MEMORANDUM

TO: Dwight Shelton  
   VP for Finance and Chief Financial Officer

FROM: Trisha Wilson  
      Buyer Senior

SUBJECT: Contractor: Jamba Juice Company  
          Commodity/Service: Restaurant

The Jamba Juice Franchise Agreement has been approved by University Legal Counsel and is ready for signature. The amount of this contract will exceed $1,000,000 annually.

Jamba Juice is planned for the Academic and Student Affairs Building that is scheduled to open in August 2012.

Thank you for your attention to this matter.

Attachment
FIRST ADDENDUM TO FRANCHISE AGREEMENT (UNIVERSITIES)

THIS FIRST ADDENDUM TO JAMBA JUICE FRANCHISE AGREEMENT ("Addendum") is entered into effective as of __________, 2012 by and between Jamba Juice Company, a California corporation ("Company"), and Virginia Polytechnic Institute and State University ("Franchisee" or "Virginia Tech").

WITNESSETH

WHEREAS, contemporaneous with the execution of this Addendum, Franchisee is entering into a Franchise Agreement (the "Franchise Agreement") for the operation of a Jamba Juice Store located on the campus of Virginia Tech, (the "University") in Lavery Hall, Blacksburg, Virginia 24061 (the "Store"); and

WHEREAS, the parties desire to amend the Franchise Agreement as set forth in this Addendum.

AGREEMENT

NOW THEREFORE, with the intent of being legally bound hereby, in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable consideration, which the parties acknowledge is sufficient to create a legally binding agreement, the parties agree as follows:

1. Virginia Modifications. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, Item 17.h. of the Franchise Disclosure Document for Jamba Juice Company is supplemented by the following:

   "Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the franchise agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

   Pursuant to Section 13.1-354 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the franchise agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable."

2. Definitions. The term "Affiliate" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Development Agreement" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "District Manager" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Heirs" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Lease" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Managing Owner" shall not apply to the Franchise Agreement and all references thereto, including Sections 7.2.1 and 7.2.3 of the Franchise Agreement, are hereby deleted. The term "Net Sales" shall be amended to delete "(d) sales from vending devices including pay telephones;" from the definition. The term "Owner"
shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Partner" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Partnership Rights" shall not apply to the Franchise Agreement and all references thereto are hereby deleted. The term "Premises" shall mean only the interior portion of the Location occupied by the Store, and expressly excludes the exterior of the Location and the exterior and interior of any ancillary hallways, common areas, buildings, or other structures of Franchisee.

3. Restrictions. Company acknowledges that Franchisee operates food concepts with many franchises and Franchisee-owned food operations and sells a large variety of foods and drinks. Nothing herein shall limit Franchisee's right to operate other eating or drinking establishments at the Location, provided, however, that Franchisee shall not operate or permit others to operate at the Location any other juice bar or restaurant offering blended to order fruit smoothies or squeezed to order juices during the Term of this Franchise Agreement.

4. Amendment to Renewal Fee. Section 3.2 of the Franchise Agreement is deleted in its entirety and replaced by the following:

Subject to the conditions contained in Sections 3.3 and 3.4, at the expiration of the Term, Franchisee shall have the right (the "Renewal Right") to renew the Franchise Agreement for a 5-year period (a "Renewal Term"). The Renewal Term shall commence upon the date of expiration of the Initial Term. When Franchisee exercises its Renewal Right, Franchisee shall pay a sum equal to $2,500 (Two Thousand Five Hundred Dollars).

5. Marketing Program Contribution. Section 4.3 of the Franchise Agreement is hereby deleted, because Franchisee's Marketing Contribution is 0%.

6. Other Payments. Section 4.4.2 of the Franchise Agreement shall be revised by deletion of the last sentence thereto.

7. Application of Funds; Manner of Payment. Section 4.5.1 of the Franchise Agreement is hereby deleted. Company agrees that Franchisee may initiate its payment through the standard Franchisee form of payment so long as such payment is made no later than provided in Section 4.5 of the Franchise Agreement. Reference to the ACH system and to a valid credit card as a method of payment by Franchisee is hereby deleted.

8. Interest and Charges for Late Payments. Section 4.6 of the Franchise Agreement is deleted in its entirety and replaced by the following:

If Franchisee shall fail to pay to Company or the Fund, as applicable, the entire amount of the Continuing Royalty and all other sums owed to Company within seven (7) days of when due, Franchisee shall pay to Company or the Fund, in addition to all other amounts which are due but unpaid, interest on the unpaid amounts, from the due date thereof, at the rate of 1.5% per month, or the highest rate allowable under Applicable Law, whichever is less. If any check or draft, electronic or otherwise, is unpaid because of insufficient funds or otherwise, then Franchisee shall pay Company’s bank fees in the amount of $30.00 per occurrence and any other related expenses incurred by Company arising from such non-payment, such other related expenses not to exceed $50 per day until payment is received.

9. Guaranty. Section 4.7 of the Franchise Agreement is hereby deleted.
10. **Lease.** Sections 5.3 and 15.1.5(i) of the Franchise Agreement (calling for Franchisee to assign its lease to Company) are hereby deleted.

11. **Construction.** Notwithstanding anything to the contrary in Section 5.4.1 of the Franchise Agreement, Company acknowledges that Franchisee has already engaged the services of an architect, and Company has no objections to Franchisee’s use of such architect for purposes of Section 5.4 of the Franchise Agreement. Company acknowledges that Franchisee has commenced construction and agrees that Construction Approval need not occur before commencement of construction. The first sentence of Section 5.4.2 of the Franchise Agreement is hereby amended to say “After commencement of construction, Franchisee shall submit on a commercially reasonable recurring basis to Company digital photographs and schedule updates depicting the progress of the construction of the Store in a commercially reasonable manner and format.” Company will obtain Franchisee’s approval of the date and time of planned inspections pursuant to Section 5.4.2 of the Franchise Agreement. The last sentence of Section 5.4.2 of the Franchise Agreement is hereby deleted. Section 5.4.7 of the Franchise Agreement is hereby deleted and replaced with the following:

5.4.7 Franchisee agrees to be responsible for any and all claims and damages that directly result from the negligent acts or omissions of the Franchisee, its employees or agents, to the extent allowed by the laws of the Commonwealth of Virginia.

12. **Maintaining and Remodeling of Store.** Since the Term of the Franchise Agreement is five (5) years, Section 5.5.2 of the Franchise Agreement shall be deleted. Section 5.4.4 is deleted in its entirety and replaced by the following:

If the Store is damaged or destroyed by fire or any other casualty, Franchisee, within 30 days thereof, shall initiate such repairs or reconstruction, and thereafter in good faith and with due diligence continue (until completion) such repairs or reconstruction, in order to restore the Premises of the Store to its original condition prior to such casualty. If, in the Franchisee’s reasonable judgment, the damage or destruction is of such a nature or to such extent that it is feasible for Franchisee to repair or reconstruct the Premises and the Store in conformance with the then standard "JAMBA JUICE®" decor specifications, the Franchisee will repair or reconstruct the Premises and Store in conformance with the then standard System decor specifications.

13. **Start-Up Training.** Since the Franchise Agreement will not be executed pursuant to a Development Agreement, Section 6.1.1 is hereby deleted in its entirety.

14. **Initial Training Program.** Section 6.2.1 is hereby amended by the addition of the following: “Should Franchisee, with Company’s approval, not use the Company’s system standard Aloha Point of Sale system for the Store, then the Initial Training Program shall consist of approximately 3 to 4 weeks.”

15. **Opening Assistance.** Section 6.4 is hereby deleted in its entirety and replaced with the following:
Company shall, in its sole discretion, and upon the request of Franchisee, furnish to Franchisee one or more persons experienced in the System to assist Franchisee in conjunction with, and prior to, the opening and initial operations of the Franchisee’s Store. Franchisee shall reimburse Company for all of its reasonable out-of-pocket expenses including wages (including a reasonable estimate of the cost of associated benefits), transportation, lodging, and food, for such person or persons. Franchisee shall not be required to reimburse Company for travel expenses that exceed the maximum amount allowable under Commonwealth of Virginia travel regulations applicable to state employees.

16. POS System. Company and Franchisee acknowledge and agree that Section 7.3 of the Franchise Agreement entitled “POS System” is deleted in its entirety, and the following is inserted in lieu thereof:

7.3 POS System. Franchisee shall use and maintain the point of sale cash collection system (the “POS System”) that is provided at the Client’s Premises. The parties agree that any and all point of sale systems or software that Franchisee uses will be compliant with such standards as the Payment Card Industry (“PCI”) data security standards and the Payment Application Data Security Standards. Franchisee shall ensure that the POS System is maintained. The maintenance shall include, but not be limited to, adding new Authorized Products, removing products, promotions, and pricing. Franchisee shall provide daily sales information, on a weekly basis, upon the request of Company in a mutually agreeable form. Subject to the limitations of its common register and point of sale equipment, Franchisee shall accept debit cards, credit cards, or other student/employee meal plan cards to enable customers to purchase Authorized Products via such procedure.

17. Hours. Notwithstanding Section 7.5 of the Franchise Agreement, Franchisee’s hours shall conform to the schedule of operations specified by the University, which are currently between 9:00 a.m. and 7:00 p.m. Monday - Friday during the academic year which will exclude Franchisee’s summer semester.

18. Uniforms and Employee Appearance. In accordance with Section 7.12 of the Franchise Agreement, the Company hereby consents to Franchisee’s employees working in other businesses owned or operated by Franchisee.

19. Co-Branding. In accordance with Section 7.14.1 of the Franchise Agreement, the Company hereby consents to Franchisee selling bottled and pre-packaged fresh squeezed juices within the Location but outside of the Premises.

20. Computer Systems and Specified Software. Sections 7.15.2, 7.15.3, 7.15.4 and 7.15.6 of the Franchise Agreement are hereby deleted.

21. Advertising. Company acknowledges that under Section 8.1 of the Franchise Agreement, Franchisee shall have no obligation to advertise. In the event Franchisee elects to advertise, it will abide by all requirements of this section except for any requirement to advertise in geographic coverage outside of Franchisee’s campus community.

22. Co-op Advertising. Section 8.2 of the Franchise Agreement, calling for Franchisee to participate in regional co-operative advertising, is not applicable.

23. Marketing Program. Section 8.3 of the Franchise Agreement is hereby deleted.
since Franchisee does not pay a Marketing Program Contribution.

24. **Promotional Campaigns.** The last sentence of Section 8.5 of the Franchise Agreement is hereby deleted.

25. **General Reporting.** Notwithstanding anything to the contrary set forth in Section 10.1 of the Franchise Agreement, Franchisee shall make reasonable efforts to submit monthly statistical control forms and such other financial, operational and statistical information as the Company may require, including information required by Section 10.1.2, but need not comply with Sections 10.0.1, 10.1.3 and 10.1.4 of the Franchise Agreement.

26. **Customer Lists.** Notwithstanding anything to the contrary set forth in Section 10.4 of the Franchise Agreement, Company acknowledges that many privacy restrictions, including the Family Educational Rights and Privacy Act, apply to Franchisee as a nonprofit educational institution. Franchisee shall not be required to secure the names and addresses of its customers.

27. **Non-Competition.** Upon expiration, termination or non-renewal of the Agreement, Franchisee or its Assignor may open a concept that competes with the Business of the Store prior to the expiration of such two-year period, provided, however that under no circumstances, before or after the lapse of such two-year period, shall Franchisee or any Assignor be permitted to use Company Trade Secrets, including recipes, know-how or other confidential and proprietary information, in the conduct of such business.

28. **New Developments.** Section 12.7 of the Franchise Agreement is hereby deleted and replaced with the following:

12.7 **New Developments.** Title and ownership of any invention or discovery, whether or not copyrighted, patented or patentable, or otherwise, created solely by the Company shall remain with the Company. Title and ownership of any invention or discovery, whether or not copyrighted, patented or patentable, or otherwise, created solely by Franchisee shall remain with Franchisee. Title and ownership of any invention or discovery created jointly by the Company and Franchisee shall be owned jointly.

29. **Lease. Assignment, Death or Incapacity.** Section 14.3.2 of the Franchise Agreement is hereby deleted and replaced with the following:

14.3.2 **Assignment, Death or Incapacity.** If Franchisee shall purport to sell, assign, transfer or encumber in whole or in part this Agreement, the Store, or any substantial portion of its assets, or the stock or other ownership interest in Franchisee in violation of Section 13.2; provided, however, that on written request and on condition that the Store continue to be operated on conformity with this Agreement.

30. **Telephone Numbers.** Section 15.1.5(iii) of the Franchise Agreement (calling for Franchisee to assign its telephone number(s) to Company) shall be deleted.

31. **Insurance.** Sections 16.1.1, 16.1.2, 16.2, and 16.3 are deleted in their entirety and replaced with the following (except that sentence "In the event of damage to the Store covered by insurance, the proceeds of any such insurance shall be used to restore the Store to its original condition as soon as possible, unless such restoration is prohibited by the Location lease or Company has otherwise consented to in writing" in Section 16.2 shall not be deleted):
16.1 **Insurance.** Franchisee shall obtain and maintain, at its own cost and expense, commercial general liability insurance and umbrella liability insurance with the following coverage and limits: $1,000,000 per occurrence and $2,000,000 in the aggregate. Under the provisions of this Section, Franchisee may choose to self-insure. Franchisee may elect to assume, insure or maintain a plan of self-insurance with respect to the coverage required to be carried by Franchisee under this Agreement, so long as Franchisee as Franchisee delivers to Company upon request (i) a certificate by an authorized officer of Franchisee (and, upon request, reasonable evidence) confirming that Franchisee has in place a self-insurance program which is adequately funded and capitalized based upon a reasonable actuarial analysis of the risks covered by such self-insurance program, and (ii) a certificate by an authorized officer of Franchisee stating that Franchisee is the insurer for all purposes under this Agreement as to each particular risk and coverage under the self-insurance plan. No plan of self-insurance provided hereunder shall diminish the right or privileges to which Company is otherwise entitled under the terms of the Agreement, if there were a third-party insurer, including, without limitation, any release from liability as set forth in this Agreement. If Franchisee ceases to maintain a plan of self-insurance with respect to any risk for which this Agreement requires insurance or if at any time it is determined that Franchisee’s self-insurance program is not adequately funded and capitalized as referenced in clause (i) above, Franchisee shall promptly give notice thereof to Company and shall immediately comply with the provisions of this Agreement relating to the policies of insurance required. The right to self-insurance is personal to the named Franchisee hereunder. If Franchisee elects to self-insure, Franchisee in its capacity as insurer shall be treated in the same manner as an independent third-party insurer would be treated, and shall not be entitled to the benefit of any waivers or limitations applicable to Franchisee in its capacity as a party under this Agreement. Franchisee shall be deemed to have self-insured the deductible amount under any policy of insurance required to be carried by Franchisee under the terms of this Agreement. In the event of any loss as to which a deductible applies, Franchisee shall be deemed to have received insurance proceeds in the amount of such deductible.

32. **Indemnity.** Section 17.2.1 of the Franchise Agreement is hereby deleted and replaced with the following:

17.2.1 Franchisee agrees to be responsible for any and all claims and damages that directly result from the negligent acts or omissions of the Franchisee, its employees or agents, to the extent allowed by the laws of the Commonwealth of Virginia.

33. **Mediation.** A new Section 18.5 is added to the Franchise Agreement, which reads as follows:

18.5 **Mediation.** Before either party may initiate any litigation proceeding, the parties pledge to attempt first to resolve the controversy or claim arising out of or relating to this Agreement ("Dispute") pursuant to mediation conducted in accordance with the Commercial Mediation Rules of the American Arbitration.
Association unless the parties agree on alternative rules and a mediator within 15 days after either party first gives notice of mediation. The fees and expenses of the mediator shall be shared equally by the parties. The mediator shall be disqualified as a witness, expert or counsel for any party with respect to the Dispute and any related matter. Mediation is a compromise negotiation and shall constitute privileged communications under Applicable Laws. To the extent permitted by law, the entire mediation process shall be confidential and the conduct, statements, promises, offers, views and opinions of the mediator and the parties shall not be discoverable or admissible in any legal proceeding for any purpose; provided, however, that evidence which is otherwise discoverable or admissible shall not be excluded from discovery or admission as a result of its use in the mediation.

34. Joint and Several Liability. Since Franchisee does not consist of more than one person or entity, or a combination thereof, Section 19.6 is hereby deleted.

35. Governing Law. Section 19.7 is hereby deleted.

36. Entire Agreement. Section 19.8 of the Franchise Agreement is hereby amended to provide that this Addendum and Franchisee’s Request for Proposal number 0003251, dated January 30, 2008, and all exhibits thereto (the “RFP”) as set forth in Exhibit A attached hereto, shall be deemed fully incorporated in the Franchise Agreement to which this Addendum is attached, and this Addendum, the RFP, and the Franchise Agreement shall collectively be referred to as the “Agreement.” All terms shall, unless expressly provided to the contrary herein, have the same respective meanings as set forth in the Franchise Agreement. Unless expressly provided to the contrary herein, to the extent that any provision of this Addendum conflicts with any provision of the Franchise Agreement, this Addendum shall control. All other provisions of the Franchise Agreement shall remain in full force and effect, including any portion of any section modified in this Addendum which is not inconsistent with the changes set forth herein.

37. Organization, Ownership and Financial Matters. Since Franchisee is not a Business Entity, Sections 21.5, 21.6 and 21.7 of the Franchise Agreement are hereby deleted.

38. Severability. If any provision of this Addendum shall be deemed for any reason to be invalid, illegal or unenforceable, such provision shall be severed from the remainder of this Addendum, and that remainder shall continue in full force and effect.

(Signature Page Follows)
IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first above written.

“Company”
JAMBA JUICE COMPANY
a California corporation

By: ____________________________
Its: ____________________________

“Franchisee”
VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

By: ____________________________
Its: ____________________________

#1262 – Virginia Polytechnic Institute and State University First Addendum to Franchise Agreement
Request for Proposal #0003251

for

Restaurant Concepts

for a New Dining Facility

January 30, 2008
**RFP 0003251**

**GENERAL INFORMATION FORM**

**QUESTIONS:** All inquiries for information regarding this solicitation should be directed to: Trisha Wilson, Phone: (540) 231-7402, e-mail: wilsont@vt.edu.

**DUE DATE:** Sealed Proposals will be received until March 12, 2008 at 3:00 PM. Failure to submit proposals to the correct location by the designated date and hour will result in disqualification.

**ADDRESS:** Proposals should be mailed or hand delivered to: Virginia Polytechnic Institute And State University (Virginia Tech), Purchasing Department (0333), 270 Southgate Center, Blacksburg, Virginia 24061. Reference the Opening Date and Hour, and RFP Number in the lower left corner of the return envelope or package.

In compliance with this Request For Proposal and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal and as mutually agreed upon by subsequent negotiation.

**PRE-PROPOSAL CONFERENCE:** See Section IX for information regarding a pre-proposal conference.

**TYPE OF BUSINESS:** (Please check all applicable classifications)

- [ ] Large

- [ ] Small business – An independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less averaged over the previous three years. Department of Minority Business Enterprise (DMBE) certified women-owned and minority-owned business shall also be considered small business when they have received DMBE small business certification.

- [ ] Women-owned business – A business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

- [ ] Minority-owned business – A business concern that is at least 51% owned by one or more minority individuals (see Section 2.2-1401, Code of Virginia) or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals

**COMPANY INFORMATION/SIGNATURE:** In compliance with this Request For Proposal and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal and as mutually agreed upon by subsequent negotiation.

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I. PURPOSE:
The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract or contracts through competitive negotiations for a brand name recognizable, restaurant or restaurant concepts in a new dining facility, existing facilities (i.e. Owens Food Court and Hokie Grill), or other locations to be negotiated by Virginia Polytechnic Institute and State University (Virginia Tech), an agency of the Commonwealth of Virginia.

II. CONTRACT PERIOD:
The term of this contract is for five years or as negotiated. There will be an option for renewals.

III. BACKGROUND:
From a meager beginning in October of 1872, Virginia Polytechnic Institute and State University, popularly known as Virginia Tech, has evolved into a comprehensive university of national and international prominence. As Virginia’s largest university with 26,000 full time students and one of the top 50 research institutions in the nation, it is an institution that firmly embraces a history of putting knowledge to work. That tradition is rooted in our motto, Ut Prosim: “That I May Serve,” and our land-grant missions of institution, research, and solving the problems of society and through public service and outreach activities. Virginia Tech is located in the town of Blacksburg, Virginia. Blacksburg is located in Southwestern Virginia, just off Interstate 81, about 45 minutes from Roanoke, Virginia, four hours from Washington, D.C. and Richmond, Virginia, and three hours from Charlotte, North Carolina.

Virginia Tech operates on a semester system, with Fall Semester running August to December, and Spring Semester running January to May. There are also two six-week summer sessions, the first running May to June/July, and the second running June/July to August. Approximately 9,100 students live on campus. Collectively, summer school enrollment averages about 5,800 students. Approximately 7,000 faculty and staff are employed by Virginia Tech.

The main dining options for students are provided by Virginia Tech's Dining Services. Dining Services is a division of the Department of Housing and Dining Services, a major unit within the Division of Student Programs. Virginia Tech has built a reputation for outstanding dining. Our dining program stays at the leading edge of national trends, and our food was ranked number one in the country in The Princeton Review's most recent college rankings publication. Customers report high overall satisfaction and appreciate the variety of dining options available on campus. Recent customer comments such as “I brag about our food service to my friends and family” illustrate that the Virginia Tech students share our pride in the dining program.

Dining Services encompasses a wide-ranging foodservice system and serves approximately 5.2 million meals per year, and has on campus sales of $34.1 million per year. The current National Brands annual gross sales are over $6.7 million. Dining Services has more than 17,000 student debit-style dining plan that can be used in any of the dining centers.

Dining Services currently operates six cash operations, two board operations and a single catering operation. Board operations are all-you-care to-eat/pay-one-price services. Cash operations are a la carte and include: Owens Food Court (Owens), The Hokie Grill and Company (Owens), West End Market (Cochrane), Deet's Place (Dietrick), Squires Food Court (Squires) and Graduate Life Center (Donaldson Brown). The board units are: D2 (Dietrick) and Shultz Dining Hall (Shultz). Additionally, snack bar-type operations exist at the Virginia-Maryland Regional College of Veterinary Medicine, on the ground floor of Dietrick Dining Hall (DXpress), and Shultz Express on the second-floor of Shultz.

Current national brands offered by Virginia Tech Dining Services in Owens Hall are: Chick-fil-A, Pizza Hut, Freshens Yogurt and Cinnabon.


Sales for the franchise operated by Dining Services at Virginia Tech are as follows: Au Bon Pain, $3.5 million; Sbarro’s $1 million; Chick-fil-A, $1.2 million; Pizza Hut, $800,000.00; Cinnabon $183,154.00. Au Bon Pain is operated for a full calendar year. Sbarro is operated for 35 weeks. The last three franchises operate five days a week only during the academic school year (32 weeks).
G. Burke Johnston Student Center consists of one franchise operation: Burger King. Sales for the franchise operated by University Unions and Student Activities (UUSA) are $525,000 per year. Burger King operates five days a week only during the academic school year (32 weeks).

A campus map with building locations is shown as Attachment D. Construction on a new multipurpose facility is scheduled to start in 2009 and is scheduled to open in the summer of 2011. This building will be centrally located in the academic heart of campus. It will have approximately 35,000 square feet of space for dining services on two floors. This will be the first major dining facility on the academic side of campus; therefore, it will have a new customer base with increased faculty, staff and commuter traffic. It will be conveniently located close to commuter parking lots and to the bus route that services campus and the Blacksburg community.

Dining Services is looking at a variety of options with different menu and service styles available to suit the diverse needs of the campus community. Dining Services plans to enter into a license agreement for a maximum of ten brands in individual spaces for the new dining facility, located on two floors. The new facility will have 5,880 square feet for the servery venues and more than 8,900 square feet of seating area indoors and outdoors, with a capacity over 550 seats. The new facility is also projected to fill the gap for a large take out style population. The new facility will have an additional back-of-house area which includes more than 6,000 square feet of service, kitchen, storage, and office space. The actual number of licensed brands will be determined after reviewing and analyzing several sets of information: Customer Food Preference Survey, replies to this RFP, commission/royalty structure and square footage required by the respondents to this RFP.

The new dining facility and other locations will accept Dining Plans i.e., Flex dollars, and Dining dollars, as well as cash and Hokie Passport dollars. The pool of Flex dollars and Dining dollars available on campus equates to approximately $30 million in retail buying power.

Virginia Tech has entered into an Education Sponsorship Agreement with The Coca-Cola Company and Coca-Cola Bottling Co. Consolidated. Accordingly, any contract or contracts resulting from this solicitation that includes beverage sales as the concept or part of the concept, will require that the contractor only serve Coke products (except for hot coffee or hot tea) in approved cups and will not sell, serve, distribute, sample, advertise or promote (on a brand or generic basis) any competitive products. The agreement runs through December 31, 2011 and contains a provision for a possible extension through May 31, 2012.

IV. EVA BUSINESS-TO-GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM:

The eVA Internet electronic procurement solution streamlines and automates government purchasing activities within the Commonwealth of Virginia. Virginia Tech, and other state agencies and institutions, have been directed by the Governor to maximize the use of this system in the procurement of goods and services. We are, therefore, requesting that your firm register as a trading partner within the eVA system.

There are registration fees and transaction fees involved with the use of eVA. These fees must be considered in the provision of quotes, bids and price proposals offered to Virginia Tech. Failure to register within the eVA system may result in the quote, bid or proposal from your firm being rejected and the award made to another vendor who is registered in the eVA system.

Registration in the eVA system is accomplished on-line. Your firm must provide the necessary information. Please visit the eVA website portal at www.eva.state.va.us and complete the Ariba Commerce Services Network registration. This process needs to be completed before Virginia Tech can issue your firm a Purchase Order or contract. If your company conducts business from multiple geographic locations, please register these locations in your initial registration.

For registration and technical assistance, reference the eVA website at: eVAcustomercare@dgs.virginia.gov, or call 866-289-7367.

V. CONTRACT PARTICIPATION:

It is the intent of this solicitation and resulting contract to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institutions, or Virginia Tech's affiliated corporations may access any resulting contract if authorized by the contractor.
Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor, the resultant contract may be extended to the entities indicated above to purchase at contract prices in accordance with contract terms. The Contractor shall notify Virginia Tech in writing of any such entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor will provide semi-annual usage reports for all entities accessing the Contract. Participating entities shall place their own orders directly with the Contractor and shall fully and independently administer their use of the contract to include contractual disputes, invoicing and payments without direct administration from Virginia Tech. Virginia Tech shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that Virginia Tech is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

VI. STATEMENT OF NEEDS

Virginia Tech needs the services of a Contractor to:

A. Provide the means to establish, and facilitate the operation of a brand name, recognizable restaurant or restaurant concepts in Virginia Tech’s new dining facility. The contractor should supply their standards, methods, procedures, trade secrets, and proprietary trademarks in order to provide Virginia Tech’s students, faculty, staff and guests with high quality service. The desired type of arrangement is a license or franchise agreement.

B. Assist Virginia Tech with the design of the floor plan, kitchen layout and construction documents specific to the individual franchise.

C. Assist Virginia Tech with the selection, purchase and installation of required equipment. The contractor shall provide equipment specifications and drawings showing all equipment locations with dimensions, and all associated plumbing, electrical and HVAC systems.

D. Suggest structural modifications. If approved, structural modifications will be made by Virginia Tech.

F. Offer advertising to inform the community about the restaurant, which is subject to the approval of Virginia Tech. With the exception of advertisements directly related to the services offered and the location, the Contractor agrees not to advertise any connection with Virginia Tech, its Board, or agency thereof, nor make use of Virginia Tech’s name or other identifying marks or property, nor make representation, either expressed or implied, as to Virginia Tech’s promotion or endorsement of the Contractor’s operations without prior written permission from Virginia Tech.

G. The new facility will start providing service by August 19, 2011 which is the beginning of Virginia Tech’s fall semester in 2011. Other existing building locations could require services be provided as soon as 2008.

VII. PROPOSAL PREPARATION AND SUBMISSION:

A. General Requirements

1. RFP Response: In order to be considered for selection, Offerors must submit a complete response to this RFP. One original and four copies of each proposal must be submitted to:

   Virginia Tech
   Purchasing Department (0333)
   270 Southgate Center
   Blacksburg, VA 24061

   Reference the Opening Date and Hour, and RFP Number in the lower left hand corner of the return envelope or package.
No other distribution of the proposals shall be made by the Offeror.

2. Proposal Preparation

a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in Virginia Tech requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by Virginia Tech at its discretion. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

b. Proposals should be prepared simply and economically providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

d. Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.

e. Ownership of all data, material and documentation originated and prepared for Virginia Tech pursuant to the RFP shall belong exclusively to Virginia Tech and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, to prevent disclosure the Offeror must invoke the protections of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other materials is submitted. The written request must specifically identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to Virginia Tech. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal but will in no way change the original proposal. Virginia Tech will schedule the time and location of these presentations. Oral presentations are an option of Virginia Tech and may not be conducted. Therefore, proposals should be complete.

B. Specific Requirements

Proposals should be as thorough and detailed as possible so that Virginia Tech may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following information/items as a complete proposal:

1. Type of Service(s) per Store Front:

   a. Describe the varieties of food to be provided. Include sample menus, food cycles, current portion size and nutritional information. Also, please complete Attachment C.
b. Provide the proposed selling prices. Discuss the leverage Virginia Tech has in setting and changing prices.

c. Discuss the manner of food presentation. Include ordering, packaging delivery, etc.

d. Discuss the willingness to allow an on-campus delivery service and off site production.

e. Describe the license agreement offered. The Offeror should submit a sample license agreement including terms and conditions.

f. Discuss how contract renewals would occur.

g. Provide information on delivery agent; name of company, location, number of deliveries per week, length of truck, drayage cost per case and any special requirements.

2. Expenses to Virginia Tech per Store Front

a. Provide a listing of the fees paid by Virginia Tech.

b. Describe the frequency for which fees are charged and how they are charged.

c. Describe the number of managers, employees, etc. required to staff the operation.

d. Provide a listing of raw materials, ingredients, supplies, food specifications (recipes), packaging etc. required for the typical operation. Include a listing of estimated usage, purchasing plans, mandatory and non-mandatory providers and the associated prices/estimates.

e. Supply a list of all equipment, store front(s) and or counter(s) to be utilized under the proposed agreement. Include a listing of types, specifications, the estimated value and ownership upon completion of the agreement.

3. Level of Marketing Support and Name Recognition per Store Front

a. Describe the level and type of support provided for marketing. Identify any costs associated with marketing to be paid by Virginia Tech.

b. Discuss advertising plans for local, regional and/or national exposure.

c. Describe the number and the extent of promotional events provided by the Offeror. Discuss the typical benefits received by Virginia Tech for such promotions. Provide a breakdown on any costs to be paid by Virginia Tech and those paid by the Offeror.

d. Describe how well the Offeror is known throughout higher educational institutions and the Southeast region in comparison to other concepts of both similar and dissimilar product lines. Discuss the importance of name recognition.

4. Level of Training Support per Store Front

a. Describe the type and level of support provided by training. Discuss the length of training, refresher training opportunities and any costs associated with training to be paid by Virginia Tech.

b. Describe the content and outcome expectations of the training program.

5. Quality Assurance Programs per Store Front

a. Specify the methods used to measure the level of customer satisfaction and methods used to respond to respond to suggestions or complaints.
b. Specify the method and frequency of your evaluation of the Franchise operation.

c. Discuss the ability to maintain food quality standards, particularly in terms of palatability, nutrition and variety.

d. Describe the sanitation and safety program for the proposed operation.

6. Layout and Equipment per Store Front

a. Provide photographs, diagrams and/or other visual representations of the equipment, furnishings, store fronts and layouts of the restaurant.

b. Discuss the level of flexibility available to Virginia Tech regarding the store front façade. Describe the Offeror's ability to attractively blend their concept façade with that of other potential concepts.

c. Provide a listing of the equipment, store front(s) and/or counter(s) which must be purchased through the Offeror and the associated prices.

d. Discuss the willingness of the Offeror to purchase all equipment, store front(s) and/or counter(s) on behalf of Virginia Tech. Include the associated price(s).

7. Small, Women-owned and Minority-owned Business (SWAM) Utilization:

Describe your plan for utilizing small businesses and businesses owned by women and minorities if awarded a contract. Describe your ability to provide statistical reporting on actual SWAM subcontracting when requested. Specify if your business or the business or businesses that you plan to subcontract with are certified by the Department of Minority Business Enterprise.

Identify, preferably four (4), Licensees currently in operation in the Virginia/East Coast region. Include the date established, the restaurant name, address and the name and phone number of the individual that Virginia Tech has your permission to contact.

8. References.

Identify, preferably four (4), Licensees currently in operation in the Virginia/East Coast region. Include the date established, the restaurant name, address and the name and phone number of the individual that Virginia Tech has your permission to contact.

9. The return of the General Information Form and addenda, if any, signed and filled out as required.

VIII. SELECTION CRITERIA AND AWARD:

A. Selection Criteria

Proposals will be evaluated by Virginia Tech using the following:

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4. Level of Training Support 10
5. Quality Assurance Programs 10
6. Layouts and Equipment Offered 10
7. SWAM 10
8. References 5

Total 100

B. Award

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposal, including price, if so stated in the Request for Proposal. Negotiations shall then be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, Virginia Tech shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Virginia Tech may cancel this Request for Proposal or reject proposals at any time prior to an award. Should Virginia Tech determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of this solicitation and the Contractor's proposal as negotiated. See Attachment B. for sample contract form.

Virginia Tech reserves the right to award more than one contract as a result of this solicitation.

Virginia Tech reserves the right to award separate contracts to separate contractors for any type of restaurant concept. Additionally, Virginia Tech reserves the right to award multiple separate contracts to multiple separate contractors for any type of restaurant concept.

IX. OPTIONAL PRE-PROPOSAL CONFERENCE:

An optional pre-proposal conference will be held on Wednesday, February 20, 2008 at 10:00 am at Virginia Tech, Schultz Dining Center, Blacksburg, VA 24060. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a proposal, offerors who intend to submit a proposal are encouraged to attend.

Bring a copy of this solicitation with you. Any changes resulting from this conference will be issued in a written addendum to this solicitation.

It is strongly recommended that you obtain a visitor parking permit for display on your vehicle prior to attending the conference. Visitor parking permits are available from the Visitor Information Center located on Southgate Drive, phone: (540) 231-3548 or from the Parking Services Department located at 455 Tech Center Drive, phone: (540) 231-3200.

X. Any ADDENDUM issued for this solicitation may be accessed at http://www.purch.vt.edu/html/docs/bids.html. Since a paper copy of the addendum will not be mailed to you, we encourage you to check the web site regularly.

XI. CONTRACT ADMINISTRATION:

A. Christine Boling, Contracts Administrator, Housing & Dining Services at Virginia Tech or her designee, shall be identified as the Contract Administrator and shall use all powers under the contract to enforce its faithful performance.
B. The Contract Administrator, or her designee, shall determine the amount, quantity, acceptability, fitness of all aspects of the services and shall decide all other questions in connection with the services. The Contract Administrator, or her designee, shall not have authority to approve changes in the services which alter the concept or which call for an extension of time for this contract. Any modifications made must be authorized by the Virginia Tech Purchasing Department through a written amendment to the contract.

XII. TERMS AND CONDITIONS

This solicitation and any resulting contract/purchase order shall be governed by the attached terms and conditions.

XIII. ATTACHMENTS:

Attachment A - Terms and Conditions
Attachment B - Standard Contract Form
Attachment C - Declaration Form
Attachment D - Campus Map
ATTACHMENT A

TERMS AND CONDITIONS

RFP General Terms and Conditions


Special Terms and Conditions

1. ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this solicitation, no indication of such sales or services to Virginia Tech will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.

2. AUDIT: The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. Virginia Tech, its authorized agents, and/or the State auditors shall have full access and the right to examine any of said materials during said period.

3. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that Virginia Tech shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

4. CANCELLATION OF CONTRACT: Virginia Tech reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

5. CONTRACT DOCUMENTS: The contract entered into by the parties shall consist of the Request for Proposal including all modifications thereof, the proposal submitted by the Contractor, the written results of negotiations, the Commonwealth Standard Contract Form, all of which shall be referred to collectively as the Contract Documents.

6. IDENTIFICATION OF PROPOSAL ENVELOPE: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and addressed as follows:

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
Purchasing Department (0333)
270 Southgate Center
Blacksburg, VA 24061
Reference the opening date and hour, and RFP Number in the lower left corner of the envelope or package.

If a proposal not contained in the special envelope is mailed, the Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other correspondence or other proposals should be placed in the envelope. Proposals may be hand delivered to the Virginia Tech Purchasing Department.

7. INDEPENDENT CONTRACTOR: The contractor shall not be an employee of Virginia Tech, but shall be an independent contractor.

Nothing in this agreement shall be construed as authority for the contractor to make commitments which shall bind Virginia Tech, or to otherwise act on behalf of Virginia Tech, except as Virginia Tech may expressly authorize in writing.

8. INSURANCE: By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the work commences. Additionally, it will maintain these during the entire
term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract, Virginia Tech reserves the right to require the Contractor to furnish certificates of insurance for the coverage required.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

A. Worker's Compensation - Statutory requirements and benefits.

B. Employers Liability - $100,000.00

C. General Liability - $500,000.00 combined single limit. Virginia Tech and the Commonwealth of Virginia shall be named as an additional insured with respect to goods/services being procured. This coverage is to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.

D. Automobile Liability - $500,000.00

E. Builders Risk - For all renovation and new construction projects under $100,000, Virginia Tech will provide All Risk - Builders Risk Insurance. For all renovation contracts, and new construction from $100,000 up to $500,000, the contractor will be required to provide All Risk - Builders Risk Insurance in the amount of the contract and name Virginia Tech as additional insured. All insurance verifications of insurance will be through a valid insurance certificate.

The contractor agrees to be responsible for, indemnify, defend and hold harmless Virginia Tech, its officers, agents and employees from the payment of all sums of money by reason of any claim against them arising out of any and all occurrences resulting in bodily or mental injury or property damage that may happen to occur in connection with and during the performance of the contract, including but not limited to claims under the Worker's Compensation Act. The contractor agrees that it will, at all times, after the completion of the work, be responsible for, indemnify, defend and hold harmless Virginia Tech, its officers, agents and employees from all liabilities resulting from bodily or mental injury or property damage directly or indirectly arising out of the performance or nonperformance of the contract.

9. **NOTICES:** Any notices to be given by either party to the other pursuant to any contract resulting from this solicitation shall be in writing, hand delivered or mailed to the address of the respective party at the following address:

If to Contractor:  Address Shown On RFP Cover Page

Attention:  Name Of Person Signing RFP

If to Virginia Tech:

Virginia Polytechnic Institute and State University
Attn: Trisha Wilson
Purchasing Department (0333)
270 Southgate Center
Blacksburg, VA 24061

and

Virginia Polytechnic Institute and State University
Attn: Christine Boling
Housing & Dining Services (0223)
200 Owens Hall
Blacksburg, VA 24061

10. **SEVERAL LIABILITY:** Virginia Tech will be severally liable to the extent of its purchases made against any contract resulting from this solicitation. Applicable departments, institutions, agencies and Public Bodies of the Commonwealth of Virginia will be severally liable to the extent of their purchases made against any contract resulting from this solicitation.

11. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.
ATTACHMENT B

Standard Contract form for reference only
Offerors do not need to fill in this form

COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT

Contract Number: ______________________

This contract entered into this ___ day of ___________ 20___, by _____________________, hereinafter called the "Contractor" and Commonwealth of Virginia, Virginia Polytechnic Institute and State University called "Virginia Tech".

WITNESSETH that the Contractor and Virginia Tech, in consideration of the mutual covenants, promises and agreements herein contained, agrees as follows:

SCOPE OF CONTRACT: The Contractor shall provide the ___________ to Virginia Tech as set forth in the Contract Documents.

PERIOD OF CONTRACT: From _____________________ through ________________________

COMPENSATION AND METHOD OF PAYMENT: The Contractor shall be paid by Virginia Tech in accordance with the contract documents.

CONTRACT DOCUMENT: The contract documents shall consist of this signed contract, Request For Proposal Number __________ dated __________, together with all written modifications thereof and the proposal submitted by the Contractor dated ________ and the Contractor's letter dated __________, all of which contract documents are incorporated herein.

In WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Contractor: Virginia Tech
By: _________________________ By: _________________________
Title: _________________________
Offerors should declare their product line (concept) or product lines (concepts) below so that concepts of similar offerings may be grouped together for evaluation purposes. When multiple concepts are proposed by the same Offeror, Virginia Tech reserves the right to evaluate and negotiate each concept individually, or as a group.

Type(s) of Concepts(s):

- Italian/Pizza
- Asian
- Casual Dining
- Mexican
- Steak House
- Family Dining
- Burgers
- Chicken
- Barbeque
- Seafood
- Sandwich/Bakery Café
- Sub Sandwiches
- Coffee/Tea/Baked Goods
- Ice Cream/Desserts
- Combination, Please Specify

- Other, Please Specify

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JAMBA JUICE®
FRANCHISE AGREEMENT
By and Between
JAMBA JUICE COMPANY
and
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Store #1262
Address: Turner Place at Lavery Hall
Virginia Polytechnic Institute and State University
Blacksburg, Virginia 24061

Form dated March 23, 2012
FDD dated March 23, 2012
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EXHIBIT A: TERRITORY
EXHIBIT B: ADDENDUM TO LEASE
EXHIBIT C: OWNER SCHEDULE
EXHIBIT D: CONFIRMATION OF TERM COMMENCEMENT DATE
THIS FRANCHISE AGREEMENT (this “Agreement”) is entered into as of the ___ day of ____________, 2012 (the “Effective Date”) by and between Jamba Juice Company, a California corporation, located at 6475 Christie Avenue, Suite 150, Emeryville, California 94608 (the “Company”), and Virginia Polytechnic Institute and State University (the “Franchisee” or “Virginia Tech”), with reference to the following facts:

A. Company owns certain proprietary and other property rights and interests in and to the “JAMBA JUICE®” name and service mark, and such other trademarks, service marks, logo types and commercial symbols as Company may from time to time authorize or direct its Franchisees to use in connection with the operation of “JAMBA JUICE®” Stores (the “Marks”).

B. Company has developed and continues to develop a System (as defined in Section 1.2 hereof) for the operation of Stores and merchandising of Authorized Jamba Juice® Products (as defined in Section 1.2 hereof), which System (as further defined in Section 1.2) features distinctive signs, food and beverage recipes, uniforms, and various trade secrets and other confidential information, and in some cases also includes architectural designs, trade dress, uniforms, equipment specifications, layout plans, inventory, record-keeping and marketing techniques.

C. Franchisee desires to obtain a franchise to operate a single Store, and possibly one or more Distribution Points (defined in Section 1.2), under the Marks and in strict accordance with the System, and the standards and specifications established by Company; and Company is willing to grant Franchisee such franchise under the terms and conditions of this Agreement.

D. The Store operated pursuant to this Agreement shall be a:

   (check one) [ ] Traditional Store/[X] Non-Traditional Store and shall be located in a (check one) [ ] Urban Location/[ ] Non Urban Location/[X] Not Applicable (for Non-Traditional Stores)

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS

In this Agreement the following capitalized terms shall have the meanings set forth below, unless the context otherwise requires:

1.1 Certain Definitions and Applicable Information.

“Initial Fee” means Five Thousand Dollars ($5,000).

"Continuing Royalty Rate" means eight percent (8%).
“General Manager” means the individual appointed pursuant to and in accordance with Section 7.2 as “General Manager”.

“Location” means: (check one) [X] Turner Place at Lavery Hall, Blacksburg Virginia 24061 or [ ] a location to be determined in accordance with Section 5.1.1. Upon determination of a location in accordance with Section 5.1.1, the address shall be inserted above.

“Managing Owner” means the individual appointed pursuant to and in accordance with Section 7.2 as “Managing Owner”.

“Marketing Contribution Rate” means zero percent (0%).

1.2 Other Definitions. In this Agreement the following capitalized terms shall have the meanings set forth below, unless the context otherwise requires:

“AAA” shall have the meaning set forth in Section 18.1 of this Agreement.

“Accounting Period” means each of the 12 accounting periods in Company’s fiscal year ending on the Tuesday which is closest to December 31 each year.

“Affiliate” when used herein in connection with Company or Franchisee, includes each person and Business Entity which directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Company or Franchisee, as applicable. Without limiting the foregoing, the term “Affiliate” when used herein in connection with Franchisee includes any Business Entity more than 50% of whose stock, membership interests, Partnership Rights, or other equity ownership interests (collectively “Equity”) or voting control, is held by person(s) or Business Entities who, jointly or severally, hold more than 50% of the Equity or voting control of Franchisee. For purposes of this definition, control of a person or Business Entity means the power, direct or indirect, to direct or cause the direction of the management and policies of such person or Business Entity whether by contract or otherwise. Notwithstanding the foregoing definition, if Company or its Affiliate has any ownership interest in Franchisee, the term “Affiliate” shall not include or refer to the Company or that Affiliate (the “Company Affiliate”), and no obligation or restriction upon an “Affiliate” of Franchisee, shall bind Company, or said Company Affiliate or their respective officers, directors, or managers.

“Anti-Terrorism Laws” means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.
“Applicable Law” means and includes applicable common law and all applicable statutes, laws, rules, regulations, ordinances, policies and procedures established by any Governmental Authority, including, without limitation, those governing the development, construction and/or operation of the Store, including, without limitation, all labor, disability, food and drug laws and regulations, as in effect on the Effective Date hereof, and as may be enacted, modified or amended from time to time thereafter.

“Assignment” shall have the meaning set forth in Section 13.2 of this Agreement.

“Authorized Jamba Juice® Products” means the specific juices, smoothies, snack and other food items for sale at the Franchisee’s Store, prepared and served in strict accordance with Company’s recipes, standards and specifications, including specifications as to ingredients, brand names, preparation and presentation.

“Business Entity” means any limited liability company, general partnership or limited partnership (each of which shall be referred to as a “Partnership”), and any trust, association, corporation or other entity which is not an individual.

“Change of Control” shall have the meaning set forth in Section 13.2 of this Agreement.

“Computer System” means those brands, types, makes, and/or models of communications and computer systems or hardware specified or required by Company for use by, between, or among the Stores (including requirements for Internet access and email capability).

“Construction Approval” shall have the meaning set forth in Section 5.4.1 of this Agreement.

“Construction Documents” shall have the meaning set forth in Section 5.4.1 of this Agreement.

“Development Agreement” means an agreement between Franchisee and Company under which Franchisee (as Developer) has agreed to open multiple Stores.

“Director of Operations” means an individual appointed by Franchisee under any Development Agreement pursuant to which this Franchise Agreement is executed and approved by Company (and until subsequently rejected by Company) who shall be the “chief operations officer” vested with the authority and responsibility for the day-to-day operations of all Stores within the Development Market provided in such Development Agreement.

“District Manager” means an individual appointed by Franchisee and approved by Company (and until subsequently rejected by Company) prior to the opening of the 4th Store to supervise Stores on a district or regional basis.

“Distribution Point” is any location other than a Jamba Juice® Store, where Authorized Jamba Juice® Products using Company’s Marks or System are sold, such as carts, offsite catering, JambaGo™, grab’n go cases, vending machines, mobile vending vehicles and any other product distribution device or system which may be developed in the future by or for Company.

“Effective Date” means the date indicated in the first paragraph of this Agreement.

#1262 – Virginia Polytechnic Institute and State University – Franchise Agreement
“Force Majeure” means acts of God (such as tornados, earthquakes, hurricanes, floods, fire or other natural catastrophe); strikes, lockouts or other industrial disturbances; war, riot, acts of terrorism or other civil disturbances; epidemics; or other forces or occurrences which Franchisee could not by the exercise of due diligence have avoided.

“Franchise Disclosure Document” or “Disclosure Document” means the franchise disclosure document or its equivalent as may be required by Applicable Law.

“Franchisee Page” means one or more interior pages of the Website dedicated in whole or in part to the Store developed and operated hereunder.

“General Manager” shall have the meaning set forth in Section 7.2.2.

“Good Standing” means timely compliance by Franchisee and its Affiliates with all provisions of this Agreement and the Manuals, specifically including timely payment of all monies due Company, and a level of operational excellence as measured by Company’s Operations Standards Evaluations and in a manner consistent with that applied by Company to Stores which Company itself operates.

“Governmental Authority” means and includes all Federal, state, county, municipal and local governmental and quasi-governmental agencies, commissions and authorities.

“Grocery Store” means a retail store that offers to the general public a broad line of grocery products, meat, dairy, produce and other fresh and pre-packaged food products, household goods and related items, but excluding convenience stores.

“Guaranty” shall have the meaning set forth in Section 4.7 of this Agreement.

“Heirs” shall have the meaning set forth in Section 14.3.2 of this Agreement.

“Initial Training Program” shall have the meaning set forth in Section 6.2 of this Agreement.

“Information” shall have the meaning set forth in Section 10.1 of this Agreement.

“Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and software, which comprise the interconnected worldwide network of networks that employ the TCP/IP [Transmission Control Protocol/Internet Protocol], or any predecessor or successor protocols to such protocol, to communicate information of all kinds by fiber optics, wire, radio, or other methods of transmission.

“Jamba Juice® Brand Product” is any product now existing or developed in the future that bears any of Company’s Marks and is sold by some or all Jamba Juice® Franchisees or Company or other entities such as supermarkets, Grocery Stores, Mass Merchandisers, convenience stores.
“Lease” shall mean those agreements, however denominated, that allow Franchisee to lease, manage and/or operate concessions and stores at property owned by third parties, including leases, subleases, concession agreements, licenses, and similar arrangements between Franchisee and third parties.

“Management Employees” means the Franchisee (if an individual), the Managing Owner, General Manager, Assistant General Manager, Lead (e.g., supervisor), and, if applicable, the Director of Operations and District Manager, each of whom shall have successfully completed the Initial Training Program to Company’s satisfaction.

“Managing Owner” shall have the meaning set forth in Section 7.2.1.

“Manuals” means all of the operating manuals, training manuals, bulletins, and all other materials related to the System, whether in written, machine readable, electronic or other form, to which Franchisee is provided access during the Term, as the same may be amended and revised from time to time.

“Marketing Contribution” shall mean zero percent (0%).

“Marks” shall have the meaning set forth in Recital A above.

“Mass Merchandisers” shall mean mass merchandisers or club stores including, without limitation, Wal-Mart, Wal-Mart SuperCenter, SAM’s CLUB, Wal-Mart Neighborhood Market, Kmart, SuperKMart, Big K, Sears, Target, and Costco.

“Net Sales” means the total of all revenues derived from the Store at the Location during each Accounting Period during the Term whether evidenced by cash, services, property, or other means of exchange, and whether or not Company offers such services or products in its other locations, including: (a) revenues from sales of any nature or kind whatsoever, derived by Franchisee or by any other person or entity (including, without limitation, persons controlling, controlled by, or under common control with Franchisee) from the Store at the Location; (b) sales of Authorized Jamba Juice® Products in contravention of this Agreement at locations other than the Store at the Location; (c) the proceeds of any business interruption insurance, after the satisfaction of any applicable deductible; (d) sales from vending devices including pay telephones; (e) mail or telephone orders received or filled in or from the Store at the Location; and (f) orders taken in or from the Store at the Location although filled elsewhere. All transactions shall be recorded at full list retail selling price and without discount except that employee meals and other special discount marketing promotions approved by Company shall be included in Net Sales to the extent of actual cash receipts. There shall be no reduction for the costs or expenses of operating the Store or for federal, state, or local income taxes or business and occupation taxes related to the Store. Notwithstanding the foregoing, “Net Sales” shall exclude the value of refunds paid to customers, the amount of any state or local sales or use tax actually paid by Franchisee and sales of fixtures or other capital items sold by Franchisee after use thereof in the operation of the Store.

“Non-Proprietary Products” shall have the meaning set forth in Section 9.3 of this Agreement.
“Non-Traditional Store” is a “JAMBA JUICE®” Store (which may include a kiosk) located within another primary business or in conjunction with other businesses or at institutional settings such as schools, colleges and universities, military and other governmental facilities, hospitals, airports, toll roads, office or in-plant food facilities, Shopping Malls, supermarkets, health clubs, Mass Merchandisers, Grocery Stores or convenience stores, some of which may be other fast-food type operations such as food courts, and any other venue operated by a master concessionaire or contract food service provider.

“Non-Urban Location” shall mean a Traditional Store located outside the downtown area of the 100 largest U.S. cities as measured by population, as of the Effective Date.

“Ongoing Training” shall have the meaning set forth in Section 6.3.1 of this Agreement.

“Orientation Program” shall have the meaning set forth in Section 6.1.4.

“Owner” means the owner of any direct or indirect interest in Franchisee, including any shareholder, member, general or limited partner, trustee, or other equity owner of a Business Entity; except that if Company or any Affiliate of Company has any ownership interest in Franchisee, the term “Owner” shall not include or refer to the Company or that Affiliate, and no obligation or restriction upon the “Franchisee” or its Owners shall bind Company, or said Affiliate or their respective officers, directors, or managers. Franchisee’s Owners are listed in Exhibit C to this Agreement.

“Partner” means any partner of a Partnership.

“Partnership Rights” means voting power, property, profits or losses, or partnership interests of a Partner.

“Permits” means and includes all applicable franchises, licenses, permits, registrations, certificates and other operating authority required by Applicable Law.

“POS System” shall have the meaning set forth in Section 7.3 of this Agreement.

“Premises” means SEE ADDENDUM the premises owned, leased or subleased by Franchisee at which the Franchisee’s Store shall be located, including in the case of a Non-Traditional Store both the space occupied by the Store and, unless otherwise expressly provided, the portions not used for the Store (including any ancillary common area, campus, buildings and other structures associated with the Premises).

“Proprietary Products” shall have the meaning set forth in Section 9.2 of this Agreement.

"Relocation Fee" shall mean Five Thousand Dollars ($5,000).

“Renewal Franchise Agreement” shall have the meaning set forth in Section 3.2 of this Agreement.

“Renewal Notice” shall have the meaning set forth in Section 3.3 of this Agreement.
“Renewal Right” shall have the meaning set forth in Section 3.2 of this Agreement.

“Renewal Term” shall have the meaning set forth in Section 3.2 of this Agreement.

“Shopping Mall” means any retail center (enclosed or open), including “outlet malls,” with an aggregate gross leasable area in excess of 350,000 square feet.

"Software Support and Maintenance Fee" shall have the meaning set forth in Section 7.15.5 of this Agreement.

“Specified Software” means such software, programming, and services which Company from time to time specifies or requires for use by Franchisees.

"Start Date" means the earlier of two hundred ten (210) days after the Effective Date or the date when the Store opens for business. The Start Date shall be memorialized by the parties executing and delivering a Confirmation of Term Commencement Date in the form of Exhibit D hereto.

“Store” means a store or other outlet, whether a Traditional Store or a Non-Traditional Store, operated under Company’s Marks and in accordance with the System pursuant to a validly existing Franchise Agreement and specializing in the sale of Authorized Jamba Juice® Products for on-premises and off-premises consumption, and from which Authorized Jamba Juice® Products may be delivered for off-premises consumption.

“Supplier” shall have the meaning set forth in Section 9.3 of this Agreement.

“System” shall mean the Company’s business operating methods for a Jamba Juice® Store, including interior and exterior store design; other items of trade dress; specifications for equipment, fixtures, in-store music, and uniforms; defined product offerings, recipes and preparation methods; Trade Secrets and other confidential information; standard operating and administrative procedures; management and technical training programs; and marketing and public relations programs; all as the same may exist today or as they may change from time to time, as specified in the Manuals or as otherwise reasonably directed by Company from time to time.

“Term” shall have the meaning set forth in Section 3.1 of this Agreement.

“Territory” shall mean, for a Traditional Store, the geographic area within a specified radius of the Store in a Non-Urban Location, and in an Urban Location, the geographic area within a specified number of city blocks of the Store, as described in Exhibit A to this Agreement. In each instance, the radius shall be measured from the front door of the Store.

“Then-current” as used in this Agreement and applied to the Disclosure Document, a Franchise Agreement and a Development Agreement shall mean the form then currently provided by Company to similarly situated prospective Franchisees, or if not then being so provided, then
such form selected by the Company in its discretion which previously has been delivered to and
executed by a Franchisee of Company.

"Trade Secrets" means proprietary and confidential information, including recipes, ingredients,
specifications, costing procedures, policies, concepts, systems, know-how, plans, strategies, and
methods and techniques of developing, constructing and operating the Store and producing
Authorized Jamba Juice® Products, excluding information that is or becomes a part of the public
domain through publication or communication by third parties not bound by any confidentiality
obligation or that Franchisee can show was already lawfully in Franchisee’s possession before
receipt from Company.

"Traditional Store" is a business premises that exists primarily as a "Jamba Juice®" Store,
excluding any Non-Traditional Store; however, such Traditional Store may also have other types
of approved co-branded businesses located in it, but in such case the Jamba Juice® Store is the
primary business.

"Urban Location" shall mean a Traditional Store located in the downtown area of the 100 largest
U.S. cities as measured by population as of the Effective Date.

"URL" means uniform resource locator.

"Website" means one or more Internet websites that may, among other things, facilitate catering,
take-out and delivery orders, provide information about the System and the products and services
which are offered on such Website and at Stores operated under the Marks.

ARTICLE 2
GRANT

2.1 Grant.

2.1.1 Company hereby awards Franchisee the right and license, during the
Term, to use and display the Marks, and to use the System, to operate one Store (of the type
identified in Recital D) at, and only at, the Location upon the terms and subject to the provisions
of this Agreement and all ancillary documents hereto.

2.1.2 This Agreement does not authorize the use or operation of any
permanent or temporary Distribution Point, and Franchisee may do so only with Company’s
prior written consent and pursuant to a separate addendum prescribed by Company; provided,
however, that (a) in the case of a Non-Traditional Store operated at a convenience store,
supermarket, Mass Merchandiser, or Grocery Store, Franchisee may continue its customary
operations and sales of other products at the store consistent with past practice, and may offer
other food products typical of fast food operations on the Premises, provided that Franchisee
shall not sell any smoothies (i.e. mixed fruit juices) or other fruit juice products which are
prepared fresh; and (b) in the case of any other Non-Traditional Store, Franchisee may continue
its customary sales of fresh-squeezed orange or other fruit juices in connection with its cafeteria
or other food service facilities provided they are not “smoothies.”
2.2  No Sublicensing Rights. Notwithstanding anything to the contrary herein, Franchisee shall not sublicense, sublease, subcontract or enter any management agreement providing for the right to operate the Store or to use the System or the Marks granted pursuant to this Agreement.

2.3  Territorial Protection.

2.3.1 Upon designation of the Location for the Jamba Juice Store, Franchisee will be assigned a geographic area around the Location that will be described in Exhibit A to this Agreement (“Territory”); provided, however, that in no event shall the Territory exceed a one mile radius for a Traditional Store in a Non-Urban Location and a one block radius for a Traditional Store in an Urban Location. Except as provided in this Agreement and subject to Franchisee's full compliance with this Agreement and any other agreement between Franchisee and the Company or its Affiliates, during the Term of this Agreement neither the Company nor any Affiliate of the Company will establish or operate, or authorize any person or entity other than Franchisee to establish or operate, a Traditional Store in the Territory. Unless otherwise expressly agreed to by Company, and memorialized in an addendum attached hereto, there are no territorial rights or protections with respect to a Non-Traditional Store.

2.3.2 Except to the limited extent expressly provided in Section 2.3.1, the license granted to the Franchisee under this Agreement is nonexclusive and the Company expressly reserves the exclusive, unrestricted right, in its discretion, directly and indirectly, itself and through its employees, Affiliates, representatives, Franchisees, assigns, agents and others to own or operate, and to license others (which may include its Affiliates) to own or operate “JAMBA JUICE®” Traditional Stores at any location outside the Territory and, within and outside the Territory:

(a)  to own and operate (i) “JAMBA JUICE®” Non-Traditional Stores of any type or category whatsoever at any location regardless of proximity to the Store developed pursuant hereto; and (ii) stores of any type or category whatsoever operating under names other than “JAMBA JUICE®,” at any location regardless of proximity to the Store developed and operated pursuant hereto;

(b)  to produce, license, distribute and market Jamba Juice® Brand Products and products bearing other marks, including, but not limited to, pre-packaged food, snacks and beverage products; books; juicers; clothing; souvenirs and novelty items at or through any outlet (regardless of its proximity to the Store opened pursuant hereto) whether or not operating under the “JAMBA JUICE®” name, including Grocery Stores, Mass Merchandisers, supermarkets and convenience stores and through any distribution channel, at wholesale or retail, including by means of the Internet, any Internet web site, mail order catalogs, direct mail advertising and other distribution methods;
(c) to advertise and promote the System through any means, including the Internet; and

(d) to acquire, directly or as franchisor, singly or as part of a multiple unit acquisition, and thereafter to operate and to license others to operate without limitation, under the Jamba Juice® marks or under any other trade names, trademarks or service marks, one or more food service businesses offering fruit smoothies, fruit juices, blended beverages or healthy snacks, including stores located within the Territory and/or adjacent, adjoining or proximate to your Jamba Juice Store, regardless of whether such stores are converted to Jamba Juice Stores following the acquisition or whether such stores continue to operate under other trade-marks or trade dress and/or use other operating systems, and which may compete with your Jamba Juice Store.

2.3.3 Franchisee hereby waives any right it has, may have, or might in the future have, to oppose Company’s exercise of its reserved rights in Section 2.3.2 and any claim for compensation from Company in respect of any and all detriment or loss suffered by Franchisee as a result of Company’s exercise of such rights.

ARTICLE 3
TERM AND RENEWAL

3.1 Initial Term. The term of this Agreement (“Term”) shall begin on the Effective Date and shall continue for a period of five (5) years from the Start Date unless sooner terminated pursuant to Article 14.

3.2 Renewal Right. SEE ADDENDUM Subject to the conditions contained in Sections 3.3 and 3.4, at the expiration of the Term and any Renewal Term hereof, Franchisee shall have the right (the “Renewal Right”) to enter into a new franchise agreement in the then-current form for the state in which the Store is located (each a “Renewal Franchise Agreement”) for a 5-year period (each a “Renewal Term”), provided that each Renewal Franchise Agreement shall grant Franchisee a Renewal Right for an additional 5-year renewal term. The term of the Renewal Franchise Agreement shall commence upon the date of expiration of the Term or Renewal Term, as applicable. The Renewal Franchise Agreements may include a different Continuing Royalty Rate and Marketing Contribution Rate, other fees and charges, and changes in performance criteria and in other terms and conditions. Each time Franchisee exercises its Renewal Right, Franchisee shall pay a sum equal to one-half (1/2) of the then-current initial fee upon execution of a Renewal Franchise Agreement. Franchisee understands that the Renewal Franchise Agreements it is required to execute may be materially different from this Agreement.

3.3 Form and Manner of Renewal. Franchisee shall exercise its Renewal Right, if at all, strictly in the following manner:

3.3.1 Between 6 months and 12 months before the expiration of the Term, Franchisee shall notify Company in writing (“Renewal Notice”) that it intends to exercise its Renewal Right and Franchisee shall execute the copies of said Renewal Franchise Agreement and return execution copies to Company in compliance with Company’s procedures and Applicable Law.
3.3.2 If Franchisee shall have exercised its Renewal Right in accordance with Section 3.3.1 and satisfied all of the conditions contained in Section 3.4, Company shall execute the Renewal Franchise Agreement executed by Franchisee and at the expiration of the Term deliver one fully executed copy thereof to Franchisee.

3.3.3 If Franchisee fails to perform any of the acts, or deliver any of the notices required pursuant to the provisions of Sections 3.3 or 3.4 in a timely fashion, such failure shall be deemed an election by Franchisee not to exercise its Renewal Right and shall automatically cause Franchisee's said Renewal Right to lapse and expire.

3.4 Conditions Precedent to Renewal. Franchisee's Renewal Right is conditioned upon Franchisee's fulfillment of each and all of the following conditions precedent:

3.4.1 At the time Franchisee delivers its Renewal Notice to Company and at all times thereafter until the commencement of the Renewal Term, Franchisee shall have fully performed all of its material obligations under this Agreement, the Manuals and all other agreements then in effect between Franchisee and Company (or its Affiliates).

3.4.2 At Company's request, Franchisee shall, prior to the date of commencement of the Renewal Term, undertake and complete at its expense the renovation or modernization of the Premises and the Store in accordance with Section 5.5.3.

3.4.3 Without limiting the generality of Section 3.4.1, Franchisee shall not have committed three (3) or more material breaches of this Agreement during any 12-month period during the Term of this Agreement for which Company shall have delivered notices of default, whether or not such defaults were cured.

3.4.4 Franchisee shall have in all material respects maintained its status as a "JAMBA JUICE®" Franchisee in "Good Standing" throughout the Term.

3.4.5 Franchisee shall satisfy Company's then-current training requirements for renewing Franchisees.

3.4.6 Franchisee shall execute and deliver to Company a general release, on a form prescribed by Company of any and all known and unknown claims against Company and its Affiliates and their officers, directors, agents, owners and employees.

3.5 Notice Required by Law. If Applicable Law requires that Company give notice to Franchisee prior to the expiration of the Term, this Agreement shall remain in effect on a week-to-week basis until Company has given the notice required by such Applicable Law. If Company is not offering new franchises, is in the process of revising, amending or renewing its form of franchise agreement or disclosure document, or is not lawfully able to offer Franchisee its then-current form of franchise agreement, at the time Franchisee delivers its Renewal Notice, Company may, in its discretion, (i) offer to renew this Agreement upon the same terms set forth herein for a renewal term determined in accordance with Section 3.2 hereof, or (ii) offer to extend the Term hereof on a week-to-week basis following the expiration of the Term hereof for
as long as it deems necessary or appropriate so that it may lawfully offer its then-current form of license agreement.

ARTICLE 4
PAYMENTS

4.1 Initial Fee. Upon execution of this Agreement, Franchisee shall pay to Company the Initial Fee; provided, however, if this Agreement has been executed pursuant to a Development Agreement, then Franchisee shall, if applicable, receive a credit against the Initial Fee in accordance with such Development Agreement. The Initial Fee shall be non-refundable, in whole or in part, under any circumstances.

4.2 Continuing Royalty. Franchisee shall pay to Company during the Term a royalty equal to the Continuing Royalty Rate multiplied by the Net Sales of the Store at the Location during each Accounting Period ("Continuing Royalty").

4.3 Marketing Program Contribution. Franchisee shall pay to Company or, at Company's discretion, to Company's wholly owned advertising subsidiary (the "Fund") during the Term, simultaneously with its Continuing Royalty payments, a Marketing Program Contribution of the Marketing Contribution Rate multiplied by the Net Sales of the Store at the Location during each Accounting Period ("Marketing Contribution"). The Marketing Contribution will be contributed to the Marketing Program to be administered in the manner provided in Section 8.3. The parties acknowledge that with respect to the Marketing Contribution Rate of 4% applicable to a Traditional Store, and for a Non-Traditional Store located in a Shopping Mall, Company or the Fund may actually collect less than the full 4% from Franchisee during all or a portion of the Term of this Agreement, provided that such action shall in no event waive or otherwise prejudice Company's right to increase the amount actually collected up to the full 4% at any time. Franchisee acknowledges and agrees that Company retains its right to collect or to direct the Fund to collect all or any portion of the Marketing Contribution at any time and in its sole discretion.

4.4 Other Payments. In addition to all other payments provided herein, Franchisee shall pay to Company, its Affiliates and designees, as applicable, promptly when due:

4.4.1 All amounts advanced by Company or which Company has paid, or for which Company has become obligated to pay on behalf of Franchisee for any reason whatsoever.

4.4.2 The amount of all sales taxes, use taxes, personal property taxes and similar taxes, which shall be imposed upon Franchisee and required to be collected or paid by Company (a) on account of Franchisee's Net Sales, or (b) on account of Continuing Royalties, Marketing Contributions or Initial Fees collected by Company or the Fund from Franchisee (but excluding ordinary income taxes). Company, at its discretion, may collect the taxes in the same manner as Continuing Royalties are collected herein and promptly pay the tax collections to the appropriate governmental authority; provided, however, that unless Company so elects, it shall be Franchisee's responsibility to pay any sales, use or other taxes now or hereinafter imposed by any Governmental Authorities on Continuing Royalties, Initial Fees, or Marketing Contributions. Without limitation of the foregoing, each payment to be made to Company or the Fund
hereunder shall be made free and clear and without deduction for any present or future taxes, levies, imposts, duties or other charges of whatsoever nature, including any interest or penalties thereon, imposed by any government or political subdivision of such government on or relating to the operation of the franchised business, the payment of monies, or the exercise of rights granted pursuant to this Agreement, except taxes imposed on or measured by Company's net income.

4.5 Application of Funds; Manner of Payment.

4.5.1 If Franchisee shall be delinquent in the payment of any obligation to Company or any of its Affiliates hereunder, or under any other agreement with Company or its Affiliates, Company shall have the absolute right to apply any payments received from Franchisee to any obligation owed, whether under this Agreement or otherwise, notwithstanding any contrary designation by Franchisee as to application.

4.5.2 Franchisee shall calculate the Continuing Royalty and Marketing Contribution due each Accounting Period and shall make all payments of Continuing Royalties, Marketing Contributions and all other amounts owed under or in connection with this Agreement, together with a statement of Franchisee's Net Sales for the Accounting Period (certified as complete and accurate by a duly authorized representative of Franchisee), so that they are received no later than 30 calendar days after the end of the applicable Accounting Period, unless Company notifies Franchisee in writing of a different payment period. At the request of Company, Franchisee shall process its payments via the ACH (Automated Clearing House) system and/or via a valid credit card for which Company or the Fund will be authorized to charge payments. Company may, at its option, provide Franchisee with statements of amounts owed for products and/or services purchased by Franchisee from Company within 14 calendar days after the end of each Accounting Period.

4.6 Interest and Charges for Late Payments. SEE ADDENDUM If Franchisee shall fail to pay to Company or the Fund, as applicable, the entire amount of the Continuing Royalty, Marketing Contributions and all other sums owed to Company promptly when due, Franchisee shall pay to Company or the Fund, in addition to all other amounts which are due but unpaid, interest on the unpaid amounts, from the due date thereof, at the rate of 1.5% per month, or the highest rate allowable under Applicable Law, whichever is less. If any check or draft, electronic or otherwise, is unpaid because of insufficient funds or otherwise, then Franchisee shall pay Company's expenses arising from such non-payment, including bank fees in the amount of at least $30.00, hourly staff charges arising from such default, and any other related expenses incurred by Company.

4.7 Guaranty. Upon the execution of this Agreement, upon each transfer or Assignment, and at any other time upon Company's request, all holders of 5% or more of the Equity of Franchisee shall execute a written guaranty in a form prescribed by Company ("Guaranty"), personally, irrevocably and unconditionally guaranteeing, jointly and severally, with all other holders of 5% or more of the Equity of Franchisee, the full payment and performance of Franchisee's obligations to Company and to Company's Affiliates.
ARTICLE 5
CONSTRUCTION AND COMMENCEMENT OF BUSINESS

5.1 Location.

5.1.1 Franchisee’s Store shall be located at the Location. If no Location has been inserted in the blank space provided in Section 1.1 at the time of execution of this Agreement, Franchisee shall, promptly following the execution hereof, purchase or lease Premises which meet Company’s then-current standards and specifications. Franchisee shall not enter into any such Lease or purchase agreement unless Franchisee shall have first (i) notified Company in writing of the proposed Location and provided Company with all information which Company may request concerning such proposed Location, including, Company’s then-current “site approval package,” and (ii) shall have received Company’s written acceptance of such Location, upon the receipt of which acceptance such Location shall be deemed to be the “Location” as defined above.

5.1.2 Franchisee may not relocate the Store, including to any other location within the Premises, without Company’s prior written consent. As a condition of any such relocation, Franchisee must pay, before relocation, the Relocation Fee.

5.2 Company Site Selection Assistance. Company may voluntarily (without obligation) assist Franchisee in obtaining an accepted location. Neither Company’s said assistance, if any, nor its acceptance of Franchisee’s proposed site, shall be construed to insure or guarantee the profitable or successful operation of the Store at the Location by Franchisee, and Company hereby expressly disclaims any responsibility therefor. Franchisee acknowledges its sole responsibility for finding, selecting and acquiring the Location.

5.3 Lease. Franchisee shall deliver to Company a true and correct copy of the fully executed Lease for the Location, if applicable, within ten (10) business days of the Lease’s execution. Franchisee shall duly and timely perform all of the terms, conditions, covenants and obligations imposed upon it under the Lease. In the case of a Traditional Store, the Lease shall permit the retail sale of juices, blended drinks (including, but not limited to, smoothies, whether hot or cold), coffee, tea and coffee and/or tea-based drinks, and other beverages, soups, baked goods, pizzas, flatbreads, sandwiches, wraps, salads, snacks, health products (including, but not limited to, health foods, health-oriented books and nutritional products), juice-related equipment and supplies, promotional items (including, but not limited to, apparel, headwear, books, drinkware, and activity items) and incidentals items as are reasonably related to Franchisee’s business (collectively, the “Initial Use”), and any other lawful use not in violation of existing exclusive use rights or matters of record and shall contain the Addendum as set forth on Exhibit B, attached hereto and incorporated herein by this reference. Without Company’s prior written consent, the entry of a Lease without the Initial Use clause and the language contained in Exhibit B shall be a material breach of this Agreement.
5.4 Construction.

5.4.1 Franchisee shall at its sole cost and expense promptly engage the services of an architect. Company recommends that Franchisee utilize the services of one of Company's pre-approved architects. Within 45 days after the Effective Date and before the renovation or construction of the Store or Location, Franchisee shall provide Company with a schematic design of the layout of the Store space for Company's approval. Franchisee may need to obtain a survey of the Store prior to preparing such a schematic design. Company shall provide such standards and specifications to Franchisee as are necessary in order for Franchisee's architect to prepare such survey and/or schematic design. Company shall provide Franchisee with copies of Company's specifications for the design and layout of the Store and required fixtures, equipment, furnishings, decor, and signs. Franchisee shall at its sole cost and expense promptly cause the Premises and Store and to be designed, constructed, equipped and improved in accordance with such standards and specifications, unless Company shall, in writing, agree to modifications thereof. Franchisee's architect shall prepare such architectural, engineering and construction drawings and site plans, and Franchisee or its architect shall obtain all Permits required to construct, remodel, renovate, and/or equip the Store and Premises ("Construction Documents") in accordance with Company's standards and specifications. All costs and expenses related to architects and general contractors (as may be selected by Franchisee, including if Company's pre-approved architects are utilized) shall be borne solely by the Franchisee. If Franchisee requests Company's support in adapting Company's standard plans to Franchisee's Location, Company may charge a reasonable support fee. Company shall not be responsible for any errors or omissions of the Company's pre-approved architects or any other architect. Not more than 75 days following the Effective Date, all such Construction Documents, plans, and modifications and revisions thereto, shall be submitted to Company for its prior review and approval ("Construction Approval") before Franchisee's commencement of construction. Franchisee shall also submit to Company for its approval all signage placement and shop designs prior to fabrication. It is Franchisee's sole responsibility to ensure that the Construction Documents and other designs used in the construction of the Store are in compliance with all Applicable Laws, including, without limitation, the Americans With Disabilities Act and all codes, and permit requirements. If Company disapproves the Construction Documents, or any other designs submitted for approval, Company shall promptly notify the Franchisee in writing of such disapproval and of the required corrections.

5.4.2 SEE ADDENDUM After commencement of construction, Franchisee shall submit to Company weekly digital photographs and schedule updates depicting the progress of the construction of the Store in a manner and format acceptable to Company. At Company's sole cost and in its sole discretion, it may conduct inspections of the Store at the Location during construction and final inspections of the Store at the Location upon completion of construction to ensure that the Store at the Location has been built in accordance with the drawings and specifications approved by Company. At all times prior to Franchisee's commencing the operation of the Store, Company shall have the right to inspect and examine the Premises and any fixtures, signs, furnishings and equipment to insure compliance with Company's standards and specifications. Franchisee may not open the Store at the Location for business until it has been inspected by Company and has been provided by Company with written authorization to open. In the event the Company deemed it necessary to inspect the Store more than what is
otherwise customary, Company shall have the right to be reimbursed from Franchisee for its
reasonable out-of-pocket costs in connection with the additional inspections.

5.4.3 Franchisee may from time to time request additional information
regarding the design and construction of the Store, which, if in the possession of Company, shall
be provided at no expense to Franchisee. Upon request, Company may provide additional site
visits, project management, design work, and equipment purchasing services to Franchisee at
Franchisee’s sole cost.

5.4.4 Subject only to Force Majeure (provided that Franchisee continuously
complies with Section 5.4.5), Franchisee shall complete construction or renovation, as the case
may be, of the Premises, the Store and all improvements therein in accordance with the
Construction Approval, including installation of all fixtures, signs, equipment and furnishings as
soon as possible, and commence operation of the Store at the Location, as soon as possible, but
in any event within 210 days following the Effective Date.

5.4.5 In the event of the occurrence of an event constituting Force Majeure,
Franchisee shall notify Company in writing within five (5) days following commencement of the
alleged Force Majeure of the specific nature and extent of the Force Majeure, and how it has
impacted Franchisee’s performance hereunder. Franchisee shall continue to provide Company
with updates and all information as may be requested by Company, including Franchisee’s
progress and diligence in responding to and overcoming the Force Majeure.

5.4.6 The time periods for the commencement and completion of construction
and the installation of fixtures, signs, machinery and equipment as referred to in this Section 5.4
are of the essence of this Agreement. If Franchisee fails to perform its obligations contained in
this Section, the Company may deem the Franchisee’s failure to so perform its obligations to
constitute a material breach of this Agreement.

5.4.7 SEE ADDENDUM Franchisee and its consultants and contractors agree
to indemnify, save, and hold Company and its owners, officers, directors, employees and sub-
contractors harmless from and against any and all claims by store operators, store management
employees, or other persons for personal injury and property damage (including, without
limitation, court costs, attorneys’ fees, special or consequential damages which may be sustained
in connection with the performance of this Agreement) incurred by or arising out of the use of
the Construction Documents, or any portion thereof, approved by Company.

5.5 Maintaining and Remodeling of Store.

5.5.1 Franchisee shall maintain the condition and appearance of its Store in a
“like new” level of cosmetic appearance consistent with the image of “JAMBA JUICE®” Stores
as attractive, clean, and efficiently operated, offering high quality food products and beverages,
efficient and courteous service, and pleasant ambiance. If at any time in the Company’s
reasonable judgment, the state of repair, appearance or cleanliness of the Franchisee’s Premises
(including the Store and the non-Store portion of Franchisee’s Premises, and parking areas) or its
fixtures, equipment, furnishings, signs or utensils fail to meet the Company’s standards therefor,
Franchisee shall immediately upon receipt of notice from Company specifying the action to be
taken by Franchisee (but in any event within 90 days of such notice), correct such deficiency, repair and refurbish the Store or Premises, and make such modifications and additions to its layout, decor and general theme, as may be required, including replacement of worn out or obsolete fixtures, equipment, furniture, signs and utensils, and repair of the interior and exterior of the Store, the Premises and appurtenant parking areas (if any). Such maintenance shall not be deemed to constitute remodeling, as set forth below.

5.5.2 In addition to, and not in lieu of, Section 5.5.1, after five (5) years from the Start Date, as well as five (5) years following execution of a Renewal Franchise Agreement, Company may make reasonable requests that Franchisee shall, at its expense, refurbish the Store to conform to the building design, trade dress, color schemes, and presentation then being used in connection with Company owned Stores. Such refurbishment may include, without limitation, structural changes, remodeling, redecoration, and modifications to existing improvements; provided, however, that Franchisee shall not be required to expend an amount in excess of Fifty Thousand Dollars ($50,000) in connection with such refurbishment.

5.5.3 As a condition to Franchisee’s exercising its Renewal Right hereunder, Company may require Franchisee at Franchisee’s sole cost and expense to refurbish, remodel and improve the Store to conform the Franchisee’s building design, trade dress, color schemes, and presentation of Marks to the Company’s then current public image; provided, however, that Franchisee must be notified in writing of any required improvements with a value in excess of Five Thousand Dollars ($5,000) a minimum of eighteen (18) months prior to the desired completion date to allow for the improvements to be requested in the subsequent budget cycle. Improvements with a value less than Five Thousand Dollars ($5,000) will be performed with an implementation schedule acceptable to both parties. Such a remodeling may include extensive structural changes to the Store fixtures and improvements as well as such other changes as the parties mutually agree upon and are commercially reasonable, and Franchisee shall undertake such a program promptly upon notice from the Company (unless the Franchisee elects not to enter into a Renewal Franchise Agreement), and shall complete any such remodeling as expeditiously as possible, but in any event prior to the commencement of the Renewal Term.

5.5.4 SEE ADDENDUM If the Store is damaged or destroyed by fire or any other casualty, Franchisee, within 30 days thereof, shall initiate such repairs or reconstruction, and thereafter in good faith and with due diligence continue (until completion) such repairs or reconstruction, in order to restore the Premises of the Store to its original condition prior to such casualty. If, in the Company’s reasonable judgment, the damage or destruction is of such a nature or to such extent that it is feasible for Franchisee to repair or reconstruct the Premises and the Store in conformance with the then standard “JAMBA JUICE®” decor specifications, the Company may require that Franchisee repair or reconstruct the Premises and Store in conformance with the then standard System decor specifications.

ARTICLE 6
TRAINING

6.1 Start-Up Training.
6.1.1 If this Agreement has been executed pursuant to a Development Agreement, and is one of the first three (3) Franchise Agreements executed thereunder, Company shall provide, at no extra charge, the Initial Training Program to Franchisee’s General Manager, and no other individuals; Franchisee hereby acknowledges that its Managing Owner and Director of Operations have received adequate training pursuant to the training provided by Company in accordance with such Development Agreement.

6.1.2 If this Agreement has not been executed pursuant to a Development Agreement, and if the Store at the Location is one of the first three (3) Stores owned by Franchisee, Company shall provide, at no extra charge, the Initial Training Program concurrently to the General Manager (if the Store at the Location is the first Store only), and two other people, inclusive of the initial General Manager for the Store at the Location. If this Agreement has not been executed pursuant to a Development Agreement, and if the Store at the Location is the fourth (4th) or subsequent Store owned by Franchisee, Franchisee shall designate a District Manager and a manager or other person acceptable to Company (“Certified Trainer”), to be responsible for training Franchisee’s Store managers, leads and other Store personnel. Upon payment of the then-current fee, if any, such District Manager shall attend and complete, to Company’s satisfaction, the Initial Training Program, and such Certified Trainer shall attend and complete, to Company’s satisfaction, Company’s “Train the Trainer” Program prior to the opening of Franchisee’s fourth (4th) Store. Such programs may be held, in Company’s discretion, at a combination of the Company’s support center, a “certified” Company store and/or another location.

6.1.3 Other individuals may attend the Initial Training Program, with Company’s prior consent and Franchisee’s payment of Company’s then-current fee for the Initial Training Program.

6.1.4 The Company endeavors to conduct two new franchisee orientation programs a year (each an “Orientation Program”) at our corporate office or another location designated by the Company. One or more authorized representatives of Franchisee, approved by Company, must attend the first scheduled Orientation Program immediately following the time of the execution of (i) this Agreement if this is Franchisee’s first Store with the Company, or (ii) a Development Agreement. The Orientation Program will consist of approximately five (5) days of introductory training and orientation to the System. Franchisee will be required to pay for all meals (to the extent not provided by the Company), lodging, and other living expenses and transportation costs incurred while attending the Orientation Program. In addition, a new franchisee must attend the first scheduled Orientation Program if the new franchisee is a transferee/assignee of this Agreement and the Assignment is made in accordance with this Agreement, or if this Agreement is entered into in connection with an Assignment.

6.2 Initial Training Program.

6.2.1 SEE ADDENDUM - The “Initial Training Program” shall consist of training in the Company’s System and methods of operation at a combination of the Company’s Support Center, the Store, and a Company-Certified Training Store, or at another location selected by Company. The Initial Training Program shall consist of approximately 4 to 5 weeks, as determined by Company, of instruction prior to the opening of the Store and must be
completed before Franchisee's Store opens to the public. This includes training on the “Back Office System,” which consists of certain computer hardware and/or software designed to assist Franchisee in analyzing and managing its costs of goods and labor, and which is available from third party suppliers. Franchisee shall pay all travel, living, compensation, and other expenses, if any, incurred by Franchisee and/or Franchisee’s employees in connection with attendance the Initial Training Program. Franchisee may not open its Store until the Initial Training Program has been successfully completed to Company’s satisfaction and each trainee shall have been certified by Company. Company shall pay no compensation for any services performed by trainee(s) in connection with the Initial Training Program.

6.2.2 Company shall determine the contents and manner of conducting the Initial Training Program, however, the training course will be structured to provide practical training in the implementation and operation of a Store and may include such topics as on-site food preparation, portion control, prepping procedures, juice drink and smoothie production, packaging procedures, Jamba Juice® standards, “train the trainer,” marketing and customer service techniques, company culture, reports, equipment maintenance, safety and security.

6.2.3 Franchisee acknowledges that because of Company’s superior skill and knowledge with respect to the training and skill required to manage the Store, its judgment as to whether or not the Franchisee and the trainees have satisfactorily completed such training shall be conclusive.

6.3 Ongoing Training.

6.3.1 All replacement General Managers of Franchisee’s Store shall successfully complete, to Company’s satisfaction, the Initial Training Program (“Ongoing Training”). Management Employees of Franchisee shall have a skill level, training and experience commensurate with the demands of the position, and in keeping with Company’s high standards for quality products, courteous service, and cleanliness of operations. Franchisee shall pay all travel, living, compensation, and other expenses, if any, incurred by Franchisee and/or Franchisee’s employees in connection with attending Ongoing Training. Company shall pay no compensation for any services performed by trainee(s) in connection with Ongoing Training.

6.3.2 Unless otherwise agreed in writing by Company, Franchisee may not open any Distribution Point authorized by Company pursuant hereto until Franchisee’s General Manager for the Distribution Point shall have attended and satisfactorily completed the Company’s Initial Training Program; Franchisee must pay Company’s then current, reasonable training fee therefor in advance.

6.3.3 Company may, from time to time, at its discretion, make available to, or in certain cases (e.g. prior to a new product roll-out) require, Franchisee or its Management Employees, or any of them, to attend additional training courses or programs during the Term of this Agreement held on a national or regional basis at locations selected by Company to instruct Franchisee with regard to new procedures or programs which Company deems, in its reasonable judgment, to be of major importance to the operation of the Stores by its Franchisees. Such supplementary training may relate, by way of illustration, to product production techniques, new...
recipes, new products, marketing, accounting and general operating procedures, and the establishment, development and improvement of Computer Systems. Company may establish charges applicable to all Franchisees similarly situated for such additional training courses. Company will determine which training courses are optional and which are mandatory and Franchisee must pay Company’s then-current fees for such additional training courses. The time and place of such training courses shall be at Company’s discretion. Franchisee shall pay all transportation costs, food, lodging and similar costs incurred in connection with attendance at such courses. Company shall pay no compensation for any services performed by trainee(s) in connection with such training programs.

6.3.4 Except to the extent Company has agreed to provide the Initial Training Program at no additional charge pursuant to Section 6.1, Franchisee shall pay Company’s then current, reasonable charges for all Ongoing Training and any other training performed by Company, whether requested by Franchisee or required hereunder. Notwithstanding any training provided by Company, Company has no responsibility for the quality of any Authorized Jamba Juice® Products provided by Franchisee to its customers.

6.4 Opening Assistance. SEE ADDENDUM Company shall, in its sole discretion, and upon the request of Franchisee, furnish to Franchisee one or more persons experienced in the System to assist Franchisee in conjunction with, and prior to, the opening and initial operations of the Franchisee’s Store. Franchisee shall reimburse Company for all of its out-of-pocket expenses including wages (including a reasonable estimate of the cost of associated benefits), transportation, lodging, and food, for such person or persons.

6.5 Other Assistance.

6.5.1 Franchisee shall have the right, at no additional charge, to inquire of Company’s headquarters staff, its field representatives and training staff with respect to problems relating to the operation of the Store, by telephone or correspondence, and Company shall use its best efforts to diligently respond to such inquiries, in order to assist Franchisee in the operation of the Store. At no time shall reasonable assistance be interpreted to require Company to pay any money to Franchisee.

6.5.2 Company may, from time to time, at its discretion, cause its field representatives to visit Franchisee’s Store to advise, consult with, train or evaluate Franchisee, the Store, its operation and performance, and compliance by Franchisee with the Manuals and Operations Standards Evaluation (O.S.E.) or some equivalent. If provided at the Franchisee’s request, the Company may require the Franchisee to pay such reasonable training charges as may be then in effect, and to reimburse Company for all transportation costs, food, lodging and similar costs incurred by Company and its personnel in connection with such training, subject to the restrictions on travel expenses set forth in Section 6.4 herein.

6.5.3 In the event of any sale, transfer, or assignment, the transferee/assignee must be trained by Company as a condition of Company’s consent to such transfer. All tuition costs for such training shall be deemed paid upon receipt by Company of the administrative/transfer fee due in accordance with Section 13.2.9 herein. No Store shall be opened or re-opened until Company certifies that the transferee is approved to operate the
respective Store.

6.5.4 In the event of any renewal of this Agreement pursuant to a Renewal Franchise Agreement, the Managing Owner and General Manager of the Store may be required by Company to be trained in some or all of the materials covered in the Initial Training Program. All tuition costs for such training shall be deemed paid upon receipt by Company of the renewal fee associated with such Renewal Franchise Agreement.

6.6 Employee Training. A fully trained and certified Management Employee must train each of Franchisee’s regular employees to Company’s satisfaction prior to opening of the “JAMBA JUICE®” Store.

6.7 Certain Non-Traditional Stores. Company may modify the training program set forth herein for certain Non-Traditional Stores in the case of unique Location or operations and with experienced personnel, which changes, if any, shall be as set forth in an addendum to this Agreement.

ARTICLE 7
MANUALS AND STANDARDS OF OPERATOR QUALITY, CLEANLINESS AND SERVICE

7.1 Good Standing. Franchisee shall maintain its status as a “JAMBA JUICE®” Franchisee in Good Standing.

7.2 Management of Franchisee and Store.

7.2.1 Franchisee shall be, or if Franchisee is a Business Entity, Franchisee shall appoint and retain throughout the Term one Owner who shall be at all times throughout the Term, vested with the authority and responsibility for the overall management of Franchisee (the “Managing Owner”). The Managing Owner shall at all times throughout the Term be an individual approved by Company (and subject to subsequent disapproval by Company) and, if Franchisee is a Business Entity, shall at all times during the Term own not less than 51% of the Equity and voting rights of Franchisee. Notwithstanding the foregoing, if (i) this Agreement was executed pursuant to a Development Agreement, the Managing Owner shall at all times during the Term own not less than 5% of the Equity and voting rights of Franchisee, and (ii) if this Agreement is Franchisee’s fourth (4th) or subsequent Store (other than a Store developed under a Development Agreement), the Managing Owner shall at all times during the Term own not less than 25% of the Equity and voting rights of Franchisee. Franchisee shall furnish to Company such evidence as Company may request from time to time for the purpose of assuring Company of Franchisee’s compliance with this section.

7.2.2 Franchisee shall appoint, and retain throughout the Term, an individual “General Manager” who is approved by Company (and subject to subsequent disapproval by Company), such approval not to be unreasonably withheld; provided, however, Franchisee shall not be required to obtain Company’s approval of the General Manager if this Agreement was executed pursuant to a Development Agreement. The General Manager shall be vested with the authority and responsibility to direct any action necessary to ensure that the day-to-day operation
of the Store at the Location is in compliance with this Agreement and all other agreements with Company relating to such Store. The General Manager shall devote his or her full time and best efforts to the direct and personal supervision of the Store at the Location. If the position of General Manager becomes vacant for any reason, Franchisee shall replace the General Manager within 60 days of the date of the vacancy with an individual accepted by Company.

7.2.3 The Managing Owner, or if this Agreement is executed pursuant to a Development Agreement, a Director of Operations, shall at all times during the Term of this Agreement devote his or her full time and best efforts to the supervision of all Stores which the Managing Owner operates, or if this Agreement was executed pursuant to a Development Agreement, all Stores within the Development Market provided in such Development Agreement. If, during the Term, the Director of Operations, is not able to continue to serve in such capacity or no longer qualifies to act as such in accordance with this Section (including Company’s subsequent disapproval of such person), Franchisee shall promptly notify Company and designate a replacement within 60 days after the Director of Operations ceases to serve, such replacement being subject to Company’s approval. If this Agreement has been executed pursuant to a Development Agreement, the provisions of this section shall be in addition to any staffing requirements contained therein and nothing in this section shall be deemed to amend or waive any term of such Development Agreement.

7.2.4 If this Agreement is for Franchisee’s 4th Store (whether or not this Agreement is executed pursuant to a Development Agreement), Franchisee shall employ and thereafter retain a District Manager to supervise Stores on a district or regional basis. Unless otherwise agreed in writing by Company, Franchisee shall appoint at least one additional District Manager acceptable to Company prior to the execution of a Franchise Agreement for the 10th Store, and for each additional 10 Stores thereafter. If any District Manager is not able to continue to serve in such capacity or no longer qualifies to act as such in accordance with this Section (including Company’s subsequent disapproval of such person), Franchisee shall promptly notify Company and designate a replacement within 60 days after the District Manager, ceases to serve, such replacement being subject to Company’s approval.

7.2.5 Franchisee shall ensure that the operation of the “JAMBA JUICE®” Store is at all times under the direct control of a Management Employee fully trained in accordance with Sections 6.1, 6.2 or 6.3, as applicable. Each Management Employee shall be solely dedicated to operation of the “JAMBA JUICE®” Store to which the person is assigned.

7.3 POS System. SEE ADDENDUM

7.3.1 Franchisee shall purchase, use and maintain the point of sale cash collection system (the “POS System”) as specified in the Manuals or otherwise by Company in writing. Franchisee must maintain membership in any designated third party network, which is capable of receiving e-mail, for the purpose of transmitting information from Company to any non-store location designated to receive Franchisee information. The POS System shall be electronically linked to Company or its designated Affiliate, and Franchisee shall allow Company and/or its designated Affiliate, to poll the POS System on a daily or other basis at such times and in such manner as established by the Company or its designated Affiliate, with or without notice, and to retrieve such transaction information including sales, sales mix, usage, and
other operations data as Company and/or its designated Affiliate deems appropriate. Within a reasonable time upon Company’s request, Franchisee shall apply for and maintain debit cards, jambeard cards, credit cards or other non-cash systems existing or developed in the future to enable customers to purchase Authorized Jamba Juice® Products via such procedure, as specified by Company. Certain programs (including the jambeard program) may have transaction charges/service fees and may be administered by Company or a third-party vendor designated by Company.

7.3.2 Franchisee acknowledges that Company may, during the Term of this Agreement, require Franchisee to modify, enhance and/or replace all or any part of the POS System at Franchisee’s expense. Any such modifications, enhancements, and replacements may require Franchisee to incur costs to purchase, lease and/or license new or modified equipment and to obtain different and/or additional service and support services during the Term of this Agreement. Franchisee acknowledges that Company cannot estimate the costs of future enhancements, modifications, and replacements to the POS System.

7.4 Manuals. Franchisee shall operate the Store in strict compliance with the standard procedures, policies, rules and regulations established by Company and incorporated in Company’s Manual(s), subject to such exceptions as the parties may mutually agree upon in writing.

7.4.1 The subject matter of the Manuals may include matters such as: forms, information relating to product and menu specifications, purchase orders, general operations, labor management, personnel, Net Sales reports, training and accounting; sanitation; design specifications and uniforms; display of signs and notices; catering specifications; telephone, fax and e-mail order taking; authorized and required equipment and fixtures, including specifications therefor; Mark usage; insurance requirements; lease requirements; decor; in-store music; standards for management and personnel, hours of operation; yellow page and local advertising formats; standards of maintenance and appearance of the Store; and required posting of notices to customers as to how to contact the Company to submit complaints. The Company may also establish emergency procedures pursuant to which it may require Franchisee to temporarily close the Store to the public, in which event Company shall not be liable to Franchisee for any losses or costs, including consequential damages or loss profits occasioned thereby. Franchisee may opt to temporarily close the Store pursuant to its internal emergency policies and procedures.

7.4.2 Company may modify the Manuals at any time and from time to time. All such modifications shall be equally applicable to all similarly situated Company-owned Stores and to Franchisees who are required by their Franchise Agreements to comply therewith, and no such modification shall alter Franchisee’s fundamental status and rights under this Agreement. Modifications in the Manuals shall become effective upon delivery of written notice thereof to Franchisee unless a longer period is specified in such written notice. The Manuals, as modified from time to time, shall be an integral part of this Agreement and reference made in this Agreement, or in any amendments, exhibits or schedules hereto, to the Manuals shall be deemed to mean the Manuals kept current by amendments from time to time.

7.4.3 The Manuals and all amendments to the Manuals (and copies thereof) are copyrighted and remain Company’s property. Franchisee is provided access to the Manuals
only for the Term of the Agreement and must return any and all copies of the Manuals to Company immediately upon the Agreement’s termination or expiration. The Manuals are highly confidential documents which contain certain Trade Secrets of Company. Franchisee shall not make, or cause or allow to be made, any copies or reproductions of all or any portion of the Manuals without Company’s express prior written consent.

7.5 **Hours.** SEE ADDENDUM. Subject to Applicable Law to the contrary, Company and Franchisee agree that Franchisee’s Store shall be open to the public and continuously operate from 7:00 a.m. until 8:00 p.m., seven days a week. Franchisee shall diligently and efficiently exercise its best efforts to achieve the maximum Net Sales possible from its Location, and shall remain open for longer hours if additional opening hours are reasonably required to maximize operations and sales.

7.6 **Product Line and Service.** Franchisee shall advertise, sell and serve all and only Authorized Jamba Juice® Products at or from the Store. All Authorized Jamba Juice® Products shall be distributed under the specific name designated by Company. Franchisee shall not remove any Authorized Jamba Juice® Product from the Franchisee’s menu without Company’s express approval. Except for participation in Company’s wholesale programs, if any, or as otherwise specifically authorized by Company, Franchisee shall not sell any “JAMBA JUICE®” Products outside of the “JAMBA JUICE®” Store or to any customer for the purpose of resale by the customer, and all sales by Franchisee shall be for retail consumption only.

7.7 **Containers, Fixtures and Other Goods.** All food and drink items served at the Store shall be served in containers bearing accurate reproductions of Company’s Marks. All containers, napkins, bags, cups, matches, menus and other packaging and like articles used in connection with Franchisee’s Store shall conform to Company’s specifications, shall be imprinted with Company’s Marks and shall be purchased by Franchisee from a distributor or manufacturer approved in writing by Company, as provided in Article 9. No item of merchandise, furnishings, interior and exterior decor items, supplies, fixtures, equipment or utensils shall be used in or upon any Store unless the same shall have been first submitted to and approved in writing by Company.

7.8 **Menus.**

7.8.1 Authorized Jamba Juice® Products shall be marketed by approved menu formats to be utilized in Franchisee’s Store. The approved and authorized menu and menu format(s) may include, in Company’s discretion, requirements concerning organization, graphics, product descriptions, illustrations, and any other matters related to the menu, whether or not similar to those listed. In Company’s discretion, the menu and/or menu format(s) may vary depending upon region, market size, and other factors. Company may change the menu and/or menu format(s) from time to time or region to region or authorize tests from region to region or authorize non-uniform regions or Stores within regions.

7.8.2 Franchisee shall, upon receipt of notice from Company, add, delete, or update any Authorized Jamba Juice® Products as mutually agreed by the parties to its menu according to the instructions contained in the notice. Franchisee shall have a minimum of 30 days and not more than 60 days after receipt of written notice in which to fully implement any
such change. Franchisee shall cease selling any previously approved product within 30 days after receipt of notice that the product is no longer approved.

7.8.3 All food products sold by Franchisee shall be of the highest quality, and the ingredients, composition, specifications, and preparation of such food products shall comply with the instructions and recipes and other requirements communicated by Company or contained in Company’s Manuals from time to time.

7.9 Compliance with Applicable Law. Franchisee shall operate its Store (and its other business at the Premises, in the case of a Non-Traditional Store) in compliance with all Applicable Laws. Franchisee shall not allow any part of its Premises to be used for any immoral or illegal purpose.

7.10 Notification of Legal Proceedings. Franchisee shall notify Company in writing within 10 days after Franchisee receives actual notice of the commencement of any action, suit, or other proceeding, or the issuance of any order, writ, injunction, award, or other decree of any court, agency, or other Governmental Authority that pertains to the “JAMBA JUICE®” Store or that may adversely affect Franchisee’s operation of the “JAMBA JUICE®” Store or ability to meet its obligations hereunder.

7.11 Signs. Franchisee shall maintain approved signs and/or awnings at, on, or near the front of the Premises, identifying the Location as a “JAMBA JUICE®” Store, which shall conform in all respects to Company’s specifications and requirements and the layout and design plan approved for the Location, subject only to restrictions imposed by Applicable Law. On receipt of notice by Company of a requirement to alter any existing sign on its premises, Franchisee will at its cost make the required changes within 60 days, subject to the approval of the Lessor if required by Franchisee’s Lease.

7.12 Uniforms and Employee Appearance. Franchisee shall cause all employees, while working in the Store, to: (i) wear uniforms of such color, design, and other specifications as Company may designate from time to time, and (ii) present a neat and clean appearance. If Company removes the type of uniform utilized by Franchisee from the list of approved uniforms, Franchisee shall have 90 days from receipt of written notice of such removal to discontinue use of its existing inventory of uniforms and implement the approved type of uniform. Unless Company otherwise consents in writing, Franchisee’s employees working in the “JAMBA JUICE®” Store shall be dedicated solely to the “JAMBA JUICE®” Store and shall not work at any other business owned or operated by Franchisee. In no case shall any employee of Franchisee wear his or her JAMBA JUICE® uniform while working for Franchisee at any location other than the “JAMBA JUICE®” Store.

7.13 Vending or Other Machines. No vending or game machines, pay telephones or any other mechanical device may be installed or maintained on the Premises without Company’s prior written approval.

7.14 Co-Branding. For the purpose of this Section, a co-brand shall be defined as an independent product line, business or operating system owned by another entity (not Company) that is incorporated within or adjacent to, and as an operational part of the Franchisee’s Premises.
An example would be an independent coffee or bagel operation installed within Franchisee's Premises.

7.14.1 If the Store is a Non-Traditional Store, Franchisee may install co-branding marketing systems to be operated at Franchisee's Premises (but not the Store) provided that Franchisee shall not sell any other fresh or frozen fruit juice products in connection therewith; provided, however, that (a) in the case of a Grocery Store, Mass Merchandiser, supermarket or convenience store, Franchisee (or such Grocery Store, Mass Merchandiser, supermarket or convenience store owner) may continue its store operations and customary sales of other products consistent with past practices and may offer other food products typical of a Grocery Store on the Premises, provided that Franchisee shall not sell any smoothies (i.e. mixed fruit juices) or other fruit juice products which are prepared fresh on site; and (b) in the case of any other Non-Traditional Store, Franchisee may continue its customary sales of fresh-squeezed orange or other fruit juices in connection with its cafeteria or other food service facilities provided they are not smoothies. SEE ADDENDUM

7.14.2 In the case of Traditional Stores, Franchisee may not install any co-branding marketing system absent Company's prior written consent, and only if Company has recognized that co-branding system as an approved co-brand for operation within "JAMBA JUICE®" Stores.

7.15 Computer Systems and Specified Software.

7.15.1 Franchisee shall, as Company may designate, (i) acquire a Computer System for the Store and acquire the right to use Specified Software; (ii) obtain any and all peripheral equipment and accessories and arrange for any and all support services that may be necessary to enable the Computer System and the Specified Software to operate as intended, (iii) take all other actions (including but not limited to installation of electrical wiring and cabling, and temperature and humidity controls) that may be necessary to enable the Computer System and the Specified Software to operate as required; and (iv) commence using the Computer System and the Specified Software for use in the Store. Franchisee shall be responsible for all costs associated with the foregoing, including but not limited to transportation; installation; sales, use, excise and similar taxes; and site preparation, and Company shall have no liability to Franchisee or to any other party in connection with any of the foregoing.

7.15.2 Franchisee acknowledges that Company may, during the Term of this Agreement, require Franchisee to modify, enhance and/or replace all or any part of the Computer System and/or the Specified Software at Franchisee's expense. Any such modifications, enhancements, and replacements may require Franchisee to incur costs to purchase, lease and/or license new or modified computer hardware and/or software or other equipment and to obtain different and/or additional service and support services during the term of this Agreement. Franchisee acknowledges that Company cannot estimate the costs of future enhancements, modifications, and replacements to the Computer System and the Specified Software.

7.15.3 Initial Fee. Company may charge Franchisee an initial fee for services provided in connection with the initial set-up for the Computer Systems and Specified Software in a Store.
7.15.4 **Computer System Support Service.** During the Term of this Agreement, Franchisee shall maintain such support services as is reasonably necessary to cause the Computer System to operate in accordance with the standards for the software specified from time to time by Company.

7.15.5 **Software Support Service and Maintenance Fee.** For the software support services provided by Company to Franchisee during the Term of this Agreement, and for allocated software maintenance fees charged by third party vendors, Franchisee agrees to pay to Company a software support and maintenance fee (the “Software Support and Maintenance Fee”) as may be charged by Company from time to time. The Software Support and Maintenance Fee may be increased by Company from time to time, at its sole option, upon written notice to Franchisee.

7.15.6 **Modification and Enhancement.** From time to time during the Term of this Agreement, Franchisee may request assistance from Company regarding use of the Computer System or the Specified Software or may request that Company provide additional software for Franchisee’s use. Franchisee agrees to pay Company for any out of pocket expenses incurred by Company in connection with any such assistance, subject to the travel restrictions set out in Section 6.4 herein.

7.16 **Meetings.** Franchisee must attend, at its sole expense, all annual or other meetings and conference calls that Company determines are mandatory for all Franchisees, or groups of Franchisees (as designated by Company), such as Franchisees within particular geographic regions. Company may impose a charge for Franchisee’s failure to attend such meetings and conference calls.

7.17 **Pricing.** Company reserves the right, to the fullest extent allowed by applicable law, to establish maximum, minimum or other pricing requirements with respect to the prices Franchisee may charge for products or services.

**ARTICLE 8**
**MARKETING PROGRAM, LOCAL STORE MARKETING**

8.1 **General Requirements.** SEE ADDENDUM. For Traditional Stores and Non-Traditional Stores located in Shopping Malls, Franchisee shall spend not less than 1.5% of its Net Sales each three Accounting Periods on local advertising and promotion of the Store. Franchisee shall conduct all local advertising and promotion in accordance with such policies and provisions with respect to format, content, media, geographic coverage and other criteria as are from time to time contained in the Manuals, or as otherwise directed by Company, and shall not use or publish any advertising material which does not conform to said policies and provisions or as to which Franchisee shall not have received Company’s prior written approval; provided, however, that if Company shall not object to any proposed advertisement submitted by Franchisee for approval within 20 days after Company’s receipt thereof, such advertisement shall be deemed approved subject to Company’s right to subsequently withdraw its approval.

8.2 **Co-op Advertising.** SEE ADDENDUM The Company may from time to time
establish regions for cooperative advertising ("Co-op Advertising Regions"), to coordinate advertising, marketing efforts and programs and to maximize the efficient use of local and/or regional advertising media.

8.2.1 If and when Company creates a Co-op Advertising Region for the region in which Franchisee's Store is located, Franchisee and, if Company owns a Store in such Co-op Advertising Region, Company, shall become subscribers and members thereof and shall execute and participate in accordance with the Subscription Agreement and the Certificate of Incorporation and Bylaws of such Co-op Advertising Region on the forms prescribed by Company. The size and content of such regions, when and if established by the Company, shall be binding upon Franchisee and all other "JAMBA JUICE®" franchisees in the Co-op Advertising Region whose agreements require their participation, and Company, if it operates Store(s) in the region. At all meetings of such Co-op Advertising Regions, each participating Franchisee, as well as Company, if applicable, shall be entitled to one vote for each Store located within such Co-op Advertising Region.

8.2.2 Franchisee and other members of the Co-op Advertising Region, whose agreements require their participation, will contribute to the Co-op Advertising Region such amount as may be determined by vote of the Co-op Advertising Region (not to exceed 1.5% of the Net Sales of each member's Store(s) located in the region). You may credit the amount you contribute against your local advertising obligation under Section 8.1.

8.2.3 Subject to Section 8.1, each Co-op Advertising Region will decide as to the usage of funds available to it for media time, production of media materials, whether for radio, television, newspapers or store level materials such as flyers, or posters, or for any other type of advertising or marketing use, and then such Co-op Advertising Region shall in writing request approval from Company to use said funds in said manner. Company shall not withhold approval unreasonably, but no placement of advertising or commitment of advertising funds on behalf of a Co-op Advertising Region will be made without Company's prior written approval. Company reserves the right to establish general standards concerning the operation of the Co-op Advertising Region, advertising agencies retained by Co-op Advertising Region, and advertising programs conducted by Co-op Advertising Region.

8.3 Marketing Program.

8.3.1 An amount equal to all Marketing Program Contributions including contributions on account of Company-owned Stores, will be expended for national, regional, or local marketing advertising, public relations and promotional campaigns, typically on "in-store" programs and media such as direct mail advertising, print advertising and Internet Web site development, operation and maintenance (excluding sums expended on Internet costs attributable to promotion of the sale of franchises and investor relations). Such expenditures may include, without limitation, those (a) to conduct marketing studies, and to produce and purchase radio and television commercials, point of sale materials, outdoor advertising art, local store marketing programs and materials; product research, development (including new product management, which may include, without limitation, sourcing and distribution setup, COGS and other financial modeling, collateral development and the establishment of initial quality control procedures) and market testing; and direct mail pamphlets and literature, and (b) a payment to
Company or its Affiliates (including the Fund), for internal expenses (including an allocation of employee salaries) incurred in connection with the operation of its marketing/advertising department(s), if any, and the administration of the Marketing Program; provided, however, that not more than 15% of all such Marketing Program Contributions, including contributions by Company on account of Company-owned Stores, shall be allocated to said internal expenses incurred by Company or its Affiliates (including the Fund). The Marketing Contributions may, among other things, be used to pay for such activities conducted for the benefit of co-branding, or other arrangements where "JAMBA JUICE®" products and/or services are offered in conjunction with other marks or through alternative channels of distribution. Company or the Fund may employ individuals, consultants or advertising or other agencies, including consultants or agencies owned by, operated by or Affiliated with Company to provide services for the Marketing Program. The Marketing Contributions may be used to defray salaries of Company’s or the Fund’s employees related to the operation of the Marketing Program, to pay for attorney’s fees and other costs related to the defense of claims against the Marketing Program or against Company or the Fund relating to the Marketing Program, and to pay costs with respect to collecting amounts due to the Marketing Program. Actual direct expenditures by Company or its Affiliates (including the Fund) for the production of advertising, or for attorney’s fees and collection costs, shall not be subject to or included in said 15% limitation. Company or the Fund shall determine the cost, media, content, format, style, timing, allocation and all other matters relating to such advertising, public relations and promotional campaigns. Franchisee acknowledges that not all Franchisees are or shall be required to contribute, or contribute, the same percentage of Net Sales, to the Marketing Program. Although the Company or the Fund will attempt to allocate advertising expenditures fairly and in good faith, nothing herein shall be construed to require Company or the Fund to allocate or expend Marketing Program Contributions or allocations so as to benefit any particular Franchisee or group of Franchisees on a pro-rata or proportional basis or otherwise. Company or the Fund may make copies of advertising materials available to Franchisee with or without additional reasonable charge, as determined by Company or the Fund. Any additional advertising shall be at the sole cost and expense of Franchisee. The Marketing Program shall, as available, provide to Franchisee marketing, advertising and promotional formats and sample materials at the Marketing Program’s direct cost of producing such items, plus shipping and handling. Company or the Fund may collect rebates and credits from suppliers based on purchases or sales by Franchisee and, at Company’s or the Fund’s discretion, may refund such amounts to Franchisee, contribute such amounts to the Marketing Program or retain such amounts for Company’s or Fund’s own-use in Company’s or the Fund’s discretion, notwithstanding any designation by the supplier or otherwise. Any such contribution of such rebates or credits to the Marketing Program shall not reduce Franchisee’s obligation to pay the Marketing Contributions.

8.3.2—Company shall administratively segregate on its books and records all Marketing Contributions received from Franchisees of Company. Nothing herein shall be deemed to create a trust fund, and Company may commingle Marketing Contributions with its general operating funds and expend such sums in the manner herein provided. For each Store that Company or any of its Affiliates operates, Company or such Affiliate will contribute to the Marketing Program the amount that would be required to be contributed to the Marketing program if it were a licensed Store.
8.3.3 If less than the total of all contributions and allocations to the Marketing Program are expended during any fiscal year, such excess may be accumulated for use during subsequent years. Company or the Fund may spend in any fiscal year an amount greater or less than the aggregate contributions to the Marketing Program in that year and may cause the Marketing Program to borrow funds to cover deficits or invest surplus funds. If Company or the Fund advances money to the Marketing Program, it will be entitled to be reimbursed for such advances. Any interest earned on monies held in the Marketing Fund may be retained by Company or the Fund for its own use in the Company’s or the Fund’s discretion.

8.3.4 Upon written request prior to the end of any fiscal year, Company or the Fund shall furnish to Franchisee within 90 days after the end of such fiscal year, a report for that year, prepared and certified correct by an officer of the Company or the Fund containing the calculations of the amount which were actually expended during such fiscal year and the amount remaining which shall be carried over for use during the following year(s).

8.3.5 Company reserves the right, upon thirty (30) days' prior written notice to Franchisee, to defer, reduce or suspend contributions to and operations of the Marketing Program for one or more periods of any length and to terminate (and, if terminated, to reinstate) the Marketing Program (and, if suspended, deferred or reduced, to reinstate such contributions). If the Marketing Program is terminated, all unspent monies on the date of termination will be distributed to Stores in proportion to their respective contributions to the Marketing Program during the preceding twelve (12) month-period.

8.4 Telephone Numbers and Directory Advertising. In addition to the Marketing Contributions, Franchisee may, at its sole expense, subscribe for and maintain throughout the Term, one or more listed telephone numbers which shall be listed in the white pages and under such headings in the yellow pages of such telephone directory or directories as Company may reasonably designate or approve which service Franchisee’s Territory and adjacent or nearby areas. Company reserves the right to establish general standards concerning directory and other types of advertising.

8.5 Promotional Campaigns. From time to time during the Term hereof, Company shall have the right to establish and conduct promotional campaigns on a national or regional basis, which may, by way of illustration and not limitation, promote particular products or marketing themes. Franchisee agrees to participate in such promotional campaigns upon such terms and conditions as the Company may establish. Franchisee acknowledges and agrees that such participation may require Franchisee to purchase reasonable point of sale advertising material, posters, flyers, product displays and other promotional material. Pamphlets, brochures, cards or other promotional materials offering free or discounted price Jamba Juice® Brand Products may only be used if approved by Company in advance. If Company does not give Franchisee written approval of any discount or coupon program submitted by Franchisee, such program shall be deemed disapproved. Within a reasonable time upon Company’s request, Franchisee shall apply for, implement, and maintain “smart cards” or other similar customer loyalty system existing or developed in the future to enable, among other things, Company and Franchisee to track customer purchases and reward such customers for their purchases.
8.6 Internet.

8.6.1 Franchisee shall not develop, create, generate, own, license, lease or use in any manner any computer medium or electronic medium (including, without limitation, any Internet home page, e-mail address, website, web page, domain name, bulletin board, newsgroup or other Internet-related medium or activity) which in any way uses or displays, in whole or part, the Marks, or any of them, or any words, symbols or terms confusingly similar thereto without Company’s express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Company may establish from time to time.

8.6.2 Franchisee acknowledges and agrees that Company is the owner of, and will retain all right, title and interest in and to (i) the domain name “jambajuice.com”; (ii) the URL: “www.jambajuice.com”; all existing and future domain names, URLs, future addresses and subaddresses using the Marks in any manner; (iii) all computer programs and computer code (e.g., HTML, XML, DHTML, Java) used for or on the Company’s web site(s), excluding any software owned by third parties; (iv) all text, images, sounds, files, video, designs, animations, layout, color schemes, trade dress, concepts, methods, techniques, processes and data used in connection with, displayed on, or collected from or through Company’s web site(s); and (iv) all intellectual property rights in or to any of the foregoing.

8.6.3 (a) Company has established the Website. Company may, at its sole option, from time to time, without prior notice to Franchisee: (i) change, revise, or eliminate the design, content and functionality of the Website; (ii) make operational changes to the Website; (iii) change or modify the URL and/or domain name of the Website; (iv) substitute, modify, or rearrange the Website, at Company’s sole option, including in any manner that Company considers necessary or desirable to, among other things, (a) comply with Applicable Law, (b) respond to changes in market conditions or technology, and (c) respond to any other circumstances; (v) limit or restrict end-user access (in whole or in part) to the Website; and (vi) disable or terminate the Website, or suspend listings of Franchisee locations or Franchisee’s access to the Website in the event of a default by Franchisee, without Company having any liability to Franchisee.

(b) The Website may include one or more interior pages that identify Stores operated under the Marks, including the Store developed and operated hereunder, by among other things, geographic region, address, telephone number(s), and menu items. The Website may also include one or more interior pages dedicated to franchise sales by Company and/or relations with Company’s investors.

(c) Company may, from time to time, establish the Franchisee Page. Company may permit but shall not require Franchisee to customize or post certain information to the Franchisee Page, subject to Franchisee’s execution of Company’s then-current participation agreement, and Franchisee’s compliance with the procedures, policies, standards and specifications that Company may establish from time to time. Such participation agreement may require the Franchisee to pay a reasonable fee for the privilege of having a Franchisee Page, and may include, without limitation, specifications and limitations for the data or information to be posted to the Franchisee Page, customization specifications, the basic template for design of the
Franchisee Page, parameters and deadlines specified by Company, disclaimers, and such other standards and specifications and rights and obligations of the parties as Company may establish from time to time. Franchisee shall not, and shall not permit others to, make any modifications (including customizations, alterations, submissions or updates) to the artwork, graphics, design, functionality, software, code or the like made by Franchisee for any purpose.

(d) Without limiting Company’s general unrestricted right to permit, deny and regulate Franchisee’s participation on the Website in Company’s discretion, if Franchisee shall breach this Agreement, or any other agreement with Company or its Affiliates, Company may disable or terminate the Franchisee Page and remove all references to the Store developed and operated hereunder on the Website until said breach is cured.

(e) Franchisee shall not, and shall not permit any others to, sell (which includes order-taking), advertise, or merchandise, any Authorized Jamba Juice® Products by any computer medium or electronic medium (including, any Internet home page, e-mail address, website, web page (including the Franchisee Page), domain name, bulletin board, newsgroup or other Internet-related medium or activity) without Company’s express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Company may establish from time to time. Without limiting Company’s rights under Section 2.3.2, all of said rights are reserved to Company.

ARTICLE 9
DISTRIBUTION AND PURCHASE OF EQUIPMENT, SUPPLIES, AND OTHER PRODUCTS

9.1 Jamba Juice® Brand Products. At all times throughout the Term, Franchisee shall purchase and maintain in inventory such types and quantities of Jamba Juice® Brand Products as are needed to meet reasonably anticipated consumer demand. Franchisee shall purchase Jamba Juice® Brand Products solely and exclusively from Company or its designated distributors.

9.2 Proprietary Products. Company may, from time to time throughout the Term hereof in its discretion, require that Franchisee purchase, use, offer and/or promote, and maintain in stock at the Store in such quantities as are needed to meet reasonably anticipated consumer demand, certain proprietary powder mixes and other ingredients and raw materials, which are manufactured in accordance with Company’s proprietary recipes, specifications and/or formulas (“Proprietary Products”). Franchisee shall purchase Proprietary Products only from Company or its designated distributors. Company shall not be obligated to reveal such recipes, specifications and/or formulas of such Proprietary Products to Franchisee, non-designated suppliers, or any other third parties.
9.3 **Non-Proprietary Products.** Company may designate other food products, condiments, beverages, fixtures, furnishings, equipment, uniforms, supplies, services, menus, packaging, forms, software, modems and peripheral equipment and other products and equipment other than Proprietary Products which Franchisee may or must use and/or offer and sell at the Store ("Non-Proprietary Products"). Franchisee may, but shall not be obligated to, purchase such Non-Proprietary Products from Company, if Company supplies same. Franchisee may use, offer or sell only such Non-Proprietary Products that Company has expressly authorized, and that are purchased or obtained from Company or a producer, manufacturer, supplier or service provider ("Supplier") designated or approved by Company pursuant to Sections 9.3.1 through 9.3.5 below.

9.3.1 Each such Supplier designated or approved by Company must comply with Company's usual and customary requirements regarding insurance, indemnification, and non-disclosure, and shall have demonstrated to the reasonable satisfaction of Company: (a) its ability to supply a Non-Proprietary Product meeting the specifications of Company, which may include, without limitation, specifications as to brand name, contents, quality, freshness and compliance with governmental standards and regulations; and (b) its reliability with respect to delivery and the consistent quality of its products and services.

9.3.2 If Franchisee should desire to procure authorized Non-Proprietary Products from a Supplier other than Company or one previously approved or designated by Company, Franchisee shall deliver written notice to Company of its desire to seek approval of such Supplier, which notice shall (a) identify the name and address of such Supplier, (b) contain such information as may be requested by Company or required to be provided pursuant to the Manuals (which may include reasonable financial, operational and economic information regarding its business), and (c) identify the authorized Non-Proprietary Products desired to be purchased from such Supplier. Company shall, upon request of Franchisee, furnish to Franchisee specifications for such Non-Proprietary Products if such are not contained in the Manuals. The Company may thereupon request that the proposed Supplier furnish Company at no cost to Company product samples, specifications and such other information as Company may require. Company or its representatives shall also be permitted to inspect the facilities of the proposed Supplier and establish economic terms, delivery, service and other requirements consistent with other distribution relationships for other Jamba Juice® Stores.

9.3.3 Company will use its good faith efforts to notify Franchisee of its decision within 60 days after Company's receipt of Franchisee's request for approval and other requested information and items in full compliance with this Section 9.3; should Company not deliver to Franchisee, within 60 days after it has received such notice and all information and other items requested by Company in order to evaluate the proposed Supplier, a written statement of disapproval with respect to such Supplier, such Supplier shall be deemed approved as a Supplier of the authorized Non-Proprietary Products described in such notice until such time as Company may subsequently withdraw such approval upon sixty (60) days' notice to Franchisee. Upon such withdrawal, Franchisee shall be entitled to deplete the authorized Non-Proprietary Products Franchisee has on hand. Nothing in this article shall require Company to approve any Supplier, and without limiting Company's right to approve or disapprove a Supplier in its discretion, Franchisee acknowledges that it is generally disadvantageous to the System...
from a cost and service basis to have more than one Supplier in any given market area and that among the other factors Company may consider in deciding whether to approve a proposed Supplier, it may consider the effect that such approval may have on the ability of Company and its Franchisees to obtain the lowest distribution costs and on the quality and uniformity of products offered system-wide. Company may revoke its approval upon the Supplier’s failure to continue to meet any of Company’s criteria, or if Company determines that continued approval of such Supplier is otherwise not in the best interest of the Company or its Franchisees. Franchisee agrees that at such times that Company establishes a regional purchasing program for any of the raw materials used in the preparation of Authorized Jamba Juice® Products, or other Non-Proprietary Products used in the operation of the Store, which may benefit Franchisee by reduced price, lower labor costs, production of improved products, increased reliability in supply, improved distribution, raw material cost control (establishment of consistent pricing for reasonable periods to avoid market fluctuations), improved operations by Franchisee or other tangible benefits to Franchisee, Franchisee will participate in such purchasing program in accordance with the terms of such program, to the extent permitted by the laws of the Commonwealth of Virginia governing Franchisee’s procurement operations.

9.3.4 As a further condition of its approval, Company may require a Supplier to agree in writing: (i) to provide from time to time upon Company’s request free samples of any Non-Proprietary Product it intends to supply to Franchisee, (ii) to faithfully comply with Company’s specifications for applicable Non-Proprietary Products sold by it, (iii) to sell any Non-Proprietary Product bearing the Company’s Marks only to Franchisees of Company and only pursuant to a Trademark License Agreement in form prescribed by Company, (iv) to provide to Company duplicate purchase invoices for Company’s records and inspection purposes and (v) to otherwise comply with Company’s reasonable requests.

9.3.5 Franchisee or the proposed Supplier shall pay to Company in advance all of Company’s reasonably anticipated costs in reviewing the application of the Supplier to service the Franchisee and all current and future reasonable costs and expenses, including travel and living costs at rates that shall not exceed the maximum amount allowable under Commonwealth of Virginia travel regulations applicable to state employees, related to inspecting, re-inspecting and auditing the Supplier’s facilities, equipment, and food products, and all product testing costs paid by Company to third parties.

9.4 Purchases from Company. All goods, products, and supplies purchased from Company or its distributors shall be purchased in accordance with the purchase order format issued from time to time by Company or its distributors, as applicable. Company or its distributors may change the prices, delivery terms and other terms relating to its sale of goods, products and supplies to Franchisee on prior written notice, provided, that such prices shall be the same as the prices charged to similarly situated Franchisees. Company in its discretion, may discontinue the sale of any good, product or supply at any time if in Company’s judgment its continued sale becomes unfeasible, unprofitable, or otherwise undesirable. Neither Company nor its distributors shall be liable to Franchisee for unavailability of, or delay in shipment or receipt of, merchandise because of temporary product shortages, order backlogs, production difficulties, delays, unavailability of transportation, fire, strikes, work stoppages, or other causes beyond the reasonable control of Company or its distributors. Company or its distributors may act as a Supplier of goods, services, products, and/or supplies purchased by Franchisee, and Company
may designate itself or its distributors as the sole Supplier of such goods or services. Franchisee agrees to pay promptly the prices as set forth in the order sheet or catalog, on all goods, services, products, and supplies purchased. On the expiration or termination of this Agreement, or in the event of any material breach of this Agreement by Franchisee, neither Company nor its distributors shall be obliged to fill or ship any orders then pending, or in the case of termination or non-renewal, made any time thereafter by Franchisee.

9.5 Test Marketing. Company may, from time to time, authorize Franchisee to test market products and/or services in connection with the operation of the Store. Franchisee shall cooperate with Company in connection with the conduct of such test marketing programs and shall comply with the Company’s rules and regulations established from time to time in connection herewith, provided such rules do not conflict with Franchisee’s policies or the laws of the Commonwealth of Virginia.

ARTICLE 10
REPORTS, BOOKS AND RECORDS, INSPECTIONS

10.1 General Reporting. Franchisee shall submit monthly statistical control forms and such other financial, operational and statistical information as Company may require to: (i) assist Franchisee in the operation of its Store in accordance with the System; (ii) allow Company to monitor the Franchisee’s Net Sales, purchases, costs and expenses; (iii) enable Company to develop chain-wide statistics which may improve bulk purchasing; (iv) assist Company in the development of new authorized products or the removal of existing unsuccessful Authorized Jamba Juice® Products; (v) enable Company to refine existing Authorized Jamba Juice® Products; (vi) generally improve chain-wide understanding of the System (collectively, the “Information”). Without limiting the generality of the foregoing:

10.1.1 SEE ADDENDUM. Unless otherwise agreed by Company in writing, Franchisee shall also submit condensed reports of Net Sales to Company on a daily basis in accordance with the guidelines established by Company. Franchisee will electronically link its Store to Company and will allow Company to poll on a daily basis at a time selected by the Company the Franchisee’s Store computerized POS System to retrieve sales, sales mix, usage, and operations data.

10.1.2 On or before the 10th day following each Accounting Period during the Term, or at such other interval as Company may establish, upon the request of Company, Franchisee shall submit a Net Sales report signed by Franchisee, on a form prescribed by Company, reporting all Net Sales for the preceding Accounting Period, together with such additional financial information as Company may from time to time request.

10.1.3 On or before the 45th day following each fiscal quarter during the Term hereof, upon the request of Company, Franchisee shall submit to Company financial statements for the preceding quarter, including a balance sheet and profit and loss statement, prepared in the form and manner prescribed by the Company and in accordance with generally accepted accounting principles, which shall be certified by the chief financial officer of Franchisee (or Franchisee, if an individual) to be true, correct and complete.
10.1.4 Within 90 days following the end of each fiscal year and, upon the request of Company, within 60 days following the end of each fiscal quarter, Franchisee shall submit to Company an unaudited annual financial statement prepared in accordance with generally accepted accounting principles, and in such form and manner prescribed by Company, which shall be certified by Franchisee to be accurate and complete. Upon the request of Company, Franchisee shall submit to Company a copy of the original signed 1120 or 1120S tax form each and every year or any other forms which take the place of the 1120 or 1120S forms. Upon the request of Company, Franchisee shall also provide Company with copies of signed original sales and use tax forms contemporaneously with their filing with the appropriate state or local authority. Company reserves the right to require such further information concerning Franchisee’s Store as Company may from time to time reasonably request.

10.2 Inspections. Company’s authorized representatives shall have the right to enter upon the entire Premises of Franchisee’s Store during business hours, without disrupting Franchisee’s business operations, to examine same, conferring with Franchisee’s employees, inspecting and checking operations, food, beverages, furnishings, interior and exterior decor, supplies, fixtures, and equipment, and determining whether the business is being conducted in accordance with this Agreement, the System and the Manuals. If any such inspection indicates any deficiency or unsatisfactory condition with respect to any matter required under this Agreement or the Manuals, including quality, cleanliness, service, health and authorized product line, Company will notify Franchisee in writing of Franchisee’s non-compliance with the Manuals, the System, or this Agreement and Franchisee shall promptly correct or repair such deficiency or unsatisfactory condition.

10.3 Audits. Franchisee shall prepare, and keep for not less than three (3) years following the end of each of its fiscal years, adequate books and records showing daily receipts in, at, and from the “JAMBA JUICE®” Store, applicable sales tax returns (if any), all pertinent original serially numbered sales slips and cash register records, and such other sales records as may be reasonably required by Company from time to time to verify Net Sales reported by Franchisee to Company, in a form suitable for an audit of its records by an authorized auditor or agent of Company. Such information shall be broken down by categories of goods, foods and beverages sold, where possible. Company, its agents or representatives may, at any reasonable time during normal working hours upon ten (10) days’ notice, audit Franchisee’s books and records specific to the Store in accordance with generally accepted accounting principles. If any audit or other investigation reveals an under-reporting or under-recording error of 5% percent or more, then in addition to any other sums due, the expenses of the audit/inspection shall be borne and paid by Franchisee upon billing by Company, plus interest at the highest compound rate authorized by law, but not to exceed the rate of 18% percent per annum.

10.4 Customer Lists. At Company’s request, Franchisee shall use reasonable efforts to secure the names and addresses of its customers at the “JAMBA JUICE®” Store and shall allow such information to be used by Company in perpetuity for any purpose whatsoever without compensation to Franchisee. SEE ADDENDUM.
ARTICLE 11
TRADEMARKS

11.1 Use of Marks. The Store herein licensed and franchised shall be named “JAMBA JUICE®” without any suffix or prefix attached thereto and Franchisee shall use and display such of the Company’s Marks and such signs, advertising and slogans as Company may from time to time prescribe or approve. Upon expiration or sooner termination of this Agreement, Company shall require Franchisee to execute any and all documents necessary in Company’s judgment to end and cause the discontinuance of Franchisee’s use of the Marks. Franchisee shall not imprint or authorize any person to imprint any Mark on any product without the express written approval of Company. Franchisee shall not use the Marks in connection with any offering of securities or any request for credit without the prior express written approval of Company. Company may withhold or condition any approval related to the Marks, including those described in this Section, in its discretion.

11.2 Non-Use of Trade Name. If Franchisee is a Business Entity, it shall not use Company’s Marks, or Company’s trade name, or any words or symbols which are confusingly phonetically or visually similar to the Marks, as all or part of Franchisee’s legal name.

11.3 Use of Other Trademarks. Franchisee shall not display the trademark, service mark, trade name, insignia or logotype of any other person or Business Entity in connection with the operation of the Store without the express prior written consent of Company, which may be withheld in its discretion; provided however, in the case of a Non-Traditional Store, the Premises (but not the Store) may display the trademarks, service marks and other commercial symbols of Franchisee or third parties, in accordance with the terms herein contained.

11.4 Non-Ownership of Marks. Nothing herein shall give Franchisee, and Franchisee shall not assert, any right, title or interest in or to any of the Marks or the goodwill annexed thereto, except a mere privilege and license during the Term hereof, to display and use the same according to the terms and conditions herein contained.

11.5 Defense of Marks. If Franchisee receives notice, or is informed, of any claim, suit or demand against Franchisee on account of any alleged infringement, unfair competition, or similar matter on account of the use of the Marks in accordance with the terms of this Agreement, Franchisee shall promptly notify Company of any such claim, suit or demand. Thereupon, Company shall take such action as it may deem necessary and appropriate to protect and defend Franchisee against any such claim by any third party; Company shall not be obligated to take any such action, however. Franchisee shall not settle or compromise any such claim by a third party without the prior written consent of Company. Company shall have the sole right to defend, compromise or settle any such claim, in its discretion and in conjunction with the Virginia Office of the Attorney General, at Company’s sole cost and expense, using attorneys of its own choosing, and Franchisee shall cooperate fully with Company in connection with the defense of any such claim. Franchisee may participate at its own expense in such defense or settlement, but Company’s decisions with regard thereto shall be final.

11.6 Prosecution of Infringers. If Franchisee shall receive notice or is informed or learns that any third party, which it believes to be unauthorized to use the Marks, is using the
Marks or any variant thereof, Franchisee shall promptly notify Company of the facts relating to such alleged infringing use. Thereupon, Company shall, in its discretion, determine whether or not it wishes to take any action against such third person on account of such alleged infringement of the Marks. Franchisee shall have no right to make any demand against any such alleged infringer or to prosecute any claim of any kind or nature whatsoever against such alleged infringer for or on account of such infringement.

11.7 Modification of Marks. From time to time, in the Manuals or in directives or bulletins supplemental thereto, Company may add to, delete or modify any or all of the Marks. Franchisee shall use, or cease using, as may be applicable, the Marks, including but not limited to, any such modified or additional trade names, trademarks, service marks, logotypes and commercial symbols, in strict accordance with the procedures, policies, rules and regulations contained in the Manuals or in written directives issued by Company to Franchisee, as though they were specifically set forth in this Agreement. Except as Company may otherwise direct, Franchisee shall implement any such change within 60 days after notice thereof by Company, at Franchisee's expense.

11.8 Acts in Derogation of the Marks. Franchisee acknowledges and recognizes Company's exclusive ownership of the Marks and the validity of the Marks, and agrees that its use of the Marks inures to the benefit of Company. Franchisee shall not contest or assist anyone in contesting at any time during or after the Term, in any manner, the validity of any Mark or its registration, and shall maintain the integrity of the Marks and prevent their dilution. Franchisee shall not do or permit any act or thing to be done in derogation of any of the rights of Company in connection with the same, either during the Term of this Agreement or thereafter, and will use the Marks only for the uses and in the manner licensed hereunder and as herein provided. Without limiting the foregoing, Franchisee shall not interfere in any manner with, or attempt to prohibit, the use of Company's Marks by Company or by any other Franchisee of Company.

11.9 Assumed Name Registration. If Franchisee is required to do so by Applicable Law, Franchisee shall promptly upon the execution of this Agreement file with applicable Governmental Authorities, a notice of its intent to conduct its business under the name “JAMBA JUICE®.” Promptly upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee shall promptly execute and file such documents as may be necessary to revoke or terminate such assumed name registration.

ARTICLE 12
COVENANTS REGARDING OTHER BUSINESS INTERESTS

12.1 Non-Competition. Franchisee acknowledges that the Jamba Juice® System has been developed by Company at great effort, time, and expense, and that Franchisee has regular and continuing access to valuable and confidential information, training, and Trade Secrets regarding the Jamba Juice® System. Franchisee recognizes its obligations to keep confidential such information as set forth herein. Franchisee therefore agrees as follows:

12.1.1 During the Term, except with Company's prior written consent or as expressly permitted hereunder, neither Franchisee (as defined in Section 12.6) nor any Affiliate of Franchisee, shall, in any capacity whatsoever, either directly or indirectly, engage in the
production or sale at retail or wholesale of any smoothie or fresh or frozen fruit juice-type product or any other featured item authorized by Company, now or in the future approved by Company for use in Franchisee's Store, or have any employment or financial or other interest in any business engaged in the production or sale of such products; and

12.1.2 SEE ADDENDUM. To the extent permitted by Applicable Law, during the two (2)-year period after (a) the expiration, termination or non-renewal hereof, for any reason, and (b) any Assignment, neither Franchisee nor any Assignor (as defined in Section 12.6) shall, either directly or indirectly, in any capacity whatsoever, either directly or indirectly, engage in the production or sale at retail of any type of smoothie or fresh or frozen fruit juice-type product or any other featured item authorized by Company at the time of expiration, termination, non-renewal, or Assignment, or have any employment or financial or other interest in any business engaged in the production or sale at retail of any such products, at (i) the Location of the Store, or (ii) at a site within a ten (10) mile radius of the Location of the Store, or (iii) at a site within a five (5) mile radius of any other Store then existing, unless Company gives its prior written consent (and except for another Store operating under a valid Franchise Agreement with Company). In applying for such consent, Franchisee will have the burden of establishing that any such activity by it will not involve the use of benefits provided under this Agreement or constitute unfair competition with Company or other Franchisees of the Company.

12.2 Trade Secrets. Company possesses and may continue to develop, and during the course of the relationship established hereunder Franchisee shall have access to, certain of the Company's Trade Secrets. Company will disclose certain of its Trade Secrets to Franchisee in the Manuals, bulletins, supplements, confidential correspondence, or other confidential communications, and through the Company's training program and other guidance and management assistance, and in performing Company's other obligations and exercising Company's rights under this Agreement.

12.2.1 Franchisee shall acquire no interest in the Trade Secrets other than the right to use them in developing and operating the Store during the Term of this Agreement. Franchisee shall: (i) not use the Trade Secrets in any business or other endeavor other than in connection with the operation of the Store during the Term; (ii) maintain absolute confidentiality of the Trade Secrets during and after the Term of this Agreement; (iii) make no unauthorized copy of any materials containing in whole or in part the Trade Secrets; and (iv) operate and implement all reasonable procedures prescribed from time to time by Company to prevent unauthorized use and disclosure of the Trade Secrets, including without limitation, restrictions on disclosure to employees and use of such non-disclosure and non-competition agreements as Company prescribes (naming Company as a third party beneficiary with the independent right to enforce such agreements) with employees and others who may have access to the Trade Secrets. Promptly upon Company's request, Franchisee shall deliver executed copies of such agreements to Company. If Franchisee has any reason to believe that any such person has violated the provisions of the confidentiality and non-competition agreement, Franchisee shall promptly notify Company and shall cooperate with Company to protect Company against infringement or other unlawful use of the Trade Secrets including, but not limited to, the prosecution of any lawsuits if, in the reasonable judgment of Company, such action is necessary or advisable.
12.2.2 In view of the importance of the Marks and the Trade Secrets and the incalculable and irreparable harm that would result to the parties in the event of a breach of the covenants and agreements set forth herein in connection with these matters, the parties agree that each party may seek specific performance and/or injunctive relief to enforce the covenants and agreements in this Agreement, in addition to any other relief to which such party may be entitled at law or in equity.

12.3 Confidentiality and Press Releases. Except for disclosure to its legal and business advisors (who shall agree to observe the confidentiality requirements set forth herein), Franchisee shall not disclose the substance of this Agreement to any third party except as necessary to inform lessors from which it is seeking Leases or lessors which are parties to Leases in order to obtain renewals of, or avoid terminations of, such Leases or as necessary to obtain any governmental permits, licenses or other approvals, or to the extent required by the lawful order of any court of competent jurisdiction or federal, state, or local agency having jurisdiction over Franchisee, provided that Franchisee shall give Company prior notice of such disclosure. Unless disclosure is required by Applicable Law, no public communication, press release or announcement regarding this Agreement, the transactions contemplated hereby or the operation of the Store hereunder shall be made by Franchisee without the written approval of Company in advance of such press release or announcement. The parties agrees to cooperate on any such press releases and other public communications and the parties agree to coordinate any such public announcements.

12.4 Interference With Employment Relations. Without Company’s prior written consent, during the Term of this Agreement (and for 24 months following its termination or expiration), Franchisee shall not employ or seek to employ, or otherwise directly or indirectly induce to leave his or her employment, any person who is at the time or was at any time during the prior 6 months employed by Company or any of its Affiliates, or by any person or Business Entity operating a business under a license or franchise from Company in an executive, managerial or operational position. Request for Company’s consent shall be sent in writing to Company. Provided, however, the restrictions set forth in this Section 12.4 shall not apply to solicitations directed at the public in general or to the retention of the services of an individual as a consequence of that individual responding to such a public solicitation.

12.5 Effect of Applicable Law. In the event any portion of the covenants in this Article 12 violates laws affecting Franchisee, or is held invalid or unenforceable in a final judgment to which Company and Franchisee are parties, then the maximum legally allowable restriction permitted by law shall control and bind Franchisee. Company may at any time unilaterally reduce the scope of any part of the above covenants, and Franchisee shall comply with any such reduced covenant upon receipt of written notice.
12.6 Franchisee’s Affiliates. For purposes of this Article only, “Franchisee” and “Assignor” shall mean and include the individual Franchisee and Franchisee’s spouse and minor children if Franchisee is an individual, and its Owners and Affiliates, and their respective officers and directors (or other individuals serving in similar capacity) if Franchisee is a Business Entity. In no event shall the term “Franchisee” or “Assignor” refer to Company or any of its direct or indirect Owners or subsidiaries, or the officers or directors (or other individuals serving in similar capacity) of any of them, even if Company owns an equity or other pecuniary interest in Franchisee.

12.7 New Developments. SEE ADDENDUM If Franchisee or its employees, or Owners develop any new concept, process or improvement in the operation or promotion of the franchised business, Franchisee shall promptly notify Company and provide Company with all necessary related information. Any such concept, process or improvement shall become Company’s sole property and Company shall be the sole owner of all patents, patent applications, and other intellectual property rights related thereto. Franchisee and its Owners hereby assigns to Company any rights they may have or acquire therein, including the right to modify such concept, process or improvement, and otherwise waive and/or release all rights of restraint and moral rights therein and thereto, without compensation, and will obtain any appropriate assignments from others. Franchisee and its Owners agrees to assist Company in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agrees to execute and provide us with all necessary documentation for obtaining and enforcing such rights. Franchisee and its Owners hereby irrevocably designates and appoints Company as its agent and attorney in fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property right related to any such concept, process or improvement. In the event that the foregoing provisions of this Section 12.7 are found to be invalid or otherwise unenforceable, Franchisee and its Owners hereby grants to Company a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe their rights therein.

ARTICLE 13
NATURE OF INTEREST, ASSIGNMENT

13.1 Assignment by Company. Company shall have the right to transfer or assign any of its rights or delegate any of its obligations under this Agreement to any person or legal entity who assumes its terms and agrees to comply with Company’s obligations contained herein. Company shall have no liability for the performance of any obligations contained in this Agreement after the effective date of such transfer or assignment.

13.2 Assignment by Franchisee. The rights and duties created by this Agreement are personal to Franchisee. Accordingly, except as otherwise may be permitted herein, neither Franchisee nor any Owner or other person with an interest in Franchisee (other than Company, if applicable) shall, without Company’s prior written consent, directly or indirectly sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber any direct or indirect interest in this Agreement or in the assets of, or used in connection with, the Store (except in the instance of Franchisee’s advertising to sell its Store and assign this Agreement in accordance
with the terms hereof and the sale of Authorized Jamba Juice® Products in the ordinary course) (an “Assignment”). If Franchisee is a Business Entity, any sale, assignment, transfer, conveyance, gift, pledge, mortgage, or other encumbrance of 50% or more of the outstanding and issued stock or other ownership interest of Franchisee by one or more transfers, or any other event(s) or transaction(s) which, directly or indirectly, effectively changes management control of Franchisee (a “Change of Control”) shall constitute an “Assignment” hereunder. Any such purported Assignment occurring by operation of law or otherwise without Company’s prior written consent shall constitute a default of this Agreement by Franchisee, and shall be null and void. Company will not unreasonably withhold its consent to any transfer or assignment which is subject to the restrictions of this Article, provided however, Company may impose any reasonable condition to the granting of its consent, and requiring Franchisee to satisfy any or all of the following conditions shall be deemed reasonable: If a Franchisee or any Owner of a Franchisee which is a Business Entity proposes any sale, assignment, transfer, conveyance, gift, pledge, mortgage, or other encumbrance of the outstanding and issued stock or other ownership interest of Franchisee, or any other event(s) or transaction(s) which do not effect a Change of Control, then Franchisee shall promptly notify Company of such proposed transfer in writing and shall provide such information relative thereto as Company may reasonably request prior to the transfer. The transferee shall not be one of Company’s competitors and may be required to execute a Guaranty and/or a non-disclosure and non-competition agreement in the form then required by Company.

13.2.1 Franchisee’s written request for Company’s consent to Assignment must be accompanied by a binding agreement between Franchisee (or any Owner) and the proposed assignee (“Purchase Agreement”) evidencing the proposed Assignment (as compared to a non-binding letter of intent), the performance of each party thereto being conditioned upon Franchisee’s providing a true and accurate copy of the Purchase Agreement to Company and Company or its designee not having exercised its Right of First Refusal (as hereinafter defined). Following receipt of the Purchase Agreement, Company or its designee shall have the right and option, exercisable in its sole discretion, to purchase the interest proposed to be transferred as set forth in the Purchase Agreement upon the same terms, provisions and conditions contained in the Purchase Agreement (the "Right of First Refusal"), provided that Company may substitute equivalent cash (as determined by the Company) for any non-cash form of payment set forth in the Purchase Agreement. The Right of First Refusal may be exercised by Company or its designee within 30 days after receipt of the Purchase Agreement by providing written notice thereof to Franchisee. Franchisee (or such Owner) shall promptly provide Company with such additional information as Company may, from time to time, thereafter request. If Company exercises its Right of First Refusal, the training and transfer/administrative fees due by Franchisee in accordance with Section 13.2.9 shall be waived by Company. If the Company does not exercise its Right of First Refusal, then Franchisee (or the Owner) may complete the sale to such proposed assignee pursuant to and on the terms set forth in the Purchase Agreement, subject to Company's approval as provided in this Section 13.2. However, if the sale to the proposed assignee is not completed within 120 days after delivery of the Purchase Agreement to Company, or there is a material change in the Purchase Agreement prior to the consummation thereof, then there shall be deemed a new offer, subject to the same Right of First Refusal by Company, or its third-party designee, as hereinafore provided. Company’s failure to exercise such option shall not constitute a waiver of any other provision of this Agreement, including any of the requirements of this Article with respect to the proposed transfer;
13.2.2 The Franchisee shall not be in default under the terms of this Agreement (or any other related agreement), the Manuals or any other obligations owed Company, and all of its then-due monetary obligations to Company shall have been paid in full;

13.2.3 The Franchisee and its Owners (other than Company, and its Affiliates, if otherwise applicable), if the Franchisee is a Business Entity, shall execute a general release under seal, in a form prescribed by Company, of any and all claims against Company, its Affiliates, and their respective owners, directors, officers, agents and employees;

13.2.4 The transferee/assignee shall have demonstrated to Company’s satisfaction that it meets all of Company’s then-current requirements for new operators or for holders of an interest in a franchise, including, without limitation, possession of good moral character and reputation, satisfactory credit ratings, acceptable business qualifications, and the ability to fully comply with the terms of the Franchise Agreement;

13.2.5 The transferee/assignee shall have either (a) assumed this Agreement by a written assumption agreement approved by Company, or has agreed to do so at closing, and at closing executes an assumption agreement approved by Company; provided however, that such assumption shall not relieve Franchisee (as transferor/assignor) of any such obligations under this Agreement arising prior to the assumption of this Agreement by the transferee/assignee; or (b) at Company’s option, the transferee/assignee shall execute a replacement Franchise Agreement on the Then-current Franchise Agreement form used by Company. If this Agreement has been executed pursuant to a Development Agreement, the Franchisee must concurrently transfer/assign to the same assignee the Development Agreement and all Franchise Agreements executed pursuant thereto; provided, however, if the Development Market under the Development Agreement comprises more than one DMA (as defined from time to time by A. C. Nielsen Company), then following the 10th anniversary of the effective date of such Development Agreement, Franchisee may concurrently transfer/assign to the same assignee this Agreement and all other Franchise Agreements for Stores which are located in the same DMA if said Development Agreement is terminated simultaneously by mutual consent of Company and Franchisee;

13.2.6 The assignee shall agree to refurbish the “JAMBA JUICE®” Store as needed (in Company’s discretion) to match the building design, trade dress, color scheme and presentation then used by JAMBA JUICE® in 50% or more of its “JAMBA JUICE®” Stores (such refurbishment may include, without limitation, structural changes, remodeling, redecoration and modifications to existing improvements);

13.2.7 There shall not be any suit, action, or proceeding pending, or to the knowledge of Franchisee any suit, action, or proceeding threatened, against Franchisee with respect to the “JAMBA JUICE®” Store.

13.2.8 The transferee/assignee, its management employees or other employees responsible for the operation of the Store shall have satisfactorily completed Company’s Initial Training Program;
13.2.9 Upon submission of Franchisee’s request for Company’s consent to any proposed transfer or assignment, Franchisee shall pay to Company an administrative/transfer fee of $10,000 plus Company’s reasonable out of pocket costs associated with the transfer; and

13.2.10 The Franchisee and each Assignor shall execute a non-competition covenant in favor of Company and the assignee/transferee as described in Section 12.1.2.

13.3 No Waiver. Company’s consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party arising out of this Agreement or otherwise, including (a) any payment or other duty owed by Franchisee to Company under this Agreement before such Assignment; or (b) Franchisee’s duty of indemnification and defense as set forth in Section 17.2 hereof, whether before or after such Assignment, or (c) the obligation to obtain Company’s consent to any subsequent transfer. Further, Company’s consent to transfer shall not constitute a waiver or release of any guaranty executed pursuant to this Agreement or any Development Agreement.

ARTICLE 14
DEFAULT AND TERMINATION

14.1 General. Company shall have the right to terminate this Agreement only for “cause.” “Cause” is hereby defined as a material breach of this Agreement. Franchisee acknowledges that each of Franchisee’s obligations described in this Agreement is a material and essential obligation; that nonperformance of such obligations will adversely and substantially affect the Company and the System; and that the exercise by Company of the rights and remedies set forth herein is appropriate and reasonable. Accordingly, Company shall exercise its right to terminate this Agreement upon notice to Franchisee upon the following circumstances and manners.

14.2 Automatic Termination Without Notice. Subject to Applicable Laws of the jurisdiction in which Franchisee’s Store is located to the contrary, Franchisee shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Franchisee if: (i) Franchisee shall be adjudicated bankrupt or judicially determined to be insolvent (subject to any contrary provisions of any applicable state or federal laws), shall admit to its inability to meet its financial obligations as they become due, or shall make a disposition for the benefit of its creditors; (ii) Franchisee shall allow a judgment against it in the amount of more than $5,000 to remain unsatisfied for a period of more than 30 days (unless a supersedeas or other appeal bond has been filed); (iii) the Store, the Premises or the Franchisee’s assets are seized, taken over or foreclosed by a government official in the exercise of its duties, or seized, taken over, or foreclosed by a creditor or lienholder provided that a final judgment against the Franchisee remains unsatisfied for 30 days (unless a supersedeas or other appeal bond has been filed); (iv) a levy of execution or attachment has been made upon the license granted by this Agreement or upon any property used in the Store, and it is not discharged within 5 days of such levy or attachment; (v) Franchisee permits any mechanics lien to attach to the Store or to any equipment; (vi) Franchisee allows or permits any judgment to be entered against Company or its Affiliates, arising out of or relating to the operation of Franchisee’s Store; (vii) a condemnation or transfer in lieu of condemnation occurs; (viii) Franchisee is unable to continue operation of the “JAMBA JUICE®” Store at the Location due
to the withdrawal of permission from the applicable Lessor; (ix) casualty damage to the "JAMBA JUICE®" Store that cannot reasonably be repaired or replaced within 30 days; or (x) closing of the "JAMBA JUICE®" Store is required by law and such closing was not the result of a violation by Company.

14.3 Option to Terminate Without Notice. Franchisee shall be deemed to be in default and Company may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon receipt of notice by Company upon the occurrence of any of the following events:

14.3.1 Abandonment. If Franchisee shall abandon the Store. For purposes of this Agreement, "abandon" shall refer to (i) Franchisee’s failure, at any time during the term of this Agreement, to keep the Premises or Store open and operating for business for a period of five (5) consecutive days without prior notice to Company when the university is in session, except as provided in the Manuals, (ii) Franchisee’s failure to keep the Premises or Store open and operating for any period after which it is not unreasonable under the facts and circumstances for Company to conclude that Franchisee does not intend to continue to operate the Store, unless such failure to operate is due to fire, flood, earthquake or other similar causes beyond Franchisee’s control, and/or (iii) Franchisee’s failure to actively and continuously maintain and answer the telephone listed by Franchisee for the Store solely with the "JAMBA JUICE®" name;

14.3.2 Assignment, Death or Incapacity. If Franchisee or any Owner shall purport to sell, assign, transfer or encumber in whole or in part this Agreement, the Store, or any substantial portion of its assets, or the stock or other ownership interest in Franchisee in violation of Section 13.2; provided, however, that on written request and on condition that the Store continues to be operated in conformity with this Agreement, (i) upon the death or legal incapacity of a Franchisee who is an individual, Company shall allow up to 6 months after such death or legal incapacity for the heirs, personal representatives, or conservators (the “Heirs”) of Franchisee either to enter into a new Franchise Agreement upon Company’s then current form (except that no initial fee or transfer fee shall be charged) for the remaining Term of this Agreement, if Company is subjectively satisfied that the Heirs meet Company’s standards and qualifications, or if not so satisfied to allow the Heirs to sell the Store to a person approved by Company, or (ii) upon the death or legal incapacity of a member or stockholder owning 50% or more of the capital stock, membership interests or voting power of a corporate or limited liability company Franchisee, or a general or limited partner owning 50% or more of any of the Partnership Rights of a Franchisee which is a Partnership, Company shall allow a period of up to 6 months after such death or legal incapacity for the Heirs to seek and obtain Company’s consent to the transfer or Assignment of such stock, membership interests or Partnership Rights to the Heirs or to another person acceptable by Company. If, within said 6-month period, said Heirs fail either to enter into a new Franchise Agreement or to sell the Store to a person approved by Company pursuant to Section 13.2, or fail either to receive Company’s consent to the transfer or Assignment of such stock, membership interest or Partnership Rights to the Heirs or to another person acceptable by Company, as provided in Section 13.2, this Agreement shall thereupon automatically terminate;
14.3.3 Repeated Defaults. If Franchisee commits three (3) or more material events of default under this Agreement within a twelve (12) month period, whether or not such defaults are of the same or different nature and whether or not such defaults have been cured by Franchisee after notice by Company, such repeated course of conduct shall itself be grounds for termination of this Agreement without further notice or opportunity to cure;

14.3.4 Misrepresentation. If Franchisee makes any material misrepresentations relating to the acquisition of the Store or this Agreement;

14.3.5 Violation of Law. If Franchisee fails, for a period of 10 days after having received notification of noncompliance from Company or any governmental or quasi-governmental agency or authority, to comply with any Applicable Law or regulation applicable to the operation of the Store;

14.3.6 Health or Safety Violations. If Franchisee’s conduct of the operation of the Store licensed pursuant to this Agreement is so contrary to this Agreement, the System and the Manuals as to constitute an imminent danger to the public health (for example, selling spoiled food knowing that the food products are spoiled or allowing a dangerous condition arising from a lack of security for customers to continue despite Franchisee’s knowledge of such condition), or selling regularly unauthorized products to the public after notice of default and continuing to sell such products whether or not Franchisee has cured the default after one or more notices;

14.3.7 Under Reporting. If an audit or investigation conducted by Company discloses that Franchisee has knowingly maintained false books or records, or submitted false reports to Company, or knowingly understated its Net Sales or withheld the reporting of same as herein provided;

14.3.8 Criminal Offenses. If Franchisee or any of its officers, directors, or key employees is convicted of or pleads guilty or nolo contendere to a felony or any other crime or offense that is reasonably likely, in the sole opinion of Company, to adversely affect the Company’s reputation, System, Marks or the goodwill associated therewith, or Company’s interest therein;

14.3.9 Intellectual Property Misuse. If Franchisee misuses or makes any unauthorized use of the Marks or otherwise materially impairs the goodwill associated therewith or Company’s rights therein, or if Franchisee engages in any act which reflects materially and unfavorably upon the operation and reputation of the Store or System, or if Franchisee makes any unauthorized use, disclosure, or duplication of the “Trade Secrets”, excluding independent acts of employees or others if Franchisee exercised its best efforts to prevent such disclosures or use;
14.3.10 Failure to Commence Operations. If Franchisee fails to carry out all necessary construction and fixtureization of the Store at the Location and commence operations within 210 days following the Effective Date.

14.4 Termination With Notice and Opportunity To Cure. Except for any default by Franchisee under Sections 14.2 or 14.3, or as otherwise expressly provided in this Agreement, Franchisee shall have 10 days (5 days in the case of any default in the timely payment of sums due to Company or its Affiliates), after Company’s written notice of default within which to remedy any default under this Agreement, and to provide evidence of such remedy to Company. If any such default is not cured within that time period, or such longer time period as Applicable Law may require or as Company may specify in the notice of default, this Agreement and all rights granted by it shall thereupon automatically terminate without further notice or opportunity to cure.

14.5 Reimbursement of Company Costs. In the event of a default by Franchisee and as awarded by a court of competent jurisdiction, all of Company’s costs and expenses arising from such default, including reasonable legal fees and reasonable hourly charges of Company’s administrative employees, shall be paid to Company by Franchisee within five (5) days after cure.

14.6 Cross-Default. Any material default by Franchisee under the terms and conditions of this Agreement, any Lease, or any other agreement between Company, or its Affiliate, and Franchisee shall be deemed to be a material default of each and every said agreement. Furthermore, in the event of termination, for any cause, of this Agreement or any other agreement between the parties hereto, Company may, at its option, terminate any or all said agreements.

14.7 Notice Required By Law. Notwithstanding anything to the contrary contained in this Article 14, in the event any valid, Applicable Law of a competent Governmental Authority having jurisdiction over this Agreement and the parties hereto shall limit Company’s rights of termination hereunder or shall require longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice periods or restrictions upon termination required by such laws and regulations. Company shall not, however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, arbitration, hearing or dispute relating to this Agreement or the termination thereof.

ARTICLE 15
RIGHTS AND OBLIGATIONS UPON TERMINATION

15.1 General. Upon the expiration or termination of Franchisee’s rights granted under this Agreement:

15.1.1 Franchisee shall immediately cease to use all Trade Secrets, the Marks, and any confusingly similar trademark, service mark, trade name, logotype, or other commercial symbol or insignia. Franchisee shall immediately return all copies of the Manuals and all written
materials incorporating Trade Secrets and any copies thereof to Company. Franchisee shall, at its own cost, make cosmetic changes to Franchisee’s Store so that it no longer contains or resembles Company’s proprietary designs, including: Franchisee shall remove all “JAMBA JUICE®” identifying materials and distinctive “JAMBA JUICE®” cosmetic features and finishes, interior wall coverings and colors, exterior finishes and colors, signage and “JAMBA JUICE®” counter equipment (which shall be deemed proprietary to Company) from the Location as Company may reasonably direct. Franchisee shall deliver all goods and materials containing the Marks to Company and Company shall have the sole and exclusive use of any items containing the Marks, without compensation to Franchisee.

15.1.2 Company may retain all fees paid pursuant to this Agreement, and Franchisee shall immediately pay any and all amounts owing to Company or its Affiliates.

15.1.3 Any and all obligations of Company to Franchisee under this Agreement shall immediately cease and terminate.

15.1.4 Any and all rights of Franchisee under this Agreement shall immediately cease and terminate, and Franchisee shall immediately cease representing itself as then or formerly a Franchisee of, or as having any association with, Company.

15.1.5 Company shall have the following options, exercisable by written notice within 30 days after the termination or expiration of this Agreement,

(i) to take an assignment of the Lease or other agreement relating to the Store, and Franchisee shall assign the same to Company or its designee, without compensation. In the event Company exercises this option, Company may operate the Store as a Company owned Store, permit another franchisee to operate a Store from the Location, or otherwise use the Location for any purpose permissible under the Lease;

(ii) to acquire (and if Company so elects, at its sole option, Franchisee will sell to Company) such equipment and furnishings as Company may designate that are associated with the “JAMBA JUICE®” Store at its net book value, using a 5-year straight line amortization period. Company shall have no other payment obligations to Franchisee, and Franchisee specifically waives any and all claims to be paid for other equipment, furnishings, fixtures, products, supplies or the goodwill associated with the terminated “JAMBA JUICE®” Store (which goodwill Franchisee acknowledges is owned exclusively by Company). Company may offset against any payments made pursuant to this Section any amounts owed by Franchisee to Company; and/or

(iii) to take an assignment of all telephone numbers (and associated listings) for Franchisee’s Store, and Franchisee shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee’s right to use any telephone number and any classified or other telephone directory listings associated with the “JAMBA JUICE®” Store, and authorize and instruct their transfer to Company. Franchisee is not entitled to any compensation from Company if Company exercises this option.
15.2 Survival of Obligations. Termination or expiration shall be without prejudice to any other rights or remedies that Company shall have in law or in equity, including, without limitation, the right to recover benefit of the bargain damages. In no event shall a termination or expiration of this Agreement affect Franchisee’s obligations to take or abstain from taking any action in accordance with this Agreement. The provisions of this Agreement which constitute post-termination covenants and agreements, including the obligation of Company and Franchisee to mediate any and all disputes, shall survive the termination or expiration of this Agreement.

15.3 No Ownership of Marks. Franchisee acknowledges and agrees that rights in and to Company’s Marks and the use thereof shall be and remain the property of Company.

15.4 Government Filings. In the event Franchisee has registered any of Company’s Marks or the name “JAMBA JUICE®” as part of Franchisee’s assumed, fictitious or corporate name, Franchisee shall promptly amend such registration to delete Company’s Marks and any confusingly similar marks or names therefrom.

ARTICLE 16
INSURANCE

16.1 Insurance.

16.1.1 SEE ADDENDUM Franchisee shall obtain and maintain (at all times during the Term) insurance coverage in the types and amounts of coverage and deductibles specified by the Company, with an insurance company rated “A VIII” or better by the A.M. Best Company, Inc. and otherwise approved by Company, which approval shall not be unreasonably withheld. All such insurance policies (with the exception of worker’s compensation) shall designate the Company and its Affiliates as additional insureds.

16.1.2 SEE ADDENDUM As of the Effective Date, the insurance requirements are: all risk property and casualty insurance for the replacement value of the real property, if applicable, and of the inventory, equipment, and all other property used to operate the Store (property and casualty insurance for Traditional Stores must have minimum coverage of $325,000); business interruption insurance providing for continued payment of all amounts due (or to become due) to Company under this Agreement; workers compensation insurance as required by applicable law; automobile liability insurance with a minimum coverage of $5,000 medical payment, $1,000,000 uninsured motorist and $1,000,000 bodily injury/property damage; comprehensive general liability insurance with a minimum coverage of $1,000,000 each occurrence, $2,000,000 aggregate (with no minimum deductible) for all the “JAMBA JUICE®” Stores that Franchisee or its Affiliates own; provided, however, that if Franchisee and its Affiliates own between 4 and 6 “JAMBA JUICE®” Stores, Franchisee must also obtain and maintain an “umbrella” policy providing excess coverage with limits of not less than $1,500,000 which must be excess to the general liability coverage, and, if Franchisee and its Affiliates own 7 or more “JAMBA JUICE®” Stores, Franchisee must also obtain and maintain an “umbrella” policy providing excess coverage with limits of not less than $3,000,000 which must be excess to the general liability coverage; and such other provisions as Company may require from time to time.
16.2 Use of Proceeds. In the event of damage to the Store covered by insurance, the proceeds of any such insurance shall be used to restore the Store to its original condition as soon as possible, unless such restoration is prohibited by the Location Lease or Company has otherwise consented to in writing.

16.3 Proof of Insurance. SEE ADDENDUM Franchisee shall, prior to opening its Store, (annually thereafter and from time to time, within 10 days after a request therefor from Company) file with Company, certificates of such insurance (including any renewal or extension of such insurance) and shall promptly pay all premiums on the policies as they become due. In addition, the policies shall contain a provision requiring 30 days’ prior written notice to Company of any proposed cancellation, modification, or termination of insurance (or ten (10) days’ prior written notice in the event of non-payment of premiums). If Franchisee fails to obtain and maintain the required insurance, Company may, without any obligation but at its option, in addition to any other rights it may have, procure such insurance for Franchisee without notice and Franchisee shall pay, upon demand, the premiums and Company’s costs in taking such action.

16.4 No Limitation of Other Obligations. Franchisee’s obligation to obtain and maintain the insurance policies required by this Agreement in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Company, nor shall Franchisee’s performance of that obligation relieve Franchisee of liability under Section 17.2 of this Agreement.

ARTICLE 17
RELATIONSHIP OF PARTIES, DISCLOSURE

17.1 Relationship of the Parties. It is expressly agreed that the relationship created by this Agreement is not a fiduciary, special, or any other similar relationship, but rather an arm’s-length business relationship, and Company owes Franchisee no duties except as expressly provided in this Agreement. Franchisee is an independent contractor, and 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. It is further agreed that Franchisee has no authority to create or assume in Company’s name or on behalf of Company, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Company for any purpose whatsoever. Neither Company nor Franchisee is the employer, employee, agent, partner or co-venturer of or with the other, each being independent. Franchisee agrees that it will not hold itself out as the agent, employee, partner or co-venturer of Company. All employees hired by or working for Franchisee shall be the employees of Franchisee and shall not, for any purpose, be deemed employees of Company or subject to Company control. Each of the parties shall file its own tax, regulatory and payroll reports with respect to its respective employees and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof. Neither shall have the power to bind or obligate the other except specifically as set forth in this Agreement. Company and Franchisee agree that the relationship created by this Agreement is not a fiduciary relationship. Franchisee shall not, under any circumstances, act or hold itself out as an agent or representative of Company.
17.2 Indemnity.

17.2.1 SEE ADDENDUM Franchisee shall protect, defend and indemnify Company, its Affiliates, and all of their respective past, present and future owners, direct and indirect parent companies, subsidiaries, officers, directors, employees, attorneys and designees, and each of them, and hold them harmless from and against any and all costs and expenses, including attorneys’ fees, court costs, losses, liabilities, damages, claims and demands of every kind or nature on account of any actual or alleged loss, injury or damage to any person or Business Entity or to any property arising out of or in connection with Franchisee’s breach of this Agreement or its operation of the Premises or the Store pursuant hereto, except to the extent caused by Company’s intentional misfeasance, gross negligence or material breach of its obligations under this Agreement.

17.2.2 Company shall protect, defend and indemnify Franchisee, its Affiliates, and all of their respective past, present and future Owners, direct and indirect parent companies, subsidiaries, officers, directors, employees and attorneys and designees, and each of them, and hold them harmless from and against any and all liability or damage any of them may incur, including reasonable attorneys fees, as a result of third party claims, demands, costs, or judgments of any kind or nature, arising out of Company’s intentional misfeasance, gross negligence or material breach of its obligations under this Agreement, except to the extent caused by Franchisee’s intentional misfeasance, gross negligence or material breach of its obligations under this Agreement.

17.2.3 Each party entitled to indemnification hereunder shall give the indemnifying party prompt written notice of any claim for which the indemnified party demands indemnity (provided that such obligation shall not constitute a condition to the indemnifying party’s indemnification obligation unless the indemnifying party has been materially harmed by such delay). Company shall, in conjunction with the Virginia Office of the Attorney General retain the full right and power to direct, manage, control and settle the litigation of any indemnifiable claim. Each indemnified party shall submit all indemnifiable claims to its insurers in a timely manner. Any payments made by an indemnified party shall be net of benefits received by any indemnified party on account of insurance in respect of such claims.

ARTICLE 18
DISPUTE RESOLUTION:
ARBITRATION AND LEGAL PROCEEDINGS

18.1 General. Except as provided in Sections 18.2 and 18.3 and except as precluded by Applicable Law, any controversy or claim between Company (and its Affiliates and its and their respective owners, officers, directors, agents and employees, as applicable) and Franchisee (and its Affiliates and its and their respective Owners, officers and directors, as applicable) arising out of or relating to this Agreement or any alleged breach hereof or the relationship created hereby, including any issues pertaining to the arbitrability of such controversy or claim and any claim that this Agreement or any part hereof is invalid, illegal, or otherwise voidable or void, shall be submitted to binding arbitration conducted before and in accordance with the Commercial Rules of the American Arbitration Association (“AAA”), by one arbitrator selected by Company and Franchisee. Judgment upon any award rendered may be entered in any Court having jurisdiction.
thereof. Except to the extent prohibited by Applicable Law, (a) the proceedings shall be held in San Francisco, California; (b) all arbitration proceedings and claims shall be filed and prosecuted separately and individually in the name of Franchisee and Company, and not in any representative capacity, and shall not be consolidated with claims asserted by or against any other Franchisee; (c) subject to the exceptions in Section 18.2, Company and Franchisee waive to the fullest extent permitted by law, and the arbitrator shall have no power or authority to grant punitive, exemplary, treble or other forms of multiple or consequential damages as part of its award; and (d) in any arbitration proceeding hereunder, each party shall submit or file any claim which would constitute a compulsory counterclaim (as defined by the then current Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Notwithstanding subsection (b) or anything to the contrary herein, if any court or arbitrator determines that all or any part of subsection (b) is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 18.1, then Company and Franchisee agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Agreement (excluding this Section 18.1). In no event may the material provisions of this Agreement including, but not limited to the method of operation, authorized product line sold or monetary obligations specified in this Agreement, amendments to this Agreement or in the Manuals be modified or changed by the arbitrator at any arbitration hearing. The arbitrator may not consider any settlement discussions or offers that may have been made by Company or Franchisee. The substantive law applied in such arbitration shall be as provided in Section 19.7 below. The arbitration and the parties’ agreement therefor shall be deemed to be self-executing, and if either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party despite said failure to appear. The parties shall initially share equally the arbitrator’s fees and costs. If either party fails to timely pay its share of the fees and costs, the arbitrator shall enter a default against the non-paying party on the claim and defenses in the matter, provided, that Company reserves the right, but has no obligation, to advance Franchisee’s share of the costs of any arbitration proceeding in order for such arbitration proceeding to take place and by doing so shall not be deemed to have waived or relinquished Company’s right to seek the recovery of those costs in accordance with this Section 18.1. The arbitral decision, whether by default or after hearing, shall be binding and conclusive on the parties. The prevailing party shall be entitled to an award against the non-prevailing party reimbursing the arbitrator’s fees and costs it advanced and for payment of attorneys’ fees and costs calculated in accordance with Section 19.13. All issues relating to arbitrability or the enforcement of the agreement to arbitrate contained herein shall be governed by the Federal Arbitration Act (9 U.S.C. §1 et seq.), notwithstanding any provision of this Agreement specifying the state law under which this Agreement shall be governed and construed.

18.2 Exceptions to Arbitration. The arbitration provision in Section 18.1 shall not apply to any action by Company or Franchisee for injunctive or other provisional relief including but not limited to enforcement of liens, security agreements, or attachment, as Company deems to be necessary or appropriate to compel Franchisee to comply with Franchisee’s obligations to the Company and/or to protect the Marks or Trade Secrets of the Company. Any claim or dispute involving or contesting the validity of any of the Marks shall not be subject to arbitration. Franchisee and Company hereby acknowledge that the venue and forum for any action not subject to arbitration under Section 18.1 may be the United States District Court for the Northern District of California, or if the court lacks such jurisdiction, the California court for San Francisco.
18.3 No Consequential Damages for Legal Incapacity; WAIVER OF PUNITIVE DAMAGES. Company shall not be liable to Franchisee for any consequential damages, including but not limited to lost profits, interest expense, increased construction or occupancy costs, or other costs and expenses incurred by Franchisee by reason of any delay in the delivery of Company's franchise disclosure document caused by legal incapacity during the Term, or any other conduct not due to the gross negligence or gross misfeasance of Company. Except with respect to Franchisee's obligations as set forth in Section 17.2, the parties waive to the fullest extent permitted by law any right to or claim for any punitive or exemplary damages against the other and agree that, in the event of a dispute between them, the party making the claim will be limited in recovery to equitable relief and any actual damages it sustains.

18.4 Survival. The terms of this Article are intended to benefit and bind certain third party non-signatories and shall survive termination, expiration or cancellation of this Agreement.

18.5 – SEE ADDENDUM

ARTICLE 19
MISCELLANEOUS PROVISIONS

19.1 Notices. Except as otherwise expressly provided herein, all written notices and reports permitted or required to be delivered by the parties pursuant hereto shall be deemed so delivered at the time delivered by hand, or one business day after transmission by facsimile, telegraph or other electronic system (with confirmation copy sent by regular U.S. mail), or 3 business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed as follows:

If to Company: Jamba Juice Company
6475 Christie Avenue, Suite 150
Emeryville, CA 94608
Attn: Vice President, Legal Affairs
Facsimile No.: (510) 653-0643

If to Franchisee: As set forth on the signature page hereto

Any party may change his or its address by giving 10 days’ prior written notice of such change to all other parties.

19.2 Company’s Right To Cure Defaults. In addition to all other remedies herein granted if Franchisee shall default in the performance of any of its obligations or breach any term or condition of this Agreement or any related agreement, Company may, without any obligation and solely at its election, immediately or at any time thereafter, without waiving any claim for breach hereunder and without notice to Franchisee, cure such default for the account of Franchisee, and the cost to Company thereof shall be due and payable on demand and shall be deemed to be additional compensation due to Company hereunder and shall be added to the amount of compensation next accruing hereunder, at the election of Company.
19.3 Waiver and Delay. No waiver by either party of any breach or series of breaches or defaults in performance by the other party, and no failure, refusal or neglect of either party to exercise any right, power or option given to it hereunder or under any other Franchise Agreement between Company and Franchisee, whether entered into before, after or contemporaneously with the execution hereof (and whether or not related to the Store) or to insist upon strict compliance with or performance of either party's obligations under this Agreement, any other Franchise Agreement between Company and Franchisee, whether entered into before, after or contemporaneously with the execution hereof (and whether or not related to the Store) or the Manuals, shall constitute a waiver of the provisions of this Agreement or the Manuals with respect to any subsequent breach thereof or a waiver by either party of its right at any time thereafter to require exact and strict compliance with the provisions thereof. Company will consider written requests by Franchisee for Company's consent to a waiver of any obligation imposed by this Agreement. Franchisee agrees, however, that Company is not required to act uniformly with respect to waivers, requests and consents as each request will be considered on a case by case basis, and nothing shall be construed to require Company to grant any such request. Any waiver granted by Company shall be without prejudice to any other rights Company may have, will be subject to continuing review by Company, and may be revoked, in Company's discretion, at any time and for any reason, effective upon 10 days' prior written notice to Franchisee. Company makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee by providing any waiver, approval, consent, assistance, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request.

19.4 Survival of Covenants. The covenants contained in this Agreement which, by their terms, require performance by the parties after the expiration or termination of this Agreement, shall be enforceable notwithstanding said expiration or other termination of this Agreement for any reason whatsoever.

19.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Company and Franchisee and its or their respective heirs, executors, administrators, successors and assigns, subject to the restrictions on Assignment contained herein.

19.6 Joint and Several Liability. If Franchisee consists of more than one person or entity, or a combination thereof, the obligations and liabilities of each such person or entity to Company are joint and several.

19.7 Governing Law. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of law rules, except for the provisions in Article 12 regarding Non-Competition which shall be governed by the laws of the state in which the Store is located and except that any law regulating the offer or sale of franchises, business opportunities or similar interests or governing the relationship between Company and Franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section.
19.8 **Entire Agreement.** SEE ADDENDUM This Agreement contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof. No other agreements oral or otherwise shall be deemed to exist or to bind any of the parties hereto and all prior agreements, understandings and representations are merged herein and superseded hereby. Franchisee represents that there are no contemporaneous agreements or understandings relating to the subject matter hereof between the parties that are not contained herein; provided, however, that nothing in this or any related agreement shall disclaim or require Franchisee to waive reliance on any representation that Company made in the Franchise Disclosure Document (including its exhibits and amendments) that Company delivered to Franchisee or Franchisee’s representative, subject to any agreed-upon changes to the contract terms and conditions described in that Franchise Disclosure Document and reflected in this Agreement (including any riders or addenda signed at the same time as this Agreement). No officer or employee or agent of Company has any authority to make any representation or promise not contained in this Agreement or in any franchise disclosure document for prospective franchisees required by Applicable Law, and Franchisee agrees that it has executed this Agreement without reliance upon any such representation or promise. This Agreement cannot be modified or changed except by written instrument signed by all of the parties hereto.

19.9 **Titles For Convenience.** Article, section and paragraph titles used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants, or conditions of this Agreement.

19.10 **Gender And Construction.** The terms of all Exhibits hereto are hereby incorporated into and made a part of this Agreement as if the same had been set forth in full herein. All terms used in any one number or gender shall extend to mean and include any other number and gender as the facts, context, or sense of this Agreement or any article or Section hereof may require. As used in this Agreement, the words “include,” “includes” or “including” are used in a non-exclusive sense. Unless otherwise expressly provided herein to the contrary, any consent, approval, acceptance or authorization of Company which Franchisee may be required to obtain hereunder may be given or withheld by Company in its sole discretion, and on any occasion where Company is required or permitted hereunder to make any judgment, determination or use its discretion, including any decision as to whether any condition or circumstance meets Company’s standards or satisfaction, or is otherwise acceptable, Company may do so in its sole subjective judgment and discretion. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the drafter hereof, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto. Company and Franchisee intend that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall be given the meaning that renders it enforceable.

19.11 **Severability.** Nothing contained in this Agreement shall be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provisions of this Agreement or the Manuals and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but
in such event the provisions of this Agreement or the Manuals thus affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. If any part, article, section, sentence or clause of this Agreement or the Manuals shall be held to be indefinite, invalid or otherwise unenforceable, the indefinite, invalid or unenforceable provision shall be deemed deleted, and the remaining part of this Agreement shall continue in full force and effect.

19.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

19.13 Fees and Expenses. If any party to this Agreement shall bring any mediation or judicial action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Agreement, the prevailing party is free to seek a reasonable sum for attorney fees and costs incurred in bringing or defending such mediation or judicial action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such mediation or judicial action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. In order to collect any attorney fees and costs, any judgment or order entered in such action or proceeding must contain a specific provision providing for the recovery of attorney fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing party shall be determined by the trier of fact based upon an assessment of which party’s major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party’s major arguments or positions on major disputed issues. For the purposes of this Section, attorney fees shall include, without limitation, fees incurred in the following: (1) post-judgment motions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. This Section is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

19.14 Waiver of Jury. IN ALL CASES, FRANCHISEE AND COMPANY EACH WAIVES ANY RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.

19.15 Estoppel. Upon Company’s request, Franchisee shall, within five (5) days prior to an Assignment or at any other time promptly following Company’s request, furnish Company with an estoppel agreement indicating any and all causes of action, if any, that Franchisee may have against Company or if none exist, so stating, and a list of all Owners having an interest in this Agreement (and any other agreement between Franchisee (or its Affiliates) and Company) or in Franchisee, the percentage interest of each Owner, and a list of all officers and directors, in such form as Company may require.

19.16 No Third Party Beneficiary. Nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee and Company (and Company’s Affiliates) and Franchisee’s and Company’s respective permitted successors and assigns, any rights or remedies under or as a result of this Agreement.
ARTICLE 20
SUBMISSION OF AGREEMENT

20.1 Due Execution. The submission of this Agreement does not constitute an offer and this Agreement shall become effective only upon the execution thereof by Company and Franchisee. This agreement shall not be binding on Company unless and until it shall have been accepted and signed on its behalf by a duly authorized officer of Company.

ARTICLE 21
ACKNOWLEDGMENTS AND REPRESENTATIONS

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

21.2 Independent Investigation. Franchisee acknowledges that it has conducted an independent investigation of the business contemplated by this Agreement and recognizes that the success of this business involves substantial business risks and will largely depend upon the ability of Franchisee. Company expressly disclaims making, and Franchisee acknowledges 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 contemplated by this Agreement.

21.3 Franchise Disclosure Document. Franchisee acknowledges that it received a complete copy of Company’s disclosure document required by the Federal Trade Commission’s Franchise Trade Regulation Rule (16 C.F.R. Part 436) within the time period required by applicable law.

21.4 Addenda. This Franchise Agreement is subject to the Addendum (Addenda), if any, attached hereto, all of which are incorporated herein by this reference and made a part hereof.

21.5 Organization. If Franchisee is a Business Entity, Franchisee is duly organized and validly existing under the law of the state of its formation; is duly qualified and is authorized to do business in each jurisdiction in which its business activities or the nature of the properties owned by it require such qualification; its corporate charter or written partnership or limited liability company agreement shall at all times provide that the activities of Franchisee are confined exclusively to the operation of Jamba Juice® Stores; and the execution of this Agreement and the performance of the transactions contemplated hereby are within Franchisee’s corporate power, if Franchisee is a corporation, or if Franchisee is a partnership or a limited liability company, permitted under Franchisee’s written partnership or limited liability company agreement and have been duly authorized by Franchisee; and

21.6 Ownership. If Franchisee is a Business Entity, the ownership interests in Franchisee are accurately and completely described in Exhibit C. If Franchisee is a corporation, Franchisee shall maintain at all times a current list of all owners of record and all beneficial
owners of any class of voting securities in Franchisee or, if Franchisee is a partnership, limited liability company or other form of legal entity, Franchisee shall maintain at all times a current list of all owners of an interest in the partnership, limited liability company or other entity. Franchisee shall make its list of Owners available to Company upon request.

21.7 Financial Matters. Franchisee and, at Company's request, each of Franchisee's Owners, have provided Company with their most recent financial statements. Such financial statements present fairly the financial position of Franchisee and each of its Owners, as applicable, at the dates indicated therein and, with respect to Franchisee, the results of its operations and its cash flow for the years then ended. Each of the financial statements are certified as true and correct and have been prepared in conformity with generally accepted accounting principles and, except as expressly described in the applicable notes, applied on a consistent basis. There are no material liabilities, adverse claims, commitments or obligations of any nature, whether accrued, unliquidated, absolute, contingent or otherwise, which are not reflected as liabilities on the financial statements. Franchisee shall maintain at all times during the term of this Agreement sufficient working capital to fulfill its obligations under this Agreement. At Company's request, Franchisee shall provide Company with any and all loan or other documents regarding the financing of its operations that Company may request.

21.8 Anti-Terrorism Laws. Franchisee and its Owners certify that neither Franchisee nor its Owners, employees or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html). Franchisee agrees not to hire or have any dealings with a person listed in the Annex. Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its owners, employees, or anyone associated with Franchisee being listed in the Annex to Executive Order 13224. Franchisee and its Owners agree to comply with and/or assist Company to the fullest extent possible in Company's efforts to comply with the Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its Owners certify, represent, and warrant that none of its property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its Owners are not otherwise in violation of any of the Anti-Terrorism Laws. Franchisee is solely responsible for ascertaining what actions must be taken by Franchisee to comply with all Anti-Terrorism Laws. Any misrepresentation by Franchisee under this Section or any violation of the Anti-Terrorism Laws by Franchisee or employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered into with Company or one of Company's Affiliates.
IN WITNESS WHEREOF, the parties hereof have executed this Agreement as of the Effective Date.

“Company”

JAMBA JUICE COMPANY

______________________________
By: __________________________
Its: __________________________

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

______________________________
By: __________________________
Its: __________________________

Address of Franchisee: 151 New Hall West (0428)
Blackburg, Virginia 24061

Facsimile No.: 540-231-2603
EXHIBIT B

ADDENDUM TO LEASE

NOT APPLICABLE
EXHIBIT C

OWNER SCHEDULE

NOT APPLICABLE
EXHIBIT D

CONFIRMATION OF TERM COMMENCEMENT DATE

Reference is hereby made to a Franchise Agreement dated July ___, 2012 ("Franchise Agreement") by and between Jamba Juice Company ("Franchisor") and Virginia Polytechnic Institute and State University ("Franchisee") with reference to Store #1262, located in Lavery Hall, Blacksburg, Virginia 24061. Pursuant to Section 3.1 of the Agreement, the undersigned hereby agree that the Start Date was __________ and that the Term (as defined in the Agreement) expires five (5) years from the Start Date on __________.

IN WITNESS WHEREOF, the parties hereof have executed this Confirmation of Commencement Date as of the last date set forth below.

JAMBA JUICE COMPANY

By: __________________________

Its: __________________________

Date: __________________________

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

By: _______ sample only _______

Its: __________________________

Date: __________________________

#1262 – Virginia Polytechnic Institute and State University – Franchise Agreement