documented procedures for the use of the On-Line Services; (iii) outages or issues caused by or resulting from Customer Equipment, or outages or issues occurring as a result of any actions taken by SPARK at the request or direction of Customer; (iv) outages initiated by SPARK at the request or direction of Customer for backup, maintenance or other purposes; and (v) any professional or supplemental services outside the scope of the services to be provided hereunder or under these Terms and Conditions.
- C.4.5. The Hosting Web Site may contain hyperlinks to external internet sites, which are not under the control of SPARK. SPARK assumes no responsibility for the content or accuracy of information contained within such internet sites.
- C.4.6. Any downtime of the System which results from circumstances reasonably believed by SPARK to pose a significant threat to the normal operation of the Hosting Web Site, the System or the On-Line Services, or access to or integrity of Customer data (e.g., hacker or virus attack) shall not count as System Downtime under these Terms and Conditions. In the event of such an interruption or shutdown, SPARK will attempt to return the On-Line Services to normal operation as soon as reasonably practicable.
- C.4.7. Customer acknowledges and agrees that SPARK will not be liable for any errors or delays in On-Line Services, or for any actions taken in reliance thereon.

C.5. Third Party Products. Customer acknowledges and agrees that SPARK may contract with one or more third parties to perform all or any portion of the On-Line Services. With respect to any Third Party Products provided by SPARK, Customer acknowledges and agrees that its right to use any such Third Party Products is specified on the agreement provided by the appropriate supplier of such Third Party Products. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY AND ALL THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT A WARRANTY FROM SPARK. ACCORDINGLY, SPARK EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY NATURE WITH RESPECT TO ANY THIRD PARTY PRODUCTS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS.

#### D. CUSTOMER OBLIGATIONS.

D.1. Customer is responsible for the integration of the On-Line Services with your application software and computing environment, and compliance with SPARK's implementation and deployment guidelines (as applicable), as well as applicable laws and regulations. Customer is responsible for any and all retention of Customer data, records, or information. SPARK is not responsible for any damage caused by errors or omissions in any information, instructions, or scripts Customer provides in connection with the On-Line Services, or any actions SPARK takes at your direction.

D.2. You will abide by the security procedures specified by SPARK and perform reasonable and customary security practices to preclude attempts to circumvent any security procedures or utilize any unauthorized systems in an attempt to access the data of another Customer;

D.3. You will make all reasonable efforts to assist SPARK in identifying, isolating and replicating issues found in the System; and

D.4. Customer shall be solely responsible for the manner in which Customer and Customer's users use the System and the On-Line Services. Customer shall ensure that only authorized users have access to any user identifications or passwords for use in connection with the System and the On-Line Services and that such authorized users shall not disclose such identifications or passwords to any other individual. Customer acknowledges and agrees that it is solely responsible for strictly maintaining the confidentiality and integrity of such identifications and passwords and Customer shall indemnify and hold harmless SPARK from and against any liability, damages, or costs arising from Customer's failure to comply with this obligation including, but not limited to, improper or unauthorized account access using Customer's user identifications or passwords, provided such identifications or passwords were not improperly disseminated by SPARK or any of its agent or representatives. Customer shall notify SPARK immediately in writing if the security or integrity of an identification or password has been compromised.

D.5. Customer is responsible to have and to maintain in place updated malware protection software and security for all of Customer's systems, networks, and data, which security includes properly configured hardware firewalls, unique, strong passwords per user, physical security, and access control policies. Customer acknowledges that the security and protection of its network and the data and applications on that network, including protections against unauthorized access, the configuration of all required data parameters, including security-related parameters, including security-related parameters, is solely and entirely Customer's responsibility. A properly configured firewall is required for each Customer Location using a persistent connection to the public internet or any private network where there is a potential for unauthorized access. Customer acknowledges that, to be effective, malware protection software, hardware firewalls, system passwords and other security software and hardware components require periodic and routine updates, which Customer must obtain or perform as applicable. Customer acknowledges that its failure to discharge its obligations to keep its systems secure may result in investigation fees, fines, penalties, charge backs and credit card fraud costs, and other losses as levied by credit card processors and others, remediation costs (which

## EXHIBIT B

may include system component updates or replacements) and lost profits and lost reputability of Customer's business, which costs may be so large that they may threaten the survival of Customer's business. Customer waives any claims hereunder against SPARK for any such costs or losses to the extent arising from Customer's failure to have or maintain a secure system, or to the extent arising as a result of a failure or breach of its security for its systems or data, or as a result of any unauthorized access to Customer's systems. In the event of a security breach of Customer's systems, Customer agree to promptly (i) notify SPARK of such breach, (ii) provide SPARK with copies of any forensic reports related to such breach, and (iii) authorize any investigating entities to disclose all relevant information regarding their investigations, including investigations in progress, of such breach to SPARK.

D.6. Unless otherwise specified in these Terms and Conditions or in a separate writing signed by both Customer and SPARK, Customer shall be solely responsible for the following: (a) providing and maintaining the appropriate operating environment for the SPARK Utilities, including related security and access controls, and maintaining backup and disaster recovery procedures, facilities and equipment (if applicable); (b) adherence to any applicable electronic processing standards or requirements related to Customer's operations; (c) all data entry and loading; (d) installing upgrades provided by SPARK and securely deleting previously stored information or data (if applicable); (e) the content of all Customer information or data, the selection and implementation of controls on the access and use of such information or data, and the protection and backup of the stored information or data; (f) the configuration of all required data parameters associated with use of the On-Line Services and the System and its operating environment, including security-related parameters; (g) compliance with all applicable city, state, and federal laws, rules or regulations affecting or governing Customer information or data configuration parameters in the On-Line Services; and (h) providing adequate training on the use and operation of the SPARK Utilities, the On-Line Services and the System to Customer's employees and maintaining adequate supervision of such employees.

## E. FEES AND PAYMENT.

E.1. Customer shall pay SPARK or its designee the activation and monthly service fees indicated on the applicable User Agreement referencing these Terms and Conditions. At Spark's sole discretion, Spark (or its designee) may debit amounts owed hereunder on a pro-rated weekly basis, rather than monthly. Further, Spark's debit of Customer's bank account may occur in distinct individual charges or may be combined with other amounts hereunder or other amounts owed to Spark under separate written agreements between Spark and Customer. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law or 1½% per month commencing with the date payment was due. The fees, charges and expenses payable by Customer hereunder do not include taxes, duties, customs fees and any similar charges or fees, including but not limited to sales, use, withholding, excise, value added, and ad valorem taxes. SPARK may add new and/or increase the fees and charges specified herein at any time upon 60 days notice to Customer. Additionally, SPARK reserves the right to change its credit terms at any time, effective on written notice to Customer and SPARK reserves the right to withhold performance of any obligations arising under these Terms and Conditions, including the right to suspend or terminate the On-Line Services, or any part thereof, and to disable Customer's access to the On-Line Services, in the event of Customer's non-payment when due of any amounts owed to SPARK.

E.2. Fees and charges for On-Line Services are billed to Customer's on-file payment method in accordance with the most current price schedule based upon the level of service and subscription term selected by Customer. If for any reason SPARK (or its designee) is unable to charge fees to Customer's on-file payment method, Customer will be assessed a late fee in addition to other remedies available to SPARK including without limitation those set forth in Section E.1 of these Terms and Conditions. In the event Customer's on-file payment method is no longer valid or inaccessible to SPARK, SPARK may invoice Customer for the fees, and Customer agrees to pay all fees due upon receipt of invoice from SPARK. Customer agrees to pay all fees, whether or not Customer actually makes use of On-Line Services during the applicable billing cycle.

## F. OWNERSHIP AND INDEMNIFICATION.

F.1. SPARK reserves all rights not expressly granted herein. Except as otherwise explicitly agreed to in writing by SPARK, no express or implied license or right of any kind is granted. The SPARK On-Line Services may not be used for commercial timesharing, service, business or other rental or sharing arrangements. Further, Customer shall not decompile, reverse assemble, or otherwise reverse engineer the SPARK On-Line Services. Customer acknowledges and agrees that, except for Customer's license expressly described in these Terms and Conditions, Customer has no right, title and interest in the SPARK Utilities or the On-Line Services, in any form, or in any copies thereof, including all worldwide copyrights, trade secrets, patent rights and any other proprietary information and confidential information rights therein.

### F.2. Indemnification

F.2.1. SPARK will, at its expense, defend Customer against any IP Claim. SPARK will also pay the damages, costs, and attorneys' fees that are awarded against Customer in a final, non-appealable court judgment for the IP Claim, or required to be paid by Customer or on Customer's behalf in a settlement of the IP Claim that SPARK has agreed to in writing. As used in this Section, an "IP Claim" means a suit brought against Customer by a third party to the extent the suit alleges that Customer's use of the On-Line Services or the On-Line Services infringes a patent or copyright of the third party.

F.2.2. SPARK's obligations set forth in this Section are subject to Customer (a) providing SPARK prompt written notice that the IP Claim has been threatened or brought, whichever is sooner (the "Claim Notice"); (b) providing SPARK sole control of the defense, appeal, and/or settlement of the IP Claim; (c) cooperating with SPARK with respect to the defense, appeal, and/or settlement of the IP Claim; (d) providing SPARK with requested documentation and information, relevant to the IP Claim or its defense, appeal, and/or settlement; and (e) complying with all court orders. If Customer's delay in providing the Claim Notice causes detriment to SPARK with respect to the defense or resolution of the IP Claim, the obligations set forth in this Section will not apply to the IP Claim. Notwithstanding any other provision of these Terms and Conditions, SPARK is not responsible for any fees (including attorneys' fees), expenses, costs, judgments, or awards that are incurred prior to SPARK's receipt of the Claim Notice from Customer. SPARK will have the sole right to select counsel. Customer may, at Customer's sole expense, engage additional counsel of Customer's choosing for purposes of conferring with SPARK's counsel.

F.2.3. The obligations set forth in this Section will not apply to an IP Claim if the alleged infringement is based on, caused by, or results from (a) SPARK's compliance with Customer's designs, specifications, or instructions; (b) modification of the On-Line Services other than by SPARK; (c) any product or service not provided by SPARK to Customer; or (d) combination or use of the On-Line Services with any product or service not provided by SPARK to Customer.

F.3. In addition to the other indemnities set forth elsewhere in these Terms and Conditions, Customer agrees to indemnify and hold SPARK, its officers, directors, employees, shareholders, agents and representatives harmless against any and all claims, losses, costs, fines, fees, liabilities or obligations made by third parties relating to (i) the operation of Customer's business and the conduct of other Customer activities, (ii) Customer's breach of these Terms and Conditions and (iv) Customer's violation of any applicable international, federal, state or local law, regulation or ordinance, in connection with Customer's use of the On-Line Services or other applications and services made available hereunder.

G. DISCLAIMER OF WARRANTY. ON-LINE SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND (EXPRESS OR IMPLIED). CUSTOMER AGREES THAT ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, TITLE, SECURITY, ACCURACY, NON-INFRINGEMENT, AVAILABILITY, ACCURACY OR UNINTERRUPTED ACCESS. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OR OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTIOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.



EXHIBIT B

- H. DATA SECURITY AND CYBERCRIME PREVENTION. SPARK has implemented reasonable and appropriate security policies and procedures designed to protect the security of Personal Information in SPARK's possession from unauthorized access, use, storage, and disposal. Notwithstanding the foregoing, you acknowledge that SPARK cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Personal Information for improper purposes. SPARK may disclose Personal Information to the extent compelled by process of law, provided that you are given advance written notice (unless providing such notice is prohibited by law). You are responsible for the content of the Customer Data and for your compliance with any Privacy Laws, regulations, or other legal duties applicable to your possession, transmission, processing, or use of Customer Data, including providing appropriate notifications and communications to Data Subjects and managing any complaints from Data Subjects. You acknowledge that SPARK does not control the transfer of data over telecommunications facilities and that the Internet is inherently insecure and provides opportunity for unauthorized access by third parties. You are responsible for maintaining the security of your own systems, servers, and communications links, and for providing secure access to those systems and information, including Personal Information that SPARK requires to provide the On-Line Services to you. You will: (a) have in place appropriate privacy and security safeguards to prevent the unauthorized use and disclosure of Personal Information; (b) guard against misuse of any password whether or not provided by SPARK, and change any password upon SPARK's direction; (c) not transmit any data, including Customer Data, to SPARK for processing for a purpose that does not comply with applicable law or regulations; and (d) provide reasonable cooperation to facilitate the parties' compliance with applicable law and regulation. To the extent they may affect SPARK's use or disclosure of Personal Information, you will notify SPARK in writing of any limitations or restrictions on the permitted use or disclosure of Personal Information; or any changes in, or revocation of, permission by a Data Subject to use or disclose Personal Information.
- I. LIMITATION OF LIABILITY. SPARK'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DATA LOSS, DELAYS, ERRORS OR DEFECTS IN SMOKESTACK SHALL IN NO EVENT EXCEED THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DATA LOSS DELAY, ERROR OR DEFECT IN THE SERVICES OCCURRED. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO SPARK, INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS), INCIDENTAL DAMAGES, PUNITIVE & EXEMPLARY DAMAGES, AND EXTRA-CONTRACTUAL DAMAGES (INCLUDING DECEPTIVE TRADE PRACTICES).
- J. TERM AND TERMINATION. Customer agrees to an initial license period of 12 months commencing with the date of execution of the User Agreement. Spark agrees to provide its services during the initial license period according to the monthly license fee schedule in effect on the date this Agreement is executed. The User Agreement shall extend and renew for one (1) year periods (each a "Renewal Term") under the same terms and conditions without further notice unless Customer gives written notice of its intention to terminate not less than ninety (90) days before the end of the then current term. The termination shall become effective at the end of the then-current term. Spark may terminate the User Agreement for any reason. If Spark exercises this right to terminate based on a reason other than Customer's breach, it will provide Customer 30 days' notice of such intent to terminate. Spark reserves the right to restrict, suspend or terminate Customer access to the Smokestack in whole or part and without liability in the event of a Customer breach, or threatened breach, of this User Agreement.
- K. DISPUTE RESOLUTION. Except for claims brought by Spark to collect payments owed by Customer, all disputes arising out of this User Agreement shall be submitted for binding arbitration to the office of the AAA located in Plano, Texas, on demand of either party. The arbitration proceedings shall be conducted in accordance with the then current commercial arbitration rules of the area. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. However, the arbitrator may not consolidate more than one Customer's or person's claims, and may not otherwise preside over any form of a representative or class proceeding. Additionally, the Parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any consequential, punitive or exemplary damages, all of which are hereby waived by the Parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all Parties. Spark and Customer agree that arbitration shall be conducted on an individual, and not on a classwide basis.
- L. CONFIDENTIALITY AND COMMUNICATIONS.
- L.1. Each party may disclose to the other party certain Trade Secrets and Confidential Information of such party or its affiliates, suppliers, or customer. For purposes of these Terms and Conditions, "Trade Secrets" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; "Confidential Information" means information, other than Trade Secrets, that is of value to its owner and is treated as confidential; "Proprietary Information" means Trade Secrets and Confidential Information; "Owner" refers to the party disclosing Proprietary Information hereunder, whether such party is SPARK or Customer; and "Recipient" refers to the party receiving any Proprietary Information hereunder, whether such party is SPARK or Customer.
- L.2. Recipient agrees to hold the Proprietary Information disclosed by Owner in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Owner to any third party (other than SPARK subcontractors performing any services hereunder), or utilize the Proprietary Information disclosed by Owner for any purpose whatsoever other than as expressly contemplated by these Terms and Conditions. Customer acknowledges that SPARK claims that the System and Documentation are Proprietary Information, and Customer agrees to treat such information as Proprietary Information in accordance with the terms of these Terms and Conditions. With regard to the Trade Secrets, the obligations in this Section shall continue for so long as such information constitutes a trade secret under applicable law. With regard to the Confidential Information, the obligations in this section shall continue for the term of these Terms and Conditions and for a period of 5 years thereafter. The foregoing obligations shall not apply if and to the extent that: (a) the information communicated was already known to Recipient, without obligations to keep such information confidential, at the time of Recipient's receipt from Owner, as evidenced by documents in the possession of Recipient prepared or received prior to disclosure of such information; (b) the information communicated was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (c) the information communicated was publicly known at the time of Recipient's receipt from Owner or has become publicly known other than by a breach of these Terms and Conditions; (d) the Recipient establishes that the information was independently developed without reference to the Proprietary Information; (e) the Recipient obtains the prior written approval of Owner to disclose the information; or (f) the information is required to be disclosed by law, regulation, judicial process or order of a governmental authority (provided the Recipient give the Owner prompt written notice of such requirement so that Owner may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section.
- L.3. Notwithstanding anything to the contrary herein, SPARK may use and disclose transactional and system configuration information that SPARK derives from Customer's Locations via Customer's use of the On-Line Services, provided that SPARK will take appropriate safeguards to protect Customer's Proprietary Information from public disclosure, such as confidentiality agreements or aggregation and anonymization.
- L.4. Customer further agrees that may the will not communicate in any way (or assist, encourage, or support) any statement that may include SPARK'S Trade Secrets, Proprietary Information, Confidential Information regarding the product, service, SPARK, its affiliates, partners, employees, service reviews, terms, features, enhancement and pricing or the personal or business reputation, acumen, skill, practices, or conduct of SPARK (including SPARK'S respective subsidiaries, directors, officers, employees, agents, or representatives) in connection with this User Agreement. Customer acknowledges and agrees that this provision applies to all forms of communication including, but not limited to, texting, blogging, and/or posting on Facebook or any other social networking site or internet forum or site. Customer further acknowledges and agrees that this clause is a material provision of this Agreement, that any breach is material, and that Virtual Brand Inc. would be irreparably harmed by violation of this provision. With regard to this provision, Customer agrees to waive their rights to prior restraint of speech. The party alleged to be in breach of the provision consents to the issuance of a temporary restraining order, a temporary injunction, and a permanent injunction designed to prevent any further breach of the provision.
- M. FORCE MAJEURE. Except for your obligation to make payments when due, neither party will be liable for failing to fulfill its obligations due to acts of God or government, civil commotion, military authority, war, riots, terrorism, strikes, fire, or other causes beyond its reasonable control.

- N. ASSIGNMENT. Except as otherwise set forth in these Terms and Conditions, these Terms and Conditions and all rights and obligations may not be assigned in whole or in part by Customer without the prior written consent of SPARK.
- O. RELATED ENTITIES' RIGHTS - SECTIONS C.4.1, D.4, F.3, G, I, K, and L SET FORTH IN THIS AGREEMENT SHALL APPLY TO SPARK'S PARENT CORPORATIONS, SUBSIDIARIES, AFFILIATES, RELATED ENTITIES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, SUBCONTRACTORS, AND SUPPLIERS.
- P. GOVERNING LAW. Texas law governs these Terms and Conditions, transactions occurring under it, and the relationships created by it, except for its laws regarding conflicts of law and arbitrability; the Federal Arbitration Act will govern all issues of arbitrability.
- Q. MISCELLANEOUS. No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of these Terms and Conditions shall be valid and enforceable to the fullest extent permitted by applicable law. All notices made under a User Agreement will be in writing and will be deemed made on first receipt. SPARK will send notices to you at the address on the face of the User Agreement and you will send notices to SPARK to: General Counsel/Notices, SPARK INTELLIGENCE, 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287 and via email to: legal@dickeys.com. Either party may change or supplement its notice address by written notice. Customer agrees that these Terms and Conditions, together with any exhibits and other applicable SPARK agreements referencing these Terms and Conditions and expressly made a part hereof that are duly executed by the parties will be the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of these Terms and Conditions.

**EXHIBIT Q**

**PAYMENT SERVICES AGREEMENT**

Ex. Q

## PAYMENT SERVICES AGREEMENT

THIS PAYMENT SERVICES AGREEMENT (“**Agreement**”) is entered into on \_\_\_\_\_ (“**Effective Date**”) by and between **Virtual Brands, Inc.**, a Texas corporation (“**Franchisor**”) located at 4514 Cole Ave., Dallas, Texas 75205 and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**Franchisee**”). Franchisor and Franchisee may be referred to individually as a “**Party**,” or collectively as the “**Parties**.”

### RECITALS

**WHEREAS**, Franchisee and Franchisor are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ (and together with any related addenda, agreements, and amendments, collectively the “**Franchise Agreement**”) pursuant to which Franchisee owns and operates the a “Wing Boss” restaurant (the “**Franchised Restaurant**”) located at [\_\_\_\_\_] (the “**Accepted Location**”);

**WHEREAS**, Franchisee leases the Accepted Location from [\_\_\_\_\_] (“**Landlord**”) pursuant to a lease agreement dated [\_\_\_\_\_] (the “**Lease**”), a copy of which is attached as **Exhibit A**. The Lease requires that Franchisee pay Landlord monthly rent (including base rent and any additional rent, as applicable) in the amount of \$ \_\_\_\_\_ per month (“**Rent**”) to maintain possession of the Accepted Location;

**WHEREAS**, Franchisee has entered into utility contracts (each, a “**Utility Contract**”) with those utility providers listed on **Exhibit B** (the “**Utility Providers**”), who provide certain utilities at the Franchised Restaurant, including electricity, natural gas, sewage and sanitation, and water (collectively, the “**Utilities**”);

**WHEREAS**, Franchisee has requested that Franchisor debit Franchisee’s Rent and Utilities from Franchisee’s designated bank account listed on **Exhibit C** hereto (“**Franchisee’s Bank Account**”) and act as an intermediary to pay Franchisee’s (i) Rent to Landlord; and, (ii) Utilities to the Utility Providers on Franchisee’s behalf (the “**Payment Services**”); and,

**WHEREAS**, Franchisor has agreed to provide the Payment Services on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing recitations, the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both Parties, the Parties, intending legally to be bound, do hereby covenant and agree as follows:

1. **Capitalized Terms**. All initial capitalized terms used but not defined in this Agreement shall have the meanings set out in the Franchise Agreement. If there is a conflict between the terms of the Franchise Agreement and the terms of this Agreement, the terms of this Agreement shall control.

2. **Term**. The term of this Agreement shall be effective upon execution of this Agreement by Franchisee and Franchisor, and unless terminated sooner by Franchisor in accordance with its rights under **Section 8** herein, shall continue until the earlier of the expiration or termination of (i) the Franchise Agreement; or (ii) the Lease (the “**Term**”). This Agreement shall terminate automatically upon the expiration of the Term unless otherwise agreed to in writing by the Parties.

3. **Payment Services.**

(a) **In General.** Franchisee authorizes Franchisor to perform the Payment Services on Franchisee's behalf during the Term. Franchisor will debit Franchisee's Rent and Utilities weekly from Franchisee's Bank Account by ACH electronic transfer on or before the Monday following the calendar week to which such payments relate. If the date on which such payments would otherwise be due is not a business day, then payment shall be due and drafted upon on the next business day. Franchisee shall not be entitled to withhold any payments due to Franchisor on grounds of alleged non-performance by Franchisor under this Agreement or the Franchise Agreement.

(b) **Payment Services for Rent.** The weekly amounts Franchisor debits from Franchisee's Bank Account for Rent will be in accordance with the information provided by Franchisee, including the information contained in the Lease. If there are insufficient funds in Franchisee's Bank Account to pay Rent when due, Franchisor will pay Rent to Landlord from the amounts actually debited from Franchisee's Bank Account in the preceding month and Franchisee will be solely responsible to pay the remaining balance due to Landlord for that month's Rent.

(c) **Payment Services for Utilities.** Franchisee will provide Franchisor with monthly billing statements issued by each Utility Provider ("**Utility Bills**") on or before the 5<sup>th</sup> day of the month immediately following such Utility Bills being issued. Concurrently with signing this Agreement, Franchisee must submit to Franchisor its Utility Bills for the two (2) months immediately preceding the Effective Date, or if the Franchised Restaurant has been open for less than two (2) months, the Utility Bills for the prior month immediately preceding the Effective Date. Franchisee acknowledges and agrees that Franchisor will project the amount due for Utilities each month based on (i) the prior two (2) months' Utility Bills submitted by Franchisee to Franchisor; or (ii) if the Franchised Restaurant has not been open for at least two (2) months prior to signing this Agreement, either (x) the first month's Utility Bill, or (y) other Restaurants' utility bills operating near the Franchised Restaurant. After receiving all of Franchisee's Utility Bills in a given month, if Franchisor discovers that the amounts Franchisor debited from Franchisee's Bank Account are (i) greater than the amounts Franchisee actually owed for Utilities, then Franchisor will credit an amount equal to the excess against the amounts Franchisor would otherwise debit from the Franchisee's Bank Account for Utilities in the following week; or (ii) less than the amounts Franchisee actually owed for Utilities, then, Franchisor will immediately debit Franchisee's Bank Account in an amount equal to the remaining balance due under the Utility Bills. If there are insufficient funds in Franchisee's Bank Account to pay the Utilities Bills when due, Franchisor will pay the Utility Bills to the Utility Providers from the amounts actually debited from Franchisee's Bank Account in the preceding month and Franchisee will be solely responsible to pay the remaining balance due to the Utility Providers for that month's Utilities.

4. **Franchisee's Bank Account.** Franchisee shall execute and deliver to Franchisor the ACH authorization in the form attached as **Exhibit C** hereto (or such other form as may be required by Franchisor or its bank) ("**ACH Form**"), that identifies Franchisee's Bank Account. Franchisee authorizes Franchisor to debit Franchisee's Bank Account by ACH electronic for Franchisee's Rent and Utilities pursuant to the ACH Form in accordance with the terms set out in this Agreement. Franchisee agrees to keep Franchisee's Bank Account identified in the ACH Form open throughout the Term and to keep sufficient funds in it as is necessary to process the weekly transfers and payment of Franchisee's Rent and Utilities each month during the Term, in addition to the royalty fees, Marketing Fund contributions, and other amounts payable under the Franchise Agreement.

5. **Landlord and Utility Provider Information and Acknowledgement.** Franchisee agrees to provide Franchisor with accurate and complete information and any necessary authorizations, including without limitation, Landlord's and Utility Providers' payment instructions, to enable Franchisor to perform

the Payment Services for Rent and Utilities in a timely manner on Franchisee's behalf. Franchisee must request from Landlord the execution of the Payment Services Acknowledgement attached as **Exhibit D**, under which Landlord acknowledges and agrees that Franchisor has no contractual obligations or liability to Landlord and is solely acting as an intermediary on Franchisee's behalf. Franchisee further acknowledges that Franchisor is solely acting as an intermediary on Franchisee's behalf for payment of Utility Bills under any Utility Contract and Franchisor has no independent contractual obligations with any Utility Provider. Any liability for unpaid amounts owed to a Utility Provider under any Utility Contract remains the responsibility of the Franchisee.

6. **Franchisee Representations and Warranties.** Franchisee represents and warrants to Franchisor that the following are true and correct and will remain true and correct during the Term:

(a) Entering into this Agreement is not a breach of any other agreement entered into by Franchisee, including the Lease or agreement with a Utility Provider; and,

(b) The individual signing below on behalf of Franchisee has the necessary authority to execute this Agreement; and,

(c) Franchisee has provided Franchisor with current, complete, and accurate information with respect to Franchisee's Bank Account and will timely provide Franchisor with updated information concerning Franchisee's Bank Account should any information no longer be accurate; and,

(d) Franchisee has provided Franchisor with current, complete, and accurate information with respect to the Lease, Franchisee's Rent, Landlord's payment instructions, the Utility Contracts, the Utility Providers servicing the Utility Contracts, and the payment instructions for each Utility Provider, and will timely provide Franchisor with updated information concerning any of this information should any information no longer be accurate.

Franchisee acknowledges that Franchisor is relying on these representations and warranties and would not enter into this Agreement if these representations and warranties were untrue.

7. **Franchisee Acknowledgments.** Franchisee acknowledges and agrees that:

(a) Franchisor is relying on Franchisee to provide Franchisor with accurate and complete information and any necessary authorizations, including without limitation, Landlord's and any Utility Providers' payment instructions, to enable Franchisor to perform the Payment Services on Franchisee's behalf and Franchisor is not responsible for any error in the information provided by Franchisee;

(b) Franchisor shall have no liability for any shortfall or overage in payments made by Franchisor to Landlord or any Utility Provider, and shall have no liability for any payment error when paying Franchisee's Rent to Landlord or Utilities to a Utility Provider, including any processing error in debiting Franchisee's Bank Account or by Landlord or a Utility Provider in processing payments;

(c) Franchisee shall be solely liable to Landlord for Franchisee's Rent, and must timely pay Landlord for any shortfalls or inaccuracies with the Payment Services for Rent;

(d) Franchisee shall be solely liable to its Utility Providers for Utilities, and must timely pay all Utility Providers for any shortfalls or inaccuracies with the Payment Services for Utilities;

(e) This Agreement does not make Franchisor a Party to the Lease or any Utility Contract and Franchisor's performance of the Payment Services shall not create any liability for Franchisor under the Lease, any Utility Contract, the Franchise Agreement, or this Agreement; and,

(f) FRANCHISOR MAKES NO WARRANTIES WITH RESPECT TO THE PAYMENT SERVICES AND EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PAYMENT SERVICES, INCLUDING WITHOUT LIMITATION IMPLIED OR EXPRESS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. **Termination.** Franchisor may terminate this Agreement and any future Payment Services at its sole discretion upon providing Franchisee with thirty (30) days' written notice. Additionally, Franchisor may terminate this Agreement immediately on the occurrence of the following events:

(a) A breach of this Agreement by Franchisee, which breach is not cured to Franchisor's satisfaction within five (5) days after written notice specifying the nature of such breach;

(b) A breach of the Lease or any Utility Contract by Franchisee, which breach is not cured within the requisite cure period under the Lease or the Utility Contract, whichever is applicable, if a cure is permitted; or,

(c) Franchisee makes an assignment for the benefit of creditors or admits in writing Franchisee's insolvency or inability to pay Franchisee's debts generally as they become due; Franchisee consents to the appointment of a receiver, trustee, or liquidator of all or the substantial part of Franchisee's property; the real or personal property of the Franchised Restaurant is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant, or levy is vacated within thirty (30) days; or, any order appointing a receiver, trustee, or liquidator of Franchisee or the Franchised Restaurant is not vacated within thirty (30) days following the order's entry.

Notwithstanding anything to the contrary herein, any breach of this Agreement by Franchisee shall also constitute a default under Section 16.4 of the Franchise Agreement. Upon termination of this Agreement pursuant to its terms or the expiration of the Term, Franchisee acknowledges and expressly agrees that Franchisor shall not be liable to Franchisee and Franchisee hereby waives and disclaims, and agrees that it shall not be entitled to receive, any compensation, reimbursement, or payment of any kind or character from Franchisor.

9. **Franchisee Indemnification.**

(a) In addition to Franchisee's indemnification obligations under the Franchise Agreement, Franchisee, its Owner/Operator, and each of its Investors (collectively, the "**Franchisee Parties**") shall, at all times, defend, indemnify, release, and hold harmless to the fullest extent permitted by law, Franchisor, its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, partners, employees, agents, independent contractors, and representatives (collectively, the "**Indemnified & Released Parties**") from all Losses and Expenses (as defined below) incurred in connection with: (i) the Payment Services; (ii) this Agreement, including all acts, errors, negligence, or omissions of any of the Indemnified & Released Parties; (iii) the Lease; (iv) all Utility Contracts; and/or, (v) any action by the Landlord or any Utility Provider. The Franchisee Parties agree to give Franchisor immediate notice of any action, suit, proceeding, claim, demand, inquiry, or investigation. At the expense and risk of the Franchisee Parties, the Indemnified & Released Parties may elect to control (but under no circumstance is obligated to undertake), and associate counsel of their own choosing with respect to the defense and/or settlement of any such action, suit, proceeding, claim, demand, inquiry, or investigation.

Such an undertaking by the Indemnified & Released Parties shall in no manner or form diminish or negate the obligation of the Franchisee Parties to indemnify Franchisor and hold it harmless.

(b) In order to protect persons or property, its reputation for goodwill, or the reputation or goodwill of others, an Indemnified & Released Party may, at any time and without notice, at its sole discretion, consent or agree to settlements or take such other remedial or corrective action as it deems expedient with respect to any action, suit, proceeding, claim, demand, inquiry, or investigation if, in such Indemnified & Released Party's sole judgement, there are reasonable grounds to believe that (i) any of the acts or circumstances in this Section 9 have occurred or; (ii) any act, error or omission described in this Section 9 may result directly or indirectly in damage, injury; or harm to any person, property, or goodwill.

(c) All Losses and Expenses incurred under this Section 9 shall be chargeable to and paid by the Franchisee Parties pursuant to the Franchisee Parties' indemnification obligations under this Section 9, regardless of any action, activity, or defense undertaken by an Indemnified & Released Party or the subsequent success or failure of such action, activity, or defense.

(d) As used in this Section 9, the phrase "**Losses and Expenses**" shall include, without limitation, all losses; compensatory, exemplary, or punitive damages; fines; charges; costs; expenses; lost profits; legal fees; court costs; settlement amounts; judgments; compensation for damages to an Indemnified & Released Party's reputation and goodwill; costs of or resulting from delays; financing costs of advertising material and media time/space and costs of changing, substituting or replacing the same; and, any and all other such amounts in connection with this Agreement.

(e) Under no circumstances shall any Indemnified & Released Party be required to seek recovery from third parties or otherwise mitigate their losses to maintain a claim against any Franchisee Party. The Franchisee Parties agree that the failure to pursue such recovery or mitigate loss will in no way reduce the amounts recoverable from the Franchisee Parties by any Indemnified & Released Party.

(f) The Franchisee Parties expressly agree that the indemnification obligations under this Section 9 shall expressly survive the termination, expiration or assignment of this Agreement or any interest herein.

#### 10. **Limitation of Liability.**

(a) Franchisee's sole and exclusive remedy for a breach of this Agreement by Franchisor shall be the right to terminate this Agreement if Franchisor cannot cure such breach within thirty (30) days after written notice from Franchisee to Franchisor specifying the nature of such breach.

(b) FRANCHISOR SHALL NOT BE LIABLE TO FRANCHISEE, LANDLORD, OR UTILITY PROVIDER FOR ANY ACT, CLAIM, OR DAMAGES RESULTING FROM FRANCHISOR'S PERFORMANCE OF THE PAYMENT SERVICES. FURTHERMORE, IN NO EVENT SHALL FRANCHISOR BE LIABLE TO FRANCHISEE OR ANY THIRD-PARTY (INCLUDING LANDLORD OR UTILITY PROVIDER) FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, CONTINGENT, PUNITIVE, OR TORT DAMAGES (INCLUDING NEGLIGENCE); COSTS OF LITIGATION; LOSS OF PROFITS, DATA, BUSINESS, OR GOODWILL SUFFERED OR INCURRED BY FRANCHISEE OR ANY THIRD-PARTY (INCLUDING LANDLORD OR ANY UTILITY PROVIDER) THAT ARISE OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER FRANCHISOR WAS ADVISED



OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) IN NO EVENT SHALL FRANCHISOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO FRANCHISOR FOR PERFORMING THE PAYMENT SERVICES PURSUANT TO THIS AGREEMENT.

(d) This Section 10 shall survive expiration or termination of this Agreement.

11. **Release.** Franchisee and the other Franchisee Parties hereby release and forever discharge Franchisor and its parents, subsidiaries, related entities, shareholders, and affiliates, and each of their respective officers, directors, members, employees, agents, contractors, successors, assigns, heirs, and personal representatives (the "**Released Parties**") from any and all claims, demands, rights, and causes of action of any kind that any Franchisee Party now has or will have in the future, whether known or unknown, arising out of the Franchise Agreement, this Agreement, the Payment Services, or the relationship between Franchisor and Franchisee, including any claims or causes of action arising out of alleged misrepresentations, fraud, breaches of contract (based upon implied, express, estoppel, waiver, or alternative theories of contractual obligation), negligence, or breach of any alleged special, trust, agency, or fiduciary relationship (if any), whether asserted or proposed to be asserted by way of claim, set-off, affirmative defense, counterclaim, cross-claim, or third party claim. THIS RELEASE EXPRESSLY INCLUDES, BUT IS NOT LIMITED TO, ANY ACT OR OMISSION OF NEGLIGENCE, FRAUD, MISREPRESENTATIONS, BREACH OF FIDUCIARY DUTIES, BREACH OF WARRANTIES, BREACH OF CONTRACT, AND ANY EXTRA-CONTRACTUAL CLAIMS COMMITTED OR ALLEGEDLY COMMITTED BY THE RELEASED PARTIES, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS RELEASE IS INTENDED TO REQUIRE FRANCHISEE TO RELEASE CLAIMS WHICH CANNOT BE RELEASED PURSUANT TO AN APPLICABLE FRANCHISE LAW STATUTE. This Release shall survive termination of the Franchise Agreement and this Agreement, and is in addition to any other release or similar agreement in the Franchise Agreement or other agreement between Franchisor and Franchisee. With regard to any acts or omissions covered under this Release, Franchisee and the other Franchisee Parties agree not to commence any action, lawsuit, or legal proceeding, or file any charge or complaint with any federal, state, or local agency, against the Released Parties.

**CALIFORNIA FRANCHISEES ONLY:** The Franchisee Parties hereby expressly waive and relinquish all rights and benefits under Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." **California Franchisee Initial if Applicable** \_\_\_\_\_

12. **No Agency, Partnership, or Joint Venture Created.** Franchisee is an independent contractor, and nothing contained in this Agreement shall be construed as to create an agency, partnership, or joint venture between Franchisor and Franchisee; and Franchisee shall not have the authority or power to bind or commit Franchisor in any way whatsoever.

13. **Assignment.** If at any time during this Agreement, Franchisee sells or transfers its interests in the Franchise Agreement, the Lease, any Utility Contract, or the Franchised Restaurant, which sale or transfer may not be completed without Franchisor's prior written consent and must be completed in accordance with the terms of the Franchise Agreement, Franchisee shall also assign this Agreement to the

transferee. Notwithstanding the foregoing, Franchisee may not sell, transfer, or assign this Agreement or any of Franchisee's rights, duties, or obligations in this Agreement without Franchisor's prior written consent, which consent may be withheld, conditioned, or delayed in Franchisor's sole and absolute discretion.

14. **Incorporation of Other Terms.** Articles 22, 24, 25, 26, and 27 of the Franchise Agreement, entitled "Approvals, Waivers and Remedies," "Notices," "Entire Agreement, No Reliance on Representations Outside of This Agreement, and Waiver of Certain Claims," "Severability and Construction," and Applicable Law, Mediation, Arbitration, Court Actions," respectively, are incorporated by reference in this Agreement and will govern all aspects of this Agreement and the relationship of the Parties as if fully restated within the text of this Agreement.

15. **Approval.** This Agreement shall not become effective and binding upon Franchisor unless and until (i) this Agreement is executed by Franchisee and accepted by Franchisor as evidenced by the signature of one of Franchisor's representatives authorized to execute this Agreement; and, (ii) Franchisor receives (a) the Payment Services Acknowledgement executed by Landlord as required pursuant to Section 5, above.

16. **Binding Nature and Amendment.** This Agreement shall be binding in all respects upon the Parties and their respective current and former shareholders, affiliates, officers, directors, employees, agents, representatives, heirs, legatees, beneficiaries, successors, and assigns, and shall inure to the benefit of all of the same; provided, however, that nothing contained herein shall release the Parties from their obligations under this Agreement. No alterations or modifications to this Agreement shall be effective unless in writing and signed by duly authorized representatives of both Franchisor and Franchisee.

17. **Governing Law.** The terms and conditions of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflicts of law provisions.

18. **Severability.** If any provision, in whole or in part, of this Agreement is held by a court to be void, illegal, unenforceable or otherwise in conflict with the law governing this Agreement, such provision (or portion thereof) shall be deemed to be restated to reflect, as nearly as possible, the original intentions of the Parties in accordance with applicable law, and the remaining provisions, in whole or in part, of this Agreement shall continue in full force and effect.

19. **Counterparts and Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that all Parties are not signatory to the original or the same counterpart. Delivery of a signature by facsimile or electronic transmission of this Agreement will constitute a valid and binding execution and delivery of this Agreement, and such copy will constitute an enforceable original of this Agreement. This Agreement may be executed through the use of electronic signature, which the Parties acknowledge is a lawful means of obtaining signatures. The Parties agree that an electronic signature is the legal equivalent of a manual signature on this Agreement. The Parties further agree that the use of a keypad, mouse, or other device to select an item, button, icon or similar act/action, regarding any agreement, acknowledgment, consent terms, disclosure, or condition constitutes their valid signatures, acceptance, and agreement as if actually signed by the Parties in writing.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties hereto have executed and delivered this Agreement effective as of the Effective Date.

**FRANCHISEE:**

By: \_\_\_\_\_  
          «Franchisee Name»

**FRANCHISOR:**

**Virtual Brands, Inc.**

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

**EXHIBIT A**  
**LEASE AGREEMENT**

**Exhibit A**

Virtual Brands, Inc. – Wing Boss 2021 FDD (Payment Services Agreement)  
*ACTIVE 59483956v1*

**EXHIBIT B**  
**UTILITY PROVIDERS**

**Exhibit B**

**EXHIBIT C**

**ACH AUTHORIZATION FORM**

**AUTHORIZATION AGREEMENT FOR  
PREAUTHORIZED PAYMENTS  
(ACH DEBITS)**

COMPANY NAME:		TAX ID NO.
I (we) hereby authorize Virtual Brands, Inc., hereinafter called "Company", to initiate debit entries from my <input type="checkbox"/> Checking <input type="checkbox"/> Savings Account (check one) indicated below, and the depository named below, hereinafter called "Depository", to debit the same to such account		
DEPOSITORY NAME:		BRANCH:
STATE:	STATE:	ZIP CODE:
TRANSIT/ABA NO.	ACCOUNT NUMBER:	
This authority is to remain in full force and effect until Company has received notification from me (or either of us) of its termination in such time and in such manner as to afford Company and Depository a reasonable opportunity to act on it.		
NAME(S):		ID NO.:
SIGNED:		DATE:

Exhibit C

**EXHIBIT D**

**PAYMENT SERVICES ACKNOWLEDGMENT - LANDLORD**

This Payment Services Acknowledgement (this "Acknowledgment") is made and entered into as of \_\_\_\_\_, 20\_\_ by and among Virtual Brands, Inc., a Texas corporation ("Franchisor"), \_\_\_\_\_ ("Tenant/Operator") and \_\_\_\_\_, a \_\_\_\_\_ ("Landlord").

Recitals. Tenant/Operator and Landlord are parties to that certain lease agreement dated \_\_\_\_\_ (the "Lease") pursuant to which Tenant/Operator occupies the premises located at \_\_\_\_\_ for use and operation of a "Wing Boss" restaurant authorized under a Franchise Agreement between Franchisor and Tenant/Operator. Tenant/Operator has requested that Franchisor act as an intermediary to pay the monthly rent under the Lease to Landlord on Tenant/Operator's behalf (the "Payment Services"). Franchisor conditions its agreement to provide the Payment Services on the execution and delivery of this Acknowledgment by Landlord and Tenant/Operator.

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Lease requires that Tenant/Operator pay Landlord monthly rent (including base rent and any additional rent (as applicable)) in the amount of \$ \_\_\_\_\_ per month (the "Rent").
2. Landlord agrees to look solely to the Tenant/Operator and its guarantors for the Rent or other financial obligations owed to Landlord arising under the Lease.
3. Franchisor shall have no liability for any shortfall or overage in payments of the Rent made by Franchisor to Landlord, and Franchisor shall have no liability for any payment error when paying the Rent to Landlord.
4. Landlord and Tenant/Operator acknowledge that Franchisor's performance of the Payment Services does not make Franchisor a party to the Lease and performance of the Payment Services shall not create any liability for Franchisor under the Lease.
5. Franchisor is relying on Tenant/Operator to provide Franchisor with accurate and complete information, including without limitation, Landlord's payment instructions, to enable Franchisor to perform the Payment Services on Tenant/Operator's behalf, and Franchisor is not responsible for any error in the information provided by Tenant/Operator.
6. This Acknowledgment will supersede any conflicting terms of the Lease.

[Signatures on Following Page]

Exhibit D

**FRANCHISOR:**

**VIRTUAL BRANDS, INC.,**  
a Texas Corporation

By: \_\_\_\_\_  
Name: Jeff Gruber  
Title: Senior V.P. of Franchise Relations

**TENANT/OPERATOR:**

\_\_\_\_\_

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

**LANDLORD:**

\_\_\_\_\_

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

**Exhibit D**



**EXHIBIT R**

**LISTS OF CURRENT OUTLETS AND FRANCHISEES  
WHO LEFT THE SYSTEM AS OF MAY 31, 2021**

Ex. R

**LIST OF CURRENT OUTLETS AS OF MAY 31, 2021**

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Atul Chopra	521 S College Ave, Suite 9	Tempe	AZ	85281	(734)837-6285
James Turrin	12620 Day St, Suite E	Moreno Valley	CA	92553	(760) 686-9682
Hometown BBQ, LP	2353 E 12th Street	Oakland	CA	94601	(650) 302-8382
Hometown BBQ, LP	326 University Avenue	Palo Alto	CA	94301	(650) 302-8382
Lisa Weaver	42452 Bob Hope Dr, Suite 4	Rancho Mirage	CA	92270	(503) 209-2107
Hometown BBQ, LP	604 Fifth Avenue, Suite A and B	Redwood City	CA	94063	(650) 302-8382
Hometown BBQ, LP	680 Laurel Street	San Carlos	CA	94070	(650) 302-8382
Hometown BBQ, LP	590 Van Ness Ave	San Francisco	CA	94102	(650) 302-8382
Hometown BBQ, LP	949 Ruff Drive	San Jose	CA	95110	(650) 302-8382
Tseyang and Kalden, LLC	10230 E Arapahoe Rd	Centennial	CO	80112	(970) 401-3572
Robert C. Rusnak, Jr. and Ethan Daniel Riker	1466 Garden of the Gods Rd, Suite 160	Colorado Springs	CO	80907	(719) 522-3814
Robert C. Rusnak, Jr. and Ethan Daniel Riker	4146 Austin Bluffs Pkwy	Colorado Springs	CO	80918	(719) 522-3814
Robert C. Rusnak, Jr. and Ethan Daniel Riker	1252 Interquest Pkwy	Colorado Springs	CO	80920	(719) 522-3814
Ellis Restaurant Group, Inc.	2721 S College Ave	Fort Collins	CO	80525	(303) 906-3439
Hilarisey BBQ, LLC	1509 Wadsworth Blvd, Unit B	Lakewood	CO	80214	(720) 326-7210
Tseyang and Kalden, LLC	3140 S Wadsworth	Lakewood	CO	80227	(970) 401-3572
Ellis Restaurant Group, Inc.	104 E 29th St	Loveland	CO	80538	(303) 906-3439
Chauhan Enterprises, LLC	1388 International Speedway Dr., Suite 110	Daytona Beach	FL	32114	(407) 780-3961
Chauhan Enterprises, LLC	10341 W Colonial Dr, Suite 20	Ocoee	FL	34761	(407) 780-3961
Jerrod Wade Nichols	18 N Dollins Ave	Orlando	FL	32805	(407) 752-0658
Harpinder Chauhan	2955 Traverse Trail	The Villages	FL	32163	(407) 780-3961
Harpinder Chauhan	2653 Bruce B. Downs Blvd, Suite 101	Wesley Chapel	FL	33544	(407) 780-3961

Ex. R

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Robert Dunning	91 Westbank Expressway, Suite 114	Gretna	LA	70053	(504) 330-1141
Robert Dunning	6005 Jefferson Hwy	New Orleans	LA	70123	(504) 330-1141
Janet Jeczen	44741 Five Mile Rd	Plymouth	MI	48170	(586) 422-5941
Kalani Joseph Keoho, Sr.	1036 Lenoir Rhyne Blvd SE	Hickory	NC	28602	(910) 381-4333
Hometown BBQ, LP	333 W St Louis Ave	Las Vegas	NV	89102	(650) 302-8382
Rex Christy IV	8808 N SH146, Suite 150	Baytown	TX	77523	(713) 585-5467
Fernando Soto	501 N Industrial Blvd, Suite 100	Bedford	TX	76021	(972) 830-9475
Fernando Soto	5412 Blue Mound Rd	Fort Worth	TX	76106	(972) 830-9475
Frontier Traders, Inc.	3906 US Hwy 377 E	Granbury	TX	76048	(817) 829-0286
Fernando Soto	1858 Precinct Line Rd	Hurst	TX	76054	(972) 830-9475
The Catering Guy, LLC	101 S Third St	Mabank	TX	75147	(972) 345-6424
Fernando Soto	5209 Rufe Snow Dr	North Richland Hills	TX	76180	(972) 830-9475
Abid Masood	502 N. Interstate 35	Red Oak	TX	75154	(817) 829-0286
Fernando Soto	1224 N Hwy 377, Suite 221	Roanoke	TX	76262	(972) 830-9475
The Catering Guy, LLC	5701 President George Bush Hwy, Suite 110	Rowlett	TX	75089	(972) 345-6424
Abid Masood	415 Adams Dr, Suite 425	Weatherford	TX	76086	(817) 829-0286

Ex. R

**LIST OF FRANCHISEES WHO HAVE SIGNED FRANCHISE AGREEMENT BUT OUTLET  
NOT OPEN AS OF MAY 31, 2021**

<b>Store Number</b>	<b>Franchisee</b>	<b>City</b>	<b>State</b>	<b>Phone Number</b>
6091	Mike Stennett	Fayetteville	AR	(479) 283-4724
6089	Mike Stennett	Lowell	AR	(479) 283-4724
6090	Mike Stennett	Rogers	AR	(479) 283-4724
6096	Tyson Hampton	Scottsdale	AZ	(916) 949-3923
6083	Andrew Lee	Azusa	CA	(623) 375-2176
6110	Elton Anderson	Compton	CA	(310) 505-2039
6108	Jamie Bynum	Lancaster	CA	(661) 317-9631
6082	Andrew Lee	Pasadena	CA	(623) 375-2176
6015	Hometown BBQ, LP	San Francisco	CA	(650) 302-8382
6021	Hometown BBQ, LP	San Mateo	CA	(650) 302-8382
6071	Kevin Vuu	Whittier	CA	(626) 688-3338
6047	Johnathan Frederick	Lake Nona	FL	(831) 747-4925
6032	Robert Dunning	Chalmette	LA	(504) 330-1141
6033	Robert Dunning	Destrehan	LA	(504) 330-1141
6031	Robert Dunning	LaPlace (Food Truck)	LA	(504) 330-1141
6095	Donald Gillett	Perrysburg	OH	(567) 207-7497
6005	Gene Gregory	Norman	OK	(972) 762-4700
6026	EZ Market of Dallas, Inc.	Hillsboro	TX	(817) 829-0286
6107	Greg Cox	Lewisville	TX	(214) 205-1414

Ex. R

**LIST OF FRANCHISEES WITH TERMINATED, CANCELLED, NON-RENEWED, OR TRANSFERRED OUTLETS AND FRANCHISEES WHO CEASED TO DO BUSINESS OR HAVE NOT RECENTLY COMMUNICATED WITH FRANCHISOR AS OF MAY 31, 2021**

<b>Location</b>	<b>Franchisee</b>	<b>Phone Number</b>
Orlando, FL <sup>1</sup>	Jerrod Wade Nichols	(407) 752-0658
The Villages, FL	Johnathan Frederick	(831) 747-4925
Wesley Chapel, FL	Johnathan Frederick	(831) 747-4925

<sup>1</sup> Indicates a franchise whose outlet closed, or who otherwise left the system, after May 31, 2021.

Ex. R

## STATE EFFECTIVE DATES

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the states, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration, as of the Effective Date stated below:

California	Effective Date:	_____
Hawaii	Effective Date:	_____
Illinois	Effective Date:	_____
Indiana	Effective Date:	_____
Maryland	Effective Date:	_____
Michigan	Effective Date:	_____
Minnesota	Effective Date:	_____
New York	Effective Date:	_____
North Dakota	Effective Date:	_____
Rhode Island	Effective Date:	_____
South Dakota	Effective Date:	_____
Virginia	Effective Date:	_____
Washington	Effective Date:	_____
Wisconsin	Effective Date:	_____

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

## RECEIPT OF FRANCHISE DISCLOSURE DOCUMENT

This Disclosure Document summarizes certain provisions of the Franchise Agreement, Development Agreement and other information in plain English. Read this Disclosure Document and all agreements carefully.

If Virtual Brands, Inc. offers you a franchise, we must provide this Disclosure Document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York, Iowa and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Virtual Brands, Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and you should report it to the Federal Trade Commission, Washington, D.C. 20580, and the applicable state agency listed on **Exhibit D** to this Franchise Disclosure Document.

Virtual Brands, Inc. is located at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287. Its telephone number is 972.248.9899. The franchise sellers for this offering are \_\_\_\_\_, at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287, 972.248.9899; and \_\_\_\_\_.

Virtual Brands, Inc. has authorized the persons listed on **Exhibit E** to this Disclosure Document to receive service of process for us in Texas and states where our franchise is registered.

Issuance date: October 4, 2021

I have received Virtual Brands, Inc.'s Disclosure Document, dated October 4, 2021 (or the later date set forth for each applicable state on the state cover page to this Franchise Disclosure Document), which includes the following exhibits:

- |  |  |
|--|--|
| EXHIBIT A – Franchise Agreement including ACH Authorization, Franchisee Questionnaire, Consent and Release for Training, State Addenda and Lease Rider | EXHIBIT I – Financial Statements   |
| EXHIBIT B – Development Agreement and State Addenda  | EXHIBIT J – Non-Traditional Venue Addendum   |
| EXHIBIT C – General Release  | EXHIBIT K – Mobile Unit Rider  |
| EXHIBIT D – State Franchise Regulatory Authorities   | EXHIBIT L - Delivery-Carryout Venue Addendum   |
| EXHIBIT E – Agents for Service of Process  | EXHIBIT M - Ghost Kitchen Addendum   |
| EXHIBIT F – State Addenda to Disclosure Document   | EXHIBIT N - Co-Brand Addendum  |
| EXHIBIT G – Form of Non-Disclosure Agreement for Prospective Franchisees   | EXHIBIT O- Smokestack Customer Agreement   |
| EXHIBIT H – Management Confidentiality and Non-Competition Agreement   | EXHIBIT P - Spark On-Line Services User Agreement  |
|  | EXHIBIT Q - Payment Services Agreement   |
|  | EXHIBIT R - List of Current Outlets and Franchisees Who Left the System as of May 31, 2021 |

\_\_\_\_\_  
Date of Signature  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee  
Print Name: \_\_\_\_\_

(for the prospective franchisee and any corporation, partnership or other business entity having or proposed to have an interest in the franchise or any proposed franchised location)

You may return the signed receipt either by signing, dating, and mailing it to Virtual Brands, Inc. at 18583 N. Dallas Parkway, Suite 120, Dallas, Texas 75287 or by faxing a copy of the signed and dated receipt to Virtual Brands, Inc. at 972-248-8667.

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\_\_\_\_\_  
Date of Signature  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee  
Print Name: \_\_\_\_\_  
(for the prospective franchisee and any corporation, partnership or other business entity having or proposed to have an interest in the franchise or any proposed franchised location)

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