

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid USA, Inc.,

Debtor.

Case No. 04-40416
(Jointly Administered)

Chapter 11 Case

**NOTICE OF HEARING AND MOTION (1) TO REQUIRE ASSUMPTION OR
REJECTION OF EXECUTORY CONTRACT OR ALTERNATIVE RELIEF (2) TO
COMPEL TIMELY PERFORMANCE UNDER FRANCHISE AGREEMENT AND
(3) TO GRANT ADMINISTRATIVE EXPENSE PRIORITY FOR POST-PETITION
AMOUNTS DUE UNDER FRANCHISE AGREEMENT**

TO: The Trustee, the Debtor and the other entities specified in Local Rule 9013-3(a).

1. Robert J. Poturalski and Barbara A. Poturalski (the "Ohio Franchisee"), by their undersigned counsel, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion at 10:30 a.m. on October 6, 2004, before the Honorable Nancy C. Dreher in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this Motion must be filed and delivered not later than October 1, 2004, which is three (3) days (excluding weekends or holidays) before the time and date set for the hearing, or filed and served by mail not later than September 27, 2004, which is seven (7) days (excluding weekends and holidays) before the date set for the hearing. **UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THIS MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and Bankruptcy Rule 5005. This motion proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O). The petition commencing this Chapter 11 case was filed on January 29, 2004 ("Petition Date"). This case is presently pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 365(d)(3) and 503(b). This Motion is filed under Bankruptcy Rule 9014 and Local Rules 9006-1 through 9017-1. The Ohio Franchisee requests an order of this Court requiring Intrepid U.S.A., Inc. and Intrepid Affiliates, Inc. (hereinafter referred to as Intrepid USA and Affiliates, individually, and the Debtors, collectively) to assume or reject the Franchise Agreement (as defined below); to timely perform the estate's obligations under the Franchise Agreement pending such assumption or rejection; and granting the Ohio Franchisee a claim entitled to administrative expense priority for all amounts due under the Franchise Agreement and related documents incurred during the pendency of this Chapter 11.

6. The Ohio Franchisee is the franchisee in several counties in northwest Ohio which provides personal care in home health care services in such counties. The Ohio Franchisee originally entered into a franchise agreement dated July 12, 1995, with Western Staff Services (USA), Inc. (hereinafter "Western") to provide administrative services to Western, which supplied temporary health care staffing and home health care to health care service providers and individuals.

7. During late 1999 and early 2000, Western, the franchisor under the Franchise Agreement, sold its business to Intrepid U.S.A., Inc., one of the Debtors in this consolidated case. The Debtors thereafter assigned all of the franchises to Intrepid Affiliates, Inc.

8. The northwest Ohio locations have been operated as a franchise of the Debtors. The Ohio Franchisee provides management and care services through local staff, and the Debtors hold all of the licenses (Medicare and Medicaid) and any certificates of need. The Debtors bill for the services which the Ohio Franchisee provides, collect all of the revenues, pay certain expenses, including payroll for field staff, and retain 8% of the revenues as a franchise fee.

Under the Franchise Agreement, the balance of the revenues is required to be paid to the Ohio Franchisee on a monthly basis.

9. Immediately after acquiring the franchise business, Debtors began dismantling such business. In 2000, they offered all franchisees the option to buy each of their respective franchises at a 75% discount off the formula price set forth in the standard franchise agreement. On information and belief, all but three franchisees accepted the offer, and bought their franchise at the discounted price. The Ohio Franchisee did not accept the buy out offer and elected to retain the franchise.

10. At about the same time the Debtors began offering the above-described buy out program, it also began reducing the services that it provided under the Franchise Agreement. The Ohio Franchisee alleges that the reduction of services constitutes a substantial, material and continuing default under the Franchise Agreement. Such defaults are set forth in detail in the supporting Affidavit of Robert J. Poturalski accompanying this motion.

11. In early April 2004, the Ohio Franchisee was anticipating the receipt of net revenues under the Franchise Agreement from the Debtors; however, the Debtors failed to pay such revenues to the Ohio Franchisee. The Debtors issued checks that were subsequently dishonored because they had been written on closed accounts. It was at or about this time that the Ohio Franchisee discovered that Intrepid USA had filed a petition under Chapter 11 in the District of Minnesota. The Ohio Franchisee further discovered that on April 12, 2004, Intrepid Affiliates, Inc. filed a petition under Chapter 11.

12. Debtors are also in default under the Franchise Agreement for failure to pay additional pre-petition revenues due to the Ohio Franchisee. The Ohio Franchisee has calculated they are owed \$39,477.35 in pre-petition profits, which the Debtors have failed and refuse to pay to the Ohio Franchisee.

13. Since the commencement of the Chapter 11 cases, the Debtors have failed to provide required services under the Franchise Agreement and have altered the historical payment practices so as to withhold post-petition sums due to the Ohio Franchisee. Each and every post-petition payment has been late, and only paid after the Ohio Franchisee and/or their counsel have contacted the Debtors to demand such payment. Debtors have provided little or no accounting from which the Ohio Franchisee can determine what amounts they are being paid for, whether the Debtors have correctly billed for services and whether the correct amounts are being paid to the Ohio Franchisee. The lack of accounting and failure to timely pay all post-petition amounts due the Ohio Franchisee has caused significant financial hardship to the Ohio Franchisee and has also significantly and perhaps irreparably damaged the Ohio Franchisee's business relations with clients and the agencies with whom the Ohio Franchisee works. To the best of their ability to estimate, the Ohio Franchisee estimates that the post-petition defaults and failures of the Debtor to perform their obligations under the Franchise Agreement are causing the Ohio Franchisee damage not less than the amount of approximately \$10,000 per month, most or all of which amounts constitute a claim which is entitled to priority under 11 U.S.C. § 503(a).

14. The Franchise Agreement constitutes an executory contract within the meaning of 11 U.S.C. § 365. As set forth above, and as set forth with greater specificity in the attached Affidavit of Robert J. Poturalski, the Debtors are in default of their obligations under the Franchise Agreement and such actions are causing substantial harm to the business of the Ohio Franchisee, as well as substantial monetary damages. The Ohio Franchisee requests an order of this Court pursuant to 11 U.S.C. § 365(d)(2), ordering the Debtors to determine on or before October 15, 2004, whether they intend to assume or reject the Franchise Agreement, and further directing that the Debtors timely pay to the Ohio Franchisee all post-petition obligations due under the Franchise Agreement during the pendency of their decision to assume or reject, and

granting the Ohio Franchisee an administrative expense priority pursuant to 11 U.S.C. § 503(b) for all amounts due under the Franchise Agreement from the petition date through the date of assumption or rejection; alternatively, the Ohio Franchisee requests that the Court determine that the Franchise Agreement is not subject to assumption or assignment by Intrepid pursuant 11 U.S.C § 365(c)(1) and (2).

15. Pursuant to Local Rule 9013(2)(c), the Ohio Franchisee hereby gives notice of their intention to offer oral testimony at the hearing of this matter from the following witnesses:

Robert J. Poturalski
5445 Southwyck Boulevard, Suite 208
Toledo, Ohio 43614

The witness intends to testify as to the facts and circumstances surrounding the Franchise Agreement, the Debtors' defaults under the Franchise Agreement, and the harm being caused by the Debtors' failure to assume or reject the Franchise Agreement and timely pay its obligations thereunder.

WHEREFORE, the Ohio Franchisee respectfully requests the order of this Court as follows:

(A) Directing the Debtors pursuant to 11 U.S.C. § 365(d)(2) to assume or reject the Franchise Agreement with the Ohio Franchisee not later than October 15, 2004;

(B) Directing the Debtors to timely perform all of their post-petition obligations under the Franchise Agreement pending determination as to assumption or rejection, including, but not limited to, the payment of amounts due under the Franchise Agreement;

(C) Granting administrative expense priority to the Ohio Franchisee for all amounts due under the Franchise Agreement following the commencement of Chapter 11 proceedings; and

(D) Granting such other and further relief as to the Court seems just and equitable.

Dated this 17th day of September, 2004.

/e/ Larry B. Ricke

Steven D. DeRuyter (#0022287)

Larry B. Ricke (#0121800)

LEONARD, STREET AND DEINARD

Professional Association

150 South Fifth Street, Suite 2300

Minneapolis, Minnesota 55402

Telephone: 612-335-1500

Facsimile: 612-335-1657

ATTORNEYS FOR ROBERT J.
POTURALSKI AND BARBARA A.
POTURALSKI

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid USA, Inc.,

Debtor.

Case No. 04-40416
(Jointly Administered)

Chapter 11 Case

AFFIDAVIT OF ROBERT J. POTURALSKI

* * *

Being first duly sworn to tell the truth, I, Robert J. Poturalski, testify to the following.

1. I and my wife, Barbara A. Poturalski, (collectively "**Franchisees**") are the franchisees under the following agreements (collectively, "**Franchise Agreements**") with Intrepid Affiliates, Inc. ("**Franchisor**"), assignee of Western Staff Services (USA), Inc., the franchisor under the Franchise Agreements and one of the debtors in this consolidated case.

[1] Franchise Agreement dated July 12, 1995;

[2] Addendum to Franchise Agreement dated July 12, 1995 ("**Addendum**");

[3] Equipment Operating Lease Agreement dated August 11, 1995;

[4] Local Payroll Addendum dated July 12, 1995; and,

[5] Security Agreement dated July 12, 1995.

Attached as a composite Exhibit A are true, accurate, and complete copies of each of the listed Franchise Agreements.

2. I am submitting this Affidavit in support of a motion seeking a determination that the Franchise Agreements are not assumable or an order directing Franchisor to reject the Franchise Agreements as a burden on the Estate.

3. I have firsthand knowledge of the matters that I describe in this Affidavit as a result of conducting the business that my wife and I own and operate as the Ohio Franchisee under the Franchise Agreements and observing the performance and defaults of Franchisor. Our business under the Franchise Agreements, which covers several counties in northwest Ohio, provides administrative services to Franchisor for Franchisor's business of supplying temporary health care staffing and home health care to health care service providers and individuals.

4. For the events described in this Affidavit, Intrepid USA, Inc. ("**Intrepid**") and its officers, directors, employees, agents, and contractors acted for Intrepid (for itself and as debtor-in-possession) and for Franchisor (for itself and as debtor-in-possession).

5. Attached as Exhibit B is a document titled “*Franchise Program*” that was given to the Franchisees to explain the benefits of doing business as a franchisee and thereby to induce Franchisees to enter into the Franchise Agreements. *Franchise Program* is intended to explain in plain English the Franchise Agreements. *Franchise Program* explains that the primary benefits of being a franchisee include the brand recognition associated with a franchisor; the knowledge, expertise, and key services provided by a franchisor (including advertising and marketing services); access to capital services; and access to referrals from national and regional customers (collectively with other services provided by Franchisor, “**Franchisor Services**”). Franchisees relied on the descriptions in *Franchise Program* to enter into the Franchise Agreements. Intrepid and Franchisor have failed to provide Franchisor Services as described in *Franchise Program*.

6. Assuming and performing the Franchise Agreements will constitute a burden on the Estate. Intrepid and Franchisor have admitted to me that Intrepid and Franchisor are losing money under the Franchise Agreements and cannot continue to provide services at the current deficient level because of the losses. Intrepid’s and Franchisor’s current and historical performance of the Franchise Agreements are in material default of the Franchise Agreements. Future performance of the Franchise Agreements without default by Intrepid and Franchisor will require Intrepid and Franchisor to spend significant additional sums of money. Therefore, the Franchise Agreements are a burden on the Estate and assumption of the Franchise Agreements and performing them without default will substantially increase the burden on the Estate. In addition, Intrepid and Franchisor would have to cure existing defaults or pay damages for them.

7. Assuming and selling the Franchise Agreements would likewise constitute a burden on the Estate because the value of the franchises is less than the cost of curing defaults as admitted by the conduct of Intrepid and Franchisor. Immediately upon acquiring the franchise business, Intrepid and Franchisor began dismantling the franchise business. In 2000, they offered all franchisees the option to buy each of their respective franchises at a 75% discount off of the formula price set forth in the standard franchise agreements. All but three franchisees accepted the offer, and bought their franchises at the discounted price. Applying this same discount to the formula in the Franchise Agreements yields a purchase price of approximately \$33,000 for the northwest Ohio franchise that Franchisees own. As a result of the substantial, material, continuing defaults of Intrepid and Franchisor described in this Affidavit, the value of each of the remaining franchises is worth less than they were four years ago. It would cost Intrepid and Franchisor more to cure existing defaults and to provide assurances of future performance than they would receive on a buyout at fair value today.

8. Just before and after the events described in the preceding paragraph, Intrepid and Franchisor began reducing the services that they provided under the Franchise Agreements, thereby committing substantial, material, continuing defaults under the Franchise Agreements. The defaults are continuing to date and include the following defaults by Intrepid and Franchisor:

- [a] Intrepid and Franchisor have destroyed the value of the brand recognition of Franchisor, and cannot provide adequate assurances of future performance to

restore the value, thereby causing damages in excess of \$20,000 per year through lost profits from business lost that is not otherwise itemized in this ¶8.

- [b] Intrepid and Franchisor have failed to bill for services in a timely and accurate manner causing loss of third party payor benefits and inability to collect accounts thereby damaging Franchisee in an amount estimated to exceed \$2,500 per month. In order to provide future performance, Intrepid and Franchisor would have to hire and train capable billing personnel. This is a breach of § 3.e. of the Franchise Agreement and of § 3.f. of the Addendum.
- [c] Intrepid and Franchisee have failed to bill for services in a timely and accurate manner in breach of § 3.e. of the Franchise Agreement and § 3.f. of the Addendum, resulting in significant customer relations and payment issues and causing damages in the amount of \$10,000.00 in addition to the damages described in the preceding item [b].
- [d] Intrepid and Franchisor have failed to provide direct mailing of promotional advertising and sales in breach of §2.m. of the Franchise Agreement causing damages in the amount of \$10,000.00.
- [e] Intrepid and Franchisor have failed to make available at the expense of Intrepid and Franchisor trained representatives to assist in the development and promotion of sales in breach of §2.n. of the Franchise Agreement causing damages in the amount of \$12,000.00.
- [f] Intrepid and Franchisor have failed to develop sales and promotional programs to assist franchisees in their efforts to generate more business and to increase sales of the franchises in breach of §2.l. of the Franchise Agreement causing damages in the amount of \$15,000.00.
- [g] Intrepid and Franchisor have failed to help bid and service national accounts (see *Franchise Program* for an explanation of such services) in breach of §§2.i. and 2.j. of the Franchise Agreement, causing damages in the amount of \$40,000.00.
- [h] Intrepid and Franchisor have failed to assist in community education, sales, promotions, and marketing causing damages in the amount of \$10,000.00.
- [i] Intrepid and Franchisor, post-petition, have failed to provide timely accurate and complete accountings of the business, and to pay Franchisees in a timely and accurate manner causing damages in an amount that will be determined by the cost of hiring accountants to generate such reports.
- [j] Intrepid and Franchisor have solicited and serviced for their own account, patients in Franchisees' exclusive territory, in substantial, continuing and material violation of Franchisees' exclusive territory under §1. and, possibly, §3.k. of the Franchise Agreement causing damages in an amount presently unknown to Franchisees, but is estimated to exceed \$50,000. The amount may be determined by an accounting based on Intrepid's and Franchisor's records and Medicaid/Passport statements received by Intrepid and Franchisor.
- [k] Intrepid and Franchisor are in default of payments to Franchisees in the aggregate amount of \$39,477.00.

[1] Intrepid and Franchisor have failed to supply office supplies and forms as required by §3.h. of the Addendum, causing damages in the amount of \$2,000.00.

9. Intrepid and Franchisor have failed to maintain employees knowledgeable in the franchise business to perform the services of the franchisor under the Franchise Agreements. As a result, Intrepid and Franchisor do not have the skill, knowledge, or expertise to perform the services that they are required to perform under the Franchise Agreements and would be required to incur significant costs to acquire such services in order to assume the Franchise Agreements.

10. Intrepid and Franchisor have destroyed the brand recognition of Franchisor and thereby destroyed the value of the franchise under the Franchise Agreements. Since the Chapter 11 petition of Intrepid, northwest Ohio area customers have turned to other, competitive reliable services, notwithstanding the best efforts of Franchisees. The post-petition conduct of Intrepid and Franchisor has made matters worse. Intrepid and Franchisor have engaged in inaccurate and otherwise improper billing for Medicaid which, in context of their pre-petition Medicare and Medicaid fraud, have caused local offices to reduce requests for services causing damages in the amount of \$15,000.00 as of this date. These damages will continue to have an adverse effect on Franchisees and continue to cause damages in the future notwithstanding any corrective action by Intrepid and Franchisor as a result of what appears to be systemic improprieties.

11. Intrepid and Franchisor cannot provide adequate assurances of future performance unless they recruit and retain employees knowledgeable in franchising and marketing to provide services to Franchisees, and developing and implementing short term and long term plans to support their franchise business. Having admitted that they are losing money even with their current deficient level of service, and having dismantled their franchise programs, Intrepid and Franchisor will increase their losses in the franchise business substantially if they attempt to perform at a minimally complying level.

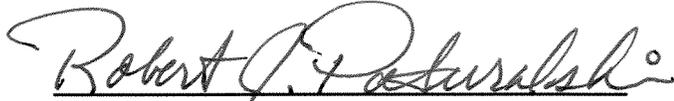
12. Intrepid and Franchisor have stopped branch manager training and consulting services that had been provided to all franchisees.

13. The failure of Intrepid and Franchisor to bill properly demonstrates specific intent to breach the Franchise Agreements. Obtaining payment from third party payors, particularly Medicaid, requires billing before certain deadlines. If billings are not sent before the deadlines, the billings are not paid. In addition, late billings are less likely to be collected in general. Intrepid and Franchisor have routinely sent late billings and billings past applicable deadlines causing accounts to become uncollectible. Intrepid and Franchisor have then charged back the uncollectible amounts against Franchisees, even though the sole reason that the accounts had become uncollectible is because of the breach of contract by Intrepid and Franchisor.

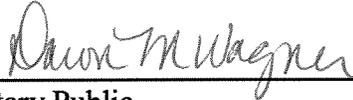
14. The Ohio Franchisees do not consent to the assumption of the Franchise Agreements because the Ohio Franchisees do not consent to extending any debt financing or other financial accommodations to or for the benefit of Intrepid or Franchisee as would be required under the Franchise Agreements.

[Signature and Notary Public Acknowledgement on following page]

Further affiant sayeth naught.


Robert J. Poturalski

Sworn to before me and subscribed in my presence this 10th day of September, 2004.


Notary Public

My Commission Expires: _____

[SEAL]



DAWN M. WAGNER
Notary Public, State of Ohio
My Commission Expires 9-24-08

FRANCHISE AGREEMENT



Western
MEDICAL SERVICES.
A Division of Western Temporary Services (USA), Inc.
 Staff

THIS AGREEMENT, by and between the Western Medical Services Division of Western Temporary Services (USA), Inc., a California corporation, having its principal place of business at 301 Lennón Lane, Walnut Creek, California ("Western"), and Robert J. Poturalski and Barbara A. Poturalski ("Franchisee").

1. Grant of Franchise and Exclusive Territory. We hereby grant you an exclusive franchise to operate a medical temporary help service in the following city or geographical area (hereinafter sometimes called your "exclusive territory"): Counties of Lucas, Fulton, Wood, Ottawa, Sandusky and Henry, Ohio

The term "medical temporary help service" as used in this Agreement shall include, but not be limited to, such services as facility staffing and private duty home care. Home health agency business, which consists of part-time or intermittent home health care, Medicare or Medicaid, is excluded. You may recruit and sell or provide medical temporary help services outside your exclusive territory, subject to Paragraph 4.c. and all other supervisory requirements of Western or the state in which such services are to be provided, until such time as the nonexclusive territory is assigned by us to another Western office, whether company-owned, franchised or licensed. You shall not, directly or indirectly, recruit and sell or provide any temporary help services within any area or territory assigned by us to another company-owned, franchised or licensed Western office.

2. Term and Conditions for Renewal.

a. **Commencement.** You shall commence the operation of the franchise on or before the following date, unless otherwise agreed in writing:

July 9, 1995

b. **Term and Conditions for Renewal.** This Agreement shall be in effect for an initial period of five (5) years from the date on which Western signs this Agreement and shall be automatically renewed every five (5) years thereafter at no additional fee, unless sooner terminated, and provided that there is no material breach or uncured default by you of any of the terms of this Agreement. Western reserves the right to require that you sign the then current form of Franchise Agreement in order to effectuate the renewal, provided the grant of exclusive territory and division of gross profit will not change.

3. Western's Obligations. We shall be obligated as follows:

a. **Training.** We shall furnish you and your office manager a training course of methods to be used in operating the franchise, the time and place of which shall be designated by Western. You shall be responsible for your own living expenses and transportation, if any, in connection with your attendance at that course.

b. **Loan of Manuals.** We shall loan you a copy of our operating manuals which contain complete instructions on how to operate a Western franchise. We reserve the right to revise the manuals from time to time. Should this Agreement be terminated, whether by you or by us, you promptly shall return our manuals in good condition or forfeit the deposit referred to in Paragraph 5.b. If you refuse to do so, Western reserves the right to obtain a court order for the immediate return of our manuals upon termination of this Agreement.

c. **Temporary Employee Payrolls.** We shall fund all payrolls for Western's temporary employees, including the payment of all payroll taxes and other related payroll costs, workers' compensation, liability and fidelity bond insurance. The temporary employees always shall be the lawful employees of Western, even if they were first recruited by you before entering into this Agreement. We shall process the temporary payroll checks using a remote payroll system, handle all accounting and other details incident to the temporary payrolls, and prepare and file the necessary payroll reports and returns.

d. **Special License.** Should a special license be required to conduct a medical temporary help service in your exclusive territory, we will reimburse you for a portion of the cost of such license(s) through the normal division of gross profit by adding the cost thereof to the direct labor costs. However, the cost of a license required of all businesses is not a reimbursable cost.

e. **Customer Invoicing.** We shall invoice all of Western's customers serviced by the franchise, supervise all collections, make adjustments and settlements, commence legal proceedings in Western's name when we deem it necessary

to collect the trade accounts receivable, and otherwise handle all the accounting and other details incident to the collection of the customer accounts. The customer lists, including the right to service customers, and the customer accounts always shall be the property of, and belong to, Western, even if they were first serviced by you before entering into this Agreement.

f. **Remote Payroll Processing.** We shall lease to you a remote payroll processing system which you must use in the operation of the franchise under the terms set forth in a remote payroll addendum to this Agreement. You shall take whatever steps are necessary to ensure the accuracy of the payroll data.

g. **Western Telephone Line(s).** Western shall own the license to use the primary telephone number, all rollover numbers and all other telephone numbers used in the operation of the franchise, whether or not published. We shall advance all installation, monthly service and usage charges and deduct them from your share of the gross profit, except for the initial telephone line connection charge and the basic monthly service charges for at least one primary telephone number listed in Western's name. To facilitate our doing so, you shall review the monthly telephone bills on receipt and promptly submit them to Western. All contract forms required by the telephone company for the Western telephone number(s) shall be executed by a corporate officer of Western. You shall not add, delete or otherwise change any Western telephone line, number, listing or directory advertisement without our prior written approval. You shall not use any Western telephone line or number in your operation of any other business. The telephone line(s) used in the franchise operation always shall be answered in such a way as to identify them exclusively as Western line(s). You shall not answer them in the name of another business you directly or indirectly own nor shall you couple any other name with the Western name. If you operate another business in accordance with Paragraph 6.a., you shall at all times use a separate telephone number for that business. You shall pay the costs of purchasing or leasing the necessary telephone equipment. In the event you relocate the franchise, you must obtain our prior written approval of any new telephone number, and you shall pay all charges for subsequently relocating the Western telephone line(s). You shall request that the primary telephone number for the new franchise be "STAT WMS" or 782-8967, if available.

h. **Telephone Directories.** You shall ensure that the primary telephone number for the franchise be listed each year in the white pages of the local telephone directory. You also shall place each year in the yellow pages of the most widely circulated directory a trademark listing or a display advertisement in the trade name of "Western Medical Services" using our then current logo(s). Western shall have the right to approve in advance the directory and the listing or advertisement. You shall not remove, change or fail to renew an approved listing or advertisement without our prior consent.

i. **National Accounts.** Whenever feasible, we shall help you bid on and service national accounts. The discounting of billing rates or the provision of other accommodations to Western's customers may be required. Such rates, discounts and accommodations, if any, shall be set by us. If you elect not to fill a job order or service a particular account, Western reserves the right to provide such service in your exclusive territory when we deem it important for Western's business development. In that event, Western shall retain all the gross profit, or suffer the loss, derived therefrom.

j. **Customer Contracts.** Whenever feasible, we shall assist you in obtaining contracts from companies and governmental entities in your territory and those with offices in more than one city. We shall use our best efforts to consult with you about appropriate local rates to use in bidding. When Western is the successful bidder, you may furnish the necessary personnel to fill assignments in your exclusive territory at the rates stipulated in our bid. Should you decline to do so, we reserve the right to furnish such personnel. In that event, Western shall retain all the gross profit, or suffer the loss, derived therefrom. You shall forward all written bids for such contracts and related contract documents or purchase orders to our corporate office Medical Division for review, approval and signature.

k. **Acquisitions.** If we acquire a competitor with an office or offices in your exclusive territory, and we choose to continue operating the office(s), we will offer you an opportunity to participate in the purchase. Your share of the purchase price would be sixty-eight percent (68%) of the total price allocated to that office or those offices. Should you decline to participate, and in order to complete the

transaction, Western shall have the right to operate the acquired business locally, using the acquired company's business name or a name other than Western.

l. Sales and Promotional Programs. We shall develop sales and promotional programs to assist you in your efforts to generate more business and increase the sales of the franchise.

m. Publicity and Direct Mail. In addition to your efforts, we shall publicize the trade names of Western and conduct direct mailings of promotional advertising and sales materials, all at our discretion and expense.

n. On-Site Assistance. After you commence the franchise operation, we shall make available to you at our expense one of our trained representatives to assist you in the development and promotion of sales under this Agreement, and to perform other appropriate and helpful services.

o. Start-Up Operating Forms. We shall furnish you with the start-up operating forms and supplies listed on Schedule A. You have the option at your expense to purchase other Western advertising items or promotional materials at the then current catalog prices.

4. Franchisee's Obligations. You shall be obligated as follows:

a. Incorporation. If you are presently organized as a corporation, you shall change its name to "Western Medical Services of (name of local city), Inc." If you are not presently organized as a corporation, you shall form a corporation named "Western Medical Services of (name of local city), Inc." to operate the franchise. You shall assign your right, title and interest in this Agreement to that corporation on a form which we shall provide. We shall reimburse you a maximum of five hundred dollars (\$500) for the costs of changing your corporate name or incorporating. You shall change your corporate name or form your corporation before doing business pursuant to this Agreement, and promptly provide a certified copy of your amended or new articles of incorporation to our Legal Department. The original shareholders and any future shareholders of your corporation shall execute a ratification and guaranty of this Agreement, jointly and severally, whereby you and they shall be personally liable for full compliance with this Agreement on the part of the Franchisee.

b. Personal Involvement. This Agreement is designed for owner-operators. Therefore, at least one of the key personnel as defined in Paragraph 7.b. must be on-site and actively involved in the operation of the franchise at all times. In the absence of key personnel due to death, disability or circumstances beyond your reasonable control, Western shall have the right to approve the franchise operating personnel. Should Western deem the viability of the franchise operation to be endangered, we shall have the option to terminate the franchise, take over the operation of the franchise and pay you fifty percent (50%) of the Franchisee's share of the gross profit as long as we choose to operate the franchise, but not more than six (6) periods.

c. Compliance with Western's Procedures, Programs and Policies. You shall adhere to Western's procedures, programs, policies, standards and ethics as presently outlined in our training courses, published in our operating manuals and directives, or as later amended or promulgated at our sole discretion for the continued success and development of Western's business. If, in the exercise of our commercially reasonable judgment, we do not permit you to fill a particular job order or service a specific customer, you may not service that customer outside this Agreement, on your own, without our prior written consent and you must comply with any conditions which we may impose in this regard. We shall have the right to determine which local Western office, whether company-owned, franchised or licensed, will service customers outside your exclusive territory on the basis of geographical proximity, priority of servicing the customer, customer preference, and any other commercially reasonable grounds. From time to time we may change or update our programs, and the acquisition of equipment, supplies, furnishings or other goods, or the completion of additional training for you or your regular staff employees may be necessary. If your participation in these changes or updates is mandatory, the reasonable costs shall be shared through the normal division of gross profit. If your participation is optional, these costs shall not be shared.

d. Western's Service Marks, Trademarks, Trade Names and Logos.

1) Ownership and Use. You shall use only our service marks, trademarks, trade names, and logos in the operation of the franchise within your exclusive territory. You shall not use any other marks, trade names or logos in connection therewith nor any combination, abbreviation or derivation thereof without our prior written approval. You acknowledge that Western's trade names enjoy the goodwill of the public for providing qualified, experienced and bonded temporary help without discrimination on the basis of race, color, religion, national origin, mental or physical disability, sex or age. You shall not at any time do or cause to be done anything contesting or impairing Western's service marks, trademarks, trade names and logos.

2) Changes in Service Marks, Trademarks, Trade Names and Logos. We reserve the right to change our service marks, trademarks, trade names and

logos whenever we reasonably believe that such changes are commercially necessary and may be beneficial. You shall promptly conform to any changes upon notice from Western.

e. Franchise Office Development. You shall in good faith use your best efforts to promote Western's service marks, trademarks, trade names and logos to develop the franchise. For its proper development, a minimum of ten (10) personal customer or prospect calls each week is required.

f. Other Businesses. You may conduct noncompetitive business activities subject to Western's prior written approval, provided that you at all times conduct them in a responsible manner and in good faith.

g. Office Premises and Operations. You shall establish and maintain at your own expense at least one franchise office and each franchise office shall be properly identified as a Western office, located in a place suitable for interviewing applicants and must be approved by us. Western shall have no liability for the franchise office lease(s) or rental obligations. The franchise office(s) must be kept in a neat and clean manner. The franchise office(s) shall be staffed according to our rules and regulations, shall be open during hours which are normal to this type of business in your community, and the telephones must be answered in person during business hours. We may inspect the franchise office premises at any time during normal business hours without prior notice for the purpose of determining whether you are in full compliance with the terms of this Agreement and, specifically, for quality assurance purposes. You shall correct promptly any deficiencies in the franchise office premises and franchise operations about which we advise you in writing.

h. Signage and Advertising. You shall consult with us concerning signage for the franchise office(s). You shall use only the name "Western Medical Services" or such other name(s) as we may authorize in writing, and otherwise comply with our advertising guidelines.

i. Compliance with All Laws. You shall adhere to all applicable federal, state and local laws, ordinances and regulations pertaining to employment practices, the rendering of temporary help services, and the provision of health care. You shall post conspicuously in the franchise office(s) all notices required by law. You shall notify our Legal Department in writing no later than five (5) days after: 1) you or the franchise office(s) are served with a demand letter, summons, complaint, or subpoena in any legal or administrative proceeding; or 2) you become aware that you or the franchise office(s) are the subject of any lawsuit, complaint to, audit or investigation by any governmental authority or agency.

j. Time Cards. You shall forward to us each week the time cards of Western's temporary employees which have been approved by Western's customers for the previous workweek.

k. In-House Temporary Help or Payroll Service. You shall comply with Western's operating manuals as regards the restricted circumstances in which you may use temporary help or payroll service as a customer of Western. You acknowledge and understand that such restrictions apply to you and the franchise office(s), any affiliated corporation in which you own stock, and any business or entity which you own in whole or in part, directly or indirectly.

l. Customer Remittances. If you receive remittances from Western's customers at any time, you shall not encash them and you must promptly forward them to us for deposit. You shall not commingle any remittances from Western's customers with any other funds or property.

m. Security Agreements and Evidence of Indebtedness. Upon request by Western, our banks or lenders, you shall execute such documentation as may be reasonably necessary to secure or otherwise evidence your indebtedness to us, if any, including limited powers of attorney.

n. Insurance. We shall carry insurance covering Western's temporary employees and the liabilities of Western in the temporary help service operations. You shall purchase and maintain at all times during the term of this Agreement policies of insurance covering the Western franchise operation in the minimum amounts specified on Schedule B, naming Western and its affiliated companies as additional insureds.

o. "Temp To Perm" Liquidated Damages. If a customer desires to hire a Western temporary employee, the provisions of Schedule C shall apply.

p. Independent Contractor. Except for the limited agency relationship described in Paragraph 4.g., you shall act as an independent contractor in the operation of the franchise. You shall use only your full corporate name, "Western Medical Services of (name of local city), Inc.," in your dealings with your suppliers, trade vendors, lessors, banking institutions, government agencies, the regular staff employees hired to assist you, as well as Western's customers and temporary employees and, in particular, you shall use that name on any bank account for the franchise operation. You shall make timely payment of all bills and expenses of the franchise, other than those which we may be obligated to pay in accordance with this Agreement, and you shall be solely liable for all operating

expenses of the franchise including, but not limited to, rent, utilities, payroll obligations and related taxes for your regular staff employees, insurance (other than for Western's temporary employees) as specified on Schedule B, advertising, supplies, telephone charges, equipment rental or leasing, and all fines, penalties, assessments or liens pertaining to all the foregoing except as otherwise provided hereunder. Nothing in this Agreement shall be construed to create the relationship of joint venturers, partners, employer or employee between us and you or between us and any of your regular staff employees hired to assist you in the operation of the franchise, and you shall not expressly or impliedly hold yourself out as a joint venturer, partner, employee or representative of Western. You shall not expressly or impliedly state or suggest that you have the power to bind Western or to incur any liability on Western's behalf. In granting this franchise, Western does not authorize you to use Western's corporate name in any capacity other than what is provided in this Agreement, and you shall not sign Western's corporate name to any bid, purchase order, contract or other written instruments or use Western's corporate name on any bank account which is owned by you or the corporation which operates the franchise.

q. Limited Agency. You shall act as an agent of Western only for the limited purposes of hiring temporary employees on the payroll of Western, soliciting job orders for temporary help on account of and for the benefit of Western, and assigning those temporary employees to work for Western's customers in accordance with gross profit margin schedules acceptable to Western and at billing rates which will be mutually established from time to time.

r. Audit. You shall make Western's records, forms and materials in your possession, custody or control as well as the books and records of the franchise operation available for review and audit during normal business hours by our designated representative(s). You shall retain such books and records as prescribed in the then current version of our operating manuals. At our request you shall cooperate with our designated representative(s) to arrange on-site visits of our customers' premises. You shall pay Western any amount found owing to us according to our audit report no later than fifteen (15) days from our written demand, unless we agree to compromise or accept other payment arrangements. If an audit discloses any gross negligence or intentional misconduct on your part or by anyone acting on your behalf, you shall reimburse us for our incurred expenses as set forth in the then current version of our operating manuals.

5. Western's Franchise Fee and Other Compensation.

a. Initial Franchise Fee. As evidence of your good faith intention to actively develop the franchise for our mutual benefit, you shall pay us an initial franchise fee as set forth in Schedule D. This fee is nonrefundable upon execution of this Agreement by Western.

b. Security Deposit. Unless included in the initial franchise fee, you shall post a five hundred dollar (\$500) security deposit for our operating manuals entrusted to you. Upon the termination of this Agreement, the security deposit shall be refunded or credited to you after you have promptly returned our manuals, equipment and other property in good condition.

c. Accounting Periods. Our accounting system shall consist of periodic intervals as described in our operating manuals. We reserve the right to change the periods at our discretion.

d. Division of Gross Profit. At the end of each period, subject to our minimum gross profit guidelines, we shall advance your share of the gross profit derived from the operation of the franchise in the following percentages:

First 1,000 hours of temporary payroll in each period:	40%
Next 2,000 hours of temporary payroll in each period:	50%
Over 3,000 hours of temporary payroll in each period:	
If your average gross profit is more than 15%:	60%
If your average gross profit is 15% or less:	50%

Such periodic remittances to you are subject to collectibility of our customer accounts in a timely manner, as provided in Paragraph 5.i.

e. Definition of Gross Profit. Gross profit is defined as gross billings of temporary help services including any taxes levied thereon for any period less discounts, payroll and other direct labor costs based on Western's payroll cost factors (which include payroll taxes, unemployment insurance, workers' compensation, liability, fidelity bond, bid surety and performance bond insurance, any other insurance required by law, taxes levied on gross billings) and any special expenses (e.g., drug testing, safety equipment and background investigation) required by Western's customers or by law. The applicable division of gross profit for payroll service (sometimes referred to as the "transfer of personnel plan") is, or will be, set forth in our operating manuals or directives.

f. Advertising Reimbursement. You shall be reimbursed an additional amount equal to eight percent (8%) of the gross profit, as defined above, but not to exceed seven hundred dollars (\$700) per period. This reimbursement will be for such expenses as classified newspaper ads and telephone directory listings to promote the trade names of Western and attract qualified applicants.

g. Minimum Per Period Fee. After the first thirteen (13) periods, Western shall be entitled to a minimum per period fee of three hundred dollars (\$300) as partial compensation for our payroll and billing services. If Western's share of the gross profit is less than three hundred dollars (\$300), you shall pay the difference.

h. Remittances to Franchisee. We shall remit to you your share of the gross profit as soon as practicable after each period ends. Our accounting to you for each period shall be deemed correct unless you take exception thereto in writing within sixty (60) days of issuance. We shall deduct from your share of the gross profit any amounts which you may owe to Western. We reserve the right to charge such deductions to any of your franchise settlement or license statements, until such time as your indebtedness to us is fully satisfied, without waiving our right to collect by other means. If you owe any amounts to Western and your share of the gross profit is insufficient for us to make such deductions, you shall make full payment of the difference to Western within fifteen (15) days of issuance of our franchise settlement or license statement showing a deficit balance or our making written demand on you. If we agree to accept installment payments pursuant to a promissory note, you shall pay interest on the unpaid principal balance at an amount equal to two (2) percentage points over the then current prime rate of Bank of America NT&SA or the highest rate allowed by applicable law, whichever is less.

i. Bad Debt Write-Offs. We shall share losses from uncollectible customer accounts together with any contractual losses, temporary payroll fraud, adjustments, disputes with customers, fees, costs, and expenses of collection or suit on the same basis that we share in gross profit, provided that you have complied with our credit granting criteria and all other procedures. You shall bear the entire loss or losses, and all fees, costs and expenses of collection or suit in the event of your noncompliance. To help you prepare for bad debt write-offs, we shall establish a deposit payable account ("bad debt reserve") by withholding from the amount due you one percent (1%) of each period's net billing commencing with the first period in which you operate as a franchise. The maximum amount in this account will be three thousand dollars (\$3,000), unless we exercise our right to increase it by deducting from your share of the gross profit any amount we deem necessary to cover the potential bad debt loss. We shall pay interest on the bad debt reserve at the "business savings rate" of Bank of America NT&SA, calculated with respect to the balance of each period, credited at the end of each period, and adjusted once annually at the start of our fiscal year. If there is a bad debt loss which exhausts this reserve account, we will reestablish this reserve. We may also, in our discretion, bill you for this deficit and require payment within fifteen (15) days of our demand, or agree to a reasonable plan for repayment. In addition to the bad debt reserve, we will deduct from your share of the gross profit one-half (1/2) of the amount of any invoice to a customer which remains unpaid after eighty-five (85) days from the invoice date. The remaining one-half (1/2) of the amount of any invoice which remains unpaid after eighty-five (85) days shall bear interest at an annual rate equal to the prime rate of Bank of America NT&SA plus two (2) percentage points or the highest rate allowed by applicable law, whichever is less. Should we deem it advisable to write off a customer account at an earlier time, we may do so. Upon termination of this Agreement, the remainder of the bad debt reserve, if any, will be remitted to you as soon as all pending financial matters are settled.

j. Recoupment of Bad Debt. When any bad debt write-off is later collected, wholly or partially, we shall credit you on the same percentage basis as we share the gross profit, less collection costs, such as contingent commissions, outside attorneys' fees, costs of suit and litigation expenses incurred or advanced by Western in furtherance of our collection efforts. Western may, at our discretion, refer any delinquent account receivable to collection agencies or retain collection attorneys and make any other collection efforts or decisions we deem reasonable. Any monies recovered shall be applied first to recoup our collection costs. The balance of any such monies shall be paid to you, or deducted, in appropriate circumstances, pursuant to this Agreement.

6. Noncompetition Covenant. As long as you are our Franchisee, and for two (2) years after the termination or nonrenewal of this Agreement, you, individually, and the corporation which is to operate the franchise, as well as all officers, directors and shareholders of such corporation, and the third parties identified below, shall be jointly and severally obligated as set forth in this Paragraph. If you later marry, or if your partner(s), or the officers, directors and shareholders of your corporation should change to include persons or entities whose identities are not presently known to Western, you shall inform our Legal Department promptly for the purpose of requiring them to execute covenants substantively identical to those set forth herein or otherwise in accordance with Paragraph 7.

a. Competitive Business. You shall not, directly or indirectly, participate in establishing, facilitate, allow or condone the establishment of a business competitive with Western, its affiliated divisions or companies, franchisees or licensees; be connected directly or indirectly as an employee, proprietor,

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stockholder, director, equity holder, officer, partner, creditor, independent contractor, consultant, volunteer, referral source, or otherwise, in the operation of any such competitive business; solicit, divert, or otherwise adversely influence, affect or interfere with any of Western's business relationships with our customers, prospective customers, employees, prospective employees, independent contractors, vendors, suppliers or anyone else. We deem to be competitive any business rendering any of the services described in Paragraph 1 as well as home health agency business more fully described therein, employee leasing services, secretarial services, data or word processing services, telephone answering services, legal or paralegal services and other similar services, unless we expressly agree otherwise in writing. The operation of a permanent placement agency or licensed nurses' registry shall not be deemed competitive. This restriction applies to businesses which are operated within your exclusive territory or service area and within any territory or service area of any Western office whether company-owned, franchised or licensed.

b. **Third Parties.** You shall require all employees (whether regular or temporary), independent contractors, consultants or volunteers who may render services in or regarding the operation of the franchise to execute a noncompetition, confidentiality and nondisclosure agreement on a form provided by Western. You shall have each such agreement signed before you commence doing business pursuant to this Agreement and before hiring new employees, retaining contractors, allowing consultants or volunteers access to the franchise operation or the use of our proprietary information, confidential data and trade secrets as defined below. You shall send our Legal Department a signed copy of each agreement within five (5) days of signature. If Western elects to enforce such agreement you shall pay sixty-eight percent (68%) of the outside attorneys' fees, costs of suit and litigation expenses.

c. **Injunction and Damages.** You hereby consent to the issuance of an injunction enjoining you from the operation of a competitive business. As damages in that event would be extremely difficult to determine, you shall pay us liquidated damages equal to twelve percent (12%) of all sales made in violation of this Agreement, or all damages which Western may prove or to which it otherwise may be entitled.

d. **Proprietary Information, Confidential Data, and Trade Secrets.** You shall not use, divulge, copy, disclose to third parties, directly or indirectly derive compensation or profit from any of our proprietary information as defined hereinafter, confidential data or trade secrets, nor shall you allow anyone else to do any of the foregoing, except as necessary in the proper operation of the franchise or as otherwise authorized by us in writing. Western's policies, procedures, practices, techniques, forms, manuals and methods of operation are and shall remain Western's property. "Proprietary information" specifically includes all information, data, ideas, operating manuals, forms, supplies and materials provided to you in furtherance of this Agreement, (without regard to the form thereof, whether written, visual, audio, graphic, illustrated, computerized, or in any format or medium) such as: sales records and analyses; marketing, advertising and promotional materials; customer contracts; bids, proposals and billing rates; business plans; personnel records; employee lists; application cards; assignment records; customer lists; customer profiles; customer contact sheets; customer service records; identities of customers' ordering sources; patient lists; patient care and treatment records; telephone numbers used in the operation of the franchise; and any other forms, manuals, documents, writings, methods, techniques and information related thereto which are not readily available to the public and would help in the creation or operation of a competitor of Western. You shall maintain the proprietary information in strictest confidence as it constitutes confidential data and trade secrets of Western in which you shall have a limited right of use, but no ownership interest.

7. **Franchisee's Corporate Status.**

a. **Individual Covenants.** You hereby represent and covenant that no shares of stock have been, or will be, issued or sold to any person or entity who is in any way connected with a competitive business. You shall obtain a written noncompetition covenant on a form which we will provide, from all shareholders, prospective shareholders, officers and directors of your corporation who have not signed or guaranteed this Agreement. Such covenant(s) shall apply only during the time that those persons are associated, in whatever capacity, with the corporation which operates the franchise, and for two (2) years thereafter. You shall promptly provide a signed copy of the covenant(s) to our Legal Department before such persons become associated with the operation of the franchise.

b. **Key Personnel.** We deem the shareholders of your corporation whom we have approved as of the time you commence doing business as our Franchisee and anyone who purchases the franchise or your corporation pursuant to Paragraph 9.a. to be key personnel. In no event shall the key personnel own less than fifty-one percent (51%) of the outstanding capital stock of your corporation, whether voting or otherwise, unless the provisions of Paragraph 9 have been satisfied.

c. **Shareholders' Identities.** Before opening the franchise office(s), and periodically thereafter at our request, you shall send us a statement setting forth the names, addresses, business and residence telephone numbers and occupations of

all shareholders, officers and directors of your corporation, and the classes and numbers of shares issued to each shareholder. You shall report immediately to us any proposed change in the share holdings or capital structure of your corporation before the effective date of such change.

d. **Stock Certificates.** All stock certificates issued by your corporation shall bear the following restrictive legend or endorsement: "This certificate is subject to the terms and provisions of a Franchise Agreement between Western Temporary Services (USA), Inc. and this corporation."

8. **Termination.**

a. **Cause for Immediate Termination by Franchisor.** We shall have the right to terminate this Agreement immediately by mailing, faxing or personally serving you with a written notice stating our reasons. Just and reasonable cause for our doing so shall include, but not be limited to: a material breach of this Agreement; a misrepresentation or omission relating to your becoming our Franchisee, immoral or unethical business conduct in the operation of the franchise or otherwise; dishonesty; conviction of a felony; abandonment of the franchise; illegal conduct which may reasonably be construed as damaging to Western; insolvency or bankruptcy, whether voluntary or involuntary; the filing of a bill in equity or other proceeding for the appointment of a receiver for the franchise operation; an assignment for the benefit of your creditors; taking or appropriating for your own use any property or funds belonging to Western; instructing a Western customer to remit payment of our invoices to you rather than to Western; failure to devote your full-time, best efforts to the franchise operation (unless approved by us in advance); repeated failure to comply with the requirements of this Agreement; or failure to pay a deficit balance due to Western. We may seek any other relief, damages and remedies in equity or at law as well as reasonable attorneys' fees, costs of suit and litigation expenses.

b. **Termination by Franchisee.** If you wish to terminate this Agreement, you shall give Western at least sixty (60) days' advance notice in writing. During that notice period, you shall continue to devote your best efforts to maintain the operation of the franchise unless we make satisfactory arrangements for an earlier termination. You shall cooperate with Western to expedite the transfer of your franchise to us and we may take possession of and exclusively operate the franchise, at our expense, provided we continue to remit to you your share of the gross profit less other deductions and your indebtedness until the effective date of termination.

c. **Billing Minimums.** We shall have the option to terminate this Agreement on written notice to you if the total sales of temporary help generated by the franchise, expressed in billing hours, do not meet the minimum billing hours set forth on Schedule D. However, this Agreement shall remain in effect if you pay Western a sum equal to twelve percent (12%) of the difference between the actual number of hours billed and the guaranteed billing minimums during the preceding twenty-four (24) weeks multiplied by the average hourly billing rate for the same twenty-four (24) weeks. That sum shall be paid to Western within fifteen (15) days of delivery of such notice or this Agreement shall terminate immediately. In the absence of key personnel due to death or disability, and in the event Western does not exercise its option under Paragraph 4.b., the billing minimums shall be sixty percent (60%) of the billing minimums required by Schedule D for the next twenty-four (24) weeks, as recalculated on a per period basis. If the billing falls below such minimums in any of the twenty-four (24) weeks, Western shall have the right to terminate this Agreement immediately. The full billing minimums of Schedule D again shall apply thereafter.

d. **Immediate Return of Western's Property.** If for any reason this Agreement is terminated, all of your rights as our Franchisee shall cease including, but not limited to, your limited right to use Western's proprietary information, confidential data and trade secrets. You immediately shall turn over to us all such proprietary information, confidential data and trade secrets in an orderly manner and in a condition suitable for our ongoing business use. You also immediately shall cooperate in transferring the Western telephone listing(s) and number(s) as we direct and you shall relinquish any claim to the use of such number(s).

e. **Disassociation.** Upon termination of this Agreement and for so long as Paragraph 6 is effective, you shall not advertise or state for any commercial purpose or in any public medium that you were affiliated with Western as our Franchisee or formerly operated a Western office or offices. You shall cease using in any manner whatsoever the trade name of "Western Medical Services," any abbreviation, combination or derivation thereof or any similar name, all our other licensed trade names, our service marks, trademarks and logos. You shall vacate promptly your corporate name and delete any reference to Western, and you shall provide our Legal Department with satisfactory evidence of your having done so.

f. **Right of Offset.** Upon termination of this Agreement for any reason, we shall have the right to offset any amounts owing to Western against any amounts Western owes you.

9. **Sale or Transfer of Majority Interest(s).** A majority interest in the franchise or your corporation may be sold or transferred as provided below:

a. **Procedure.** You, your legal heirs or personal representatives upon your death, or those shareholder(s) owning fifty-one percent (51%) or more of the stock in your corporation may sell or transfer the franchise or the shares of stock to persons or entities approved by us. You shall notify us before listing or advertising the franchise for sale or transfer. We shall not unreasonably withhold our approval of such sale. You and the prospective purchaser(s) or transferee(s) must do the following: (1) submit to us a legally binding offer or agreement in writing without any contingencies (except for Western's approval) which establishes a separate purchase price for the franchise as distinguished from your other business interests; (2) submit a completed and signed Qualifying Executive Franchise Questionnaire, the form of which we shall furnish to you on request; (3) tender a cashier's check payable to Western for twenty-five percent (25%) of the proposed purchase price which shall be refundable in full less our out-of-pocket expenses in the event we do not approve the sale or transfer; and (4) agree that the purchaser(s) or transferee(s) will attend the next scheduled training program at our corporate office as provided in Paragraph 3.a. The purchase price shall include any internal allocations of the component parts for income tax purposes such as noncompetition covenants, goodwill, consulting or management contracts, but not the book value of the furniture, furnishings, fixtures and office equipment unless owned by or leased from Western.

b. **Shared Equity on Resale.** Since we jointly develop the goodwill associated with the franchise, and will incur expenses and devote resources in the transition of ownership, twenty-five percent (25%) of the purchase price, but not less than one thousand dollars (\$1,000), shall be paid to Western from the sale proceeds. We reserve the right to require that the entire purchase price be paid directly to us as escrow holder. In such event we shall remit your share to you or to the selling shareholder(s), after deducting our share and any amounts which you then owe us. If the proposed sale is rescinded for any reason whatsoever, we may retain at our discretion twenty-five percent (25%) of the purchase price or we may exercise our option to purchase the franchise or stock. If we do so, the franchise will be purchased, as provided below, at the same price as would have been paid by the prospective purchaser(s) had the proposed sale not been rescinded. The price paid by Western in that event shall be reduced by our twenty-five percent (25%) share of the purchase price.

c. **Minority Interest(s).** Owners of minority interests in the franchise or your corporation may sell their interests to facilitate a sale to a third party. The minority owner(s) may choose not to sell, and remain minority owner(s), subject to Western's right of first refusal. In the event that we exercise our right of first refusal, we reserve the right to require the minority owner(s) to sell their shares to us at the same price pro rata as we would pay to the majority seller(s).

d. **Right of First Refusal.** For a period of fifteen (15) business days after we receive all of the items specified in Paragraph 9.a. above, Western shall have the option to purchase the franchise at the same total price or price per share as would be paid to you or to your shareholder(s) by the prospective purchaser(s), reduced by our twenty-five percent (25%) shared equity and any other amounts which you owe us. The balance shall be paid upon your signing and submitting to us a voluntary termination agreement on a form provided by us.

e. **Consummation of Sale.** If Western approves the purchaser(s) of the franchise, thereby waiving our right of first refusal provided for in Paragraph 9.d., you or your shareholder(s) shall consummate the sale no later than thirty (30) days thereafter by having the purchaser(s) or transferee(s) sign a replacement Franchise Agreement on the then current form and by your signing a voluntary termination agreement on a form provided by us. If the terms and conditions of the sale are changed after Western's approval, you or your selling shareholder(s) again must follow the procedures of Paragraph 9.

10. **Sale or Transfer of Minority Interest(s).** A sale or transfer of minority interest(s) shall not be subject to our twenty-five percent (25%) shared equity until the controlling interest passes. Western then will be entitled to twenty-five percent (25%) of the total price for each interest or share which has been sold or transferred since the time you commenced doing business under this Agreement.

11. **Rights to Purchase.**

a. **Franchisee's Right to Purchase.** After you have operated the franchise for twenty-six (26) full periods, you shall have the right to purchase our interest in the intangible assets of the franchise. You shall give us sixty (60) days' advance notice in writing and pay us the sum total of our share of the gross profit for the last twenty-six (26) periods.

b. **Western's Right to Purchase.** We shall have the right to purchase your interest in the intangible assets of the franchise upon giving you sixty (60) days' advance notice in writing. The purchase shall include, but not be limited to, this Agreement as well as all books and records developed in establishing the franchise. We shall pay you the sum total of your share of the gross profit derived from the operation of the franchise for the last twenty-six (26) periods or all the periods you have operated the franchise, whichever is less, after deducting any amounts you owe Western. The sale price of the franchise shall be determined and payable

according to the provisions of this Paragraph, but in no event shall the sales price be less than three (3) times the initial franchise fee, if any. However, if the billing hours of temporary help for the sixty (60) day notice period are less than eighty-five percent (85%) of the average billing hours for the twenty-four (24) weeks immediately preceding our giving of the notice, we may, at our discretion, revoke our offer without waiving our right to exercise this option again in the future. In the event that we exercise our option under this Paragraph, the noncompetition covenant of Paragraph 6 shall be applicable.

c. **Contingent Waiver of Noncompetition Covenant.** If you exercise your option to purchase under this Paragraph, we would not enforce the noncompetition covenant of Paragraph 6 against you, provided that: (1) as of the closing date of our purchase and sale, you deliver to us all our proprietary information, confidential data and trade secrets; (2) cease using our trade names, trademarks, service marks and logos; and (3) otherwise honor all your obligations with respect to our ownership of the license to use the Western telephone number(s). Should you fully comply with these requirements, we would allow you to transfer the information to your own application cards and job order forms from our employee and customer records which have been maintained in the franchise office(s), but we would not permit you to make or use photocopies of any of Western's proprietary information, confidential data and trade secrets. We would have the right to open a competing temporary help office in Western's name in the same territory, should it be necessary to fulfill our contractual obligations to customers.

12. **Franchisee's Defense and Indemnity Obligations.** You shall defend, indemnify and hold Western and our affiliated corporations harmless from and against any and all claims including, but not limited to, reasonable attorneys' fees, costs of suit, and litigation expenses not expressly assumed by us under this Agreement and arising from breach of this Agreement or pertaining to your business activities as our Franchisee with interest on all such sums at the highest legal rate; however, you shall not be so obligated with respect to any claim based solely upon the alleged negligence or wilful misconduct of Western. Your obligations hereunder shall include, but not be limited to, claims by your regular staff employees, Western's temporary employees, Western's customers or prospective customers, and third parties, as well as all claims of your noncompliance with the terms and conditions of this Agreement and related documents. If Western is made a party to any administrative, legal or equitable proceeding or action in connection with your acts, failures to act, omissions, or other conduct by you or attributable to you, we shall have the right at your expense to retain defense counsel of our choice to represent and protect our interests. You shall promptly reimburse us pursuant to this Paragraph within fifteen (15) days after our written demand is delivered to you.

13. **Nonexclusive Remedies.** If the franchise is terminated because of your material breach or default, the remedies described in this Agreement shall not necessarily be exclusive. Nothing in this Agreement shall be construed to deprive Western of the right to recover for lost profits, injuries to our business reputation, loss of goodwill, or other damages whether general, special, incidental, consequential, statutory, or punitive, and we may seek all other appropriate relief and legal or equitable remedies.

14. **Survival of Covenants, Representations and Warranties.** The covenants, representations and warranties made under this Agreement shall survive its termination. The termination of this Agreement shall not extinguish any obligation which has accrued beforehand. All obligations which by their terms or by reasonable implication are to be performed, in whole or in part, after the termination of this Agreement shall survive its termination.

15. **Force Majeure.** If the operation of the franchise as contemplated by this Agreement is impaired due to circumstances beyond Western's control, including, but not limited to, labor union activity, enactment of any law, ordinance or regulation, acts of God or natural disasters, war or civil disorders, or any similar circumstances, we shall have the right to terminate this Agreement upon fifteen (15) days prior written notice, without any liability except for the payment to you of your share of the gross profit less other deductions and your indebtedness until the effective date of termination.

16. **Material Breach or Default.** Except as otherwise provided in Paragraph 8, we shall notify you in writing if you are in material breach or default of any terms or conditions of this Agreement and you shall have fifteen (15) days or the number of days provided by law, whichever is greater, after the delivery of our notice in which to cure your breach or default. If you do not do so within the time allowed, or if you have repeated a previous breach or default, we shall have the right to terminate this Agreement immediately and we shall not be responsible for any related losses, damages, costs, fees, expenses, fines, penalties or forfeitures.

17. **Attorneys' Fees.** The prevailing party in any action or proceeding, including any appeals therefrom, brought to interpret or enforce the terms of this Agreement shall be entitled to reasonable attorneys' fees, costs of suit and litigation expenses in addition to any other relief and legal or equitable remedies.

18. **Notices.** Notices shall be deemed to have been properly given and served by you or us when directed to either party at their respective addresses or facsimile numbers. You shall address them to our Legal Department and we shall address them to the franchise office(s), unless either party specifies a different address in writing. Notices may be delivered by facsimile (with simultaneous posting of a copy by first class mail), or by courier. Notices by facsimile shall be deemed delivered on transmission; by courier, on delivery; and by first class mail, three (3) days after posting.

19. **Miscellaneous Provisions.**

a. **Personal Pronouns.** The personal pronouns "we", "our" and "us" throughout this Agreement refer to Western as Franchisor, whereas "you and "your" refer to Franchisee, in whatever your legal capacity at the date of execution of this Agreement and subsequently in the required corporate capacity, as well as the shareholders of your corporation.

b. **Construction of Contract.** Paragraph headings are for reference purposes only and shall not in any way modify the statements in the text of this Agreement. Each word shall be deemed to include any number or gender which the context requires. If there is any conflict between this Agreement and our operating manuals or our other directives, in their current or future versions, this Agreement shall control unless we otherwise agree in writing. Whenever a certain number of days are specified, they shall be calendar days unless otherwise stated.

c. **Governing Law.** This Agreement shall be deemed made in the state of your principal place of business, and its provisions shall be governed by and interpreted under the laws of that state.

d. **Amendments.** This Agreement may be amended only by a document signed by all the parties or their duly authorized agents.

e. **Waiver.** A waiver of any breach or default shall not be interpreted as a waiver of any subsequent breach or default.

f. **Severability.** Each provision of this Agreement shall be considered severable. If, for any reason, any provision is determined to be invalid or in conflict with any existing or future statute, regulation or ordinance, whether state, federal or local, that provision shall not impair the effectiveness of the remaining provisions.

g. **Acceptance by Western.** This Agreement and any amendments, addenda or modifications shall not be binding on Western until signed by a duly authorized corporate officer.

h. **Assignment or Pledge.** We reserve the right to assign or pledge all or part of this Agreement upon written notice. You shall not assign or pledge all or part of this Agreement to any person or entity other than the corporation which will operate the franchise pursuant to Paragraph 4.a. Any assignment, sublicense, management contract, sale, transfer or conveyance in violation of this Agreement, whether by operation of law or otherwise, shall be null and void.

20. **Binding Effect.** This Agreement shall be binding upon you, your successors and assigns, and the shareholders of the designated corporation which will operate the franchise, their personal representatives, successors, heirs and assigns.

21. **Entire Agreement.** This Agreement and the specified schedules constitute the entire contract between you and us, and replace or supersede any prior agreements, understandings or representations, whether written or oral, regarding the same subject matter.

22. **Acknowledgement.** You acknowledge that you have fully read and understood this Agreement. Your signature, and the signatures of all persons who ratify and guaranty it, shall constitute acceptance and your or their promise(s) to honor and perform Franchisee's obligations in a timely manner as time is of the essence.



This Agreement is executed by Franchisee on this 12 day of July, 1995

Witness: Harlow J. Vandell

Franchisee: Robert J. Poturalski
By: Barbara A. Poturalski
BARBARA A. POTURALSKI, Joint and Several
Title, if any: _____

This Agreement is executed by Franchisor, on this 11th day of August, 1995

Witness: Sandra Moelled

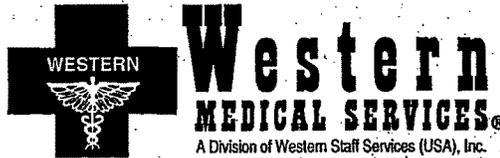
STAFF
WESTERN FRANCHISE SERVICES (USA), INC.
By: Bonnie A. McDonald
Title: Vice President

SHAREHOLDER RATIFICATION AND GUARANTY

In consideration of the representations and covenants set forth in the Franchise Agreement, each of the undersigned, individually and as shareholders of _____, jointly and severally, hereby ratifies, adopts, and affirms the Franchise Agreement, as the same may hereafter be amended or reconstituted, and personally guarantees the performance of any and all present and future obligations of the Franchisee thereunder.

Witness: Harlow J. Vandell
Harlow J. Vandell

Shareholders: Robert J. Poturalski
ROBERT J. POTURALSKI
Barbara A. Poturalski
BARBARA A. POTURALSKI



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CRITERIA FOR APPROVAL OF FRANCHISEE TO ENGAGE IN HOME HEALTH AGENCY BUSINESS

Schedule A

Franchisee must successfully complete an evaluation process by the Medicare/Accreditation Certification Committee of the Governing Body ("the Certification Committee") in order to be approved to engage in Home Health Agency Business (as defined in the Addendum to Franchise Agreement for Home Health Agency Business). Franchisee will be assessed on his understanding of the Home Health Agency Business, as well as clinical, legal, accounting and operational issues related to Medicare and part-time and intermittent care and must meet the following requirements:

Financial Prerequisites

1. Be financially solvent, with no history of bankruptcies (unless special circumstances exist which may be considered by the Certification Committee) and have no outstanding indebtedness to Western (unless an exception is made on a case to case basis for accounts receivable bad debts being financed by Western). Provide Western with any required authorization to receive confidential credit data or other relevant background information requested by Western.
2. Submit personal and/or business financial statements for review at the time the Franchise Agreement is signed and annually thereafter.
3. Be and remain current with all taxing authorities and have no state or federal tax liens against the franchisee personally or any existing business(es).
4. In the case of a corporation or partnership, submit proof of qualification to do business and good standing in the state where the home health agency is to be operated.
5. Provide documentation of available working capital of not less than \$100,000.
6. In a state requiring a Certificate of Need (CON) (after a determination by the Certification Committee is made that it is feasible to proceed with a CON), sign an agreement to share 68% of the costs of preparing and pursuing a CON application, including, but not limited to accounting, outside legal and consultant fees.

Operational and Experience Prerequisites

1. Demonstrate ability to successfully operate a home health agency or health care business. If Franchisee plans to delegate the operation of the agency to someone other than the key personnel as defined in the Franchise Agreement such person(s) must be approved by Western.
2. Establish 24 hour on-call R.N. service.
3. Establish an office location which complies with ADA (Americans with Disabilities Act) and Office of Civil Rights requirements, i.e., be handicap accessible.
4. Hire a full-time Supervising R.N., and/or Administrator or other Supervisory Nursing Personnel approved in advance by Western who meet Medicare and any applicable state law licensure and accreditation requirements and have the employee(s) sign a written contract on a form provided by Western.
5. If operating existing business(es), be in compliance with all state and federal laws (such as immigration, wage and hour, OSHA and workers' compensation laws), and, if deemed necessary, cooperate in a pre-selection audit of the existing business(es) for compliance with these requirements.
6. Submit an initial business plan for marketing or community education in the territory or service area.
7. Sign any required authorization for Western to obtain criminal and civil court records. Represent and warrant that Franchisee and any operating personnel have no prior criminal convictions, and no citations or sanctions relating to home health agency licensing, Medicare laws or regulations, or state or federal patient abuse laws.

**ADDENDUM TO FRANCHISE AGREEMENT FOR
HOME HEALTH AGENCY BUSINESS**



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SCHEDULE B

JOB CATEGORIES THAT ARE EMPLOYEES OR CONTRACTORS OF WESTERN

(Section 3.e.)

- Registered Nurses
- Licensed Practical Nurses
- Home Health Aides
- Home Companions or Sitters (not Medicare reimbursable)
- Physical Therapists
- Physical Therapist Assistants
- Speech Therapists
- Occupational Therapists
- Occupational Therapy Assistants
- Licensed Social Workers
- Enterostomal Therapists

FRANCHISE AGREEMENT



Western
MEDICAL SERVICES.
A Division of Western Temporary Services (USA), Inc.

Staff Schedule A

Opening Office Start-up Allotment of Advertising Materials and Supplies

SUPPLEMENTAL STAFFING MATERIALS

Sales Oriented

Economics of Temporary Help 4822.11
Federal Government Guide to Temporary Services 4862.65
Pharmacy Brochure 7825.61
Thank You Card 7837.67
Medical Presentation 7828.54
Guarantee Certificate 4624.07
Statement of Responsibility 7473.01
Schedule of Rates Sheet 7829.65
Certificate of Insurance 4423.103
Yellow Page Ad Glossy 7826.52
Cooperative Ad Glossy 7821.05
American Druggist Reprint 7825.57
Employer Payroll Cost Card 4826.61
Football Handbook [Seasonal]
Baseball Handbook [Seasonal]
Personnel Planner [Seasonal]
Gold Mylar Label Sheet 7823.08
Medical Logo Glossy 7823.10
Managers Personal Call Report Form 0613.08
Confidential Credit Application 4343.29
Weekly Sales Schedule 7622.02
Customer Contact Record 7623.06
Employee Profile 7473.01
Facility Staffing Customer Assessment 7016.02
Facility Staffing Orientation Profile
Western Medical Services Banner
Recruiting Oriented
Welcome to Western 7834.60
Congratulations Card 7836.52
Coop Ad Glossy 7833.01
Choice Is Yours Pharmacy Ad Glossy 7835.55
Medical Classified Ad 7835.59

OFFICE SUPPLIES

Basic Office Forms

Letterhead Template 7826.61
Envelope Template 7826.62
Business Card Template 7826.63
Supply Requisition 0243.68
Temp-O-Gram 4011.03
Adjustment Memo 4243.41
Advertising Mailing List Addition Slip 4923.07
Payroll/Billing Forms
Customer Profile 4353.13
Time Card with Expense Report 4343.33
Time Card Multiple 7343.12
Time Card Individual 7343.16
Authorization of Payroll Deductions 0173.41
Indemnity Agreement: Lost Instrument 0243.64
Stop Payment/Check Reissue 0243.66
Envelopes Pre-addressed to Temporary Payroll 4011.01
W-4 Change Slip 4243.47
Authorization of Occupational Tax 0173.32
Weekly Income Tax Withholding Request 0243.63
Employee's Withholding Allowance Certificate 4343.53
Personal Allowance Worksheet 4343.50

Applicant Processing

Professional Skills Sheet:
RN 7373.03
Radiology Technologist 7373.21
LP/VN 7373.04
Pharmacist 7373.23
Critical Care 7373.07
Nurse Aide 7373.30
Respiratory Care 7373.33
Assessments & Score Keys:
RN 7373.24
LP/VN 7373.26
Nurse Aide 7373.25
Medical Vocabulary 7373.11
Respiratory Therapist 7373.34
Critical Care 7373.31
Radiology Technologist 7373.20
Dental 7373.35
Home Health Aide
Applications:
Licensed 7373.28
Non-licensed 7373.27
Pharmacist & Pharmacy Techs 7373.29

Health Statements 7333.06
Professional Liability Insurance Application 7623.08
Job Assignment Sheet 7433.01
Request for Reference 7373.32
Schedule of Availability 7293.01
Employee Update Notification Card 7327.04
Document Update Request 7327.05
Performance Evaluation 7132.01

Safety-Related Material

Western's Safety Rules 7413.01
Safety Orientation Log Sheet
Pre-Job Safety Evaluation
Accident Investigation Report
Log Of Occupational Injuries and Illness OSHA 200
Universal Precautions for Infection Control 7828.60
One-to-One Assisting 7826.61
Chemical Hazcom 4888.62
Bloodborne Infections 7839.66
Medical Facilities Emergency Preparedness 7828.59

Manuals and Catalogs

Western Medical Advertising Catalog
Western Medical Supply Catalog
Western Medical Safety Manual
Western Procedure Manual

HOME CARE MATERIALS

[Available only to offices authorized to provide home care]
Home Health Care Manual [based on state regulations]
Home Care Brochures
Home Care Insert 7829.50
Home Care Mailer
Home Care Ad Reprint
Contractual Allowance Form 7131.02

Home Care Clinical

Medication Sheet 7018.01
Daily Care Record 7123.06
Nurses Notes 7123.07
Supportive Home Services Activity Record 7123.08
Insurance Assignment and Confirmation of Coverage 7243.07
Local Office Insurance Check List 7243.19
Order for Home Care 7242.02
Order for Home Care Financial Addendum 7243.20
Death With DNR Orders 7303.05
Death Without DNR Orders 7303.10
Physicians Orders 7303.16
Patient Discharge Summary 7303.14
Nursing Supervisors Progress Notes 7305.08
Pt. Information Form 7403.08
Employees Confidential Incident Report 7403.09
Narcotic and Controlled Medication Count Sheet 7423.02
Respiratory Patient Evaluation 7140.01
Skilled Nursing Assessment 7123.14
Intake Admission 7323.05
PT Assessment and Plan 7020.01
OT Assessment and Plan 7022.01
ST Assessment and Plan
Medical Social Worker Assessment Plan 7021.01
Patient Rights & Responsibilities
Advance Medical Directives 7115.01
Physicians Supplemental/Change Orders 7303.17
Medication Record
Patient Care Plan 7123.13
Paraprofessional Task Sheet 7123.15
Paraprofessional Notes 7123.16
Supervisory Visit Note 7019.01
Case Conference Report Form
Home Care Progress Report 7123.09
Home Health Clinical Record Review 7014.02
Clinical Visit Note 7014.03
Patient ID Card 7015.05
Progress Report 7302.01

OPENING ASSISTANCE

Direct Mail Support

1. Composing, printing and mailing of up to 500 opening office announcements upon receipt of a prospect mailing list, office address and telephone information.
2. Mailing of promotional pieces to Western's entire customer mailing list for the franchise as part of our ongoing direct mail program

OFFICE FURNITURE

A complete Office Furniture Catalog will be made available. Western can obtain price quotations on office furnishings for you, for comparison purposes, and can purchase your items for you at a discount, if you so desire. There is no obligation to provide or use this service.

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Staff

Western Medical Services, a Division of Western Temporary Services (USA), Inc., reserves the right to update any item, or substitute other items of equal value, in place of those listed on this schedule. Unless otherwise specified, the quantity furnished shall be one (1) unit pack per item listed.

FRANCHISE AGREEMENT



Western
MEDICAL SERVICES
A Division of Western Temporary Services (USA), Inc.
Staff

Schedule B Insurance

Coverage Required

- (1) Workers' Compensation and Employer's Liability
- (2) Comprehensive General Liability
- (3) Professional Malpractice Liability Insurance
- (4) Comprehensive Automobile Liability (Owned and Non-Owned)
- (5) Fidelity Bond
- (6) Business Interruption
- (7) "All Risk" Contents

Limits

- Statutory
- Bodily Injury: \$100,000 each person and \$300,000 each accident
Property Damage: \$50,000 each accident
- \$1,000,000 each occurrence and \$3,000,000 aggregate to cover your regular staff employees who are licensed professionals, if any
- Bodily Injury: \$100,000 each person and \$300,000 each accident
Property Damage: \$50,000 each accident
- \$100,000
- Amount equal to rent, salaries of key employees and other fixed expenses
- Amount equal to the replacement value of the office furniture, fixtures, equipment and leasehold improvements

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You shall deliver to Western, within ten (10) days after the date hereof, and thereafter, within ten (10) days following the issuance or renewal of any such policy of insurance, all the related certificates of insurance and all such original policies, in a form satisfactory to Western in our commercially reasonable judgment, as evidence that you have obtained all insurance coverages required to be provided and maintained by you hereunder. All such policies shall be endorsed to provide that they may neither be terminated, canceled, nor may the coverages afforded thereunder be reduced in any respect, except upon thirty (30) days' prior written notice by the insurer to Western. In the event you should fail to provide and maintain the insurance coverages required hereunder, Western may obtain all such policies of insurance on your behalf and at your expense. All such premium payments made for you by Western shall be promptly reimbursed by you upon demand or Western may deduct such amounts from any monies or compensation due you under this Agreement or to which you otherwise may be entitled. We reserve our other rights and may seek all appropriate remedies and relief with respect to your failure to obtain insurance or other noncompliance.

FRANCHISE AGREEMENT



Schedule C Liquidated Damages

Cash Settlement. Where permitted by law, Western shall invoice the temporary help customer in question for a cash settlement in a dollar amount appropriate in the local community as liquidated damages. Once collected, that amount shall be divided two thirds (2/3) to you as Franchisee and one third (1/3) to Western. We shall begin with five hundred dollars (\$500) and you may negotiate a higher amount with our approval. We together shall establish any increase(s) in that dollar amount from time to time hereafter.

Payroll. In the alternative, Western's temporary employee in question may be kept on our payroll for an additional number of weeks appropriate for the local community. The hours worked under this procedure shall be included as part of the regular billing of the franchise and shall be compensated as specified in Paragraph 5 of this Agreement. We shall begin with twelve (12) weeks and you may negotiate for a longer period with our approval. We together shall establish another appropriate number of weeks.

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A circular stamp containing handwritten initials. The initials appear to be "SM" on the left and "MM" on the right, separated by a vertical line. There are some additional scribbles and a signature-like mark at the top right of the circle.

FRANCHISE AGREEMENT



Western
MEDICAL SERVICES.
A Division of Western Emergency Services (USA), Inc.
Staff

Schedule D
Franchise Fee and Billing Minimums

You shall pay an initial franchise fee of -----Thirty Thousand and no/100-----
Dollars (\$ 30,000.00), which shall include the security deposit required by Paragraph 5.b.

The following shall be your billing minimums, except as otherwise provided in Paragraph 8.c.:

Weeks 1 through 24	<u>\$ 36,000</u>	total hours dollars
Weeks 25 through 48	<u>90,000</u>	total hours dollars
Weeks 49 through 72	<u>180,000</u>	total hours dollars
Weeks 73 through 96	<u>288,000</u>	total hours dollars
Weeks 97 through 120	<u>432,000</u>	total hours dollars
Weeks 121 through 144	<u>540,000</u>	total hours dollars

And for each subsequent twenty-four (24)
week interval either during the original term
of this Agreement or any renewal term..... 540,000 total ~~hours~~ dollars

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**ADDENDUM TO FRANCHISE AGREEMENT FOR
HOME HEALTH AGENCY BUSINESS**



**ADDENDUM TO FRANCHISE AGREEMENT FOR
HOME HEALTH AGENCY BUSINESS**



THIS ADDENDUM is made by and between the Western Medical Services Division of Western Staff Services (USA), Inc., a California corporation (hereinafter "Western" or "We"), and ROBERT J. POTURALSKI and BARBARA A. POTURALSKI ("Franchisee" or "You"), with respect to the following facts:

RECITALS

Western and Franchisee are parties to a Franchise Agreement, dated _____, pursuant to which Western has granted you an exclusive franchise to operate a medical temporary help service in a designated territory ("the Franchise Agreement").

Franchisee is a corporation having its principal place of business at _____

The parties now desire to operate a state licensed (where applicable), Medicare-certified and/or nationally accredited home health agency as an additional line of business, in accordance with the terms and conditions set forth below, subject to Franchisee's approval by Western's Governing Body, based on the criteria set forth on Schedule A to this Addendum.

In consideration of the foregoing premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Definitions.

a. "**Home Health Agency Business**" means all Home Health Services provided by Western and Franchisee, regardless of payor source.

b. "**Home Health Services**" means those services that a home health agency is permitted to provide under the scope of its state license (where applicable) and its Medicare or Medicaid certification, subject to any limitations set forth in this Addendum, and shall mean, at minimum: (a) part-time or intermittent skilled nursing care provided under the supervision of a licensed registered nurse; and (b) at least one of the following therapeutic services: physical therapy, occupational therapy, speech therapy, medical social services, or part-time or intermittent services of a home health aide.

c. "**Fiscal Intermediary**" means the entity that administers the Medicare or Medicaid Programs under contract with the U.S. Department of Health and Human Services, with respect to reimbursement of services provided to Medicare Program beneficiaries.

d. "**Medicare Cost Report**" means that report required to be filed by a Medicare-certified home health agency for the purpose of determining its annual Medicare reimbursement, and for determining whether payments made at the Medicare Interim Rate have resulted in overpayment or underpayment of actual Medicare Reimbursable Costs for the reported year.

e. "**Medicare Interim Rate**" means the rate established by the Medicare Fiscal Intermediary for reimbursement made to a home health agency, on an interim basis, for the cost of providing Home Health Services to Medicare beneficiaries. The Medicare Interim Rate is based on the estimated annual Medicare Reimbursable Costs for providing such services.

f. "**Medicare Reimbursable Costs**" means the costs associated with the provision of Home Health Services to Medicare beneficiaries, which are reimbursable by the Medicare Program under its applicable rules and regulations, as an allocation of Medicare Reportable Costs.

g. "**Medicare Reportable Costs**" means those costs which must be included in the Medicare Cost Report, as set forth in the applicable rules and regulations, and which include, but are not limited to, the following:

- 1) Salaries and wages;
- 2) Contracted or purchased services;
- 3) Payroll related benefits (FICA, pension, retirement, health insurance) and payroll taxes;
- 4) Fringe benefits;
- 5) Insurance, including, but not limited to, malpractice insurance;
- 6) Workers' compensation;
- 7) Rent;
- 8) Utilities;
- 9) Telephone;
- 10) Taxes and licenses;
- 11) Equipment and supplies, including, but not limited to, personal protective equipment;
- 12) Repairs and maintenance;
- 13) Depreciation;
- 14) Postage;
- 15) Recruitment;
- 16) Community education;
- 17) Transportation or travel expenses;
- 18) Waste disposal;
- 19) Training and education;
- 20) Advertising;
- 21) Interest; and
- 22) Legal, accounting, fiscal and other consulting services.

h. "**Final Settlement**" means the date Western accepts the Notice of Amount of Program Reimbursement (NPR) or final Medicare Cost Report as determined by the Medicare Fiscal Intermediary, and following the exhaustion of all reconsiderations and appeals, including all court proceedings, with respect to such Medicare Cost Report or NPR.

2. **Relationship To Franchise Agreement.** The Home Health Agency Business shall be governed by the Franchise Agreement as well as all amendments or other addenda thereto in addition to this Addendum. If any inconsistencies between the documents exist, this Addendum shall control, but only with respect to the Home Health Agency Business.

3. Responsibilities of Western.

a. **Licensure and Certification.** Western shall use its best efforts to obtain, in the divisional name of "Western Medical Services Home Health Agency," all required state licenses and approvals for the operation of a home health agency in the state in which the home health agency will be located; certification for participation in the Medicare Program; and, at our sole discretion, state Medicaid programs; and accreditation by a nationally recognized accreditation organization. You shall fully cooperate with us in this regard.

b. **Governing Body: Reservation of Authority.** The officers of Western (or such other persons appointed by Western) shall constitute the governing body of the Western Medical Services Home Health Agency (the "Governing Body"), and shall adopt and periodically review written bylaws, policies and procedures for the operation and management of the Home Health Agency Business and its fiscal affairs. The Governing Body must approve the engagement of the Administrator and the Supervisory Nursing Personnel in accordance with Section 4.f. below. Notwithstanding anything to the contrary herein, Western shall retain all authority not specifically delegated to Franchisee under this Addendum, and shall have all the power and responsibility that is required under federal and state laws to be retained and exercised by the holder of the license and/or certification, and that cannot properly be delegated under such laws.

c. **Participation in Government Payment Programs and Medicaid.** Western shall have sole discretion to decide whether to participate in government payment programs, including state Medicaid programs, for Home Health Services. If Western elects to do so, Western may establish policies and procedures to govern such participation, including administrative, clinical and accounting procedures, and you will abide by such policies and procedures.

Western shall have the right to establish such reserves as may be reasonably necessary to provide against the contingencies of participation in such programs, similar to the Franchisee's Medicare Reserve established pursuant to Section 5.g. below, and after consultation with you.

d. Operating Manuals, Policies and Procedures. We shall provide you with operating manuals and written policies, procedures, directives and standards for the operation of the Home Health Agency Business, and any amendments to them that may be made from time to time. Upon termination of this Addendum or the Franchise Agreement, you immediately shall return all such materials, in good condition, to Western or forfeit any deposit(s).

e. Engagement and Employment of Caregivers. Western shall employ or, alternatively, independently contract with individuals responsible for patient care in the job categories listed in Schedule B to this Addendum. Individuals so employed shall be on the temporary or regular payroll, at Western's discretion, and Western as their employer shall meet all payroll obligations, including the payment of wages and salaries, payroll taxes, workers' compensation, liability and fidelity bond insurance with respect to such employees. Independent contractors shall be paid by Western in the manner of other trade accounts.

f. Billing and Collections. Western shall have the sole right to bill and collect from all clients and customers of the Home Health Agency Business, including patients and third party payors (whether government or private payors). Western shall supervise all collections, make all settlements, finance the temporary and regular payrolls and related payroll costs of Western employees, pay contractors, and otherwise handle all accounting and other details incident to the collection of the trade accounts receivable owned by Western.

g. Community Education. We shall assist you with community education, sales, promotions and marketing of the Home Health Agency Business as described in Paragraph 3 of the Franchise Agreement. All such sales, promotions or marketing activities, whether conducted by Western or you, shall conform with applicable federal, state and local laws, rules and regulations.

h. Office Supplies and Forms. We shall supply you, at Western's expense, with those office supplies and forms relating to the Home Health Agency Business listed in the supply catalog.

i. Patient Records. Any and all patient records and charts prepared or maintained in connection with the Home Health Agency Business shall be and remain the property of Western.

4. Responsibilities of Franchisee.

a. Management Responsibilities. You shall have the responsibility and authority to conduct, manage and supervise the day-to-day operations of the Home Health Agency Business, in accordance with Western's procedures, programs, policies, standards, directives, ethics, and business practices and this Addendum; provided, however, that you shall have no authority to enter into any contract on behalf of Western, nor otherwise act as an agent of Western, except as specifically provided in the Franchise Agreement and this Addendum. You acknowledge and agree that the clients and customers of the Home Health Agency Business are Western's and that the employees of the Home Health Agency Business on Western's temporary and regular payrolls are Western's employees.

b. Name of Business; Signage and Telephones.

1) You shall operate the Home Health Agency Business under the name "Western Medical Services Home Health Agency." You shall operate the medical temporary help business under the name "Western Medical Services," except as provided in the Franchise Agreement.

2) You shall obtain, with Western's prior approval and at Western's expense, signage for the Home Health Agency Business. If the medical temporary help business and the Home Health Agency Business are conducted on the same premises, the signage must include both Western business names described in Section 4.b.1) above.

3) You shall fully cooperate with Western to obtain for Western a telephone number for the Home Health Agency Business listed in the name of "Western Medical Services Home Health Agency," which shall be distinct from the number used for the other "Western Medical Services" business you conduct pursuant to the Franchise Agreement. Such separately listed number shall be a number with the suffix acronym of "C-A-R-E," or other such acronym associated with Western, if available in your area. The terms and conditions of Paragraph 3.g. of the Franchise Agreement, with respect to payment of the installation and the basic monthly charges, Western's ownership of the telephone numbers, and the execution of telephone company contract forms, shall apply to the telephone line required under this Section 4.b.3). You shall place at least a trademark listing ad ("Yellow Pages" ad) in your local telephone directory for the Home Health Agency Business at the first available publication date, subject to our preap-

proval, and you shall renew the ad annually.

c. Office Space. You shall, at your own cost and expense, provide an appropriate office for the operation of the Home Health Agency Business. If permitted by law, you may operate the Home Health Agency Business in the office you establish pursuant to Paragraph 4.g. of the Franchise Agreement, so long as the Home Health Agency Business is properly identified pursuant to Section 4.b.1) above.

d. Scope of Business. The Home Health Agency Business you operate initially shall provide the following services; however, the subsequent addition or elimination of any therapeutic services shall be at Western's sole discretion:

- 1) Part-time or intermittent skilled nursing care;
- 2) Part-time or intermittent services of home health aides; and
- 3) Therapeutic services (check applicable services):
 - physical therapy
 - occupational therapy
 - speech therapy
 - medical social services
 - other (specify):

e. Western Personnel. On Western's behalf, you shall be responsible for recruiting, selecting, training, promoting, supervising, directing and terminating the personnel employed or contracted by Western, pursuant to Section 3.e. above, to provide Home Health Services. You shall comply with all applicable laws, whether federal, state or local, and you shall conform with Western's procedures, policies, directives and business practices in carrying out your responsibilities under this Section 4.e. You shall exercise your business judgment reasonably and in good faith in these matters to the extent that they may be discretionary.

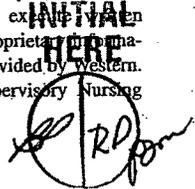
f. Employment of Administrator and Supervisory Nursing Personnel.

1) Subject to the approval of Western and the Governing Body, you shall employ, at your own cost and expense, an Administrator, a Director of Nursing and/or a Supervising Registered Nurse, or similarly qualified and titled personnel, (collectively, the "Supervisory Nursing Personnel") to the extent required by federal, state and local laws and regulations governing licensed and certified home health agencies. If directed by Western or the Governing Body for good cause, you shall replace the Administrator, and any Supervisory Nursing Personnel, with others who are acceptable to Western and the Governing Body. For purposes of this Section, "good cause" shall exist if the Administrator or any of the Supervisory Nursing Personnel: (a) violates applicable laws, rules, regulations or standards; (b) commits any material act of dishonesty, gross carelessness or misconduct; (c) unjustifiably neglects his or her duties; (d) acts in any way that has a materially adverse effect on the business or reputation of Western; or (e) otherwise conducts himself or herself in a manner inconsistent with generally recognized standards for the conduct of Administrators or Supervisory Nursing Personnel in the community in which the Home Health Agency Business is operated, after being given notice and an opportunity to correct such conduct.

2) You shall enter into written employment agreements with the Administrator and all Supervisory Nursing Personnel, on a form approved by Western and the Governing Body. Such agreements shall include, at minimum, the following provisions:

- a) A description of duties, including those duties required under federal, state and local law, rules and regulations;
- b) The minimum hours of work, or full-time equivalent, required of each such employee;
- c) The compensation (including salary, bonuses, travel expenses, benefits, etc.) to be paid;
- d) A statement of qualifications including the federal, state and local legal requirements for the position, and a representation that such employees meet and shall continue to meet all such requirements;
- e) A covenant to comply with all Western policies and procedures and all legal requirements imposed on licensed and certified home health agencies;
- f) A representation that each such employee has not been excluded from the Medicare or Medicaid Programs, and has not been convicted of a criminal offense, under any federal or state law, related to neglect or abuse of a patient, or to the delivery of goods and services under the Medicare or Medicaid Programs;

- g) The grounds for termination of each such employee; and
 - h) A requirement that each such employee execute non-competition covenants to Western to maintain the confidentiality of the proprietary information of Western and not to compete with Western, on forms provided by Western.
- 3) With respect to the Administrator or any Supervisory Nursing

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Personnel, Franchisee shall: (a) notify Western immediately upon the termination of employment of any of them; (b) inform Western immediately of any breach or potential breach of the confidentiality and non-competition covenants of their employment agreements; (c) consult with Western as to the need to litigate to enforce such confidentiality or non-competition covenants; and (d) fully cooperate with Western in filing and litigating actions to enforce the confidentiality or non-competition covenants. The cost of the litigation pursued under this Section 4.f., shall be shared by you paying sixty eight percent (68%) of the costs and Western paying thirty two percent (32%) of the costs.

4) Upon the approval of the Governing Body, a shareholder of Franchisee may act as Administrator or as Supervisory Nursing Personnel, provided each such person conforms with and is subject to all the provisions of this Section 4.f. and provided further that he or she meets the legal requirements therefor, is paid a reasonable salary commensurate with his or her responsibilities as an Administrator or Supervisory Nursing Personnel, and he or she otherwise conforms with and is subject to the provisions of this Section 4.f., whether or not a written agreement is executed.

g. Other Employees of the Franchisee. In addition to employing the management or supervisory employees set forth in Section 4.f. above, you may employ, at your own cost and expense, such employees as you may require to assist in the performance of your obligations under this Addendum, including employees for the following job categories:

- On-Call R.N.(s)
- On-Call Coordinator(s)
- Medical Coordinator(s)
- Team Secretary(ies)
- Other (specify):

Additional job categories shall be subject to the prior approval of Western, which shall not be unreasonably withheld. This Section 4.g. shall not apply to persons you may employ solely for the purpose of operating the Western franchise under the Franchise Agreement.

h. Medical and Other Supplies. You shall be responsible for providing, at your own cost and expense, such medical and other supplies that are required for the operation of the Home Health Agency Business, excluding the supplies provided by Western to you under Section 3.h. above.

i. Billing Information and Documentation. You shall submit to Western or its designee, for processing, all bills for the provision of Home Health Services by the Home Health Agency Business, under the office number established by Western for that purpose and in accordance with Western's accounting procedures, policies and business practices. You shall timely submit to Western or its designee accurate documentation with each bill as may be required by patients or third-party payors, including Medicare or Medicaid. You shall assist Western in its collection of the trade accounts receivable when requested.

j. Professional Liability Insurance. In addition to the insurance required under Paragraph 3.n. of the Franchise Agreement, you shall obtain at your own expense and maintain, at all times during the term of this Addendum as well as all renewal terms and for two (2) years after termination hereof, a policy or policies of professional liability insurance of no less than One Million Dollars (\$1,000,000.00) per claim and Three Million Dollars (\$3,000,000.00) aggregate per calendar year which insures you, your agents, employees and contractors, for any act, error or omission for which you or they may be liable in connection with the practice of his or her profession. Such policy or policies shall name Western and its parent company as additional insureds. All such policies shall contain an endorsement stating that they cannot be canceled or materially changed without thirty (30) days' prior written notice to Western. Before you commence doing business pursuant to this Addendum, you shall furnish Western's Legal Department with certificates of insurance confirming that such policy or policies are in full force and effect and that Western and its parent company are additional insureds. You likewise shall furnish renewal or replacement certificates annually or promptly upon obtaining such insurance from a different carrier.

k. Commencement Date. You shall cooperate fully and do all things reasonably necessary and convenient for Western to obtain and maintain the license, certification and/or accreditation of the Home Health Agency Business. You shall commence operations of the Home Health Agency Business at our instruction and as soon as practicable, provided all legal requirements for the operation of the Home Health Agency Business have been satisfied.

5. Medicare Reimbursement.

a. Medicare Cost-Based Reimbursement Principle. With respect to the provision of Home Health Services to beneficiaries of the Medicare Program,

each party shall only be entitled to reimbursement or payment of those Medicare Reimbursable Costs incurred by each in the operation of the Home Health Agency Business. Such Costs are determined on an annual basis upon Final Settlement of the Medicare Cost Report for any fiscal year. The parties therefore shall do such things and make such adjustments between themselves that may be required in order to conform with the foregoing cost-based reimbursement principle, and as more fully set forth below.

b. Responsibility for Medicare Accounting. Western shall have sole responsibility to communicate with the Medicare Fiscal Intermediary on, and to make decisions with respect to, all matters related to Medicare accounting and reimbursement, including, but not limited to, the establishment of the Medicare Interim Rate, the filing of the Medicare Cost Report, and the exercise of any rights of reconsideration or appeal of reimbursement determinations. We shall consult with you and keep you informed of Western's actions on such matters, as is reasonably necessary for the proper operation of the Home Health Agency Business.

c. Preparation of the Medicare Cost Report. Western shall timely prepare, or cause to be prepared, the Medicare Cost Report, audited and unaudited financial statements, and any other reports that are required to be filed by governmental agencies or payors with respect to the Home Health Agency Business. Western may engage legal, accounting and other consultants and professionals, as necessary in Western's sole discretion and of our choice, to prepare such reports, and the costs associated with engagement of such professionals shall be considered a Medicare Reportable Cost.

d. Franchisee's Reporting of Medicare Reportable Costs. You shall timely report all Medicare Reportable Costs, with such documentation as Western deems necessary each period, for the purpose of reimbursement under Section 5.e., below, and for inclusion in the Medicare Cost Report. We shall assist you in identifying Medicare Reportable Costs that must be reported by you and in determining the manner and form for such reports; however, you shall be solely responsible for: (1) any disallowance of costs that results from your failure to comply with this Section 5.d.; (2) any Medicare Reportable Cost not included in the Medicare Cost Report and not reimbursed because of your failure to comply with this Section; and (3) any Medicare Reportable Cost not reimbursed under Section 5.e. below because of your failure to comply with this Section 5.d.

e. Periodic Medicare Reimbursement. Within four (4) weeks after the end of each period, Western shall reimburse you, based upon information submitted by you under Section 5.d. above, for the Medicare Reimbursable Costs incurred by you for the period, subject to the provisions of Sections 5.f. and 5.g. below, and in accordance with the methods and procedures set forth in Schedule C to this Addendum and illustrated on Schedule D hereto.

f. Annual Reconciliation of Medicare Reimbursement. Following Final Settlement of the Medicare Cost Report for any fiscal year, Western shall provide you a written statement showing whether payments made to you under Section 5.e. above resulted in overpayment or underpayment of your actual Medicare Reimbursable Costs. Western shall refund promptly to you the amounts of any such underpayment. You shall remit promptly to Western the amounts of any such overpayment.

g. Reserve for Medicare Contingencies.

1) Establishment of Franchisee's Medicare Reserve. For each and every fiscal year in which you operate a Home Health Agency Business pursuant to this Addendum, Western shall establish a fund on your behalf (the "Franchisee's Medicare Reserve") for the purpose of creating a reserve against contingencies that arise from your participation in the Medicare Program, including, but not limited to, the risks of overpayment and underpayment following Final Settlement of the Medicare Cost Report, and disallowances based on alleged fraud, lack of documentation, unreasonableness of costs, lack of medical necessity, or any other reason asserted under applicable rules and regulations. The Franchisee's Medicare Reserve shall be established for each fiscal year by setting aside twenty percent (20%) of the periodic Medicare reimbursement under Section 5.e. above. The monies that are set aside shall be held in an interest-bearing account until such time as a Notice of Amount of Program Reimbursement (NPR) or other Final Settlement of the Medicare Cost Report is issued by the Medicare Fiscal Intermediary and accepted by Western for the fiscal year that is the subject of the Franchisee's Medicare Reserve. The establishment of the Franchisee's Medicare Reserve shall in no way limit Western from establishing reserves for its own risks of participation in the Medicare Program.

2) Medicare Adjustments. When the Final Settlement of the Medicare Cost Report is issued by the Medicare Fiscal Intermediary and accepted by Western, Western shall issue an accounting of the Franchisee's Medicare Reserve to the Franchisee. In this accounting, Western shall recover from the Reserve all

**ADDENDUM TO FRANCHISE AGREEMENT FOR
HOME HEALTH AGENCY BUSINESS**



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**SCHEDULE C
METHODS AND PROCEDURES FOR CALCULATING
PERIODIC REIMBURSEMENT OF FRANCHISEE'S
MEDICARE REIMBURSABLE COSTS**

(Section 5.e.)

A. Reporting Costs

1. For purposes of calculating Franchisee's Periodic Medicare Reimbursement under Section 5.e. of the foregoing Addendum to the Franchise Agreement ("this Addendum"), the following information shall be required, on a per period basis:
 - a. All costs incurred by Franchisee directly for the benefit of the Home Health Agency Business whether Medicare or non-Medicare, including, but not limited to, those costs identified at Section 1.g. of this Addendum;
 - b. All operating costs incurred by Franchisee for the mutual benefit of the Home Health Agency Business and the other lines of Western Medical Services supplemental staffing and private duty business operated by Franchisee; and
 - c. Documentation as requested by Western or otherwise required by law.
2. This information must be provided to Western within seven (7) days after the end of each period.

B. Cost Allocation

Under current Medicare cost reporting requirements, operating costs generally are allocated using either the direct allocation or the indirect allocation method.

1. **Direct Allocation.** Under the direct allocation method, operating costs shall be allocated between the Home Health Agency Business and the other lines of Western Medical Services business, based upon actual records of the costs, or on approved direct allocations supported by adequate documentation. For example, under the direct allocation method, rent and the costs of office utilities may be allocated between the Home Health Agency Business and the other lines of Western Medical Services business based upon square footage or another appropriate and approved method. Staff salaries may be allocated based on actual and regular time studies for each staff.
2. **Indirect Allocation.** Western shall use the indirect allocation method to allocate operating costs between the Home Health Agency Business and the other lines of Western Medical Services business, unless the Franchisee requests and Western is able to obtain specific approval from the Medicare Fiscal Intermediary for direct allocation. Approval requires a substantial amount of documentation by Franchisee for costs.

Under the indirect method, operating costs are accumulated into a pool and allocated between the businesses based upon the ratio of direct costs for each business to total direct costs.

C. Calculation of Periodic Medicare Reimbursement.

1. For purposes of the calculation of the Franchisee's Periodic Medicare Reimbursement under Section 6.5 of this Addendum, costs that are incurred solely and directly for the Medicare Program shall be allocated directly to the Franchisee's Periodic Medicare Reimbursement. Such costs may include medical supplies, salaries of the Supervising RN incurred for billable visits, etc. For all other operating costs which are shared between the lines of Western Medical Services businesses, the indirect allocation method shall be used. However, if Franchisee elects and is approved to use the direct allocation method for specific categories of operating costs (such as staff salaries), the direct allocation method shall be used for those cost categories.
2. For the purpose of applying the indirect allocation method to the operating costs, the following definitions apply. "Combined Operating Costs" refers to those operating costs, excluding direct costs, that are applicable to all lines of Western Medical Services business operated by Franchisee under the Franchise Agreement and this Addendum, including supplemental staffing, private duty and the Home Health Agency Business. "Total Direct Costs" are the aggregate of direct costs for all lines of Western Medical Services business, using the definition of direct costs in Paragraph 5.e. of the Franchise Agreement.
3. In applying the indirect allocation method, Western shall calculate the ratio of direct costs for the Medicare billings to Total Direct Costs. This ratio is the "Medicare Direct Cost Ratio". Note that this ratio is for direct costs associated with Medicare business only and not with other Home Health Agency Business (non-Medicare Home Health Agency business). Western shall use the period end franchise statements as the basis for determining the Total Direct Costs.

The Combined Operating Costs reported by the Franchisee shall be multiplied by the Medicare Direct Cost Ratio, with the result being the "Gross Medicare Indirect Costs" to be reimbursed to the Franchisee. The Gross Medicare Indirect Costs shall be added to Franchisee's direct Medicare costs, if any, with the sum being the "Gross Medicare Reimbursable Costs."

The Gross Medicare Reimbursable Costs shall be reduced by the standard twenty percent (20%) reserve pursuant to Section 6.g. of this Addendum. The difference is the "Net Medicare Reimbursable Costs," and shall constitute the Franchisee's Periodic Medicare Reimbursement under Section 5.e. of this Addendum for the period in question.

SUMMARY OF CALCULATION OF FRANCHISEE'S MEDICARE REIMBURSEMENT	
Medicare Direct Cost Ratio = Medicare direct costs / Total Direct Costs	
Gross Medicare Indirect Costs = Combined Operating Costs x Medicare Direct Cost Ratio	
Gross Medicare Reimbursable Costs = Franchisee's Medicare direct costs + Gross Medicare Indirect Costs	
Net Medicare Reimbursable Costs = Gross Medicare Reimbursable Costs less 20% reserve = Periodic Medicare Reimbursement	

**ADDENDUM TO FRANCHISE AGREEMENT FOR
HOME HEALTH AGENCY BUSINESS**



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SCHEDULE D

**EXAMPLE OF FRANCHISEE'S PERIODIC MEDICARE REIMBURSEMENT
(Section 5.e.)**

	<u>FRANCHISE OFFICE</u>	<u>MEDICARE</u>	<u>NON-MEDICARE</u>	<u>TOTAL OFFICE</u>
Total Direct Costs ^a	75,000	7,500	2,500	85,000
Medicare Direct Cost Ratio	88.24%	8.82%	2.94%	100.0%
<u>Direct Medicare Costs of Franchisee^b</u>				
Home Visits of Supervising R.N.		1,250		
Medical Supplies		200		
Subtotal		1,450		
<u>Combined Operating Costs</u>				
Salaries and benefits				4,500
Telephone				1,250
Office Supplies				750
Rent				1,250
Other				750
Total Combined Operating Costs				8,500
Allocation of Combined or Gross Medicare Indirect Costs ^c	750			
Gross Medicare Reimbursable Costs		2,200		
Less 20% Reserve		(400)		
Net Medicare Reimbursable Costs		1,760		
FRANCHISEE'S PERIODIC MEDICARE REIMBURSEMENT UNDER SECTION 5.e. OF ADDENDUM				<u>1,760</u>

^a As defined in Paragraph 5.e. of the Franchise Agreement.

^b Franchisee's Medicare direct costs shall be included in Total Direct Costs for purpose of calculating the Medicare Direct Cost Ratio.

^c Total Combined Operating Costs multiplied by Medicare Direct Cost Ratio.

of its Medicare Reimbursable Costs incurred by the Home Health Agency Business before any of the Reserve shall be returned to the Franchisee. All risks of underpayment by Medicare (except those attributable to Medicare disallowance of allotted Western Home Office Costs), whether due to any other disallowed costs or costs in excess of applicable limits on Home Health Agency costs per visit ("Medicare caps"), shall be borne by the franchisee. The remaining balance (whether positive or negative) in the Reserve after this adjustment is made shall be considered the Franchisee's Allocation of Medicare Overpayment.

3) Use of Franchisee's Medicare Reserve. Western shall use funds in the Franchisee's Medicare Reserve to pay the Franchisee's Allocation of Medicare Overpayment. In the event that such funds are insufficient to repay the Franchisee's Allocation of Medicare Overpayment, you shall provide funds to Western within ten (10) days of notice to remedy the insufficiency. If the Franchise Agreement and/or this Addendum are still in effect at the time of the notice to you of the insufficiency, Western may, at your request and at our sole discretion, advance funds to remedy the insufficiency and offset such advance from your current share of the gross profit under either the Franchise Agreement or this Addendum, until such advance is fully reimbursed.

4) Distribution of Franchisee's Medicare Reserve Following Final Settlement. Any portion of the Franchisee's Medicare Reserve remaining after payment of the Franchisee's Allocation of Medicare Overpayment or, where no overpayment exists, after Final Settlement of the Medicare Cost Report, shall be distributed to you, with accrued interest on balances due you at the then current annual rate of interest payable on business savings accounts by Bank of America NT&SA, no later than thirty (30) days from the date of Final Settlement of the Medicare Cost Report for the fiscal year in question.

5) Additional Reserves. Notwithstanding any other provision of this Addendum, Western may withhold from the periodic Medicare reimbursement under Section 5.e above any additional amounts that we deem reasonably necessary to reduce the risks of disallowance, overpayment, or recoupment, provided that: (a) Western provides you with a written notice at least fifteen (15) days before taking such action; and (b) the notice specifies: (1) the risks of disallowance, overpayment and recoupment likely to be asserted by the Fiscal Intermediary or the Medicare Program; (2) the extent to which the then current level of the Franchisee's Medicare Reserve is inadequate to meet such risks; (3) the amount to be additionally withheld and the manner and method of such withholding; (4) any limitations on the dollar amount or the duration of the period of additional withholding; and (5) your consultation rights with respect to the additional withholding.

Western shall consult with you in the event it is necessary to withhold such additional amounts, provided, however, that you shall respond to Western in writing within five (5) days after delivery of the required notice. Any additional amounts withheld pursuant to this Section 5.g. shall be added to the Franchisee's Medicare Reserve and be treated thereafter as part of such Reserve. In addition, Western may, at our sole discretion, seek adjustment of the Medicare Interim Rate by the Fiscal Intermediary as may be required to minimize the risk of Medicare overpayment.

h. Division of Medicare Underpayments. Any monies paid by the Medicare Program to Western because of underpayments identified in the NPR or on Final Settlement of the Medicare Cost Report for any fiscal year shall be allocated between the parties in proportion to each party's share of Medicare Reimbursable Costs, as shown on the NPR or final Medicare Cost Report. We shall submit to you your portion within fifteen (15) working days of our receipt of the remittance from Medicare.

6. Compensation to Franchisee for Non-Medicare Home Health Agency Business.

a. Compensation to Franchisee. At the end of each period, Western shall compensate you for your services under this Addendum. Your compensation shall be the gross profit derived from the operation of the Home Health Agency Business as defined in section 6.b. below, less eight percent (8%) of the Gross Sales, as defined in the Franchise Agreement.

b. Definition of Gross Profit. "Gross Profit" for the purpose of this Section 6.b. is defined as gross billings at the usual and customary rate for all Home Health Agency Business (exclusive of Medicare business), including taxes levied thereon, for any period, less contractual allowances, direct labor costs and any mutually agreed upon expenses. Costs under this Addendum which are defined as direct labor costs under Paragraph 5.e. of the Franchise Agreement are "Direct Labor Costs" for the purpose of this Section 6.b., whether or not so specified.

c. Combining of Billing. For the sole purpose of determining the Gross Sales under Section 6.a., Western shall combine for each period the dollar value

of the hours of temporary help billed by you under the Franchise Agreement with the dollar value of the billings for the Home Health Agency Business (exclusive of Medicare business).

7. Term. The term of this Addendum is coterminant with the term of the Franchise Agreement and any extensions or renewals thereof, and this Addendum shall terminate whenever the Franchise Agreement terminates, for whatever reason, subject to the provisions for earlier termination under Section 8 below.

8. Termination.

a. Termination By Franchisee. This Addendum may be terminated without cause by Franchisee on sixty (60) days' prior written notice to Western. During the sixty (60) day period, you shall continue to operate the Home Health Agency Business unless arrangements have been made for earlier transfer of operations. You shall cooperate with Western to expedite the transfer of the Home Health Agency Business, and at Western's option, we may take possession of and exclusively operate the Home Health Agency Business, at our expense, during the sixty (60) day period, provided we continue to remit to you such payments as may be due under Sections 5 and 6 of this Addendum.

b. Immediate Termination. Western may terminate this Addendum immediately, without further notice, and may take possession of and exclusively operate the Home Health Agency Business, upon any of the following events:

1) Conviction of Franchisee, or any of your principals, under federal or state law, of a criminal offense related to (a) the neglect or abuse of a patient; or (b) to the delivery of an item or service under the Medicare or Medicaid Programs, including the performance of administrative or management services;

2) Exclusion of Franchisee, or any of your principals, from participation in the Medicare or Medicaid Programs;

3) If required in order for Western to comply with any legal order issued or proposed to be issued by a federal, state or local government department, agency or commission;

4) Material breach of Paragraph 8 of the Franchise Agreement;

5) Material breach of Sections 9.b, 9.c, 9.d or 9.e below;

6) Failure to substantially comply with: (a) federal, state or local laws, rules, and regulations; or (b) Western's procedures, policies, standards, directives, ethics and business practices for the provision of clinical services, as determined by Western's Quality Assurance Department or designee;

7) Consistent failure to properly document claims or Medicare Reportable Costs, leading to substantial risk of non-reimbursement by patients and payors; or

8) Failure to maintain adequate personnel required for the Home Health Agency Business or to replace the Administrator or any Supervisory Nursing Personnel as may be required under Section 4.f. above.

c. Effect of Termination. The termination of this Addendum shall not automatically terminate the Franchise Agreement, nor any amendments or other addenda thereto. Notwithstanding the foregoing sentence, Western reserves the right to terminate the Franchise Agreement at any time on the grounds stated therein and in accordance with the provisions contained in Paragraph 8 thereof.

d. Distributions and Payments Following Termination. Unless otherwise specifically provided, following termination of this Addendum, we shall remit to you such payments as may be due to you under Sections 5 or 6 above, at the time and in the manner that such payments would have been made if this Addendum were in full force and effect; provided, however, that we may offset from such payments any amount due and owing to Western under this Addendum, the Franchise Agreement, any amendments or other addenda thereto, as well as any license agreements between you and Western.

e. Return of Materials Following Termination. All the provisions of Paragraph 8 of the Franchise Agreement shall apply equally with respect to your rights and obligations following the termination, for whatever reason, of this Addendum, whether or not the Franchise Agreement continues in full force and effect after the termination of this Addendum; except that you shall be required to turn over immediately to Western the items described therein which relate to your operation of the Home Health Agency Business.

9. Miscellaneous.

a. Sale or Transfer of the Franchise. No transfers of your interest in the Home Health Agency Business may be made pursuant to Paragraph 9 of the Franchise Agreement by you, your legal heirs or representatives or, if you are a corporation, the shareholders owning fifty-one percent (51%) or more of the outstanding stock, to persons or entities who are not able to satisfactorily demonstrate to Western the ability to operate a Home Health Agency Business and to meet all legal requirements related to the operation of a Medicare certified home health agency.

b. Access, Inspection and Audit. Western shall at all times be entitled

to access to the franchise office and the right to inspect, review and copy any and all of the books and records pertaining to the operation of the Home Health Agency Business, in order to ensure compliance with the terms of this Addendum.

c. Medicare Books and Records. For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, as amended, and any written regulations thereto, during the term of this Addendum and for a period of four (4) years thereafter, you shall make available upon written request from the Secretary of HHS or the Comptroller General of the United States, or any of their duly authorized representatives, this Addendum and any of the books, documents and records that may be necessary to certify the nature and extent of the costs of providing Home Health Services to Medicare Program beneficiaries. If you carry out any of your duties pursuant to this Addendum through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, you shall insert the required statutory clause in such subcontract, obligating the subcontractor to provide the same access and make available necessary documents.

d. Covenant Not to Compete.

1) For the term of this Addendum and for a period of two (2) years from and after its termination, you, individually; all your partners, if any; your spouse, if any; and the corporation which is to operate the Home Health Agency Business, as well as all officers, directors and shareholders of such corporation, shall be jointly and severally obligated to comply with the noncompetition, confidentiality and nondisclosure provisions of Paragraph 6 of the Franchise Agreement as regards the Home Health Agency Business, and Western shall be entitled to the injunctive relief, other remedies and damages more particularly described therein in the event of a breach of this Section 9.d.

2) To the extent that you, individually; your partners, if any; your spouse, if any; the corporation which is to operate the Home Health Agency Business, as well as all officers, directors and shareholders of such corporation;

and third parties have executed noncompetition, confidentiality and nondisclosure covenants as required by Paragraph 6 of the Franchise Agreement, those covenants shall be binding with respect to the Home Health Agency Business.

e. Proprietary Information, Confidential Data and Trade Secrets Any proprietary information relating to the Home Health Agency Business, including its policies, procedures, practices, techniques, forms, manuals and methods of operations, are and shall remain the property of Western. "Proprietary Information" specifically includes all information, data, ideas, operating manuals, forms, supplies and materials provided to you in furtherance of this Addendum and more fully described in Paragraph 6.d. of the Franchise Agreement, reference to which is made for further particulars.

f. Survival of Covenants, Representations and Warranties. The covenants, representations and warranties made under this Addendum shall survive its termination as more fully provided in Paragraph 14 of the Franchise Agreement.

g. Entire Agreement. This Addendum (including its exhibits and schedules), the Franchise Agreement to which it is appended, and any amendments or other addenda thereto, together constitute the entire agreement between the parties concerning the operation of the Home Health Agency Business, and together supersede all other agreements, representations or communications, whether oral or written, between the parties relating to the transactions contemplated herein, or the subject matter hereof.



IN WITNESS WHEREOF, the undersigned have executed this Addendum on the dates below their signatures.

Witness:

WESTERN STAFF SERVICES (USA), INC.

By: Bonnie A. McDonald
Signature

Bonnie A. McDonald
Type or Print Name

Vice President
Type or Print Title

Dated: August 11, 1995

Franchisee:

Robert J. Poturalski
~~Type or Print Name of Legal Entity, If Any~~ Signature

Barbara A. Poturalski
Signature

ROBERT J. POTURALSKI, Joint and Several
Type or Print Name

BARBARA A. POTURALSKI, Joint and Several
Type or Print Name

Dated: July 12, 1995

SHAREHOLDER RATIFICATION AND GUARANTY

In consideration of the above and foregoing Addendum to Franchise Agreement for Home Health Agency Business, each of the undersigned on even date herewith, individually and as all the shareholders of _____, jointly and severally, hereby ratify, adopt and affirm the Agreement contained herein and as the same may hereafter be amended or reconstituted, and personally guarantee the performance of any and all present and future obligations hereunder.

Witness:

Shareholders:

Bonnie A. McDonald

Robert J. Poturalski
ROBERT J. POTURALSKI

Bonnie A. McDonald

Barbara A. Poturalski
BARBARA A. POTURALSKI



AMENDMENT TO FRANCHISE AGREEMENT

Amendment to the Western Medical Division Franchise Agreement by and between Western Staff Services (USA), Inc., a California corporation, formerly named Western Temporary Services (USA), Inc. (hereinafter called "Western" or "We"), and ROBERT J. POTURALSKI and BARBARA A. POTURALSKI (hereinafter called "Franchisee" or "You").

It is hereby agreed by and between the parties hereto that said Franchise Agreement (hereinafter called "the Agreement") is amended as follows:

1. The name of the company in the preamble to the Agreement is changed from Western Temporary Services (USA), Inc. to Western Staff Services (USA), Inc.

2. Paragraph 1 of the Agreement, "Grant of Franchise and Exclusive Territory," is amended by adding the following after the third sentence:

"Home health agency business is covered by the Addendum to Franchise Agreement for Home Health Agency Business and is subject to the terms and conditions of that Agreement. In order to do home health agency business you must first be approved by Western's Medicare/Accreditation Certification Committee ("the Certification Committee") and you must comply at all times with any requirements of state, federal or local law and any JCAHO (Joint Commission on Accreditation of Health Care Organizations) or comparable accreditation standards."

3. Paragraph 3.d. of the Agreement, "Special License," is deleted in its entirety and replaced with the following:

"The franchise fee includes the cost of a nursing pool license and home health agency license, if required, as well as Medicare and JCAHO or comparable accreditation, provided you are approved by the Certification Committee. The cost of any other special license or fee to do medical business shall be shared between you and Western, sixty-eight percent (68%), your share, and thirty-two percent (32%), Western's share. However, the cost of a license required of all businesses is not a reimbursable or shared cost."

4. The following sentence is added to Paragraph 5.a. of the Agreement, "Initial Franchise Fee":

"This fee shall also include the Addendum to Franchise Agreement for Home Health Agency Business, subject to your approval by the Certification Committee."

5. The heading and Paragraph 5.d. of the Agreement, "Division of Gross Profit," are deleted in their entirety and replaced with the following:

"Western's Service Fee". At the end of each period, we shall advance to you the gross profit (defined in subsection 5.e. of the Franchise Agreement) derived from the operation of the franchise, less eight percent (8%) of the Gross Sales (defined in Paragraph 5.f. below) derived from the operation of the franchise which we will retain as our service fee. The periodic remittances to you are subject to the collectibility of our customer accounts in a timely manner, as provided in Paragraph 5.i. of the Agreement."

6. The last sentence of Paragraph 5.e. of the Agreement, "Definition of Gross Profit", is deleted in its entirety.

7. Paragraph 5.f. of the Agreement, "Advertising Reimbursement," is deleted in its entirety and replaced with the following:

"f. Definition of Gross Sales. Gross Sales is defined as the total amount of all sales derived from the medical temporary help service and home health agency business, including, but not limited to, sales of medical temporary help, transfer of personnel services and "temp-to-perm" liquidated damages, and any sales discounts, less reimbursable expenses and excluding Medicare Home Health Agency Business as defined in the Addendum to the Franchise Agreement for Home Health Agency Business."

8. The last sentence of Paragraph 5.g. of the Agreement, "Minimum Per Period Fee," is deleted and replaced with the following:

"If Western's compensation based on Gross Sales is less than three hundred dollars (\$300) in any period, you shall pay Western the difference."

9. The first sentence of Paragraph 5.i. of the Agreement, "Bad Debt Write-Offs," shall be deleted in its entirety and replaced with the following sentence:

"We shall share losses from uncollectible customer accounts together with any contractual losses, temporary payroll fraud, adjustments, disputes with customers, fees, costs, and expenses of collection or suit by you bearing sixty-eight percent (68%) of the losses and Western bearing thirty-two percent (32%) of the losses, provided that you have complied with our credit granting criteria and all other procedures."

10. The seventh sentence of Paragraph 5.i. of the Agreement, "Bad Debt Write-Offs," shall be revised as follows:

"In addition to the bad debt reserve, we will deduct from the gross profit one-half (1/2) of the amount of any invoice to a customer which remains unpaid after one hundred thirteen (113) days from the invoice date, as long as your office provides both home care and

staffing services. The remaining one-half (1/2) of the amount of any invoice which remains unpaid after one hundred thirteen (113) days shall bear interest at an annual rate equal to the prime rate of Bank of America NT&SA plus two (2) percentage points or the highest rate allowed by applicable law, whichever is less. If you cease to provide home care, the deduction will be made after eighty-five (85) days from the invoice date and the interest shall be charged after eighty-five (85) days from the invoice date."

11. The first sentence of Paragraph 5.j. of the Agreement, "Recoupment of Bad Debt," is deleted and replaced with the following:

"When any bad debt write-off is later collected, wholly or partially, we shall credit you sixty-eight percent (68%) of the amount collected, less collection costs, such as contingent commissions, outside attorneys' fees, costs of suit and litigation expenses incurred or advanced by Western in furtherance of our collection efforts."

12. The second to the last sentence of Paragraph 6.a. is deleted in its entirety and replaced with the following:

"Unless you operated a permanent placement agency or licensed nurses' registry before becoming a Western franchisee, prior to engaging in any such business you shall, after disclosure pursuant to any applicable franchise disclosure laws, enter into a license agreement with Western Staff Services, Inc. and, in conformity with applicable state licensing laws, do such business under the name Western Staff Services for a service fee of five percent (5%) of sales if Western handles the invoicing and two percent (2%), if Western does not handle invoicing."

13. The reference to Western Temporary Services (USA), Inc. in Paragraph 7.d., "Stock Certificate," is changed to Western Staff Services (USA), Inc.

14. The first two sentences of Paragraph 8.c. of the Agreement, "Billing Minimums," are amended to delete the words "billing hours" in the first sentence and replace them with the words "billing dollars" and to delete the words "hours billed" in the second sentence and replace them with the words "dollars billed".

15. The second sentence of Paragraph 11.a. of the Agreement, "Franchisee's Right to Purchase," is deleted in its entirety and replaced with the following sentence:

"You shall give us sixty (60) days' advance notice in writing and pay us the sum total of our compensation (eight percent (8%) of the Gross Sales derived from the operation of the franchise) for last twenty-six (26) periods."

16. The third sentence of Paragraph 11.b. of the Agreement, "Western's Right to Purchase," shall be deleted in its entirety and replaced with the following:

"We shall pay you the sum total of the gross profit of the business, less our eight percent (8%) share of the Gross Sales derived from the operation of the franchise for the last twenty-six (26) periods or all the periods you have operated the franchise, whichever is less, after deducting any amounts you owe Western[.]"

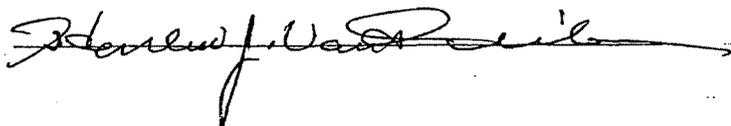
and the words "average billing hours" in the next to the last sentence of Paragraph 11.b. of the Agreement are deleted and replaced with the words "average billing dollars."

17. All other terms, conditions and covenants of the Agreement which are not otherwise inconsistent with this Amendment shall remain the same and are hereby ratified and affirmed.

The above and foregoing is hereby approved and accepted by me this 12th day of July, 1995.

WITNESS:

FRANCHISEE:



By: Robert J. Poturalski
ROBERT J. POTURALSKI, Joint and Several
Title if any: Barbara A. Poturalski
BARBARA A. POTURALSKI, Joint and Several

Entered into this Addendum at Walnut Creek, CA on this 11th day of August, 1995.

WITNESS:

WESTERN STAFF SERVICES (USA), INC.

Sandra Moeller

By: Bonnie A. McDonald
Bonnie A. McDonald
Title: Vice President

Western
MEDICAL SERVICES.

COVENANTS
(CORPORATION)

COVENANTS OF ROBERT J. POTURALSKI as OFFICER, DIRECTOR and/or SHAREHOLDER
(insert name) (strike out any inappropriate title)

of WESTERN MEDICAL SERVICES OF NORTHWEST OHIO INC. (hereinafter called "FRANCHISEE").
(insert corporate name and state of incorporation)

WHEREAS, WESTERN STAFF SERVICES (USA), INC. (hereinafter called "WESTERN") and FRANCHISEE have entered into to a Franchise Agreement dated August 11, 1995, which requires the execution of covenants;

THEREFORE, the undersigned individually and as Officer, Director and Shareholder (insert title) of FRANCHISEE hereby makes the following covenants with joint and several liability:

1. I agree that for the term of the Franchise Agreement and for a period of two (2) years from and after its termination or non-renewal, I shall not directly or indirectly establish, participate in establishing, facilitate, allow or condone the establishment of a business competitive with WESTERN, its affiliated divisions or companies, franchisees or licensees; nor shall I be connected directly or indirectly as an employee, proprietor, stockholder, director, equity holder, officer, partner, creditor, independent contractor, consultant, volunteer, referral source or otherwise, in the operation of any such competitive business; nor shall I solicit, divert, or otherwise adversely influence, affect or interfere with any of Western's business relationships with its customers, prospective customers, employees, prospective employers, independent contractors, vendors, suppliers or anyone else.

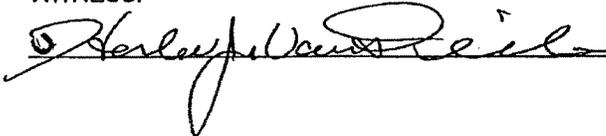
2. I agree that any proprietary information, confidential data or trade secrets relating to the business of WESTERN, including its policies, procedures, practices, techniques, forms, manuals and methods of operation, are and shall remain the property of WESTERN. "Proprietary Information" specifically includes all information, data, ideas, operating manuals, forms, supplies and materials provided to FRANCHISEE in furtherance of the Franchise Agreement (without regard to the form thereof, whether written, visual, audio, graphic, illustrated, computerized, or in any format or medium), such as: sales records and analyses; marketing, advertising and promotional materials; customer contracts; bids, proposals and billing rates; business plans; personnel records; employee lists; application cards; assignment records; customer lists; customer profiles; customer contact sheets; customer service records; identities of customers' ordering sources; telephone numbers used in the operation of the franchise office; and any other forms, manuals, documents, writings, methods, techniques and information related thereto which are not readily available to the public and would help in the creation or operation of a competitor of WESTERN. I shall maintain the Proprietary Information in strictest confidence as it constitutes confidential data and trade secrets of WESTERN.

I consent to the issuance of an injunction enjoining me from the operation of a competitive business in violation of any of the terms of the Franchise Agreement, and as damages would be extremely difficult to determine in the event of such violation, I also agree to pay WESTERN liquidated damages in the amount of twelve percent (12%) of all sales made in violation of the Franchise Agreement or all damages which WESTERN may prove or to which it may be otherwise entitled.

Every provision of these covenants is distinct and severable. If any such provision is held to be illegal, void or unenforceable it shall not affect the validity of legality of any other provision.

Executed this 12 day of July, 1995

WITNESS:



FRANCHISEE:

By Robert J. Poturalski
ROBERT J. POTURALSKI

and
Robert J. Poturalski
Individually ROBERT J. POTURALSKI

Western
MEDICAL SERVICES.

COVENANTS
(CORPORATION)

COVENANTS OF BARBARA A. POTURALSKI as OFFICER, DIRECTOR and/or SHAREHOLDER
(insert name) (strike out any inappropriate title)
of WESTERN MEDICAL SERVICES OF NORTHWEST OHIO, INC. (hereinafter called "FRANCHISEE").
(insert corporate name and state of incorporation)

WHEREAS, WESTERN STAFF SERVICES (USA), INC. (hereinafter called "WESTERN") and FRANCHISEE have entered into to a Franchise Agreement dated August 11, 1995, which requires the execution of covenants;

THEREFORE, the undersigned individually and as Officer, Director and Shareholder (insert title) of FRANCHISEE hereby makes the following covenants with joint and several liability:

1. I agree that for the term of the Franchise Agreement and for a period of two (2) years from and after its termination or non-renewal, I shall not directly or indirectly establish, participate in establishing, facilitate, allow or condone the establishment of a business competitive with WESTERN, its affiliated divisions or companies, franchisees or licensees; nor shall I be connected directly or indirectly as an employee, proprietor, stockholder, director, equity holder, officer, partner, creditor, independent contractor, consultant, volunteer, referral source or otherwise, in the operation of any such competitive business; nor shall I solicit, divert, or otherwise adversely influence, affect or interfere with any of Western's business relationships with its customers, prospective customers, employees, prospective employees, independent contractors, vendors, suppliers or anyone else.

2. I agree that any proprietary information, confidential data or trade secrets relating to the business of WESTERN, including its policies, procedures, practices, techniques, forms, manuals and methods of operation, are and shall remain the property of WESTERN. "Proprietary Information" specifically includes all information, data, ideas, operating manuals, forms, supplies and materials provided to FRANCHISEE in furtherance of the Franchise Agreement (without regard to the form thereof, whether written, visual, audio, graphic, illustrated, computerized, or in any format or medium), such as: sales records and analyses; marketing, advertising and promotional materials; customer contracts; bids, proposals and billing rates; business plans; personnel records; employee lists; application cards; assignment records; customer lists; customer profiles; customer contact sheets; customer service records; identities of customers' ordering sources; telephone numbers used in the operation of the franchise office; and any other forms, manuals, documents, writings, methods, techniques and information related thereto which are not readily available to the public and would help in the creation or operation of a competitor of WESTERN. I shall maintain the Proprietary Information in strictest confidence as it constitutes confidential data and trade secrets of WESTERN.

I consent to the issuance of an injunction enjoining me from the operation of a competitive business in violation of any of the terms of the Franchise Agreement, and as damages would be extremely difficult to determine in the event of such violation, I also agree to pay WESTERN liquidated damages in the amount of twelve percent (12%) of all sales made in violation of the Franchise Agreement or all damages which WESTERN may prove or to which it may be otherwise entitled.

Every provision of these covenants is distinct and severable. If any such provision is held to be illegal, void or unenforceable it shall not affect the validity of legality of any other provision.

Executed this 12 day of July, 1995

WITNESS:
[Signature]

FRANCHISEE:
By: [Signature]
BARBARA A. POTURALSKI

and
[Signature]
Individually BARBARA A. POTURALSKI

Western MEDICAL SERVICES.

ADDENDUM (Waiver of Service Fee/Training)

Addendum to the Western Medical Franchise Agreement(s) between Western Staff Services (USA), Inc. (hereinafter called "Western," or "We" or "Franchisor"), and ROBERT J. POTURALSKI and BARBARA A. POTURALSKI (hereinafter called "Franchisee" or "You"), which Franchise Agreement(s) are hereinafter referred to as "the Franchise Agreement", for the Counties of Lucas, Fulton, Wood, Ottawa, Sandusky & Henry, Ohio

It is hereby agreed by and between the parties hereto that the Franchise Agreement is amended as follows:

1. WAIVER OF SERVICE FEE

Notwithstanding paragraph 5 of the Amendment to Franchise Agreement to the contrary, as a special incentive to you during the first six (6) full periods following completion of your training at the corporate office, Western will waive its service fee for those six (6) periods and you shall receive one hundred percent (100%) of the gross profit from the operation of the temporary help service (exclusive of in-house temporary help).

2. TRAINING PROGRAM

- a. As a special incentive for you to attend our training program, we shall provide round-trip jet economy transportation and lodging, but not including meals, during the training program which consists of five (5) days at the corporate office and five (5) days in your local office, subject to the following:
- 1) We shall schedule the training and make all lodging and transportation arrangements for the corporate office training through our corporate travel desk.
 - 2) This training program, which is offered to you on a one-time only basis, supersedes the training described in subparagraphs 3.a. and 3.n. of the Franchise Agreement.
 - 3) Your training program, which is personal to you, is neither transferable nor assignable by you in any way.
 - 4) You shall not be entitled to any refund if you are unable to attend the training program as scheduled.
- b. We shall make this training program, including transportation and lodging, available for up to two (2) individual franchisees or corporate officers if you are presently organized as a corporation or have incorporated before attending, or one (1) owner and one (1) employee.

INITIAL
HERE



3. Each paragraph of this Addendum is distinct and severable, and if any paragraph shall be held illegal, void or unenforceable, it shall not effect the validity or legality of any other portion of this Addendum.
4. All other terms, conditions and covenants of the Franchise Agreement which are not inconsistent with this Addendum shall remain the same and are hereby ratified and affirmed.

This Addendum is executed by Franchisee on this 12 day of July, 1995.

WITNESS:

FRANCHISEE:

[Signature]

By: *[Signature]*
ROBERT J. POTURALSKI, Joint and Several

~~Title/Name~~ By: *[Signature]*
BARBARA A. POTURALSKI,
Joint and Several

This Addendum is executed by a duly authorized corporate officer of Franchisor on this 11th day of August, 1995.

WITNESS:

Sandra Moeller

WESTERN STAFF SERVICES (USA), INC.

By: *[Signature]*
Bonnie A. McDonald

Title: Vice President

Western TEMPORARY SERVICES.

EQUIPMENT OPERATING LEASE AGREEMENT. Remote Payroll Processing System

Staff (USA)

This Agreement is made and entered into at Walnut Creek, California, by and between Western Temporary Services, Inc., a California corporation (hereinafter sometimes called "Western" or "We"), and the undersigned franchisee of Western (hereinafter sometimes called "Franchisee" or "You").

NOW, THEREFORE, the parties hereto agree as follows:

1. Equipment.

a. Western hereby leases to you and you lease from Western the equipment, including third-party maintenance services, described on the attached Schedule A, which is incorporated herein by this reference. Such equipment shall remain at all times on your Western franchise office premises located at the address set forth on Schedule A. You shall not relocate the equipment from such address without the prior written approval of Western, which may be withheld or denied absolutely.

b. You shall use the equipment in a proper and careful manner in full compliance with the manufacturer's instructions as revised from time to time. You shall not make any alterations, additions or improvements to the equipment, except as otherwise provided below.

c. Your use of the equipment shall be restricted to processing the payroll of the temporary employees of Western in accordance with your Western franchise agreement(s), and the operating systems and procedures of Western as revised from time to time, which may also include provisions for testing and training of applicants for word processing temporary employment assignments.

d. If you elect to purchase additional software, your use of the added features and capability of the equipment shall be limited to your own in-house applications only, which are subject to the prior written approval of Western. You shall be restricted from using the equipment, directly or indirectly, for the purpose of conducting or operating a service bureau for any third party.

2. Term.

This Agreement shall begin on delivery of the equipment and continue thereafter for sixty-five (65) four-week accounting periods of Western starting with the first four-week accounting period following or coincidental with such delivery, unless otherwise terminated earlier as provided below. You shall confirm promptly to us in writing the delivery date of the equipment, which equipment may be "drop-shipped" directly to you by the vendor at the direction of Western. If you fail to confirm the delivery date, the shipping manifest date shall be deemed conclusive.

3. Optional Term.

You may extend the term hereof for two (2) consecutive periods of thirteen (13) four-week accounting periods of Western each by giving written notice to Western no less than sixty (60) days prior to the expiration of the term or the first extended term hereof, provided you are not then in default under this Agreement or any other agreement between you and Western.

4. Rent and Maintenance Expenses.

a. The basic equipment shall be provided to you and maintained by Western at no charge to you, provided you maintain a minimum level of temporary help billing under your Western franchise agreement(s) supported by the equipment equal to no less than seventy-six thousand nine hundred twenty-three and no/100 dollars (\$76,923.00) per four-week accounting period during the term hereof or any extension thereof. In the event your temporary help billing is less than the above amount, the rental and maintenance cost for the four-week accounting period in question shall be prorated between you and Western on the ratio of the sum of your sales of temporary help for the four-week accounting period bears to the sum of seventy-six thousand nine hundred twenty-three and no/100 dollars (\$76,923.00).

For example, your share of the leasing and maintenance cost for a given four-week accounting period would be:

Sales of Temporary Help Per Accounting Period (\$)	Your Share %	Western's Share %
0	100.0	0
5,000	93.5	6.5
10,000	87.0	13.0
20,000	74.0	26.0
30,000	61.0	39.0
40,000	48.0	52.0
50,000	35.0	65.0
60,000	22.0	78.0
70,000	9.0	91.0
76,923 or more	0	100.0

b. Any rent or other charges due hereunder are payable by you in arrears on or before the last day of each four-week accounting period during the term hereof or any renewal or extension thereof. Such rent or other charges shall begin on the first day of the four-week accounting period following or coincidental with the certification by Western that the equipment is

fully operational for Western temporary employee payroll processing, or at the time of any subsequent add-ons or upgrades to the equipment. Western reserves the right to make such deductions from your Western franchise commission settlement statements for any charges due Western under this Agreement.

5. Installation.

You, at your expense, shall be responsible for the following:

a. Preparation of the installation site in accordance with instructions and specifications of Western and the manufacturer;

b. Installation of a telephone line in accordance with instructions and specifications of Western and the manufacturer;

c. Adequate and suitable space for storage of all required operating supplies and materials; and

d. Adequate and suitable space in which the equipment service representatives of Western and the manufacturer may work while performing service and maintenance.

You shall permit equipment service representatives of Western and the manufacturer to enter your premises at all reasonable times to inspect, service or remove the equipment and telephone line.

6. Electrical Power, Telephone and Operating Supplies.

Western, at no charge to you, shall provide all operating supplies for processing the payroll of Western temporary employees. You, however, shall be responsible for providing all electrical power, telephone line and equipment charges, and any other supplies and materials required by your authorized nonpayroll applications of the equipment.

7. Transportation.

Western shall be responsible for all rigging and drayage charges of the equipment to and from your premises, unless this Agreement is terminated by Western as provided in Paragraph 12a, b, c, d, e, or f below.

8. Rental Warranty.

Western hereby assigns to you the benefits of any manufacturer's warranties regarding the equipment, including the maintenance and service thereof as the respective rights of you and Western appear under this Agreement. Western makes no warranty, express or implied, that the equipment is merchantable or fit for its intended purpose. This Agreement supersedes all prior representations of Western, whether written or oral, regarding the use, application or specifications of the equipment. WESTERN SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, CONSEQUENTIAL OR INCIDENTAL RESULTING FROM THE RENTAL, USE, OR IMPROPER FUNCTIONING OF THE EQUIPMENT. You shall waive any and all claims, causes of action or damages against Western arising from the rental, use, or improper functioning of the equipment. You agree to comply fully with all user terms and conditions of any maintenance and service contracts for the equipment.

9. Title.

Western shall remain at all times the owner of the equipment, including any upgrades and additions, and title thereto shall remain in Western. You as the lessee of the equipment shall not attempt to sell, pledge, loan or part with possession of the equipment or suffer or cause any mortgage, claim, lien or encumbrance of any kind to be made on the equipment.

10. Return of Equipment.

You, on expiration of the lease term or earlier termination thereof, shall return to Western the equipment, including any upgrades and additions thereto, in the same condition as originally leased to you, reasonable wear and tear excepted.

11. Indemnification.

You shall indemnify and hold Western harmless from and against any and all claims, demands, causes of action, liability, damages, suits, including a reasonable attorney's fee and costs, arising from your use and operation of the equipment or the presence of the equipment while on your premises.

12. Termination.

Western may terminate this Agreement and enter upon your premises, without process of law, to retake possession of the equipment from you on the occurrence of any one of the following:

a. Your failure to pay the rent and other charges within ten (10) days after the specified due date;

b. Your failure to cure or remedy any default under this Agreement within ten (10) days after receiving written notice from Western;

c. Your default under any other agreement between you and Western;

d. Your Western franchise agreement or any one of your Western franchise agreements is assigned, transferred or terminated;

e. Your attempting to assign or transfer this Agreement without the prior written consent of Western, which consent may be withheld or denied absolutely;

f. Your bankruptcy or insolvency or a bill in equity or other proceeding for the appointment of a receiver for your business is filed or if you make an assignment for the benefit of your creditors; or

g. For the administrative convenience of Western on giving you thirty (30) days' prior written notice.

Western reserves the right on termination of this Agreement to accelerate all payment not yet due Western under this Agreement as if you had no temporary help billing, and declare such sums as past due and payable in full, except when such termination is for the administrative convenience of Western. You waive any and all claims, causes of action, damages or suits against Western occasioned by the repossession of the equipment and termination of this Agreement. The above remedies of Western shall not be deemed exclusive, but are in addition to any other remedies afforded at law or in equity.

13. Attorney's Fee.

The prevailing party in any legal action brought under this Agreement shall be entitled to a reasonable attorney's fee and costs as ordered by the court in addition to any other remedy or relief granted.

14. Notice.

Any notices required to be given hereunder shall be deemed to have been properly given and served by one party upon the other when deposited postage prepaid, registered or certified, in the proper mail and directed to said party at its respective address listed on Schedule A, or to the last address designated in writing by either party.

15. Miscellaneous.

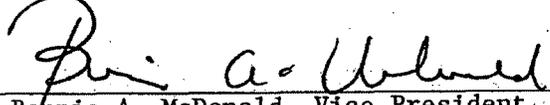
This Agreement constitutes the entire contract between you and us, and the provisions shall be binding upon you and your personal administrators, heirs, legatees, successors and assigns. We reserve the right to assign this Agreement to any affiliated corporation upon serving written notice to you. You shall not assign or sublease this Agreement, in whole or in part, to any person or entity. Any assignment or sublease, conveyance or transfer in violation of this Agreement, whether voluntary, by operation of law or otherwise, shall be null and void. No waiver by Western, express or implied, of any breach of this Agreement by you shall be deemed a continuing waiver or a consent to any subsequent breach hereof. Time is of the essence of this Agreement. Every provision of this Agreement is distinct and severable, and if any provision is held to be illegal, void or unenforceable, it shall not affect the validity or legality of any other provision. This Agreement shall be governable

by the laws of the State of California. You acknowledge that you have read fully and understood completely this Agreement and your signature at the bottom hereof shall constitute your acceptance of the terms and conditions hereof. This Agreement or any changes or modifications thereto shall have no force and effect, unless accepted in writing by a duly authorized officer of Western.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date following their respective signatures below.

WESTERN: Staff (USA)
Western Temporary Services/Inc.

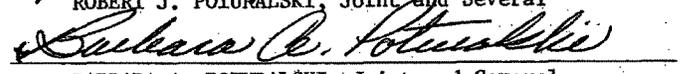
By:


Bonnie A. McDonald, Vice President

Date: August 11, 1995

FRANCHISEE


ROBERT J. POTURALSKI, Joint and Several


BARBARA A. POTURALSKI, Joint and Several

Date:

July 12, 1995

Western TEMPORARY SERVICES.

SCHEDULE A

EQUIPMENT OPERATING LEASE AGREEMENT Remote Payroll Processing System

1. Equipment Description

Basic System:

Payroll: personal computer with CPU, color monitor, modem and laser printer

2. Location of Equipment

3. Special Provisions

4. Rent and Maintenance Expenses

Basic System:

Rent \$ Waived per accounting period

Maintenance \$ Waived per accounting period,
subject to change without prior written notice

5. Notice:

WESTERN:

Staff

Western Temporary Services, Inc.
Attention: Legal Department
P.O. Box 9280
Walnut Creek, CA 94598-0980

~~FRANCHISEE/LICENSEE~~

Robert J. Poturalski
Barbara A. Poturalski

IN WITNESS WHEREOF, the parties hereto have executed this Schedule.

WESTERN:

Staff (USA)

Western Temporary Services, Inc.

By: Bonnie A. McDonald
Bonnie A. McDonald, Vice President

Date: August 11, 1995

~~FRANCHISEE/LICENSEE~~

By: Robert J. Poturalski
ROBERT J. POTURALSKI, Joint and Several

By: Barbara A. Poturalski
BARBARA A. POTURALSKI, Joint and Several

Date: July 12, 1995

Western TEMPORARY SERVICES.

ADDENDUM LOCAL PAYROLL PROCESSING COMPUTER TERMINAL SYSTEM

Addendum to Franchise Agreement between _____ Western Medical _____, a division of
Staff (USA)
Western Temporary Services, Inc., (herein called "We" or "Western") and _____

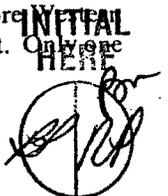
ROBERT J. POTURALSKI and BARBARA A. POTURALSKI

(herein called "You").

It is hereby agreed by and between the parties that said Franchise Agreement as the same may have been previously amended is hereby further amended as follows:

1. Commencing on July 9, 1995, you agree to process from your local Western office the payroll(s) of Western's temporary employees at the end of each weekly period, using a computer terminal check writing system.
2. To assist you in processing the payroll locally, we agree to do the following:
 - a. We will maintain a commercial payroll bank account with our funds which you agree to use as Western's payroll bank account.
 - b. We agree to maintain a balance therein sufficient to cover payroll checks presented to the bank.
 - c. We will provide you with all the necessary payroll forms.
 - d. We will provide you with the bank check forms necessary for the payroll bank account.
 - e. We will lend you a supplement to Western's Procedure Manual containing instructions on how to operate a local payroll system.
 - f. We will continue to prepare the necessary payroll reports and returns, and pay all payroll taxes and workers' compensation, liability and fidelity bond insurance premiums.
3. You agree to do the following:
 - a. You will strictly adhere to our authorized procedures and policies for local payroll processing as outlined in this Addendum and the Procedure Manual as the same may be reasonably amended or changed in the future.
 - b. You agree not to withdraw or otherwise reduce the sums in the payroll bank account for any purpose other than to meet temporary payroll and billable expenses of temporary employees, actually incurred, and you agree to indemnify and hold us harmless for any losses we may incur as a result of the unauthorized use of these funds by you or your agents and employees.
 - c. You agree, within 30 days of signing this Addendum, to secure and maintain at all times a comprehensive employee 3D fidelity bond in the amount of \$100,000 with respect to the payroll bank account, which shall meet our specifications and approval. We will reimburse you for one-half the annual cost of the bond, but in no event to exceed two hundred dollars (\$200), on receiving from you (1) a certificate of insurance and (2) a copy of the premium invoice marked by your insurance agent or broker "paid in full" within ninety (90) days of the effective date of coverage.
 - d. You agree to process in a timely manner the payrolls of temporary employees including all required bookkeeping and other details incident to the temporary payroll, and to mail or personally deliver all payroll checks. You shall have the right to designate two signatures for the payroll account. We shall have the right to designate one or more authorized signatures as we deem advisable in our sole discretion to carry out the purpose of this Agreement. Only one signature will be required to draw on the payroll bank account.

~~/ e = You agree to secure and keep in force an on-site maintenance contract for the computer terminal system. /~~

INITIAL
HERE


f. You agree to mail the following information to us as specified below:

- W-4 forms for all new employees
- Customer slips for all new customers
- Timecards approved by customers
- Any voided payroll checks

g. You will mail the above information on the day you are notified by Western your input was accepted. You will only mail the information for data which was accepted. On acceptance of reentered data as correct, you will then mail the corresponding information.

h. You agree that your local payroll records shall always be available for review and audit during reasonable hours by an authorized representative of Western.

4. This Addendum may be terminated by either party giving 15 days written notice to the other party. Until the effective date of termination, you will continue to operate the local payroll system in accordance with Western's procedures and policies, and you will cooperate with Western in any payroll processing conversion. If for any reason this Addendum is terminated, you agree to return all materials received from Western pursuant to this Addendum and convert to the payroll provisions as set forth in your Franchise Agreement, it being the intention of the parties hereto that in such event all the terms of said Agreement shall revive as if this Addendum had never been executed.

5. In the event that you are in default on any of the terms of the Addendum, we shall have the right to terminate this Addendum immediately upon giving you written notice. In such event you agree to comply with the terms of paragraph 4 above. No waiver by us, express or implied, of any breach of this Addendum by you shall be deemed to be a continuing waiver of a consent to any subsequent breach.

6. Should suit be brought to enforce any condition, covenant or agreement herein, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other remedy afforded by law.

7. Each paragraph of this Addendum is distinct and severable, and if any paragraph shall be held illegal, void or unenforceable it shall not affect the validity or legality of any other portion of this Addendum.

8. All other terms, conditions and covenants of said Franchise Agreement which are not inconsistent with this Addendum shall remain the same and are hereby ratified and affirmed.

The above and foregoing is hereby approved and accepted by me this 12 day of July, 1995.

Witness:

Robert J. Poturalski
(Franchisee) ROBERT J. POTURALSKI, Joint & Several

Barbara A. Poturalski

Barbara A. Poturalski
BARBARA A. POTURALSKI, Joint & Several

Entered into this Addendum at Walnut Creek, CA, on this 11th day of August, 1995.

Witness:

STAFF (USA)
WESTERN ~~TEMPORARY~~ SERVICES, INC.

Sandra Mullen

By: Bonnie A. McDonald
Bonnie A. McDonald, Vice President

Western TEMPORARY SERVICES®

SECURITY AGREEMENT

THIS AGREEMENT, made by and between the undersigned, hereinafter called "Debtor", and Western Temporary Services, Inc., hereinafter called "Secured Party."
Staff (USA)

WITNESSETH:

WHEREAS Debtor has requested Secured Party to extend credit and financial accommodations to Debtor; and

WHEREAS Secured Party is willing to extend credit and financial accommodations upon the security of certain collateral described below;

NOW, THEREFORE, it is hereby agreed as follows:

1. Grant of Security Interest and Description of Collateral. Pursuant to the provisions of the California Uniform Commercial Code, Debtor hereby grants to Secured Party, and Secured Party hereby accepts a security interest in all present and future collateral of the nature, type or class described as follows:

a. All rights of Debtor in the collateral described on the attached Schedule A, which is incorporated herein by reference, hereinafter called the "Collateral." All proceeds of the Collateral, including but not limited to, leasehold interests, equipment, inventory, money, deposit accounts, goods, insurance proceeds and other tangible or intangible property received upon the sale or disposition of the Collateral.

b. All present and future books and records pertaining to the Collateral and the equipment containing such books and records, together with all increases, additions, replacements and all proceeds thereof, all products thereof, all accessions thereto, all guaranties thereof, all security pertaining thereto, and all other personal property of the same nature, type or class which Debtor now owns or holds or may hereafter acquire, whether or not the same is specifically enumerated herein.

2. Location of the Collateral. The Collateral is located at the address(es) set forth on Schedule A.

3. Debt. This Agreement secures the payment, in lawful money of the United States of America, to said Secured Party at its address set forth below, of the following:

a. The performance of all obligations and the payment of all sums required pursuant to the indebtedness described on the attached Schedule A;

b. All further advances and credit made by Secured Party to Debtor including, but not limited to, all advances and expenditures made for the protection, maintenance, preservation or repair of the Collateral;

c. All liabilities of any kind, whether primary, secondary, direct or contingent, which are now due or which may hereafter become due from Debtor to Secured Party; and

d. Performance by Debtor of the covenants hereinafter set forth; provided, however, that this Agreement shall not secure, unless Debtor shall otherwise agree in writing, such further advances or liabilities which are or may hereafter be "consumer credit" subject to the disclosure requirements of the Federal Truth-in-Lending Law and do not arise as a result of any action taken, sum expended, or expense or liability incurred by Secured Party as provided herein.

4. Debtor's Ownership of Collateral. Debtor warrants that it is the owner of the Collateral clear of all liens and security interests except the security interest granted herein and that it has the right to make this Agreement.

5. Debtor's Affirmative Covenants. Debtor covenants and agrees to:

a. Pay Secured Party all amounts due and owing on the debt described on Schedule A and on all other obligations of Debtor to Secured Party when the same shall be due and payable, whether at maturity, by acceleration or otherwise, and shall perform all obligations for which this Security Agreement has been given as security.

b. Defend the Collateral against the claims and demands of all persons.

c. Insure the Collateral against all hazards requested by Secured Party in form and amount satisfactory to Secured Party and name Secured Party as an additional insured.

d. To execute from time to time such additional instruments, including UCC-1 Financing Statements, as may be reasonably required by Secured Party to preserve and perfect the security interest created by this Agreement.

e. Keep the Collateral in condition satisfactory to Secured Party; attend

to and care for the Collateral; maintain in good condition and repair the present buildings and improvements, if any, on the real property where the Collateral is located; give Secured Party prompt notice of any damage to the Collateral or to the said real property; permit Secured Party to enter upon the said real property at reasonable times for the purpose of examining the Collateral, the real property, the buildings and improvements.

f. Immediately pay Secured Party as part of the debt hereby secured all amounts including attorneys' fees with interest thereon paid or advanced by Secured Party for taxes, levies, insurance, repairs to or maintenance of the Collateral and incurred as a result of taking possession of, disposing of, or preserving the Collateral after any default hereinafter described.

g. Immediately inform Secured Party in writing of any change in the business or notice address of Debtor.

6. Debtor's Negative Covenants. Without the prior consent in writing of Secured Party, Debtor covenants and agrees not to:

a. Permit any of the Collateral to be removed from the location set forth on Schedule A.

b. Permit any liens or security interests to attach to any part of the Collateral; permit the Collateral under any legal process to be levied upon; dispose of the Collateral, or permit anything to be done that may impair the value of the Collateral; or of the security interest created hereby.

7. Secured Party's Right to Act on Behalf of Debtor.

a. If Debtor fails to make any payments necessary to preserve and protect the Collateral, Secured Party may, but shall not be obliged to make such payments. Any payments made by Secured Party under the provisions of this Agreement shall be secured by this Security Agreement and shall be immediately due and payable by Debtor to Secured Party.

b. Debtor hereby nominates and appoints Secured Party as attorney-in-fact to do all acts and things which Secured Party may deem necessary or advisable to perfect and continue perfected the security interest created by this Security Agreement (including executing and filing Financing Statements) and to preserve, maintain, protect and collect the Collateral. In order to ensure the foregoing, Debtor authorizes Secured Party to enter upon the premises where the Collateral is located and to take custody and control of the Collateral. Debtor authorizes Secured Party to endorse checks on Debtor's behalf, to collect and receive proceeds and products of the Collateral, and Debtor assigns the rights thereto to Secured Party.

c. If Debtor fails to obtain insurance as required herein, Secured Party shall have the right, but not the obligation, to obtain it at Debtor's expense and Debtor assigns to Secured Party all rights to receive proceeds of insurance, not exceeding the liabilities of Debtor to Secured Party hereunder. Debtor hereby directs any insurer to pay all proceeds directly to Secured Party and authorizes Secured Party to endorse any draft or check for the proceeds.

8. Secured Party's Rights Upon Default. Failure by Debtor to perform any covenant or agreement herein or to discharge any liability to Secured Party, or the giving of any warranty that should prove untrue, or the commencement of any proceedings under the bankruptcy or similar laws by or against Debtor, shall constitute an event of default under this Agreement. Upon the occurrence of any such default, Secured Party, at its option, may accelerate the maturity of any obligation or obligations of Debtor to Secured Party regardless of the terms of any promissory note or other instrument evidencing the same. Secured Party shall also have all of the rights and remedies of a secured party under the California Uniform Commercial Code or other applicable law and all rights provided herein, or in any other applicable security or loan agreement, all of which rights and remedies shall, to the full extent permitted by law, be cumulative. Without limiting the generality of the foregoing, upon such event of default, Secured Party is entitled to take possession of the Collateral or any part thereof, and to take such other measures as Secured Party may deem necessary for the protection of the Collateral. Secured Party may, after any such event of default, require Debtor to assemble the Collateral and to make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to Secured Party and Debtor. Any notice of sale, disposition or other intended action by Secured Party sent to Debtor at least five (5) days prior to such action shall constitute reasonable notice to Debtor. The waiver of any default hereunder shall not be a waiver of any subsequent default. Secured Party's failure to exercise any rights it may have shall not waive any obligation of Debtor or any rights of Secured Party or otherwise modify this

Agreement, or waive any other similar matter which is the subject of this Agreement.

9. Notices. Any notices or communications to be given pursuant to this Agreement shall be sent by either party to the address of the other party set forth below, or to such other address as may be substituted in writing by either party from time to time. Any notices required to be given shall be deemed to have been properly given by one party upon the other when deposited, postage prepaid, in the United States mail.

10. Miscellaneous. All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns; all obligations of Debtor or Debtor's

shareholders, if applicable, shall bind it and its shareholders, heirs, executors, administrators, successors and assigns. If there is more than one Debtor, its obligations hereunder shall be joint and several. Debtor shall execute any additional agreements, assignments or documents that may be deemed necessary or advisable by Secured Party to effectuate the purposes of this Agreement. Any married person who signs this Security Agreement expressly agrees that his or her separate property shall be liable for the indebtedness secured hereby. Any corporation which signs this Security Agreement expressly warrants that the officer signing on behalf of the corporation has authority to so sign by resolution of the Board of Directors of the corporation.

IN WITNESS WHEREOF, Debtor and Secured Party have caused this Agreement to be executed on the date following their respective signatures.

Debtor:

Secured Party:

By: *Robert J. Poturalski*
Name ROBERT J. POTURALSKI, Joint and Several
By: *Barbara A. Poturalski*
Name BARBARA A. POTURALSKI, Joint and Several

STAFF (USA)
WESTERN TEMPORARY SERVICES, INC.
By: *Bonnie A. McDonald*
Name Bonnie A. McDonald
Its: Vice President

Street Address

P.O. Box 9280
Walnut Creek, CA 94598-9280
Attn: Legal Department

City State Zip

Date: July 12, 1995

Date: August 11, 1995

Western TEMPORARY SERVICES.

SCHEDULE A TO SECURITY AGREEMENT

1. Description of Collateral:

All right, title and interest of Debtors under Debtors' Western Medical Franchise Agreement with Secured Party.

All right, title and interest of Debtor in the current office and equipment leases, office furniture and equipment, trade fixtures, supplies and business records and accounts located at:

2. Location of Collateral:

3. Debt: Promissory Note

Date: July 9, 1995

Amount: \$15,000.00

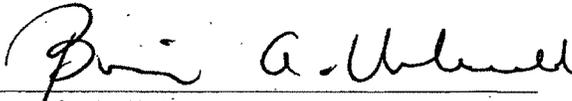
IN WITNESS WHEREOF, the parties hereto have executed this Schedule on the date shown on the Security Agreement.

Debtor:

Secured Party: STAFF (USA)
WESTERN ~~TEMPORARY~~ SERVICES, INC.


Name ROBERT J. POTURALSKI, Joint and Several

By:


Bonnie A. McDonald


BARBARA A. POTURALSKI, Joint and Several

Its:

Vice President

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Western
MEDICAL SERVICES®
A Division of Western Staff Services (USA), Inc.

FRANCHISE PROGRAM

Exhibit B

WESTERN MEDICAL SERVICES

FRANCHISE PROGRAM

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A PROFILE OF WESTERN MEDICAL SERVICES

MISSION STATEMENT

The mission of Western Medical Services Home Health Agency is to provide quality, cost-effective, health care services to our patients and payors, to assure comprehensive care of the sick and disabled in their homes, and to secure for our investors and caregivers adequate resources to provide quality, professional care, now and in the future.

CORPORATE HISTORY

Established in 1967 as a division of Western Staff Services, one of the oldest and largest temporary help firms in the United States. Western Medical Services is a national provider of comprehensive home health care, private duty, and supplemental staffing services. As of November 30, 1994, the company provides services in 33 office locations in 19 states. Of these 33 offices, 20 locations are company owned, 13 locations are operated by franchisees. The company has 12 offices which are certified to provide home health care services to Medicare patients. To date, 8 Western Medical Services' offices have completed their JCAHO survey with official notice of accreditation pending. Three other offices are scheduled for JCAHO survey before January 1, 1995.

THE BENEFITS OF FRANCHISE OWNERSHIP

An effective franchise arrangement offers benefits not generally available to other types of business. The franchise owner profits from:

- The operational know-how generated by the parent company (the franchisor). This leaves the franchisee (affiliate) free to concentrate on selling the product or service in the most profitable way possible.
- Access to key functions that become more affordable and available than they would be for an individual acting independently. These services include advertising, accounting, financing, training, legal, risk management, credit and collection, computerization, large scale purchasing, and technological innovations.
- The expertise of the franchisor, which helps minimize the risk of owning a business. In today's rapidly changing health care industry, staying abreast and reacting to new development is critical!
- The brand name recognition derived from affiliation with an established product or service.
- Referrals and sales leads from the franchisor, and the network of other franchisees.
- Access to capital resources for market expansion through acquisition or introduction of new products and services.

The franchisor benefits as well by generating faster expansion by achieving maximum market penetration in widely dispersed areas and by gaining the franchisee's in-depth knowledge of the local market.

While there is no guarantee of success in owning and operating a franchise, teaming up with a seasoned organization reduces the risk of failure. Recent statistics from the U.S. Department of Commerce indicate that after five years, 91 percent of new franchises are still operating, compared to 23 percent of new independent businesses. Joining with a major company — a leader in its industry — greatly increases the potential for success.

WESTERN FRANCHISE PROGRAM HIGHLIGHTS

- *Western's special incentive:* Western will waive its normal service fee for the first 24 weeks (approximately 6 months) you are in business. Your office will receive Western's full support during this start-up period.
- *Western funds the caregiver payroll 100%*
- *Western, as the employer, pays all payroll taxes and insurance coverage, including malpractice for licensed personnel and workers' compensation*
- *Western provides affiliates, at our expense, with a personal computer system, linked via modem, to our corporate mainframe computer in California. Payroll checks are printed in affiliate's office for immediate distribution. Checks can be issued as often as daily*
- *Western owns and finances the accounts receivable*
- *Western pays affiliate owners the gross profit generated by the business, less our service fee, every four weeks regardless of when our customers pay their Western invoices, subject to a 50% withholding of A/R that age beyond:*
 - 85 days for offices that provide only staffing services
 - 113 days for offices that provide both home care and staffing services
- *Western pays all costs associated with filing fees and surveys required to obtain state licensure, Medicare certification and JCAHO accreditation*
- *Western provides all policies and procedures required for state licensure, Medicare certification, JCAHO accreditation and operation of a home health agency*
- *Western provides billing services (Medicare/Medicaid and non-Medicare)*
- *Western provides Medicare cost reporting services*

- *Western's* National Accounts Department has secured contracts with national and regional insurance companies, case management and managed care organizations and assists the affiliate in the preparation of formal bid proposals
- *Western* shares in any bad debt losses up to your assigned credit limits as long as our credit granting procedures are followed
- *Western* provides a comprehensive, 10 day training program. Five days at *Western's* California Corporate Headquarters (airfare and lodging for up to two people paid by *Western*) and five days on site on a mutually agreed upon date
- *Western* will share in the cost of acquiring home health care companies that may be available for sale within an affiliate's territory
- *Western* provides ongoing clinical and legal support needed to stay abreast of the highly regulated health care industry
- *Western* provides professional corporate services such as accounting, legal, credit and collection, risk management and management information services
- *Western* charges the office a service fee equal to 8% of sales based on all non-Medicare billing to patients and clients for care provided

WESTERN FRANCHISE PROGRAM

SOME FREQUENTLY ASKED QUESTIONS

1. What is the franchise fee?

Western's franchise fee is based on county population -- \$30,000 for counties with a population under two million; \$40,000 for counties with a population of two million and above.

2. Are there any other capital requirements?

Yes. Western requires the franchisee to have adequate working capital of not less than \$100,000 for start-up and ongoing operational expenses.

3. Will my territory be exclusive?

Yes.

4. How often does Western reimburse the franchisee?

Your office receives payment for the gross profit generated by the business, less Western's service fee, every four weeks, regardless of when the customers pay their Western invoices, subject to a 50% withholding of A/R that age beyond:

- 85 days for offices that provide only staffing services
- 113 days for offices that provide both home care and staffing services

5. What is a period?

A period is four weeks and is based on Western's fiscal year. Western's fiscal year ends the last Saturday in October.

6. Does the franchise program include Medicare certification and JCAHO accreditation?

Yes. There is an approval process by Western's Medicare/JCAHO Accreditation Selection Committee to assure that an affiliate can meet the financial, budgetary and staffing requirements under the Medicare Conditions of Participation and JCAHO standards.

7. Does the franchise program include obtaining a Certificate of Need as required in some states?

Western cannot offer any guarantees that we can obtain a Certificate of Need. Western does pay all of the costs associated with obtaining the state licensure, Medicare certification and JCAHO accreditation once you are approved by our Selection Committee. Western does provide up to \$35,000 in legal services, fees and expenses toward securing a Certificate of Need when we determine one is obtainable. Western shares in 32% of any CON costs over \$35,000.

8. How does the program work?

Your income will equal the gross profit generated by the sales in your office, less Western's service fee of 8% of sales.

9. Does Western's service fee equal to 8% of sales apply to Medicare?

No, the Medicare program is based on cost reimbursement.

10. What expenses am I responsible for?

General and administrative expenses which include administrative payroll, rent, utilities, local advertising, etc.

11. What is included in direct costs?

Field (caregiver) wages, mandatory fringe benefit costs, professional liability insurance, workers' compensation, and any other expenses directly related to patient care.

12. Are financial statements a part of the franchise program?

Definitely. Western provides you with a franchise settlement statement each period. Offices that are Medicare certified receive in addition to their franchise settlement statement, an interim cost report each period.

13. Will I have to bear all the loss on bad debts?

No, Western shares in 32% of bad debt losses up to your assigned credit limits, as long as our credit granting procedures are followed.

14. Will I be able to open additional offices?

Yes. In fact Western encourages expansion within your territory. Through our Acquisition Program, Western will share in the cost of acquiring home health care companies that may be available for sale within your territory.

15. Can I sell my franchise?

Yes. Anytime. Subject to Western's first right of refusal and its right to disapprove a buyer for cause. On resale, Western receives 25% of the purchase price paid by the buyer, since Western has helped build the business and create its value.

16. Can I leave Western and operate again as an independent?

After you have operated your franchise for twenty-six full periods, you have the right to exit the Western system by paying Western an amount equal to 8% of sales from the most recent 26 periods.

17. Does Western have a National Accounts Program?

Yes, Western has already secured a number of contracts with national and regional insurance companies, HMO's, and PPO's across the United States.] 8

18. How does the National Accounts Program Work?

Western's National Accounts Director assists affiliate owners with a managed care plan for their marketplace which incorporates national, regional and local HMO's, PPO's, case management and insurance companies. By combining the efforts of our National Accounts Department, the affiliate and referral source, Western strives to generate referrals.

19. What does Western provide in the area of advertising and marketing?

Western creates collateral marketing brochures and promotional items, and makes them available to all offices. It also provides national advertising, direct mail programs, and special television, radio, and medical print co-op programs.

20. What is the charge for the forms required to do business?

There is no charge for any operating forms that are required by Western. There is a nominal charge for sales oriented items.

HOW DO YOU MAKE MONEY?

Your income will equal the gross profit generated by the sales in your office, less Western's service fee of 8% of sales (does not apply to Medicare).

FOR EXAMPLE

	Sales to Western's clients
Less:	Pay to Western's caregivers
Less:	<u>Payroll taxes, insurance and benefits</u>
Equals:	Gross Profit
Less:	<u>Western's 8% Service Fee</u>
Equals:	Your Income \$\$\$\$

(See hypothetical example on following page)

HYPOTHETICAL EXAMPLE

A licensed caregiver is paid \$10.65 per hour to work an assignment; the client is billed \$20.00 per hour and the cost of payroll taxes, insurance, and benefits is \$3.35.

Bill Rate:	\$20.00
Pay Rate:	(10.65)
Payroll Taxes, Insurance, and Benefits	<u>(3.35)</u>
Gross Profit	\$ 6.00 (30%)
Less Western's Service Fee	<u>(1.60)</u>
Your Income	\$ 4.40

The following example illustrates "your income" based on 10 people working a 1 hour, 40 hour and 4 week time period:

	1 Hour	40 Hours	4 Weeks
Bill Rate:	\$ 200	\$8,000	\$32,000
Pay Rate:	(106.50)	(4,260)	17,040
Payroll Taxes, Insurance/Benefits:	(33.35)	(1,430)	(5,360)
Gross Profit:	60.00	2,400	9,600
Less Western's Service Fee Equal to 8% of Sales:	(16.00)	(640)	(2,560)
Your Income:	\$44.00	\$1,760	\$7,040

HYPOTHETICAL
FRANCHISE FEE COMPARISON
WESTERN MEDICAL SERVICES
VERSUS TYPICAL SHARED GP PROGRAM

*Total Sales: \$60,000

<u>GP%</u>	<u>Western Franchise Fee 8% of Sales</u>	<u>Franchisor Share of 40% of GP</u>
18%	\$4,800	\$4,320
20%	\$4,800	\$4,800
22%	\$4,800	\$5,280
24%	\$4,800	\$5,760
26%	\$4,800	\$6,240
28%	\$4,800	\$6,720
30%	\$4,800	\$7,200

*Total Sales: \$100,000

<u>GP%</u>	<u>Western Franchise Fee 8% of Sales</u>	<u>Franchisor Share of 40% of GP</u>
18%	\$8,000	\$7,200
20%	\$8,000	\$8,000
22%	\$8,000	\$8,800
24%	\$8,000	\$9,600
26%	\$8,000	\$10,400
28%	\$8,000	\$11,200
30%	\$8,000	\$12,000

* Note: The figures are provided for comparison purposes only.
 Actual results may vary from franchise to franchise.

STEPS TO BECOMING A WESTERN MEDICAL SERVICES AFFILIATE OWNER

1. Fill out "Executive Questionnaire" and send to Western's Corporate Headquarters. No obligation, of course.
2. Western prepares Prospectus and sends documentation to you.
3. Review documents thoroughly, seek additional input from an attorney or independent business consultant as necessary.
4. Ten business days waiting period.
5. Contact existing Western affiliate owner(s) to discuss financial, operational, and support issues. Prepare list of questions to address as necessary.
6. Visit Western's Corporate Headquarters (shared cost). Meet with the senior management team that supports the Western affiliate owners.
7. Return home and discuss your impressions with people who influence your thinking....spouse, friends, lawyer, accountants, etc.
8. Make decision; sign documentation and remit required fee. Western conducts background investigation.
9. Approval by Franchise Selection Committee and Medicare/Accreditation Certification Committee.
10. Western signs documentation and awards franchise.
11. Attend next available training session.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid USA, Inc.,

Debtor.

Case No. 04-40416
(Jointly Administered)

Chapter 11 Case

**MEMORANDUM IN SUPPORT OF MOTION (1) TO REQUIRE ASSUMPTION
OR REJECTION OF EXECUTORY CONTRACT, (2) TO COMPEL
TIMELY PERFORMANCE UNDER FRANCHISE AGREEMENT AND (3) TO
GRANT ADMINISTRATIVE EXPENSE PRIORITY FOR POST-PETITION
AMOUNTS DUE UNDER FRANCHISE AGREEMENT**

Robert J. Poturalski and Barbara A. Poturalski, by their undersigned counsel, respectfully submit this Memorandum in Support of their Motion (1) to Require Assumption or Rejection of Executory Contract, (2) to Compel Timely Performance Under Franchise Agreement and (3) to Grant Administrative Expense Priority for Post-Petition Amounts Due Under Franchise Agreement.

The facts underlying the relief requested in the Motion are set forth in the verified Motion and Affidavit of Robert P. Poturalski, and are not repeated herein. Capitalized terms used, but not defined, in this Memorandum have the meanings specified in the Motion.

DISCUSSION

**A. CAUSE EXIST TO DIRECT THE DEBTOR TO ASSUME OR REJECT THE
FRANCHISE AGREEMENT WITHIN A SPECIFIED PERIOD OF TIME.**

The Franchise Agreement is an executory contract within the meaning of 11 U.S.C. § 365. 11 U.S.C. § 365(a) provides that the Trustee (which includes the debtor in possession) “may assume or reject any executory contract or unexpired lease of the debtor.” The Bankruptcy Code does not define “executory contract”. Most courts, recognizing the legislative history of

this section, have found executory contract to mean a contract on which performance is due to some extent on both sides. Matter of Newcomb, 744 F.2nd 621 (8th Cir. 1984).

Section 365(d)(2) of the Bankruptcy Code provides that in a case under Chapter 9, 11, 12 or 13, the Trustee or debtor in possession “may assume or reject an executory contract ... at any time before the confirmation of a plan but *the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.*” 11 U.S.C. § 365(d)(2)(emphasis supplied). It has been held that the relevant considerations for the Bankruptcy Court in determining what is a reasonable time for requiring the debtor to determine whether to assume or reject an executory contract includes the following:

1. Damage that the non-debtor party will suffer beyond compensation available under the Bankruptcy Code;
2. Contracts important to the debtor’s business and reorganization;
3. Whether the debtor has had sufficient time to appraise its financial situation and the potential value of the assets in formulating a plan; and
4. Whether exclusivity has terminated.

In re Teligent, Inc., (Bankr. S.D.N.Y. 2001) 268 B.R. 723. See also In re Enron, (Bankr. S.D.N.Y. 2002) 279 B.R. 695; In re Adelphia Communications Corp., (Bankr. S.D.N.Y. 2003) 291 B.R. 283. In reviewing the facts and circumstances of this case, it is clear that balancing the applicable factors compels the conclusion that the Debtors should be required to make a determination as to assumption or rejection of the contract.

First, as set forth in the Affidavit of Robert J. Poturalski, the Ohio Franchisee and their business are suffering continuing and ongoing damage for which they are unlikely to be compensated as part of the bankruptcy proceeding. Aside from the cash flow interruption caused

by the bankruptcy filing, and the failure of the Debtors to pay to the franchisees the revenues which represent the pre-petition defaults, the failure of the Debtors to timely pay to the Ohio Franchisee the post-petition obligations and to perform causes significant damage to the Ohio Franchisee. The Debtors are not rendering performance required under the Franchise Agreement at even a minimal level. In both action and word, the Debtors have indicated that they do not intend to assume the Franchise Agreement. Indeed, to do so would require it to cure both pre-petition and post-petition defaults, and provide adequate assurance of future performance under the contracts. Under the circumstances, it seems clear that the Debtors are choosing to delay the decision to reject the Franchise Agreement solely to extract some financial accommodation from the Ohio Franchisee. The use of § 365 in this manner violates at least the spirit and purposes of § 365. The Ohio Franchisee is being threatened with the shut down of its business operations in an effort to extract a financial benefit.

For these same reasons, the second factor weights in favor of compelling immediate assumption or rejection of the contract. The Franchise Agreement is not important to the Debtors' business or reorganization efforts. In fact, the Debtors for all intents and purposes dismantled its franchise operation and is not servicing the remaining franchisees. It is beyond unlikely that the Debtors will attempt to resurrect the franchise operation as part of its reorganization plan. In order to do so, it would be required to cure past defaults, and put in place the employees and structure to service the franchisees in order to provide adequate assurance of future performance. The expense of curing defaults and hiring staff to operate the franchise operation would be prohibitive. The "benefits" of assuming the Franchise Agreement would be far outweighed by the costs.

Thirdly, the Debtors have had more than sufficient time to appraise its financial situation and the potential value of Franchise Agreement in formulating its plan. The case has been

pending since February. The Ohio Franchisee has been engaged in discussions since the case was filed. The Debtors have shown no indication of an intention to maintain the franchise operation as an ongoing part of the Debtors' business. The Debtors' exclusive period within which to file a plan would have expired on June 6, 2004. It was extended by Order of the Court to August 10, 2004, and upon information and belief, the exclusivity period has been further extended. The Debtors have not filed a plan.

For the foregoing reasons, the Ohio Franchisee is entitled to the entry of an order directing the Debtors to determine whether to assume or reject the contract not later than October 15, 2004. In the interim, the Ohio Franchisee requests that the Court direct that the Debtors timely perform its obligations under the Franchise Agreement.

Finally, the Ohio Franchisee requests that the Court allow the unpaid post-petition amounts due the Ohio Franchisee under the Franchise Agreement as an administrative expense under 11 U.S.C. §503(b)(1) and direct that such payments be made to the Ohio Franchisee according to the terms of the Franchise Agreement. As set forth in the Affidavit of Robert J. Poturalski, the amounts due the Ohio Franchisee are revenues generated solely through the efforts of the Ohio Franchisee. The Debtors are collecting a franchise fee in exchange for which the Ohio Franchisee is receiving no benefit. If these revenues are not the Ohio Franchisee's property, then they are certainly entitled to payment of the same as an actual, necessary cost and expense of preserving the estate.

B. ALTERNATIVELY, THE COURT SHOULD DETERMINE THAT THE FRANCHISE AGREEMENTS ARE NOT ASSUMABLE OR ASSIGNABLE BY THE DEBTOR.

Section 365 of the Bankruptcy Code provides in pertinent part as follows:

“The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if – (1)(a) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (b) such party does not consent to such assumption or assignment; or (2) such contract is a contract to make a loan, or extend other debt financing or debt financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor ...”

11 U.S.C. § 365 (c)(1) and (2). Under these provisions, the Court should find that the Franchise Agreement is not assumable or assignable by the Debtor. Other courts have found that a Franchise Agreement to be non-assignable. See In re Pioneer Ford Sales, 729 F.2d 27 (1st Cir. 1984).

Even more significantly, the Franchise Agreement is a contract to make a loan or extend financial accommodations to the Debtors. As such, it is neither assumable or assignable by the Debtors. Under the Franchise Agreement, and as set forth in the accompanying Affidavit, under the Franchise Agreement, the Ohio Franchisee’s employees formed home health care and related services for their clients. Under the Franchise Agreement, the Ohio Franchisee submits to Intrepid billing and accounting information which Intrepid utilizes in invoicing for such services. Under the Franchise Agreement, Intrepid is required to remit back to the Ohio Franchisee its share of the gross profit. Essentially, Intrepid collects the Franchisee’s money and under the Agreement, is entitled to charge a franchise fee. Under the Franchise Agreement, the Ohio Franchisee is essentially required to extend credit to the Debtors, and during the course of this case, the Debtors have altered their historical practices with respect to timely payment of

such obligations. Under the provisions of § 365(c), the Franchise Agreement is not assumable or assignable as a matter of law.

CONCLUSION

For the reasons set forth herein, the Court should direct the Debtors to assume or reject the Franchise Agreement not later than October 15, 2004, and if such determination is not made, that the Franchise Agreement be deemed rejected as of that date; alternatively, the Court should determine that the Franchise Agreement is not assumable or assignable as a matter of law. Additionally, Movant requests that the Debtors be required to timely perform under the terms of the Franchise Agreement pending such determination, and that all post-petition amounts due be ordered paid to the Ohio Franchisee on a timely basis.

Dated: September 17, 2004.

/e/ Larry B. Ricke
Steven D. DeRuyter (#0022287)
Larry B. Ricke (#0121800)

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ATTORNEYS FOR ROBERT J.
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POTURALSKI

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid USA, Inc.,

Debtor.

Case No. 04-40416
(Jointly Administered)

Chapter 11 Case

**ORDER GRANTING MOTION (1) TO REQUIRE ASSUMPTION
OR REJECTION OF EXECUTORY CONTRACTS AND (2) TO COMPEL
TIMELY PERFORMANCE UNDER FRANCHISE AGREEMENT AND
(3) TO GRANT ADMINISTRATIVE EXPENSE PRIORITY FOR
POST-PETITION AMOUNTS DUE UNDER FRANCHISE AGREEMENTS**

The above-entitled matter came on for hearing before the Court on October 6, 2004, upon the Motion (1) to Require Assumption and Rejection of Executory Contracts (2) to Compel Timely Performance under Franchise Agreement and (3) to Grant Administrative Expense Priority for Post-petition Amounts Due under Franchise Agreement filed by Robert J. Poturalski and Barbara A. Poturalski. Appearances were noted on the record. Based on the verified Motion, all of the files and records in this case, and the argument of counsel, it appearing that notice of the hearing on the Motion was adequate, and the Court being fully advised in the premises,

IT IS ORDERED:

1. The Debtors are hereby required to assume or reject the Franchise Agreements not later than October 15, 2004. If the Debtors have not served the Ohio Franchisee with written notice of their intention to assume or reject the contract and filed a motion requesting approval of such assumption or rejection by that date, then the Franchise Agreement shall be deemed rejected.

2. The Debtors are ordered to timely perform all of their obligations under the Franchise Agreement to the Ohio Franchisee, including payment obligations until such agreements are assumed or rejected.

Dated: _____

Judge of Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Intrepid USA, Inc.,

Debtor.

Case No. 04-40416
(Jointly Administered)

Chapter 11 Case

UNSWORN CERTIFICATE OF SERVICE

I, Jill M. Lillis, declare under penalty of perjury that on September 17, 2004, I served the attached Motion (1) to Require Assumption or Rejection of Executory Contract, (2) to Compel Timely Performance Under Franchise Agreement and (3) to Grant Administrative Expense Priority for Post-Petition Amounts Due Under Franchise Agreement by United States Mail on the following parties:

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Dated: September 17, 2004

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/e/ Jill M. Lillis