



Dated 20__

EQUITY AFIA LIMITED

(the Franchisor)

and

XXXXXXXXXXXXX LIMITED

(the Franchisee)

FRANCHISE AGREEMENT

relating to

EQUITY AFIA LIMITED

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THIS AGREEMENT is made as of the _____ day of _____, 20____

- (1) **EQUITY AFIA LIMITED**, a company registered in the Republic of Kenya with registration number CPR/2015/174536 whose address for the purposes hereof is Post Office Box Number 75104-00200, Nairobi (hereinafter referred to as the **Franchisor**); and
- (2) **XXXXXXXXXXXXXX**, a limited liability company duly incorporated and registered in the Republic of Kenya with registration number [XXXXXXXXXXXXXX] whose address for the purposes hereof is Post Office Box XXXXXXXXXXXXXXXX Nairobi (hereinafter referred to as the **Franchisee**),

(each a **Party** and together the **Parties**).

RECITALS:

- (A) The Franchisor, as a result of extensive research and practical business experience, has developed the Business which is carried on under the Trade Name.
- (B) The Franchisor has a reputation and goodwill in the Trade Name which is associated with high standards of service and integrity.
- (C) The Franchisor has also developed the Services.
- (D) The Franchisor is the owner of Intellectual Property rights in the System.
- (E) The Franchisor is licensed to use the Trade Marks in the provision of the Services.
- (F) The Franchisee wishes to acquire from the Franchisor the right and franchise to operate the Business in the Premises in accordance with the terms of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the recitals and the schedules) the following words and expressions shall, unless the context otherwise requires, have the following meanings:
 - 1.1.1 **Applicable Law** means the applicable local, county and national laws of the jurisdiction in which the Franchisee operates;
 - 1.1.2 **Budget** means the proposed initial approved budget of the Franchisee as set out in Schedule 33, and which shall be subject to further review and approval two (2) months before the end of the year for the following year's budget;
 - 1.1.3 **Business** means providing sustainable and affordable high-quality health care to customers based on the needs and purchasing ability of low income and middle income households, leadership on best-practices in the health care sector, research and innovative initiatives to increase quality care and insurance penetration;
 - 1.1.4 **Business Day** means any day (other than a Saturday, Sunday or gazetted public holiday) on which banking institutions are generally open for the conduct of banking business in Kenya;
 - 1.1.5 **Conditions Precedent** means the conditions set out in clause 5 and the term **Condition Precedent** shall be construed accordingly;
 - 1.1.6 **Confidential information** has the meaning ascribed to it in clause 16.1;

- 1.1.7 **EMCA** means the Environmental Management and Coordination Act (Cap 387, Laws of Kenya);
- 1.1.8 **Expert** means a person who is a senior partner at any of the four (4) global accounting firms in Kenya, being Deloitte & Touche Limited, PricewaterhouseCoopers, Ernst & Young or KPMG, and who is a member of the Institute of Certified Public Accountants of Kenya appointed for the purpose of determining the market value of the assets in clause **Error! Reference source not found.**;
- 1.1.9 **Franchisee's Business** means the Business as carried on by the Franchisee pursuant to and in accordance with this Agreement on the Premises;
- 1.1.10 **Franchise Fee** means the royalty payments and the management fee payable to the Franchisor under this Agreement;
- 1.1.11 **HEP** means the health entrepreneurship training program to be administered by the Franchisor to the Franchisee's employees;
- 1.1.12 **HMIS** means the centrally managed health management and information system software to be leased by the Franchisor from a reliable information technology company and which shall be licensed by the Franchisor to the Franchisee for use in the Franchisee's Business;
- 1.1.13 **Initial Budget Amount** means the amount required to finance the working capital of the Franchisee as set out in the Budget;
- 1.1.14 **Intellectual Property** means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may, now or in the future, subsist in any part of the world relating to the Services, Business, Manual and the System, owned by the Franchisor and acquired by the Franchisor from time to time;
- 1.1.15 **Know-how** means non-patented practical information and knowledge resulting from experience and testing by the Franchisor;
- 1.1.16 **Manual** means the manual setting out the operations and procedures for running the Business created and compiled by the Franchisor, as updated from time to time by the Franchisor and which shall remain the Intellectual Property of the Franchisor;
- 1.1.17 **Premises** means the parcel of land known as [xx] being the premises from where the Franchisee shall operate the Franchisee's Business;
- 1.1.18 **Prohibited Area** means any area within a radius of fifteen (15) kilometres from any Business or Premises of the Franchisee;
- 1.1.19 **Restricted Customer** means any firm, company or person who, during the Restricted Period, was a customer of any other franchisee of the Franchisor;
- 1.1.20 **Restricted Period** has the meaning ascribed to it in clause 20.1.1;

- 1.1.21 **Services** means the specialised health care administration services developed by the Franchisor to be used in, or supplied to, the Franchisee's Business as described in clauses 6 and 7;
- 1.1.22 **Start Date** means xxxxxxxxxxxx or such other date as the Parties may agree in writing;
- 1.1.23 **Start Up Package** means the items, including stationery, listed in Schedule 1 required by the Franchisee to start the Franchisee's Business;
- 1.1.24 **System** means the distinctive business format and method developed and implemented by the Franchisor in connection with the Business using the Intellectual Property, Confidential Information, operational procedures, plans, directions, specifications, methods, management, marketing and advertising techniques which are contained in the Manual;
- 1.1.25 **Tax** shall be construed so as to include any tax, levy, impost, duty or other charge of a similar nature (including, without limitation, value added tax, stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and **Taxation** and **Taxes** shall be construed accordingly and the expression "competent taxing authority" means any state or administrative division thereof or any governmental authority monetary agency or central bank having power to collect or levy Taxes;
- 1.1.26 **Term** means the period of [10 years] from the Start Date;
- 1.1.27 **Trade Marks** means the trademarks and service marks and any other marks used by the Franchisor in relation to the Business from time to time;
- 1.1.28 **Trade Mark Licence** means the trade mark licence to be entered into by the parties substantially in the form set out in Schedule 4;
- 1.1.29 **Trade Name** means the name **Equity Afia** under which the Business is carried on;
- 1.1.30 and
VAT means value added tax or similar or analogous tax chargeable under the relevant value added tax statute and any similar replacement or additional tax.
- 1.2 In this Agreement (including the recitals and the schedules) unless the context otherwise requires:
 - 1.2.1 words denoting the singular number shall include the plural and vice versa and references to the masculine gender includes a reference to the feminine gender and neuter and vice versa;
 - 1.2.2 references to a document in **agreed form** or in **agreed terms** are references to the document described in the form of the draft agreed between the parties thereto and initialled by or on behalf of such parties for purposes of identification;
 - 1.2.3 the expression **person** includes any legal or natural person, partnership, trust, company, joint venture, agency, governmental authority or other body (whether corporate or unincorporate);
 - 1.2.4 references to **writing** shall include any mode of reproducing words in a legible and non-transitory form;
 - 1.2.5 headings to Sections and schedules are for convenience only and shall not affect the interpretation or construction of this Agreement;

- 1.2.6 references to Sections, clauses, sub-clauses and schedules are to be construed as references to the sections, clauses and sub-clauses and schedules to this Agreement;
- 1.2.7 the schedules form part of this Agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this Agreement includes the schedules;
- 1.2.8 statutory provisions shall, save as otherwise expressed in this Agreement, be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and any orders, regulations, instruments or other subordinate legislation made from time to time under the statute concerned provided that any such amendment, consolidation, extension or re-enactment does not have retrospective effect;
- 1.2.9 the rule known as the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word **other** shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words; and
- 1.2.10 indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance.
- 1.3 In this Agreement any reference to any document including this Agreement means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
- 1.4 If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a party such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.
- 1.5 This Agreement is the result of the joint efforts of the Franchisor and the Franchisee and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of the Parties and there shall be no construction or interpretation of any provision of this Agreement against any Party based on any presumption of that Party's involvement in the drafting of this Agreement or any provision thereof.
- 1.6 Where any term is defined within the context of any particular Section, clause or sub-clause, the term so defined, unless it is clear from the Section, clause or sub-clause in question that the term so defined has limited application to such Section, clause or sub-clause, shall bear the meaning ascribed to it for all purposes under this Agreement notwithstanding that that term has not been separately defined in this Section 1.

2 RIGHTS GRANTED

- 2.1 In consideration of the payments agreed to be made by the Franchisee in clause 4 the Franchisor grants the Franchisee a non- exclusive licence to:
 - 2.1.1 operate the Franchisee's Business; and
 - 2.1.2 use the Intellectual Property in connection with the undertaking of the Franchisee's Business,

on the Premises, in accordance with the System, during the Term and in accordance with the provisions of this Agreement and the Trade Mark Licence.

- 2.2 The Franchisee shall enter into the Trade Mark Licence with the Franchisor on the same date as the date of this Agreement.

3 TERM

- 3.1 Subject to the right of termination in clause 18 this Agreement will come into full force and effect from the Start Date for the Term, and shall thereafter continue to be in full force and effect on the terms and conditions hereof *mutatis mutandis* unless terminated by either party giving the other party at least six (6) months' notice to terminate this Agreement.
- 3.2 Upon the expiry of the Term, the Franchisor will not be under any obligation to perform the Services set out in clause 6 which relates to the start-up phase only of the Franchisee's Business.

4 FEES

- 4.1 The Franchisee shall pay to the Franchisor the Franchise Fee of:
- 4.1.1 5 % of all cash sales, franchising fee payable monthly;
- 4.1.2 All credit sales will be classified in bands as shown in the below table ;

| Monthly Revenue Bands (KES) | | Franchise fee (KES) |
|-----------------------------|-----------|---------------------|
| From | To | |
| Zero | 1,000,000 | 50,000 |
| 1,000,001 | 2,000,000 | 100,000 |
| 2,000,001 | 3,000,000 | 135,000 |
| 3,000,001 | 4,000,000 | 160,000 |
| 4,000,001 | 5,000,000 | 175,000 |
| 5,000,001 | 6,000,000 | 180,000 |
| 6,000,001 | 7,000,000 | 200,000 |
| 7,000,001 | above | 250,000 |

- 4.1.3 The Joining fee as prescribed in the table below:

| New facilities (KES) | Additional facilities (KES) |
|-----------------------------|------------------------------------|
| 300,000 (Hub) | 150,000 (Hub) |
| 200,000 (Satellite) | 100,000 (Satellite) |
| 100,000 (Spoke) | 50,000 (Spoke) |

- 4.1.4 The gross monthly revenues shall be as extracted from the HMIS;
- 4.1.5 The fees above stated are subject to review solely by the Franchisor and reasonable notice shall be issued to the Franchisee for the implementation of the new Fees.
- 4.2 The Franchisor may at the end of the financial year, at its sole discretion and following the review of the Franchisee's annual audited accounts, adjust the amount of the Franchise Fee payable to the Franchisor for the succeeding year.
- 4.3 The Franchise Fee shall be paid monthly on or before the 10th day of the month following the month to which the Franchise Fee relates. The Franchisor shall, unless otherwise agreed in writing by the Parties, on the fifth (5th) day of every calendar month send by email to the Franchisee a written invoice setting out the Franchise Fee due to the Franchisor for periods between the first and the last day of the immediately preceding month in accordance with the terms of this Agreement.
- 4.4 Unless the Franchisor otherwise notifies the Franchisee in writing, the Franchisee shall make all payments electronically to the Franchisor's bank account as is notified from time to time in writing by the Franchisor to the Franchisee.
- 4.5 The Franchisor shall be responsible for the payment of all invoices due to third party suppliers.
- 4.6 (Subject to clause 4.7) where there is a variance between the invoicing statistics of the Franchisee and the invoices presented by the Franchisor as Franchise fee as per this agreement, the Parties agree that the amount NOT in dispute shall be settled in accordance with the terms of this Agreement and the Parties shall hold a meeting within fourteen (14) Business Days upon request of the disputing party to compare statistics and other pertinent information necessary to reach an amicable conclusion. Such a meeting may be held by way of a telephone, video conference or other suitable means of communication provided that the representatives of the Franchisee and the Franchisor can communicate effectively.
- 4.7 If there is a variance between the invoicing statistics of the Franchisee and the invoice presented by the Franchisor which variance is equal to or less than nought decimal one per cent (0.1%) of the invoice sum claimed by the Franchisor, then the invoice prepared by the Franchisor will prevail, such that the variance shall not be disputed and the Franchisee shall be required to pay the entire invoice sum without any deduction save as provided for in this Agreement.
- 4.8 All payments due to be made by the Franchisee under this Agreement shall be made free and clear of and without deduction for or on account of any present or future Taxes. If at any time, whether now or in the future, any applicable law, regulation or regulatory requirement withholding in respect of taxes from any payment due under this Agreement for the account of the Franchisor the sum due from the Franchisee in respect

of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Franchisor receives a net sum equal to the sum which the Franchisor would have received had no such deduction or withholding been required to be made and the Franchisee shall indemnify the Franchisor against any losses or costs incurred by the Franchisor by reason of any failure of the Franchisee to make any such deduction or withholding.

- 4.9 Should the Franchisee fail to make full or timeous payments of any invoice due in accordance with the terms of this Agreement on the due date thereof, the Franchisor shall be entitled to charge and receive interest on the amount outstanding, calculated from the due date to the date on which the payment is made in full at the rate of five (5%) per cent per annum above the base lending rate for the time being of Equity Bank (Kenya) Limited. The Franchisee agrees that this is a reasonable pre-estimate of Franchisor's loss that will be suffered as a result of the Franchisee's late payment.
- 4.10 Without prejudice to any other provisions of this Agreement, if any undisputed amount remains outstanding for more than sixty (60) days from the due date of payment, then the Franchisor shall be entitled to forthwith suspend the provision of Services until all outstanding amounts owed to the Franchisor have been paid in full.

5 CONDITIONS PRECEDENT

- 5.1 The Start Date shall be subject to and conditional upon the following Conditions Precedent being satisfied:
- 5.1.1 the Franchisee demonstrating the availability of the Initial Budget Amount and providing the Franchisor with evidence of the availability of the Initial Budget Amount. The Franchisee shall have at least twenty (20%) per cent of the Initial Budget Amount from his own resources and the remaining eighty (80%) per cent may be from financing by a reputable financial institution. It shall be sufficient for the Franchisee to demonstrate availability of ten (10%) per cent of the Initial Budget Amount on or before the Start Date provided the Franchisee provides an undertaking that the remaining ten (10%) per cent will be available within six (6) months from the Start Date;
- 5.1.2 the Franchisee jointly with the Franchisor identifying suitable Premises for conducting the Franchisee's Business;
- 5.1.3 the Franchisee entering into a lease for the Premises with the landlord in relation to the Premises with the Franchisee for the Franchisee's Business; and
- 5.1.4 the Franchisee entering into the Trade Mark License with the Franchisor.

6 FRANCHISOR'S INITIAL OBLIGATIONS

- 6.1 In order to assist the Franchisee in launching the Franchisee's Business, the Franchisor shall on or before the Start Date;
- 6.1.1 provide general advice on how to set up the Franchisee's Business as well as undertake research activities to identify suitable locations and buildings to establish the Franchisee's Business;
- 6.1.2 provide training to the Franchisee with respect to healthcare management including quality clinical services, financial management, human resources management and monitoring and evaluation;

- 6.1.3 install at the Premises centrally managed Health Management Information System (HMIS) to be used for all operations of the Franchisee's Business;
- 6.1.4 offer operational support by providing such suitably qualified staff in such numbers and for such periods as the Franchisor shall reasonably consider necessary to assist the efficient launch of the Franchisee's Business.
- 6.1.5 to inspect the Premises and confirm its suitability to launch the Business;
- 6.1.6 provide operational support to the Franchisee to assist the efficient launch of the Franchisee's Business; and

7 THE FRANCHISOR'S CONTINUING OBLIGATIONS

- 7.1 To assist the Franchisee in conducting the Franchisee's Business, the Franchisor will, provide or make available to the Franchisee the following services during the Term:
 - 7.1.1 provide continuous training through the Health Entrepreneurship Program (HEP) to the Franchisee and its Employees and employees;
 - 7.1.2 facilitate employees training and management, including the development of materials;
 - 7.1.3 maintain the ownership and administration of the HMIS to be used for all operations of the Franchisee's Business;
 - 7.1.4 update the System from time to time and educate the Franchisee on such updates;
 - 7.1.5 use reasonable end to assist the Franchisee to obtain permits and personnel licenses required to undertake the Franchisee's Business;
 - 7.1.6 provide and manage a centralised procurement system for all goods and services required by the Franchisee including but not limited to medical and non-medical equipment, pharmaceutical supplies, non-pharmaceutical supplies, laboratory supplies and any other goods and services that the Franchisee's Business may require from time to time;
 - 7.1.7 up-dating the Franchisee on any alterations and/or improvements in or to the System, to enable the Franchisee keep the Manual up to date. In the event of any dispute, the authentic text of the Manual shall be the copy kept as such by the Franchisor at its head office. The Manual shall at all times remain the property of the Franchisor. The Franchisee hereby acknowledges that the copyright in the Manual is invested in the Franchisor;
 - 7.1.8 provide the Franchisee with such Know-how, advice and guidance relating to the management, finance and promotion of the Franchisee's Business as it thinks fit;
 - 7.1.9 monitoring and evaluation visits by such members of the Franchisor's staff as the Franchisor shall consider appropriate for the purpose of monitoring the standards of the Franchisee service delivery;
 - 7.1.10 advise on all human resource requirements and assist the Franchisee in the recruitment process of employees to be hired by the Franchisee
 - 7.1.11 up to date information regarding all conventions, seminars, franchise meetings organised by the Franchisor, and permit or arrange for the Franchisee at its own expense to attend such events;

7.1.12 subject to payment by the Franchisee and specific to the shared service contracts , pay all invoices due to third party suppliers in the shared service contract promptly in accordance with the terms of supply agreed ;

7.1.13 design and undertake advertising and marketing initiatives to increase patient base.

8 FRANCHISEE'S OBLIGATIONS

8.1 provide evidence of the availability of the Initial Budget Amount within thirty (30) days before the start date and where applicable, providing the undertaking in terms satisfactory to the Franchisor as provided in clause 5.1.1;

8.2 The Franchisee shall at least ten (10) Business Days before the Start Date;

8.2.1 obtain and maintain in good standing at its cost and expense all the necessary approvals, licences, registrations, tax registration/deduction, and permits required by the Applicable Law for the operation of the Franchisee's Business; and

8.3 The Franchisee shall start trading on the Start Date and, at all times during the existence of this Agreement in relation to the Franchisee's Business shall:

8.3.1 operate the Franchisee's Business strictly in accordance with the Applicable Law and not do anything that could reasonably bring the Business, the Franchisor's goodwill in the Trade Marks and/or the Franchisor into disrepute or damage the reputation of the Business or the Franchisor;

8.3.2 undertake not to engage or carry out any illegal activities;

8.3.3 procure through the central procurement system managed by the Franchisor all medical and non-medical equipment, pharmaceutical supplies, non-pharmaceutical supplies, laboratory supplies and any other goods and services that the Franchisee's Business may require from time to time;

8.3.4 only use the HMIS installed and administered by the Franchisor for all its operations, and the Franchisee shall not interfere with or manipulate the HMIS;

8.3.5 maintain in good working condition the furniture, stationery, fixtures and fittings as listed in the Start-Up Package, together with all other assets in the Premises in accordance with the Franchisor's specifications;

8.3.6 replace the furniture, stationery, fixtures and fittings listed in Schedule 1 when required as well as procure any additional equipment and assets for the Franchisee's Business as the Franchisor may require;

8.3.7 use its best endeavours to promote and grow the Franchisee's Business;

8.3.8 pay the Franchise Fee and any other fees due to the Franchisor under this Agreement;

8.3.9 maintain and comply with all relevant Applicable Law in relation to the Intellectual Property;

8.3.10 maintain and comply, as well as facilitate the Franchisor's compliance with all relevant Applicable Law in relation to environmental requirements and obligations as required under the EMCA;

- 8.3.11 use its best endeavours to protect and promote the goodwill in the Business and the Trade Marks;
- 8.3.12 operate the Franchisee's Business during hours specified by the Franchisor from time to time;
- 8.3.13 operate the Franchisee's Business only from the Premises and such other premises as the Franchisor shall consent to in writing;
- 8.3.14 comply with ordering, invoicing and accounting procedures in line with the generally accepted accounting principles as required by the Franchisor;
- 8.3.15 not offer credit to customers save in relation to a credit policy approved by the Franchisor;
- 8.3.16 pay all invoices due to third party suppliers in the Franchisor's panel promptly in accordance with the terms of supply agreed with Franchisee and not enter into any arrangement or agreement to factor, charge or otherwise deal with the debts of the Franchisee's Business without the prior written consent of the Franchisor;
- 8.3.17 without delay, inform the Franchisor of any changes or modification to the Franchisee's Business or System or business opportunity which comes to its attention;
- 8.3.18 supply the Franchisor with such information relating to the Franchisee's Business in such form and at such times as the Franchisor may from time to time require;
- 8.3.19 introduce any improvements or modifications into the Franchisee's Business when requested by the Franchisor;
- 8.3.20 at the request of the Franchisor, provide potential franchisees with information and access to the Premises for training purposes as reasonably requested;
- 8.3.21 put such notifications in such places as required by the relevant Applicable Law and as the Franchisor may require to the effect that the Franchisee is operating the Franchisee's Business under licence from the Franchisor;
- 8.3.22 permit the Franchisor and any person authorised by the Franchisor at all reasonable times to visit the Premises for purposes of checking on the quality of the Services rendered and the manner in which the Business is being carried on, as well as inspecting apparatus being used in connection with the Franchisee's Business;
- 8.3.23 train its employees in the operation of the System in all its aspects to such a standard that will discharge the obligations of the Franchisor under the Agreement;
- 8.3.24 not acquire any interest in an undertaking or engage or seek to engage in any business which competes directly or indirectly with the Business or a business similar to the Franchisee's Business without the written consent of the Franchisor;
- 8.3.25 to ensure that only equipment and supplies specified by the Franchisor (as may be advised from time to time) or goods and services from suppliers recommended by the Franchisor are used in the Franchisee's Business, unless in any particular case, the Franchisee can demonstrate that an alternative uniform item of at least the same standard is available elsewhere on more favourable terms. The Franchisee shall inform the Franchisor of such alternative supply in writing to enable procurement policy amendments for the mutual benefit of the Parties. The Franchisee and any third party suppliers shall then enter into separate supply contracts;

- 8.3.26 not to deviate from the core business of providing low cost, affordable high-quality health care services;
- 8.3.27 maintain proper accounting records for the Franchisee's Business;
- 8.3.28 ensure all personnel are appropriately licensed as required by the Applicable Law to carry out their respective roles in the Business;
- 8.3.29 maintain at all times high quality and standards in the running of the Franchisee's Business in accordance with the specifications of the Franchisor; and.
- 8.3.30 use its best endeavours to keep a minimum stock of the supplies and communicate to the Franchisor any experience gained in exploiting the franchise, and other franchisees non-exclusive know-how resulting from that experience.
- 8.3.31 Procure all furniture, equipments and supplies including stationery, pharmacy supplies, laboratory equipments and supplies and imaging equipments and supplies from the Franchisors pre-qualified suppliers and or vendors required to start up the business, the cost of which shall be deductible from the loan.
- 8.3.32 Provide such local advertising and marketing activities for the launch of the Franchisee's Business before the Start Date in such manner as it may, in its absolute discretion, think fit.

9 FRANCHISEE'S EMPLOYEES AND TRAINING

- 9.1 In relation to the Franchisee's employees who are engaged in the Franchisee's Business, and whose qualification requirements are set out in the Manual, the Franchisee shall, at all times during the existence of this Agreement:
 - 9.1.1 employ sufficient number and quality of employees with the required qualifications, and only with the support of the Franchisor, to fulfil its obligations under this Agreement as notified by the Franchisor from time to time;
 - 9.1.2 not employ any person who has not been approved by the Franchisor and who has not successfully completed the Franchisor's training course provided under clause 9.2 and ensure that all the Franchisee's employees attend such further training as the Franchisor may reasonably require;
 - 9.1.3 ensure the employees are licensed as required by Applicable Laws;
 - 9.1.4 avail the employees to take part in the HEP's and any other trainings and meetings organised by the Franchisor;
 - 9.1.5 implement all reasonable advice given by the Franchisor in relation to the management, remuneration and performance of its employees;
 - 9.1.6 ensure that all employees are well-dressed and professional in the manner specified by the Franchisor from time to time or if not specified, in accordance with acceptable standards;
 - 9.1.7 check, on daily basis, that all employees are fulfilling their duties and obligations, and take all such reasonable steps as the Franchisor may require, to ensure that such duties and obligations are fulfilled; and

9.1.8 obtain a signed confidentiality undertaking from each employee within two (2) weeks from the date of commencement of employment or of the date of this Agreement, whichever shall be the later.

9.2 The Franchisee shall:

9.2.1 provide an initial training programme for the Franchisee's employees in accordance with Schedule 2, and shall give the Franchisor notice of which of the Franchisee's employees have, in its reasonable opinion, successfully completed such training;

9.2.2 provide HEP training to the Franchisee's employees and directors (as may be required) on a regular basis to ensure they keep abreast of developments in the medical sector;

9.2.3 provide other training for the employees of the Franchisee's employees on a regular basis; and

9.2.4 the training provided under clause 9.2.1, 9.2.2 and 9.2.3 shall be at the cost of the Franchisee.

9.3 The employees shall at all times be employees of the Franchisee and the Franchisee indemnifies the Franchisor for any liability or loss that may arise from the employees being deemed to be employees of the Franchisor.

10 ACCOUNTING RECORDS

10.1 The Franchisee shall:

10.1.1 maintain accurate records of all patients and Services offered and submit to the Franchisor a statement of them on or before the fifth (5th) day of each succeeding month. Such records and statement shall be in the form approved by the Franchisor;

10.1.2 keep and maintain at the Premises complete and accurate accounting records relating to the Franchisee's Business in a form approved by the Franchisor and in accordance with the Applicable Law. All such records shall be full, accurate, up to date and sufficient to ascertain any amounts due to the Franchisor. If required by the Franchisor, the Franchisee shall have them audited at the Franchisee's cost and expense by qualified auditors nominated by the Franchisor;

10.1.3 deliver to the Franchisor a copy of the audited accounts of the Franchisee, within three (3) months from the relevant accounting year end;

10.1.4 retain its accounting and financial records for at least six (6) years and three (3) months after the end of any accounting year to which those records relate;

10.1.5 allow representatives of the Franchisor to access the records of the Franchisee at the Premises and take copies of the Franchisee's accounts and records on reasonable notice, during usual business hours during the existence of this Agreement and for a period of three (3) years after the termination of this Agreement; and

10.1.6 supply to the Franchisor copies of all VAT returns and any other financial and fiscal information which the Franchisor may reasonably request.

11 BUSINESS DEVELOPMENT

11.1 The Franchisor shall:

- 11.1.1 promote the Trade Name and Business at the Premises in such manner and at such times as it shall in its absolute discretion think fit; and
- 11.1.2 provide the Franchisee with such promotional display literature and other point-of sale material as it, in its absolute discretion, thinks fit.
- 11.2 The Franchisee shall:
 - 11.2.1 promote the Franchisee's Business in accordance with the Franchisor's instructions using any materials supplied by the Franchisor and co-operate with the Franchisor in relation to any special promotion or advertising campaign as the Franchisor may require;
 - 11.2.2 apply not less than two (2%) percent of the gross sums received by the Franchisee's Business in each month commencing from the Start Date on business development of the Franchisee's Business, which amount shall be reviewed annually at the Franchisor's sole discretion; and
 - 11.2.3 display on its Premises such marketing materials as are required by the Franchisor from time to time.

12 INSURANCE

- 12.1 The Franchisee shall take out and maintain all-risk insurance policies with a reputable insurance company (or companies) approved by the Franchisor with such amount of cover as the Franchisor may, in its absolute discretion, specify Such policies shall include:
 - 12.1.1 professional indemnity cover;
 - 12.1.2 public liability;
 - 12.1.3 liability for damage to property (including to the Premises) and equipment;
 - 12.1.4 loss of profits and interruption of the Franchisee's Business (optional); and
 - 12.1.5 any other cover which the Franchisor may, in its absolute discretion, specify.
- 12.2 The Franchisee shall not breach, or allow any breach of, such policies.
- 12.3 The Franchisee shall provide the Franchisor with copies of all such policies and renewals.
- 12.4 The Franchisee shall use centralised procurement for the insurance policies.
- 12.5 The Franchisee shall promptly pay all premiums for such policies and immediately provide the Franchisor with evidence of payment of premiums.
- 12.6 If the Franchisee fails to take out and maintain such policies, the Franchisor may do so and the Franchisee shall reimburse the Franchisor for all costs and expenses incurred in doing so.
- 12.7 The Franchisee shall procure that the Premises and assets of the Franchisee's Business shall at all times be comprehensively insured for full value, on terms and with insurers approved by the Franchisor from time to time (including naming the Franchisor as "first loss payee"), and provide the Franchisor with a certified copy of such insurance policy, including all annexures and schedules thereto, together with details of the sum and risks for which the Premises and assets have been insured and furnish the Franchisor with all renewal confirmations, in respect of the policy until the relevant assets are sold to a third party and title has passed to that third party.

- 12.8 The Franchisee shall inform the insurers of the Franchisor's interest in and to the Premises and assets of the Business and provide the Franchisor with confirmation from the insurers that the Franchisor's interests as first loss payee have been duly noted and recorded against the insurance policies.

13 INTELLECTUAL PROPERTY

- 13.1 The Franchisee shall execute the Trade Mark Licence on the date of execution of this Agreement. The Franchisee shall, at all times, comply with the terms and conditions of the Trade Mark Licence. If there is any inconsistency between the Trade Mark Licence and this Agreement, this Agreement shall prevail.
- 13.2 The Franchisee acknowledges that:
- 13.2.1 it does not have any right, title or interest in the Intellectual Property or any updates or improvements to it, save as specifically set out in this Agreement and the Trade Mark Licence;
 - 13.2.2 any goodwill (and any other rights) in the Trade Marks which result from the use by the Franchisee of the Trade Marks shall vest in the Franchisor; and
 - 13.2.3 any Intellectual Property developed together with the Franchisor in the course of undertaking the Business using the expertise of the Franchisor shall belong to the Franchisor.
- 13.3 If the Franchisee learns of any threatened or actual infringement of the Intellectual Property, or of any circumstance which suggests that the use of the Intellectual Property may infringe the intellectual property of a third party, it shall immediately inform the Franchisor, giving all such details as the Franchisor requests.
- 13.4 The Franchisor shall have conduct of any proceedings relating to the Intellectual Property and may take whatever action it, in its sole discretion, decides in respect of any infringement or alleged infringement of it, or arising from its use. The Franchisee shall at all times and from time to time co-operate with the Franchisor in taking such action and the Franchisor shall meet any reasonable expenses of the Franchisee in doing so.
- 13.5 The Franchisee shall:
- 13.5.1 not apply for registration of any of the Intellectual Property (or any intellectual property that is confusingly similar to the Intellectual Property) in its own name, in any part of the world;
 - 13.5.2 comply with all requests by the Franchisor as to the use of the Intellectual Property and the [™], © and ® symbols in relation to the Intellectual Property;
 - 13.5.3 not license (or purport to license) sublicense or grant any right to any other person to use any of the Intellectual Property;
 - 13.5.4 not use the Intellectual Property other than as specifically permitted by this Agreement and the Trade Mark Licence;
 - 13.5.5 not use any intellectual property that is confusingly similar to the Intellectual Property;
 - 13.5.6 not do anything that may adversely affect the Intellectual Property or the Franchisor's right or title to it; and

- 13.5.7 immediately stop using any advertising or promotional material or packaging on receipt of a request by the Franchisor to do so.
- 13.6 The Franchisee acknowledges and agrees that the Intellectual Property is and shall remain the exclusive property of the Franchisor.

14 SALE OF BUSINESS

- 14.1 The Franchisee shall not sell, transfer or otherwise dispose of part or all of the Franchisee's Business to a third party purchaser (or purchasers), without the prior written consent of the Franchisor.
- 14.2 The Franchisee shall in the event that it wishes to sell, transfer or otherwise dispose of part of the Franchisee's Business, give the Franchisor or the Franchisor's nominee a first right of refusal at the price offered by a third party purchaser (or purchasers) or at a price determined by the auditors of the Franchisor to be the market value of the Franchisee's Business, whichever is lower. The auditor will provide such valuation within thirty (30) days of receipt of notice from the Franchisee or the Franchisor to undertake a valuation.
- 14.3 Where the Franchisee has a bona fide offer from a third party purchaser, it shall submit to the Franchisor copies of the proposed purchaser's written offer, together with such additional information as to the offer and the proposed purchaser as the Franchisor may reasonably require.
- 14.4 If the Franchisor consents to the sale the Franchisee's Business in accordance with this clause 14, the Franchisee shall procure that the proposed purchaser enters into an agreement similar to this Agreement as a condition of the sale.
- 14.5 The Franchisor shall issue a consent to the Franchisee to register a trading business on the use of the words Equity Afia subject to the fulfilment of the obligation set under this Agreement and requisite due diligence requirements, the Franchisor reserves the right to withhold or revoke such consent as and where necessary.

15 LIABILITY AND INDEMNIFICATION

- 15.1 Notwithstanding the provisions of this Agreement, the liability of Franchisor shall not be liable for the acts or omission of the Franchisee nor shall it be liable under this agreement and its liability shall be limited in accordance with the provisions of this clause 15.
- 15.2 The Franchisee acknowledges that the Franchisor's obligations in respect of the provision of the Services are exhaustively defined in this Agreement and the Franchisor's liability are in lieu of and to the exclusion of any obligation or liability arising out of or in any way related to any warranty, condition, term, duty undertaking or representation of any kind, express or implied, statutory, pursuant to common law or otherwise (including without limitation, implied warranties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability or of accuracy) that is not expressly provided for in this Agreement.
- 15.3 Without prejudice to the generality of the foregoing and notwithstanding the provisions of clauses **Error! Reference source not found.** to 15.10, the Franchisor shall not be liable for any collateral, exemplary, punitive, indirect, incidental or consequential losses or damages (including without limitation, damages for loss of goodwill, for loss of profits or

revenues, for loss of savings, for loss of use or interruptions of business, for loss of confidential or other information, for personal injury, for loss of privacy, for failure to meet any duty, including without limitation, of good faith or of reasonable care, and for any other pecuniary or other loss whatsoever) (including any costs or expenses in respect thereof) of any kind whatsoever, howsoever and by whomsoever caused whether arising out of the provision of or failure to provide any goods or services (including the Services), even in the event of fault, tort (including negligence), misrepresentation (whether intentional, fraudulent, negligent, reckless, innocent or otherwise) strict liability, breach of contract or breach of warranty of the Franchisor, and even if the Franchisor has been advised of their possibility.

- 15.4 Notwithstanding anything to the contrary in this Agreement and notwithstanding any damages, loss, costs or expenses that the Franchisor might actually suffer or incur for any reason whatsoever, and only to the extent that such damages, loss, costs or expenses loss cannot be recovered from insurance taken by the Franchisee, the total liability in respect of any claims for damages, loss, costs or expenses of whatsoever nature accepted by the Franchisor arising pursuant to this clause and the Franchisee shall compensate the Franchisor for:-
- 15.4.1 any loss, damage, cost or expense to the Franchisee resulting from the wilful acts, wilful defaults, gross negligence or breach of statutory duty of or by the Franchisor, its employees or agents; and
- 15.4.2 all claims made by third parties (including and not limited to Customers, employees of the Franchisee) against the Franchisee in respect of death or personal injury resulting from the wilful acts, wilful defaults or gross negligence of the Franchisee, its employees or agents or breach by the Franchisee, its employees or agents of any statutory duties or its obligations under this Agreement,
- 15.5 Franchisee shall indemnify and hold harmless Franchisor, its parent, and correspondents and each of their respective directors, officers, employees and agents (each, including Franchisor, an "Indemnified Person") from and against any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including expert witness fees and legal fees, charges and disbursements of any counsel (including in-house counsel fees and allocated costs) for any Indemnified Person ("Costs"), arising out of, in connection with, or as a result of: (i) the Franchise under this Agreement ; (ii) any transfer, sale, delivery, surrender, or endorsement of any Drawing Document at any time(s) held by any Indemnified Person in connection with the Franchise under this Agreement; (iii) any action or proceeding arising out of or in connection with the Franchise under this Agreement (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under the Franchise under this Agreement, or for the negligence under the Franchise under this Agreement; (iv) any independent undertakings issued by the beneficiary of the Franchise under this Agreement; (v) any unauthorized Instruction (vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated; (vii) any third party seeking to enforce the rights of a Franchisee, beneficiary, nominated person, transferee, assignee of letter of credit proceeds or holder of an instrument or document; (viii) the fraud, forgery or illegal action of parties other than the Indemnified Person; (ix) the enforcement of this Agreement or any rights or remedies under or in connection with this Agreement or the Franchise under this Agreement; (x) the Franchisor's performance of the obligations of a confirming

institution or entity that wrongfully dishonors a confirmation; (xi) Franchisor dishonoring any presentation upon or during the continuance of any Event of Default or for which Franchisee is unable or unwilling to make any payment to Franchisor required under this agreement ; (xii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of such Indemnified Person; in each case, including that resulting from Franchisor's own negligence.

- 15.6 Notwithstanding anything to the contrary in this Agreement and notwithstanding any damages, loss, costs or expenses that the Company might actually suffer or incur for any reason whatsoever, and only to the extent that such damages, loss, costs or expenses cannot be recovered from insurance taken by the Company, the total liability in respect of any claims for damages, loss, costs or expenses of whatsoever nature accepted by the Franchisor and the Franchisee's exclusive remedy in respect of each incident of death or personal injury under clause **Error! Reference source not found.** shall not in the aggregate exceed one hundred per cent (100%) of the Franchise Fees charged in the period of twelve (12) months prior to the occurrence of the event giving rise to such loss (or such shorter period if the Services have been provided by the Franchisor for less than twelve (12) months). The Franchisor, its employees or agents will not be liable in any manner for any civil, criminal, administrative or investigative proceedings or any claim arising out of any act or omission of the Franchisee, its employees or agents or breach by the Franchisee of its obligations under the applicable laws in relation to the provision of the Services.
- 15.7 The Franchisee hereby indemnifies (on a full and unqualified indemnity basis) the Franchisor, its employees and agents from and against all liability disclaimed by the Franchisor pursuant to the provisions of clause 15.6 and will protect and defend the Franchisor, its employees and agents from any action, claim or proceeding alleging such liability, and will pay all expenses and satisfy all judgments that may be incurred by or rendered against the Franchisor, its employees and agents in connection therewith.
- 15.8 The Franchisee hereby indemnifies the Franchisor, its employees and agents against all claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services pursuant to this Agreement.
- 15.9 Claims by the Franchisee for any loss, damage, cost or expense must be presented in writing to the Franchisor within a reasonable time and in no event longer than sixty (60) days after the Franchisor is notified by the Franchisee or otherwise receives notice that circumstances giving rise to such loss, damage, cost or expense has arisen.
- 15.10 No action or suit may be maintained by the Franchisee against the Franchisor for any loss, damage, cost or expense, unless timely written claim has been given as provided in clause 15.9, and unless such action or suit is commenced within six (6) months after the Franchisee provides notification to Franchisor pursuant to clause 15.9.
- 15.11 the Franchisee indemnifies the Franchisor for any liability or loss that may arise from the customers being deemed to be customers of the Franchisor.

16 Return of Property

Franchisee shall immediately return and redeliver to the Franchisor all intangible and tangible material provided and obtained during the term of this agreement not limited to all issued equitel sim cards , Point of Sale system, financial and phone resources, notes, summaries,

memoranda, drawings, manuals, records, excerpts or derivative information, and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data, word processing, or other types of files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Franchisor may so request. The Franchisee, with the written consent of the Franchisor may (or in the case of Notes, at the Franchisee's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Franchisee supervising the destruction).

17 CONFIDENTIALITY

17.1 Parties, to the extent of their contractual and lawful right to do so, will exchange proprietary or confidential information as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either Party to the other, whether oral or written, and when identified as confidential or proprietary in writing, is hereby deemed to be confidential and proprietary information (Confidential Information).

17.2 Except as provided in clause 17.1, a Party receiving Confidential Information pursuant hereto (the Franchisee), shall not, without the prior written consent of the Party disclosing such information (the Disclosing Party), (i) use any portion of the Confidential Information for any purposes other than the purposes of this Agreement, or (ii) disclose any portion of the Confidential Information to any persons or entities other than the employees of and Franchisors to the Franchisee who reasonably need to have access to the Confidential Information in connection with the purposes of this Agreement and who have agreed to protect Confidential Information as though they were a party to this Agreement.

17.3 A Franchisee will not be liable for disclosure of Confidential Information, or part thereof, if the Franchisee can demonstrate that such Confidential Information (i) was in the public domain at the time it was received or subsequently entered the public domain through no fault of the Franchisee; (ii) was known to or was in the possession of the Franchisee at the time of receipt; (iii) became known to the Franchisee from a source other than the Disclosing Party without breach of an obligation of confidentiality. In the event of any legal action or proceeding or asserted legal requirement for disclosure of Confidential Information furnished hereunder, the Franchisee will promptly notify the Disclosing Party and, upon the request and at the expense of the Disclosing Party, will co-operate, to the extent permitted by law with the Disclosing Party in lawfully contesting such disclosure. Except in connection with any failure to discharge its responsibilities under the preceding sentence, the Franchisee will not be liable for any disclosure pursuant to any court order or other lawful and proper demand by any competent authority.

17.4 Confidential Information will remain the property of the Disclosing Party and will, at the Disclosing Party's request and after it is no longer needed for the purposes of this Agreement, promptly be returned thereto or destroyed, together with all copies made by the Franchisee and by anyone to whom such Confidential Information has been made available by the Franchisee in accordance with the provisions of this Section 17.

17.1 The obligations under this Section 16 shall survive termination of this Agreement.

18 TERMINATION

18.1 The Franchisor may terminate this Agreement with immediate effect without prejudice to any of its rights or remedies, by giving One Hundred and Eighty (180) days prior written notice to the Franchisee if:

18.1.1 the Franchisee fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment; or

18.1.2 the Franchisee commits a breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so; or

18.1.3 the Franchisee does not start trading by the Start Date; or

the Franchisee repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to give effect to the terms of this Agreement; or

18.1.4 the Franchisee gives to the Franchisor any false or misleading information, or makes any misrepresentation in connection with obtaining this Agreement or during the Term, in connection with the Franchisee's Business; or

18.1.5 persistent, valid complaints continue to be made to the Franchisor about the quality of the service provided by the Franchisee and the Franchisee, having received notice of such complaints, fails to improve such service to the reasonable satisfaction of the Franchisor; or

18.1.6 the Trade Mark Licence is terminated; or

18.1.7 the Franchisee, in the reasonable opinion of the Franchisor, does, or permits to be done, any act which might jeopardise or invalidate the registration of the Trade Marks or does any act which might assist, or give rise to, an application to remove the Trade Marks, or which might prejudice the right or title of the Franchisor to the Trade Marks; or

18.1.8 the Franchisee purports to assign any of the rights or licences granted under this Agreement other than in accordance with the terms of this Agreement; or

18.1.9 the Franchisee fails to obtain any written approval or consent of the Franchisor as expressly required by this Agreement; or

18.1.10 the Franchisee suspends or threatens to suspend or is unable to pay its debts as they fall due for payment, commences negotiations with creditors with the view of rescheduling any of its debts, an order is made or resolution passed for winding up, administration or dissolution of the Franchisee, a liquidator, trustee in bankruptcy, receiver or administrators is appointed in respect of the Franchisee's Business or any part of its assets; or a creditor or encumbrancer of the Franchisee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or

- 18.1.11 the Franchisee suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the Franchisee's Business; or
- 18.1.12 there is a change in the shareholders of the Franchisee from those as at the Start Date without prior written consent of the Franchisor.

19 CONSEQUENCES OF TERMINATION

- 19.1 On termination or expiry of this Agreement for any reason clauses 14, 15, 16, 18, 19, 19, 21, 23, 24, 27, 30 and 31 shall survive any such termination.
- 19.2 Any termination or expiry of this Agreement shall not affect any rights or liabilities that have accrued prior to such termination.
- 19.3 On termination or expiry of this Agreement for any reason, the Franchisee shall:
 - 19.3.1 immediately pay the Franchisor the full amount of all sums due from the Franchisee to the Franchisor together with any interest payable in accordance with clause 4;
 - 19.3.2 cease to operate the Franchisee's Business and System and to trade under any of the Trade Marks, and not hold the Franchisee out as a franchisee of the Franchisor or do anything that may indicate any relationship between them and the Franchisor;
 - 19.3.3 immediately stop using the Intellectual Property, including the Trade Marks and take all steps as the Franchisor may reasonably require to remove the name of the Franchisee as licensee at the applicable trademarks registries;
 - 19.3.4 cease to use the software supplied to the Franchisee by the Franchisor, and return or at the Franchisor's option, destroy,(without copying) all elements of it, including all software, hardware and documentation relating to it;
 - 19.3.5 return, or at the option of the Franchisor, destroy, all copies of the Manual, stationery and other materials bearing the Trade Marks;
 - 19.3.6 pay all debts owing to creditors of the Franchisee's Business; and
 - 19.3.7 assign to the Franchisor all domain name registrations and rights in website content owned or used by the Franchisee in the Franchisee's Business.
- 19.4 On termination or expiry of this Agreement for any reason, the Franchisor may, at its option, repurchase any plant, equipment, fixtures and fittings used by the Franchisee for the purpose of the Franchisee's Business at the Premises at such price as the Franchisor reasonably considers to be its current market value. If the Franchisor and Franchisee do not agree on the price, the matter shall be referred to the Expert for determination.
- 19.5 On termination or expiry of this Agreement for any reason, the Franchisee must return (at its expense and in good working order and condition) all items of equipment held on loan or hire from the Franchisor under the terms of this Agreement. Until they have been returned or repossessed, the Franchisee shall be solely responsible for the safe keeping, supervision, custody and insurance of them.
- 19.6 If the Franchisee fails to fulfil its obligations under this clause 19 within a reasonable time, take such steps as it thinks fit to fulfil any outstanding obligations.

20 RESTRICTIONS

- 20.1 In order to protect the Confidential Information, trade secrets and business connections of the Franchisor and the Franchisor's other franchisees, the Franchisee covenants with the Franchisor that it shall not:
- 20.1.1 during the Term and for two (2) years after termination or expiry of this Agreement (the **Restricted Period**) and within the Prohibited Area, solicit or endeavour to entice away from the Franchisor or any other franchisee of the Franchisor the business or custom of a Restricted Customer with a view to providing goods or services to that Restricted Customer in competition with the Business; or
 - 20.1.2 during the Restricted Period and within the Prohibited Area, be involved in the course of any business concern which is in competition with or similar to the Business or any business of the Franchisor or any other franchisee of the Franchisor, offer to employ or engage, or otherwise endeavour to entice away, any employee or sales agent of the Franchisor or any other franchisee of the Franchisor; or
 - 20.1.3 during the Restricted Period and within the Prohibited Area, be involved as agent, Franchisor, director, employee, owner, partner or shareholder with any business concern which is or intends to be in competition with the Business; or
 - 20.1.4 during the Restricted Period and within the Prohibited Area, be involved with the provision of goods or services to (or otherwise have any business dealings with) any Restricted Customer in the course of any business concern which is in competition with the Business; or
 - 20.1.5 at any time after termination of this Agreement, represent himself as connected, in any way, with the Franchisor.
- 20.2 None of the restrictions in clause 20.1 shall prevent the Franchisee from:
- 20.2.1 holding an investment by way of shares or other securities of not more than five percent (5%) of the total issued share capital of any company, whether or not it is listed or dealt in on a recognised stock exchange; or
 - 20.2.2 being engaged or concerned in any business concern insofar as their duties or work relate solely to geographical areas where the business concern is not in competition with the Business.
- 20.3 The restrictions imposed on the Franchisee by this clause 20 apply to the Franchisee acting:
- 20.3.1 directly or indirectly; and
 - 20.3.2 on its own behalf or on behalf of, or in conjunction with, any firm, company or person.
- 20.4 Each of the restrictions in this clause 20 is intended to be separate and severable. If any of the restrictions are held to be void, but would be valid if part of their wording were deleted, such restriction shall apply with such deletion as may be necessary to make it valid or effective.

21 ENTIRE AGREEMENT

- 21.1 This Agreement and any documents referred to in it constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between the Parties relating to the subject matter of this Agreement.

- 21.2 If there is an inconsistency between the terms of this Agreement or any other documents referred to in it, the terms of this Agreement shall prevail.
- 21.3 Each Party warrants to the other parties that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22 FURTHER ASSURANCE

- 22.1 The Franchisee shall (and shall use all reasonable endeavours to procure that any necessary third party shall) (at its own expense) promptly execute and deliver all such documents, and perform such acts, as the Franchisor may, from time to time, reasonably require for the purpose of giving full effect to this Agreement and the transactions and arrangements contemplated under this Agreement.

23 ASSIGNMENT

- 23.1 This Agreement is personal to the Franchisee, who, subject to clause 14 may not, without the prior written consent of the Franchisor, assign, transfer, mortgage, charge, declare a trust of, sub-contract, delegate or deal in any other manner with:
- 23.1.1 this Agreement or any of its rights and obligations under it; or
- 23.1.2 the Franchisee's Business, or purport to do any of the same.
- 23.2 The Franchisor may, at any time, assign (absolutely or by way of security and in whole or in part), transfer, mortgage, charge or deal in any other manner with the benefit of any or all of any other party's obligations or any benefit arising under this Agreement.
- 23.3 If there is an assignment pursuant to clause 23.2:
- 23.3.1 the Franchisee may discharge its obligations under this Agreement to the Franchisor until it receives written notice of the assignment;
- 23.3.2 the assignee may enforce this Agreement as if it were a party to it, but the Franchisor shall remain liable for its obligations under this Agreement;
- 23.3.3 the liability of the Franchisee to any assignee cannot be greater than its liability to the Franchisor;
- 23.3.4 notwithstanding clause 0, the Franchisor may disclose to a proposed assignee any information in its possession that relates to this Agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment; and
- 23.3.5 any disclosure pursuant to clause 23.3.4 shall only be made after notice of the identity of the proposed assignee has been given to the Franchisee.
- 23.4 Each party to this Agreement is acting on its own behalf and not for the benefit of another person.

24 NO PARTNERSHIP OR AGENCY

- 24.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute any party the

agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in this Agreement.

25 FORCE MAJEURE

- 25.1 A party, provided that it has complied with the provisions of clause 25.2, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and, subject to clause 25.3, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any of the following:
- 25.1.1 compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - 25.1.2 fire, explosion or accidental damage; and
 - 25.1.3 collapse of building structures, failure of computers.
- 25.2 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement, provided that:
- 25.2.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 25.2.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - 25.2.3 it has used all endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 25.3 If the Force Majeure Event prevails for a continuous period of more than thirty (30) days, any party may terminate this Agreement by giving thirty (30) days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate and the provisions of clause 19 shall apply. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

26 SEVERANCE

- 26.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, unenforceable or illegal, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 26.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and, to the greatest extent possible, to give effect to the commercial intention of the parties.
- 26.3 The parties agree, in the circumstances referred to in clause 26.1 and if clause 26.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves, to the greatest extent possible, the same effect as would have been achieved by the invalid or unenforceable provision. The obligations

of the parties under any invalid or unenforceable provision of this Agreement shall be suspended while an attempt at such substitution is made.

27 VARIATION

27.1 No variation of or amendment to this Agreement shall be effective unless it is in writing and signed by the parties or their authorised representatives.

28 WAIVER

28.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict the further exercise of that or any other right of remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

29 COUNTERPARTS

29.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

30 NOTICES

30.1 A notice or other communication given to a party under or in connection with this Agreement:

30.1.1 shall be in writing;

30.1.2 shall be signed by or on behalf of the party giving it;

30.1.3 shall be sent to the party for the attention of the person at the postal address, email address or fax number specified in this clause (or to such other person or to such other postal address, email address or fax number as that party may notify to the others, in accordance with the provisions of this clause), any such change to take effect five (5) Business Days after the notice is deemed to have been received or, if later, on the date specified in that notice; and

30.1.4 shall be:

- (a) delivered personally; or
- (b) sent by commercial courier; or
- (c) sent by airmail registered post; or
- (d) sent by email; or
- (e) sent by fax.

30.2 The addresses for delivery of a notice or other communication are as follows:

30.2.1 Franchisor:

- (a) address: [P.O Box 29544-00100 Nairobi]
- (b) for the attention of: [General Manager, Equity Afia]
- (c) fax number: [FAX NUMBER]

- (d) email address: [info@equityafia.co.ke]
- 30.2.2 Franchisee:
 - (a) address: [P.O Box xxxxxxxxxxxxxxxxx]
 - (b) for the attention of: [xxxxxxxxxxxxxxxxx]
 - (c) fax number: [N/A]
 - (d) email address: [xxxxxxxxxxxxxxxxxxxxxx]
- 30.3 If a notice or other communication has been properly sent or delivered in accordance with this clause, it shall be deemed to have been received as follows:
 - 30.3.1 if delivered personally, at the time of delivery; or
 - 30.3.2 if sent by commercial courier, at the time of signature of the courier's delivery receipt; or
 - 30.3.3 if sent by airmail registered (or similar) post, 10.00 am on the tenth Business Day after posting; or
 - 30.3.4 if delivered by email, when a delivery-receipt has been received by the sender in respect of the email address notified or an acknowledgement of the e-mail by the recipient sent to the sender; or
 - 30.3.5 if sent by fax, at the time of transmission.
- 30.4 For the purposes of this clause, if deemed receipt is not within usual business hours in the place of business of the recipient, the notice or other communication is deemed to have been received on the next Business Day in the place of receipt.
- 30.5 To prove delivery, it is sufficient to prove that:
 - 30.5.1 if sent by airmail registered post, the envelope containing the notice or other communication was properly addressed and posted; or
 - 30.5.2 if sent by fax, the notice or other communication was transmitted by fax to the fax number of the party.
- 30.6 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 30.7 A notice or other communication required to be given under, or in connection with, this Agreement shall not be validly given if sent by e-mail.

31 GOVERNING LAW AND DISPUTE RESOLUTION

- 31.1 This Agreement, including all matters relating to its validity, construction, performance and enforcement, shall be governed by and construed in accordance with the law of Kenya.
- 31.2 All disputes or differences which at any time arise between the parties whether during the Term or afterwards touching or concerning this Agreement or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this Agreement shall be referred to arbitration by a single arbitrator to be agreed upon by the parties or in default of agreement by the Chairman for the time being of the

Chartered Institute of Arbitrators in accordance with the provisions of the Arbitration Act No. 4 of 1995 and the rules of the Chartered Institute of Arbitrators (Kenya Branch) shall apply to all such or any statutory modification or re-enactment of it for the time being in force whose decision in relation to any such dispute or difference shall be final and binding on the parties hereto. The seat of arbitration shall be in Nairobi, Kenya. The language to be used in the arbitral proceedings shall be in English.

- 31.3 The determination of the arbitrator shall be final and binding upon the parties and, so far as the law permits, not subject to appeal.
- 31.4 Notwithstanding the foregoing, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from a court of competent jurisdiction pending the final award.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties as of the day and year first above written.

| | |
|---------------------------------------|---|
| Sealed with the Common Seal of |] |
| EQUITY AFIA LIMITED |] |
| in the presence of: |] |
| |] |
| |] |
| |] |
| DIRECTOR |] |
| |] |
| |] |
| |] |
| |] |
| |] |
| DIRECTOR |] |

| | |
|--|---|
| Sealed with the Common Seal of |] |
| [INSERT NAME OF THE FRANCHISEE] |] |
| in the presence of: |] |
| |] |
| |] |
| |] |
| DIRECTOR |] |
| |] |
| |] |
| |] |
| |] |
| |] |
| DIRECTOR |] |

Drawn By:
Anjarwalla & Khanna Advocates
3rd Floor, The Oval
Junction of Ring Rd Parklands & Jalaram Rd
Westlands P.O Box 200 - 00606
Nairobi, Kenya

Schedule 1 START UP PACKAGE (HUB)

1. Remodeled site to Equity Afia Brand
2. Pharmaceutical supplies
3. Non-Pharmaceutical Equipment & Supplies
4. Laboratory Equipment
5. X-Ray Machine
6. Ultra-Sound Machine
7. Electrocardiogram
8. Automated External Defibrillator
9. Vital Signs Monitor
10. Information Technology Equipment
11. Health Management Information System
12. Furniture
13. Equity Afia Manuals, Policies and Guidelines
14. Listing of out-sourced services and identified suppliers
15. Listing of admitting Medical Specialists
16. Listing of Referral Health Facilities
17. Security and guarding services

Schedule 2 : TRAINING

Training Schedule

1. Equity Afia Induction
2. Equity Afia Policies, Procedures, Manuals and Guidelines
3. Basic Life Support
4. Advanced Cardiac Life Support
5. Advanced Trauma Life Support
6. Health Management Information System
7. Health Entrepreneurship Programme
8. Continuous Medical Educations

Schedule 3 BUDGET

Initial Budget

| Equity Afia Limited initial Requirement[insert name of the Branch] | | |
|---|--------------------------------|----------------------|
| | | |
| | Description | Budget Amount |
| | | (Kes) |
| Working Capital | | |
| | Operational Expenses | |
| | Trading licences | |
| | Insurance | |
| | Rent & rates | |
| | Petty Cash | |
| | TOTAL Working Capital | |
| | | |
| Fixed Assets | | |
| Medical Equipment | | |
| | Medical Equipment - Cost | |
| | TOTAL Medical Equipment | |
| Computers | | |
| | Computers - cost | |
| | TOTAL Computers cost | |
| Furniture & Fittings | | |
| | Furniture & Fittings - Cost | |

| | | |
|---|---------------------------------------|--|
| | TOTAL Furniture & Fittings | |
| Lease Hold Improvements | | |
| | LeaseHold Improvements- Cost | |
| | TOTAL Lease Hold Improvements | |
| | TOTAL FIXED ASSETS | |
| | | |
| Inventory | | |
| | | |
| | Pharmaceuticals | |
| | Non-Pharmaceuticals | |
| | TOTAL Inventory | |
| | | |
| Total Assets and Working Capital | | |

Schedule 4 TRADE MARK LICENCE