

**FRANCHISE AGREEMENT**

**between**

**SALON PROFESSIONAL EDUCATION COMPANY, LLC ("SPEC")**

**and**

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## FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT is entered into by SPEC, a ~~Minnesota~~North Dakota limited liability company (“Franchisor”), and \_\_\_\_\_ (“Franchisee”), a \_\_\_\_\_, on the date set forth in the parties’ signature page below.

A. As the result of the expenditure of time, skill, effort, and money, Franchisor has a special System. Under the System, Franchisee has the right to establish and operate a distinctive school for training students in hairstyling and other cosmetology services (and, at its election, if it has sufficient space, massage services) under the SPEC service marks (“SPEC Marks”) and one of the following cosmetology school brands that Franchisee selects (the “Selected Trademark”): ***The Salon Professional Academy, Academy for Salon Mastery, or Elevate Salon Institute***, which selection is set forth adjacent to the parties’ signatures to this Agreement.

B. The System’s distinguishing characteristics include: uniform standards and procedures for business operations; ongoing training in the operation, management, and promotion of the franchised business; advertising and promotional programs; quality education facilities; customer development and service techniques; student development; and other technical assistance, all of which may be changed, improved or further developed by Franchisor.

C. Franchisee recognizes the benefits to be derived from receiving a Franchise from Franchisor and desires to enter into this Franchise Agreement subject to the conditions and controls prescribed herein and to receive the benefits provided by Franchisor in connection with this Agreement. Franchisor has reviewed Franchisee’s application and has decided to award a Franchise to Franchisee in accordance with the terms of this Agreement.

The parties, therefore, agree as follows:

### ARTICLE 1. APPOINTMENT

- 1.1. **Grant.** Subject to the terms and conditions contained in this Agreement, Franchisor grants to Franchisee the right—and Franchisee undertakes the obligation—to operate the Franchised Business in accordance with the System.
- 1.2. **Location of the Franchised Business.** The “Premises” means the entire real property—either owned or leased by Franchisee—where the Franchised Business is located, as more fully described in Schedule 1.2. If Schedule 1.2 is not complete as of the Agreement Date, the Premises must be designated and Schedule 1.2 completed after Franchisee selects a Site within the Reserved Area in accordance with Section 4.1. The failure to insert the address for the Premises shall not render this Agreement unenforceable. Without Franchisor’s prior consent and Franchisee’s compliance with Franchisor’s then current relocation procedures, the location of the Premises cannot be changed. Franchisee shall operate the Franchised Business only at the Premises and not from or at any other location, whether on a permanent or temporary basis, even if such location is within the Protected Territory.
- 1.3. **Protected Territory.** Subject to Section 5.6, during the Term for so long as Franchisee is not in default, Franchisor shall not itself operate—or grant a third party the right to operate—a cosmetology school using Franchisee’s Selected Trademark within the territory described in Schedule 1.3 (the “Protected Territory”).

### ARTICLE 2. FRANCHISOR’S DUTIES

So long as Franchisee is not in default under this Agreement, Franchisor shall assist and provide certain services to Franchisee, as follows:

- 2.1. **License.** During the Term, Franchisor licenses to Franchisee the right to use the Proprietary Property as authorized under this Agreement.

2.2. **Site-Selection Criteria.** Franchisor may supply the Site-Selection Criteria and such on-site evaluation as it deems advisable in accordance with Section 4.1.a.

2.3. **Plans and Specifications.** Franchisor shall loan to Franchisee Franchisor's plans or specifications, if any, for design, decoration, layout, equipment, furniture, fixtures and signs for the Franchised Business (collectively, the "Design Specifications"). The Design Specifications shall be for two different sizes that Franchisor offers for the Premises. On or before the Opening Date, or, if sooner, the Opening Date Deadline, Franchisee shall return to Franchisor the Design Specifications.

2.4. **Systems, Lists, Forms and Schedules.**

- a. Franchisor shall provide Franchisee with a list of standardized accounting, cost control, portion control and inventory control systems or Software that Franchisee must acquire prior to opening the Franchised Business.
- b. Franchisor shall provide Franchisee with an initial set of forms, including various operational forms. Such forms may be provided through access to Franchisor's designated website for franchisees.
- c. Franchisor shall provide Franchisee with a list of required equipment, supplies, materials, inventory, and other items necessary to operate the Franchised Business and a list of designated, approved or recommended suppliers of all such items.
- d. Franchisor may provide Franchisee with a schedule of items, if any, that Franchisee must purchase from Franchisor or its affiliates. Such items may include inventory, business forms, uniforms, promotional materials and brochures, and other items.
- e. Franchisor may provide Franchisee with a schedule of recommended, but not required, items such as equipment and supplies and a list of approved or recommended suppliers of these items.

2.5. **Initial Franchise Training.**

- a. Initial Franchise Training. Franchisor shall provide Trainees a minimum of 172 hours of initial training for operating the Franchised Business ("Initial Franchise Training") at a location designated by Franchisor, which may be on-site, online, at Franchisor's principal training facilities or at such other location designated by Franchisor. A "Trainee" shall be a person required or approved by Franchisor to attend Initial Franchise Training. All Trainees must be acceptable to Franchisor. The Franchise Owner and your Operations Director must attend Initial Regional Franchise Training~~Trainings~~. Initial Franchise Training includes instruction in the following areas: site selection and buildout; marketing, promotions, and advertising; management; cosmetology education and training; recruiting and admissions; operations; hiring; and computer applications. At its expense, Franchisor shall provide instructors, facilities, training materials, and technical training tools in connection with Initial Franchise Training. Franchisee is responsible for all other expenses the Trainees incur in connection with attending Initial Franchise Training, including all travel, lodging, and meal expenses. In its discretion, Franchisor may provide Initial Franchise Training to multiple franchisees at the same time. Franchisee is responsible to ensure that all Trainees attend Initial Franchise Training at the applicable times and locations offered by Franchisor. Franchisor has no obligation to provide Initial Franchise Training at other times or locations, or on an individual franchisee basis.
- b. Failure to Complete Initial Franchise Training. All Trainees must complete Initial Franchise Training prior to the Opening Date. If Franchisor, determines that any Trainee has failed to satisfactorily complete Initial Franchise Training it may, at Franchisee's expense, retrain such Trainee or allow Franchisee to hire a substitute Trainee who must attend and satisfactorily complete Initial Franchise Training. Alternatively, Franchisor may elect to terminate this Agreement.

2.6. **Manuals.** Franchisor will provide Franchisee a copy of the Manuals (with periodic revisions as required). Franchisor may provide the Manuals in an electronic medium, including by download from Franchisor's website.

2.7. **Continued Assistance and Support.**

- a. Routine Assistance. Franchisor, to the extent it considers advisable, may make its staff reasonably accessible for routine consultation or other routine assistance that is not considered special assistance pursuant to Section 2.7.d. in person or by telephone, facsimile, written communication, email, or other electronic means (including Skype or other medium).
- b. Advertising. Franchisor, to the extent it considers advisable, may generally promote its franchisees through advertising and public relation campaigns in such manner as it deems advisable.
- c. Post-Opening Training.
  - i. Franchisor shall offer the following amounts of refresher or additional training programs and seminars (collectively, the "Regular Training"): (i) during the first year following the Opening Date, 156 hours of Regular Training; (ii) during the second year following the Opening Date, 111 hours of Regular Training; and (iii) during the third and each of the subsequent years following the Opening Date, 100 hours of Regular Training. Franchisor will track the number of hours of routine and special assistance provided to Franchisee under Sections 2.7.a. and 2.7.d. Franchisor's tracking of its time to provide assistance under Sections 2.7.a. or 2.7.d, if any, will be done in ten minute increments with a minimum of ten minutes for each task (e.g., telephone conference or email). Except as follows, neither routine nor special assistance is considered Post-Opening Training. All time that Franchisor spends on any such assistance in any year of the Term will count toward the hours Franchisor is required to offer during such year for the Regular Training. If Franchisee does not complete the full amount of hours of the Regular Training in any year of the Term, Franchisee may not carry over any unused hours to the next year of the Term.
  - ii. Franchisor may also offer refresher, advanced or additional programs and seminars over and above the Regular Training ("Special Training," and collectively with the Regular Training, "Post-Opening Training").
  - iii. Post-Opening Training shall be offered at a location designated by Franchisor, which may be on-site, online, at Franchisor's principal training facility, or at such other location designated by Franchisor. Post-Opening Training may include instruction in one or more of the following areas: new developments; improvements in equipment and supplies, new techniques and materials in advertising, service, or management; marketing, promotions, and advertising; cosmetology education and training; recruiting and admissions; student placement; accreditation; and operations. Franchisor may require each Franchise Owner, the Operations Director and any of Franchisee's employees as Franchisor may designate, to attend Post-Opening Training. At its expense, Franchisor shall provide instructors, facilities, training materials, and technical training tools in connection with the Regular Training. Franchisee is responsible for all other expenses its attendees incur in connection with attending Regular Training, including all travel, lodging, and meal expenses. Franchisee is solely responsible for all costs and expenses associated with any Special Training, including the then prevailing training fee Franchisor charges for such training, if any, as well as all travel, lodging and meal expenses Franchisee's attendees incur. In its discretion, Franchisor may provide Post-Opening Training to multiple franchisees at the same time. Franchisee is responsible to ensure that its attendees attend Post-Opening Training at the applicable times and locations offered by Franchisor. Franchisor has no obligation to provide Post-Opening Training at other times or locations, or on an individual franchisee basis. Franchisee may object to not receiving any requisite number of hours of Regular Training in any year, or being overcharged for any assistance in any year. To do so, Franchisee must deliver a notice of

such claim within 90 days of the end of such year. Any failure to do so within the provided time constitutes a waiver of any right to make such claim thereafter. Franchisee shall cooperate with Franchisor as it reasonably requests to help it evaluate the claim. If Franchisor confirms the claim is correct Franchisor shall promptly take action to provide the missed training or credit (or, if already paid, refund) any overpayment.

- d. Special Assistance. If Franchisee requests non-routine guidance or other assistance to deal with Franchisee's unusual or unique operating problems, makes multiple assistance requests in a limited period, or requests training of new staff, to the extent that Franchisor determines that it can reasonably accommodate such requests, Franchisor will furnish such assistance and training at its then current fees, which Franchisee shall pay Franchisor together with any out-of-pocket expenses that Franchisor incurs providing such guidance and assistance. Franchisor shall, in its discretion, determine whether any assistance is special assistance pursuant to this Section 2.7.d. or routine assistance pursuant to Section 2.7.a. Notwithstanding the foregoing, Franchisor will not charge any fee for the first 12 hours of special assistance in each year of the Term (but Franchisee will still be responsible for any out-of-pocket expenses that Franchisor incurs in providing such special assistance). Special assistance may be provided by Franchisor upon the request of Franchisee and is specific to Franchisee. For clarification, Post-Opening Training is not offered specifically for or at the Franchisee's request. It is offered to Franchisee as part of larger programs for multiple franchisees, including the Franchisee.

- 2.8. ***Duties Solely to Franchisee; Delegation***. All of Franchisor's obligations under this Agreement are solely to Franchisee. No other party may rely on, enforce, or obtain relief for breach of such obligations either directly or by subrogation. Franchisor may delegate any or all of its duties under this Agreement to a Delegatee. To the extent Franchisor periodically requests, Franchisee shall discharge its duties with respect to such Delegatee in the same manner that it is otherwise required to do so with Franchisor.

### ARTICLE 3.

#### FEES AND PAYMENTS

- 3.1. ***Types of Fees***. In consideration of Franchisor's executing this Agreement, in addition to any other fees that may be required under this Agreement, Franchisee shall pay the following fees to Franchisor:
- a. Initial Franchise Fee. Upon the execution of this Agreement, Franchisee shall pay Franchisor an initial franchise fee of \$38,500 (the "Initial Franchise Fee"). At such time, the Initial Franchise Fee is fully earned by Franchisor and nonrefundable.
- b. Royalty Fee.
- i. Calculation of Royalty Fee. Franchisee shall pay Franchisor a continuing monthly non-refundable royalty fee (the "Royalty Fee") equal to 6% of monthly Gross Revenues.
- ii. Minimum Royalty Fee. The minimum monthly Royalty Fee that Franchisee must pay is \$1,500. However, the minimum monthly Royalty Fee is due regardless of the opening date of the Franchised Business or the amount of the Gross Revenues, starting only in the sixth full calendar month after signing this Agreement.
- c. Technology Fee. Franchisor may provide, maintain, or assist Franchisee in obtaining (or obtaining access to) some or all of the Software that Franchisee is required to purchase or use under this Agreement, including a cloud based customer relationship management system. If it does, Franchisor may charge Franchisee a monthly fee of up to \$250 (the "Technology Fee") to reimburse Franchisor for expenses to third parties and to provide an administrative fee that Franchisor designates in connection therewith. Franchisor may periodically increase the limit set forth above upon 90 days prior notice to Franchisee if, after the date of this Agreement, Franchisor incurs more fees or costs in connection with such Software; provided, that, Franchisor will not increase the maximum amount it

is permitted to charge by an average of more than 20% per year in any consecutive five year period unless approved by its franchise advisory committee.

- 3.2. **Payment Schedule.** No later than the 10<sup>th</sup> day of each month during the Term, Franchisee shall pay Franchisor the Royalty Fee and Technology Fee (if any) for the preceding month, and deliver any required monthly reports. All other amounts due to Franchisor from Franchisee shall be paid as specified in this Agreement or, if no time is specified, such amounts are due upon receipt of an invoice from Franchisor. Any payment or report not actually received by Franchisor on or before its due date shall be deemed overdue.
- 3.3. **Payment System.** All required payments by Franchisee to Franchisor or to any of its affiliates must be effectuated by a payment system using pre-authorized transfers from Franchisee's operating account through the use of electronic fund transfers, or by any other payment system designated by Franchisor (the "Payment System"). Franchisor may process such transfers at the time any payment is due and owing. Franchisee shall cooperate with Franchisor in all respects to implement the Payment System within 15 days before the scheduled Opening Date. Franchisee shall cooperate with Franchisor in maintaining the efficient operation of the Payment System (including depositing all Gross Revenues it receives in the operating account accessed by the Payment System within three business days of receipt). With respect to the Payment System, Franchisee shall pay all charges imposed by its financial institution and Franchisor shall pay all the charges imposed by its financial institution.
- 3.4. **Payment Obligations.** Franchisee's obligations to make payments in accordance with this Agreement and any other agreement entered into with Franchisor or any of its affiliates with respect to the Franchised Business—and the rights of Franchisor and its affiliates, if any, to receive such payments—are absolute and unconditional. They are not subject to any abatement, reduction, setoff, defense, counterclaim or recoupment due or alleged to be due to any past, present, or future claims that Franchisee has or may have against Franchisor, any of its affiliates, any of its Delegates, or against any other person for any reason whatsoever.
- 3.5. **Interest on Late Payments; Late Charge.** Each failure to pay monies when due is a material breach of this Agreement. To encourage prompt payment and to cover the costs involved in processing late payments, if any payment under this Agreement or any other agreement between Franchisor and Franchisee is overdue for any reason, Franchisee shall pay to Franchisor on demand, in addition to the overdue amount, interest on such overdue amount from the date it was due until paid at a rate (the "Contract Interest Rate") equal to the lesser of: (a) 18% per annum; and (b) the maximum rate of interest permitted by law. In addition to interest on overdue amounts, Franchisee shall pay a late charge on demand of up to \$200 for each payment that is more than 10 days overdue to cover Franchisor's administrative costs in dealing with the late payment. Nothing in this Agreement may be construed to mean that Franchisee is to pay, or has contracted to pay, any sum in excess of that which may lawfully be charged or contracted for under any applicable law. The parties intend to strictly conform to applicable usury laws. If an amount in excess of such laws is inadvertently collected, it must be applied to reduce outstanding amounts owed for Royalty Fees and Technology Fees, if any.
- 3.6. **Application of Payments.** Notwithstanding any designation by Franchisee, Franchisor has the absolute and unlimited discretion to apply any payments made by Franchisee or effectuated through the Payment System to any past due indebtedness of Franchisee, including Royalty Fees, purchases from Franchisor or its affiliates, late charges, or any other indebtedness of Franchisee to Franchisor or its affiliates in any manner chosen by Franchisor.
- 3.7. **Security Interest.** Subject to any subordination agreement that Franchisor may enter into pursuant to the last sentence of this Section 3.7, to secure the payment and performance of all Franchisee's monetary and other obligations to Franchisor or its affiliates arising under or relating to this Agreement or any other agreement, Franchisee grants to Franchisor a first-priority security interest in all Franchisee's assets used

in connection with the Franchised Business (including all accessions thereto and proceeds thereof and any and all after acquired property). These assets include the lease for the Premises and all furniture, fixtures, machinery, equipment, inventory and all other property, (tangible or intangible), now owned or later acquired by Franchisee, used in connection with the Franchised Business, wheresoever located, as well as all contractual and related rights of Franchisee under this Agreement and all other agreements between the parties. Upon Franchisor's request, Franchisee shall execute such financing statements, continuation statements, notices of lien, assignments or other documents as may be required in order to perfect and maintain Franchisor's security interest, including attaching a collateral description of the aforesaid collateral as Franchisor may deem advisable. Alternatively, Franchisee hereby authorizes Franchisor to execute, in its own name, and file such financing statements, continuation statements, and other documents (using such descriptions of the aforesaid collateral), as Franchisor may deem advisable. Franchisee shall pay all filing fees and costs for perfecting Franchisor's security interest. Notwithstanding the foregoing, Franchisor will not unreasonably withhold its consent to enter into a subordination agreement, in form and substance satisfactory to it, whereby it will subordinate its security interest to: (a) the security interest of a reputable institutional lender relating to a loan to Franchisee for reasonable working capital or construction purposes; or (b) the purchase money security interest of an approved equipment vendor for any equipment purchased or leased by Franchisee and used in the operation of the Franchised Business.

- 3.8. **Rebates.** Suppliers that provide Franchisee with products or services may pay Franchisor rebates, or provide it with other benefits, based on franchisees' purchases of those products and services. Franchisee hereby acknowledges the existence of such payments and that nothing in this Agreement prevents Franchisor from receiving them and hereby authorizes Franchisor to keep or use such payments for any purpose Franchisor considers advisable, including keeping them for its own account.

#### ARTICLE 4.

#### THE FRANCHISEE'S DUTIES

##### 4.1. **Acquisition of the Site.**

- a. **Site Approval.** Franchisee is entitled to determine which of two general sizes it desires to operate for the Premises, in accordance with the Design Specifications. If, as of the Agreement Date, the Premises have not already been approved by Franchisor, Franchisee shall select a site for the Premises within the Reserved Area and present it to Franchisor for its approval within 120 days of the Agreement Date (each proposed site, a "Site"). In such case, Franchisor may supply its Site-Selection Criteria. If Franchisor (either on its own initiative or at Franchisee's request) considers on-site evaluation necessary or advisable, Franchisee shall reimburse Franchisor for all reasonable expenses it incurs in connection with such on-site evaluation (including the cost of travel, lodging and meals). Franchisee is solely responsible for selecting the Site and Franchisor has the right to accept or reject the Site at its discretion; provided, that, Franchisor will not unreasonably withhold approval of any Site that meets the Site-Selection Criteria. If Franchisor rejects Franchisee's selected Site, Franchisee has 90 days after delivery of written notice of such rejection to submit a new Site for Franchisor's approval. If a Site, however, has not been approved by Franchisor within 210 days of the Agreement Date, Franchisor may elect to terminate this Agreement. A Site will not become the Premises unless and until approved by Franchisor. Franchisor will review site approval submissions on a first-in basis. Within 270 days of the Agreement Date, Franchisee, at its expense, shall complete the acquisition or lease arrangements to acquire or lease the Premises for the Franchised Business. If Franchisee fails to so acquire or lease the Premises for the Franchised Business within such 270-day period, Franchisor may elect to terminate this Agreement.
- b. **Lease of the Premises.** If Franchisee intends to enter into any lease or sublease of the Premises, such lease or sublease must be approved by Franchisor, unless (i) the lease or sublease contains the provisions substantially similar to those contained in the form attached as Exhibit 4.1.b. (the "Tri-Party

Agreement”), or (ii) Franchisee enters an agreement substantially similar to the Tri-Party Agreement with its landlord and Franchisor. Within seven days of its execution, Franchisee shall deliver a copy of the signed lease or sublease (together with the Tri-Party Agreement executed by Franchisee and Landlord, if applicable) to Franchisor. Without Franchisor’s prior approval, Franchisee shall not execute or agree to any modification of the lease or sublease (or Tri-Party Agreement) that would adversely affect Franchisor’s rights.

4.2. **Construction Plans and Permits.** Franchisee shall not commence any construction with respect to a Site until it has become the Premises. Prior to commencing such construction, Franchisee shall perform the following actions:

- a. Franchisee shall retain, at its sole expense, Franchisor’s designated designer to prepare the designs (the “Designs”) for the Franchised Business in accordance with the Design Specifications. Once the Designs are complete, Franchisee shall retain, at its sole expense, a qualified architect or engineer to prepare a site plan and plans and specifications adapting the Designs to the Premises and to applicable laws and lease requirements and restrictions (collectively, the “Plans”). Franchisee shall not commence construction without Franchisor’s advance approval of the Plans. Franchisee’s architect or engineer must comply with all zoning, signage, seating capacity, parking requirements and storage requirements, as well as with any other federal, state, or local laws pertaining to the design or construction of the Premises, including the Americans with Disabilities Act. If compliance with such requirements or laws necessitates any material modification to the Plans, such modification must be approved by Franchisor, and such modified Plans may not thereafter be materially changed or modified without Franchisor’s further approval.
- b. Franchisee shall obtain all such permits and certifications as may be required for the lawful construction and operation of the Franchised Business. It shall also obtain certifications from all governmental authorities having jurisdiction over the Premises and the Franchised Business that all necessary permits have been obtained and that all requirements for construction and operation have been met, including zoning, access, sign, fire, health, environmental and safety requirements. Notwithstanding anything in this Agreement to the contrary, Franchisor may designate an architect, engineer, or designer to prepare, or participate in the preparation of, the Plans, and to supervise the construction of the Premises. If Franchisee has not used Franchisor’s recommended architect, engineer or designer, and Franchisor designates an architect, engineer or designer to participate or supervise, Franchisee shall be responsible for all costs and expenses of such designated architect, engineer or designer. Franchisee must reimburse such costs, if any, to Franchisor within 30 days of Franchisor’s request and remains solely responsible for complying with the Designs regardless of any oversight, except to the extent that Franchisor expressly authorizes otherwise. However, Franchisee agrees that Franchisor has no liability for their conduct. In addition, Franchisee shall provide to Franchisor such periodic progress reports as Franchisor may require with respect to the construction of the Premises.

4.3. **Construction Requirements.** Within 60 days after an approved Site is obtained, Franchisee shall commence construction of the Franchised Business. Commencement of construction shall be defined as the time at which any Premises construction work is initiated on-site by or on behalf of Franchisee as Franchisor determines in its reasonable discretion. Within 10 days after commencement, Franchisee shall provide Franchisor with notice of the date it began construction. Franchisee shall retain a qualified general contractor and any necessary and qualified subcontractors to construct the Premises in accordance with the Design Specifications. Franchisee shall maintain continuous construction of the Premises. Within six months after an approved Site is obtained (but in no event later than the Opening Date Deadline), at its sole expense, Franchisee shall complete construction (including all exterior and interior carpentry, electrical, painting and finishing work, and installation of all approved fixtures, equipment and signs). Franchisor and its representatives may, but are not obligated to, inspect the construction at all reasonable

times. Within 90 days after completing construction, Franchisee shall obtain a Certificate of Occupancy. With respect to locating and acquiring the Premises and constructing and opening the Franchised Business, time is of the essence.

- 4.4. **Conditions Precedent to Opening.** Franchisee shall not open the Franchised Business for business until:
- a. all of its obligations pursuant to Sections 4.1 through 4.3 are fulfilled;
  - b. Franchisor determines that the Franchised Business has been constructed, furnished, equipped, and decorated in accordance with Franchisor's requirements;
  - c. each Trainee has completed Initial Franchise Training to Franchisor's satisfaction;
  - d. Franchisee has acquired all required Federal, state and local licenses, permits, certificates, bonds and accreditations;
  - e. the Initial Franchise Fee and all other amounts due to Franchisor and its affiliates prior to opening under this Agreement have been paid in full;
  - f. Franchisor has been furnished with certificates of insurance and copies of all insurance policies or such other evidence of insurance coverage as Franchisor reasonably requests, as set forth in ARTICLE 9;
  - g. Franchisee satisfies any other conditions that Franchisor reasonably imposes; and
  - h. Franchisor approves of the opening of the Franchised Business, which approval shall not be unreasonably withheld if Franchisee satisfies the foregoing conditions.

Franchisee shall open the Franchised Business within seven days of Franchisor's delivery of approval. In any event, Franchisee shall satisfy all conditions pertaining to opening the Franchised Business and be prepared to open for business within 12 months after the Agreement Date (the date on which such period expires, the "Opening Date Deadline"), time being of the essence. Franchisor will not unreasonably withhold its consent to a request by Franchisee to extend the Opening Date Deadline by up to 90 days if, through no fault of Franchisee, the sole reason for such request is a delay by the applicable governing agency in granting a Certificate of Occupancy.

- 4.5. **Maintenance and Repairs.** Franchisee shall maintain the Franchised Business in the highest and most uniform degree of sanitation, repair, appearance, condition and security in the manner set forth in the Manuals. Franchisee shall make such additions, alterations, repairs and replacements to the Premises as may be reasonably required for that purpose, including such periodic repainting, changes in appearance, repairs to impaired equipment, and replacement of obsolete signs and graphics as Franchisor may reasonably direct.
- 4.6. **Refurbishing.** Franchisee shall refurbish the Franchised Business at its expense to conform to the building design, exterior facade, Trade Dress, signage, furnishings, decor, color schemes, and presentation of the Proprietary Marks in a manner consistent with the image then in effect for new cosmetology schools that Franchisor authorizes to operate under the System, with any particular requirements Franchisor designates for using the Selected Mark. Franchisee need not, however, undertake such refurbishment more frequently than once every seven years (but not during the first year after the Opening Date). Such refurbishing may include, among other things, remodeling, redecoration, and modifications to existing improvements, as Franchisor may require in writing. Maintenance, repairs, and other actions performed under Section 4.5 are not considered refurbishing under this Section 4.6.
- 4.7. **Operational Requirements.** To ensure that the highest degree of quality and service is uniformly maintained, Franchisee shall operate the Franchised Business in conformity with such uniform methods, standards and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. Without limiting the foregoing, Franchisee shall:

- a. use the Premises solely for operating and promoting the Franchised Business and not use or permit or suffer the use of the Premises for any other purpose or activity;
- b. record all Gross Revenues on the approved Computer System and otherwise use it for such functions and in such manner as Franchisor may prescribe;
- c. comply with the procedures and systems instituted by Franchisor, including those relating to sales, good business practices, advertising and other operating requirements of Franchisor;
- d. maintain in sufficient supply (as Franchisor may describe in the Manuals or otherwise in writing) and use at all times only such inventory, equipment, materials, advertising methods and formats, and supplies that conform to Franchisor's standards and specifications therefor, if any, at all times sufficient to meet the anticipated volume of business;
- e. adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct in all dealings with customers, suppliers, employees, students, independent contractors, Franchisor, and the public;
- f. sell or offer for sale only such products and services that meet Franchisor's uniform standards of quality and quantity, and that have been expressly approved or required for sale by Franchisor, at retail to consumers from and through the Franchised Business, and shall not sell such items for redistribution or resale;
- g. purchase, install and maintain, at Franchisee's expense, all fixtures, furnishings, signs, equipment, and Software as Franchisor may periodically specify; maintain such items in a condition that meets the operational standards specified in the Manuals or otherwise in writing; and, if Franchisor reasonably determines that additional or replacement items are needed because of a change in technology, health or safety considerations, or any other factors Franchisor considers relevant, install the additional or replacement items within the time specified by Franchisor;
- h. within each student kit, include all equipment and materials (including any equipment or materials from a Designated Brands Manufacturer) required by Franchisor or applicable law;
- i. within each student admission packet, include all forms and releases required by Franchisor or applicable law;
- j. ensure that all of Franchisee's employees and students, when at the Premises, wear the distinctive school uniforms or other approved attire, if any, as specified by Franchisor, and ensure that there is on hand at all times sufficient uniforms to outfit all employees and students (Franchisor reserves the right to change the style and appearance on the uniforms and Franchisee shall be required to promptly implement any such changes);
- k. if requested by Franchisor, participate in any new product or service test in accordance with Franchisor's standards;
- l. maintain credit-card relationships as Franchisor may designate and otherwise comply with all Franchisor's credit-card policies as prescribed in the Manuals; and
- m. continuously maintain a phone system and high-speed Internet service in accordance with the Manuals.

4.8. **Curriculum.** Unless required by applicable law, Franchisee shall use only Franchisor's curriculum and not offer any courses that have not been approved by Franchisor. Further, Franchisee shall use all elements of the curriculum required by Franchisor or applicable law. If Franchisee is required by applicable law to offer one or more programs or courses not approved by Franchisor in the Manuals or otherwise, Franchisee shall take all actions requested by Franchisor to distinguish the cosmetology program from such other programs or courses, including: (a) at all times conspicuously displaying, in such form and manner as required by Franchisor, on one or more signs on the Premises and on all materials provided in connection

with such programs or courses, a disclaimer stating that (i) only the cosmetology program is affiliated with Franchisor and no other programs or courses offered by Franchisee are affiliated with or approved by Franchisor, and (ii) Franchisor is in no way responsible for such programs or courses; and (b) prior to enrolling in such programs or courses, requiring all students to sign an acknowledgement that they understand the foregoing disclaimer.

4.9. **Computer System.**

- a. Before commencing operation of the Franchised Business, Franchisee shall purchase and install the Computer System at the Premises in accordance with the specifications and sourcing requirements set forth in the Manuals or otherwise in writing. Franchisee shall provide any assistance Franchisor requires to allow Franchisor to independently access and retrieve, at any time, such data and information from Franchisee's Computer System as Franchisor, in its discretion, deems necessary, desirable or advisable. If the Computer System fails to provide such access or retrieval, and Franchisee does not correct such failure within 30 days, Franchisee is exclusively responsible for the cost of such access and retrieval. All of the foregoing items specified to be installed or purchased, or acts specified to be undertaken by Franchisee, and the delivery of all hardware and Software, are at Franchisee's sole expense.
- b. Franchisee shall, at its expense, keep the Computer System in good maintenance and repair. Franchisor may, from time to time, require that Franchisee acquire additional, new or substitute items comprising the Computer System or require Franchisee to replace or upgrade the entire Computer System with a system that Franchisor specifies. Franchisee shall make such additions, substitutions, replacements or upgrades at its sole expense, on those dates and within those times specified by Franchisor in its discretion, in the Manuals or otherwise in writing. Franchisee shall delete all software and related applications from all memory and storage and provide Franchisor with evidence satisfactory to Franchisor that it has done so. Notwithstanding the foregoing, Franchisee shall not be required to replace the entire Computer System more frequently than once every two years.

4.10. **Hiring, Training and Appearance of Employees.** Franchisee shall maintain a competent, conscientious staff and employ such minimum number of employees as are necessary to meet the anticipated volume of business. Franchisee is exclusively responsible for the terms of their employment and compensation and, except for training provided by Franchisor under this Agreement, for the proper training of such employees in operating the Franchised Business. Franchisee is solely responsible for making and performing all employment decisions and functions, including those related to hiring, firing, establishing wage and hour requirements, disciplining, supervising and record keeping. Without the prior written permission of Franchisor or such other franchisee, Franchisee shall not recruit or hire any employee of a Company-Owned Unit or franchised unit operated by another franchisee within the Chain. Franchisee is solely responsible for locating and recruiting students for the Franchised Business and Franchisor has no obligation to review or approve student applications; provided, that, each student shall meet Franchisor's minimum criteria, if any.

4.11. **Management of the Franchised Business.** The Franchised Business must be supervised by an operations director (the "Operations Director"). The Operations Director shall devote, on a full-time basis, his or her best efforts to managing and operating the Franchised Business. At all times it is open for business, the Franchised Business requires the Operations Director's day-to-day supervision. A Franchise Owner must either serve as the Operations Director or Franchisee must hire a qualified individual to serve as the Operations Director. Without limiting any other obligations of the Franchisee, the Franchisee must responsibly supervise all of its employees and independent contractors. Regardless of such supervision, misconduct of any independent contractor that Franchisee engages to perform services for it shall be attributed to Franchisee to the same extent as if it were misconduct by an employee of Franchisee, including misconduct constituting a breach of this Agreement. The initial and any successor Operations Director must, to Franchisor's satisfaction, complete Initial Franchise Training and meet Franchisor's

minimum requirements, if any, for education, certification, as well as experience relevant to managing operating the Franchised Business. Without limitation, the Franchise Owner, Operations Director and any other person Franchisor designates must, unless waived in writing by Franchisor, attend any annual franchise convention that Franchisor offers. At its expense, Franchisor shall generally provide instructors, facilities, training materials, and technical training tools in connection with the annual convention. Franchisor may charge for certain third party expenses (or reimbursement for them) for optional programs or materials. Franchisee is responsible for all other expenses its attendees incur in connection with the annual convention, including all travel, lodging, and meal expenses. If the Operations Director is an individual other than a Franchise Owner, and such Operations Director fails to satisfy his or her obligations due to death, disability, termination of employment, or for any other reason, a Franchise Owner shall satisfy such obligations until Franchisee designates a new Operations Director of the Franchised Business in accordance with this Section 4.11. Franchisee is solely responsible for the costs and expenses associated therewith, including Training Fees.

**4.12. *Approved Specifications and Sources of Supply; Designated Brands Manufacturers.***

- a. Authorized Specifications and Suppliers. To the extent Franchisor may periodically require, Franchisee shall purchase or lease equipment, supplies, inventory, advertising or marketing materials, and any other products and services used to operate the Franchised Business solely from manufacturers and suppliers Franchisor authorizes, as well as in accordance with any specifications that Franchisor authorizes. Franchisor may revoke such authorization at any time. Such manufacturers and suppliers shall demonstrate, to Franchisor's continuing satisfaction, that they possess: (i) the ability to meet Franchisor's reasonable standards and specifications for such items; and (ii) adequate quality controls and capacity to supply Franchisee's needs promptly and reliably. When considering whether to approve suppliers for the System, Franchisor may consider any other relevant factors, including any factors relating to the price and quality of the products or services, the reliability of the supplier, and the economic benefits and incentives the supplier may provide to Franchisor (including rebates). Such approval may be provisional, pending Franchisor's further evaluating such supplier. Franchisor may approve a single supplier for any product or service. Franchisor may concentrate purchases with one or more suppliers to obtain the lowest prices or the best advertising support or services for any group of franchised businesses or Company-Owned Units within the Chain. Franchisor may from time to time designate itself or an affiliate as an authorized or exclusive supplier of any product or service used to operate the Franchised Business.
- b. Approval of New Specifications and Suppliers. If Franchisee proposes to purchase or lease any equipment, supplies, inventory or other products or services from an unapproved supplier, Franchisee shall submit to Franchisor a request for such approval, or request the supplier itself to do so. As a condition of its approval, Franchisor may require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, at Franchisor's option, either to Franchisor or to an independent, certified laboratory Franchisor designates for testing. Franchisor is not liable for damage to any sample that may result from the testing process. Because Franchisor shall devote its resources where it deems advisable it is not required to consider additional or replacement suppliers. Franchisor will use its discretion in doing so. If it does so, Franchisee or the prospective supplier shall pay a charge not to exceed the reasonable cost of the inspection and the actual cost of the testing. Franchisor may, at its option, reinspect any such approved supplier's facilities and products and continue to sample the products at the supplier's expense and to revoke approval upon the supplier's failure to continue to meet Franchisor's standards and specifications. Franchisor may also require as a condition to its approval, that the supplier present satisfactory evidence of insurance, such as product-liability insurance, protecting Franchisor and its franchisees against any and all claims arising from the use of the supplied item(s) within the System. Franchisor will not approve any previously unapproved supplier for products or services that it determines, in its

discretion, are competitive with the products and services offered by any Designated Brands Manufacturer.

c. Designated Brands Manufacturers.

- i. Franchisor may designate certain parties as designated brands manufacturers (each, a “Designated Brands Manufacturer”) for supplying certain goods and services to Franchisee. Franchisor has designated the following as Designated Brands Manufacturers: (i) L’Oréal USA Creative, Inc. (“L’Oréal”), the owner or affiliate of the owner of the **Redken**, **Matrix**, and **L’Oréal Professionnel** trademarks, and (ii) Fuel Productions, LLC (d/b/a Fuel Education Systems), the owner of the **Fuel for Design** brand. Franchisor may enter into agreements with the Designated Brands Manufacturers to provide certain services and products and to allow Franchisor to authorize its franchisees to use certain materials in their Franchised Businesses and to promote the Designated Brands Manufacturers. Unless Franchisor otherwise requires, Franchisee shall purchase such services, products and materials directly from the Designated Brands Manufacturer or its designees (and make any corresponding payments directly to such party and not to Franchisor). Each Designated Brands Manufacturer is Franchisor’s independent contractor and is not an agent, franchisor, legal representative, subsidiary, joint venture, partner, employee, or affiliate of Franchisor for any purposes whatsoever. Neither Franchisor nor any Designated Brands Manufacturer has any right to make any contract, agreement, warranty, or representation on the other’s behalf. Franchisee acknowledges that Franchisee shall have no direct license with L’Oréal or any other Designated Brands Manufacturer (unless Franchisor otherwise authorizes) during the Term. Franchisor expressly reserves the right to periodically revoke its designation of who is a Designated Brands Manufacturer or revise its agreements with any of them.
- ii. Subject to the applicable Designated Brands Manufacturer’s and Franchisor’s requirements, standards, and usage guidelines, as may be changed from time to time, Franchisee shall: (1) exclusively use and promote those goods and services relating to those brands of the Designated Brand Manufacturers that Franchisor designates for the Selected Trademark (the “Designated Brands”); (2) maintain the goodwill related to Designated Brands; (3) utilize the Designated Brands Manufacturer’s educational support materials, training modules, and training techniques, for the Designated Brands, in Franchisor’s curriculum; (4) procure an install furniture and fixtures bearing the Designated Brands Manufacturer’s trademarks for the Designated Brands; and (5) display the Designated Brands’ trademarks and images for the Designated Brands in advertising and promotions.
- iii. Franchisee acknowledges that the manner and use of the Designated Brands Manufacturer’s goods, services, trademarks, brands, advertising, images and other intellectual property (collectively, the “Designated Brands IP”) is in the sole discretion of Franchisor and the Designated Brands Manufacturer (and, if applicable, the owner of such Designated Brands IP). Franchisor authorizes Franchisee to use the Designated Brands IP only as authorized by Franchisor and only in accordance with standards, guidelines and specifications set by Franchisor or the Designated Brands Manufacturer from time to time and in a manner consistent with the premium quality associated with the Designated Brands IP. At its sole cost and expense, Franchisee agrees to furnish to Franchisor or the Designated Brands Manufacturer samples of any materials incorporating the Designated Brands IP for inspections to assurance conformance to applicable standards.
- iv. Franchisee agrees that it shall not, directly or indirectly, infringe or contest or aid in contesting the validity of, or the rights of Franchisor or the Designated Brands Manufacturer in or to, the Designated Brands IP, or take any other action in derogation of such rights. Franchisee must obtain Franchisor’s consent (who, in turn, may have to obtain the Designated Brands

Manufacturer's consent) prior to modifying any of the Designated Brands IP. Franchisee acknowledges that it will have no right, title, or interest in the Designated Brands IP (including, without limitation, all advertising, layouts, copy, artwork, photographs, videos, recordings, and fixture designs), and that all use of the Designated Brands' trademarks shall inure to the benefit of the Designated Brands Manufacturer and its affiliates. The Designated Brands' trademarks may not be used as a source identifier for the Franchised Business. If, in any jurisdiction, Franchisee secures any rights whatsoever to any Designated Brands IP not expressly granted under this Agreement, Franchisee shall immediately notify Franchisor and assign all of Franchisee's right, title and interest to the Designated Brands IP not expressly granted under this Agreement to the Designated Brands Manufacturer. The terms of this Section 4.12.c.iv. shall survive any expiration or sooner termination of this Agreement.

- v. In addition, if required by Franchisor, Franchisee shall enter into, and comply with all of the provisions of, any agreements with the Designated Brands Manufacturer that Franchisor prescribes (each, a "Designated Brands Manufacturer Agreement"), which may include a term shorter than the Term. Accordingly, Franchisor may require Franchisee to enter into an extension to such agreement or a replacement agreement to coincide with the length of the Term.
- vi. If Franchisor's agreement with a Designated Brands Manufacturer expires or is terminated or if Franchisor notifies Franchisee that Franchisee has been using the Designated Brands IP in a manner that does not comply with Franchisor's or the Designated Brands Manufacturer's standards or specifications, Franchisee acknowledges that it may be required to immediately discontinue and abandon any and all uses of the Designated Brands IP and to dispose of such materials in a manner specified by Franchisor or the Designated Brands Manufacturer.
- vii. A Designated Brands Manufacturer may inform Franchisor of expiration dates relating to the use of certain Designated Brands IP. As of each expiration date, Franchisee shall immediately cease all use of the applicable Designated Brands IP and remove or replace such Designated Brands IP. For each failure by Franchisee to comply with its obligations under this Section 4.12.c.vii, Franchisor may require Franchisee to pay Franchisor \$500 as liquidated damages; provided, that Franchisee will not be required to pay such amount for its first failure to comply with such obligations. The foregoing liquidated damages do not include the amount of any expenses Franchisor may incur to remove or cause the cessation of any such use (including legal fees) or any damages that the Designated Brands Manufacturer may seek to recover from Franchisor or Franchisee, which amounts Franchisee shall pay Franchisor on demand. The payments described in this Section 4.12.c.vii are not penalties. A precise calculation of the full extent of damages that Franchisor will incur upon Franchisee's failure to comply with this Section 4.12.c.vii cannot be reasonably determined. Nevertheless, each lump-sum payment provided under this Section 4.12.c.vii is reasonable in light of the damages that Franchisor may reasonably be expected to incur as a result of such event. Each sum is not a penalty and is intended by the parties only as a compensatory remedy for past breaches and not as a preventative remedy to deter future breaches. Each sum does not represent a price for the privilege of not performing and each sum's payment does not represent an alternative manner of performance. Accordingly, this Section 4.12.c.vii does not preclude, nor is it inconsistent with, a court granting Franchisor specific performance or any other equitable remedies, such as an injunction, to prevent future breaches. The terms of this Section 4.12.c.vii shall survive any expiration or sooner termination of this Agreement.
- viii. As part of Franchisor's agreements with L'Oréal, if Franchisee's Franchised Business meets certain standards, Franchisor may, in its discretion, annually designate the Franchised Business as having achieved a special designation (the "Special Designation"), which Franchisee may represent to the public in accordance with standards and specifications established by Franchisor

from time to time. Franchisor may describe in the Manuals or otherwise in writing the conditions necessary for Franchisee to achieve and maintain the Special Designation. Franchisor may change any such conditions or standards or discontinue the Special Designation program upon notice to Franchisee. Further, Franchisee shall allow L'Oréal or its designees (or, if L'Oréal is no longer a Designated Brands Manufacturer, any other Designated Brands Manufacturer or its designees, as specified by Franchisor) the first opportunity to recruit students trained by Franchisee.

**4.13. Compliance with Laws, Rules and Regulations; Accreditation.**

- a. Franchisee shall comply with all Federal, state, and local laws, rules and regulations (including Title IV of the Higher Education Act of 1965 and any amendments thereto or replacements thereof; and wage, hour and other labor-related laws) in the jurisdictions (federal, state and local) that regulate its business operations. Franchisee shall timely obtain, maintain, and renew when required any and all permits, certificates, licenses or franchises necessary for the full and proper conduct of the Franchised Business under this Agreement (including qualification-to-do-business; fictitious, trade, or assumed-name registration; building and construction permits; occupational licenses; sales-tax permits; health and sanitation permits and ratings; fire clearances and environmental permits). In addition, within four years of the Opening Date, Franchisee shall obtain accreditation from an Accrediting Agency (an "Accreditation").
- b. Within two days of Franchisee's receipt of such items, Franchisee shall forward to Franchisor copies of all inspection reports, warnings, certificates, ratings and other notices issued by any governmental entity in connection with the conduct of the Franchised Business that indicate Franchisee's material non-compliance with any applicable law, rule or regulation. In addition, Franchisee shall notify Franchisor immediately in writing if any of its permits, certificates, licenses, franchises (including the Accreditation) are, or Franchisee has reason to believe may be, suspended or terminated for any reason. If an Accreditation is suspended or terminated, Franchisor may (but is not obligated to) use a third party or take such other actions it deems necessary to reestablish such Accreditation. If Franchisor does so Franchisee shall promptly reimburse Franchisor for any costs and expenses incurred in connection therewith.
- c. Within 10 days of its submission (but in no event later than 10 days prior to the due date), Franchisee shall provide Franchisor with a copy of the Accrediting Agency annual report prepared by Franchisee for submission to the applicable Accrediting Agency. Franchisee may request Franchisor to provide special assistance, in accordance with Section 2.7.d, to furnish information needed to obtain or maintain an Accreditation.
- d. Franchisor may, but has no requirement to, advise Franchisee of any legislative or legal developments that may affect its business. Any information Franchisor provides to Franchisee does not relieve it of responsibility to consult with its own legal advisor. Franchisee is solely responsible for complying with its legal requirements.

**4.14. Tax Payments; Contested Assessments.** Franchisee shall promptly pay when due all taxes levied or assessed by any Federal, state or local tax authority assessed during or after the Term in connection with owning or operating the Franchised Business. Such taxes include unemployment taxes, withholding taxes, sales taxes, income taxes, tangible commercial personal-property taxes, real estate taxes, intangible taxes and any and all other indebtedness incurred by Franchisee in the conduct of the Franchised Business. Franchisee shall pay to Franchisor an amount equal to any sales tax, goods and services taxes, gross-receipts tax, or similar tax imposed on Franchisor during or after the Term with respect to any payments to Franchisor required under this Agreement. It shall do so unless the tax is measured by or related to Franchisor's net income or its corporate status in a state. If Franchisor pays any such tax during or after the Term, Franchisee shall promptly reimburse it for the amount paid. In the event of any bona-fide

dispute as to liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law. In no event, however, may Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises or any assets used in connection with the Franchised Business.

- 4.15. **Inspections.** Franchisee shall permit Franchisor or its designees to enter the Premises, and, if not located at the Premises, Franchisee's office, to conduct inspections at any time during normal business hours. Franchisee shall cooperate fully with Franchisor and its designees in such inspections by rendering such assistance as they may reasonably request and by permitting them, at their option, to observe the manner in which Franchisee is selling products, rendering services and maintaining the Premises (including with respect to the Designated Brands IP), and to confer with Franchisee's students, employees and customers. The inspections may be conducted without prior notice at any time when Franchisee or one of its employees is at the Franchised Business. The inspections will be performed in a manner that minimizes interference with operating the Franchised Business. Upon notice from Franchisor, and without limiting Franchisor's other rights under this Agreement, Franchisee shall take such steps as may be necessary to immediately correct any deficiencies detected during such inspections. Such steps may include immediately ceasing from the further use of any equipment, advertising, materials, products, supplies, or other items that do not conform to Franchisor's then current requirements. If Franchisee fails or refuses to correct such deficiencies, Franchisor may, without any claim to the contrary by Franchisee, enter the Premises, or Franchisee's office, without being guilty of trespass or any other tort, to make or cause to be made the required corrections. All such corrections are at Franchisee's expense. In addition, Franchisee must reimburse Franchisor for all of Franchisor's costs and expenses connected with any reinspection (including Franchisor's then current reinspection fee).
- 4.16. **Notices to Franchisor.** If any Notification Event occurs and such event is reasonably likely to have a material adverse effect on Franchisee or the Franchised Business, within five days of the occurrence thereof (unless a shorter period is required elsewhere in this Agreement), Franchisee shall notify Franchisor in writing. If any Notification Event occurs and such event is not reasonably likely to have a material adverse effect on Franchisee or the Franchised Business, within 15 days of the occurrence thereof (unless a shorter period is required elsewhere in this Agreement), Franchisee shall notify Franchisor in writing. "Notification Event" means any of the following events in connection with the Franchised Business: (a) the commencement of any action, suit, countersuit, or other proceeding against Franchisee or any of its employees; (b) the receipt of any notice of noncompliance by Franchisee or any of its employees with any law, rule or regulation; or (c) the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality entered against Franchisee or any of its employees. Within five days of request, Franchisee shall provide Franchisor with any information it requests about the progress and outcome of any Notification Event.
- 4.17. **Operating Suggestions.** Franchisee is encouraged to submit suggestions to Franchisor for improving elements of the System (such as products, services, equipment, service format, advertising, marketing and any other relevant matters). Franchisor may consider such suggestions when adopting or modifying standards, specifications, and procedures for the System. Franchisor, however, has no obligation to use such suggestions or to compensate Franchisee therefor, although it may choose to do so. Without Franchisor's prior consent, Franchisee may not implement any suggestions inconsistent with its obligations under this Agreement. If Franchisee or any of its employees develop any new concept, process, product or improvement in the operation or promotion of the Franchised Business (whether or not it submitted a suggestion for such item), Franchisee is required to promptly notify Franchisor and provide Franchisor with all related information. Franchisee acknowledges that any such concept, process, product or improvement will immediately become the property of Franchisor, and Franchisor may use or disclose such information

to other franchisees or developers as it determines to be advisable, also without the benefit of compensation.

- 4.18. **Certification of Performance.** No later than three days after requested by Franchisor, Franchisee shall execute and deliver to Franchisor a certification (the “Certification of Performance”), in a form Franchisor reasonably requests, confirming that Franchisor has performed its pre-opening obligations under this Agreement. If, however, Franchisee does not reasonably believe that Franchisor has performed all its pre-opening obligations hereunder, it shall, within such three-day period, provide Franchisor with notice specifically describing the obligations that Franchisor has not performed. In such case, Franchisee shall execute and deliver the Certification of Performance not later than three days after Franchisor completes all the non-performed obligations specifically described in such notice. Franchisee shall execute and deliver the Certification of Performance to Franchisor even if Franchisor performed such obligations after the time performance was due under this Agreement. If Franchisee does not deliver the Certification of Performance within such time period, Franchisor shall be deemed to have performed all of its pre-opening obligations. The term “pre-opening obligations” means such of Franchisor’s obligations to Franchisee under this Agreement that shall be performed before the Opening Date.
- 4.19. **Quality-Control Programs.** Franchisor may, from time to time, designate an independent evaluation service to conduct a “mystery shopper,” or similar type, quality-control and evaluation program with respect to the Franchisee’s business. Franchisee shall participate in such programs as required by Franchisor. If Franchisee receives an unsatisfactory or failing report in connection with any such program, it shall immediately implement any remedial actions Franchisor requires at Franchisee’s expense.
- 4.20. **Maximum and Minimum Rates and Prices.** Franchisor may, from time to time, suggest maximum and minimum tuition rates and retail prices for the goods and services that Franchisee may sell or offer to sell. However, Franchisee will be responsible for setting such rates and prices; except to the extent that Franchisor lawfully adopts any price floors or ceilings and requires Franchisee to comply with them for any of its goods or services.

## ARTICLE 5.

### PROPRIETARY PROPERTY

- 5.1. **Franchisee’s Use of the Proprietary Property.** Franchisee may use the Proprietary Property and the Designated Brands IP only in accordance with standards and specifications Franchisor determines from time to time. Without limiting the foregoing:
- a. Franchisee shall use the Proprietary Property and Designated Brands IP only in connection with operating the Franchised Business at the Premises, in accordance with Section 7.1 and other terms of this Agreement, and, without Franchisor’s consent, shall not sublicense or otherwise grant any third party the right to use the Proprietary Marks or Designated Brands IP in their advertising, website or otherwise;
  - b. Franchisee shall use the Proprietary Marks as the sole service-mark/trademark identifications for the Franchised Business and prominently display the Proprietary Marks on or in connection with all materials Franchisor designates, and only in the manner Franchisor prescribes;
  - c. Franchisee shall not use the Proprietary Property or Designated Brands IP as security for any obligation or indebtedness nor in any manner encumber it;
  - d. Franchisee shall not use the Proprietary Marks or Designated Brands IP as part of its corporate, partnership, limited liability company or other legal name;
  - e. Franchisee shall not, during or after the Term, use or attempt to register any other trademarks, service marks, or other commercial symbol that is the same as or similar to any of the Proprietary Marks or Designated Brands IP, or any mark with phonetic or graphic similarity thereto. Without limitation, use

or registration of any of the following is deemed a violation of such commitment: SPEC, Mastery, Elevate, TSPA, ASM, ESI, or any colorable imitation of such items, for any purpose; and Salon Professional, Salon Pro, Salon Academy, Salon Institute, Professional Academy, Pro Academy, Professional Institute, Pro Institute, any such word phrases in reverse order, or colorable imitation of any of the foregoing, in connection with any cosmetology school or training program;

- f. Franchisee shall comply with Franchisor's instructions concerning filing and maintaining the requisite fictitious, trade, or assumed-name registrations for the Proprietary Marks, and execute any documents Franchisor or its counsel deems reasonably necessary to obtain protection for the Proprietary Property or Designated Brands IP and Franchisor's (or the Designated Brands Manufacturer's, as applicable) interest therein;
- g. all materials including letterhead, business cards, marketing and advertising materials, flooring, wall hangings, designated equipment, uniforms, premiums, supplies, and packaging materials used in connection with the System must bear Franchisor's Proprietary Marks, as prescribed by Franchisor;
- h. in addition to, and without limiting any other obligations of Franchisee, Franchisee shall exercise caution when using Franchisor's Proprietary Property and Designated Brands IP to ensure that the Proprietary Property is not jeopardized in any manner; and
- i. notwithstanding anything to the contrary in this Agreement or otherwise involving the relationship of Franchisor and Franchisee, with respect to the marks for TSPA, ASM and ESI, Franchisee may use only the one that is the Selected Trademark, and not use any mark for any of the other brands that Franchisee was entitled to choose from under this Agreement but did not (the "Nonselected Trademarks"). Accordingly, all references to the Proprietary Marks and the Proprietary Property, that are intended to grant rights to Franchisee are construed to include the Selected Trademark but not any of the Nonselected Trademarks.

5.2. ***Infringement by Franchisee.*** Any use of the Proprietary Property or Designated Brands IP not in accordance with, or outside the scope of, this Agreement, without Franchisor's prior written consent, infringes Franchisor's, or the Designated Brands Manufacturer's, as applicable, rights in the Proprietary Property. Both during and after the Term, Franchisee shall not, directly or indirectly, infringe or contest or aid in contesting the validity of, or the rights of Franchisor in or to, the Proprietary Property or Designated Brands IP, or take any other action in derogation of such rights.

5.3. ***Claims Against the Proprietary Property.*** In the event of any claim of infringement, unfair competition, or other challenge to Franchisee's right to use any Proprietary Property or Designated Brands IP, or in the event Franchisee becomes aware of any use of, or claims to, any Proprietary Property or Designated Brands IP by persons other than Franchisor or its franchisees, Franchisee shall notify Franchisor in writing no later than seven days thereafter. Except pursuant to judicial process, Franchisee shall not communicate with anyone except Franchisor (or the Designated Brands Manufacturer, as applicable) and its counsel in connection with any such infringement, challenge, or claim. Franchisor (or the Designated Brands Manufacturer, as applicable) has discretion whether it takes any action in connection with any such infringement, challenge or claim, and has the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge or claim relating to any Proprietary Property or Designated Brands IP. Such discretion includes determining whether or not to settle such infringement, challenge, or claim, and on what terms. Franchisee shall sign all instruments and documents, render any assistance, and perform any acts that Franchisor's (or the Designated Brands Manufacturer's, as applicable) attorneys deem necessary or advisable to protect and maintain Franchisor's (or the Designated Brands Manufacturer's, as applicable) interest in any litigation or proceeding related to the Proprietary Property or Designated Brands IP or otherwise to protect and maintain Franchisor's interests in the Proprietary Property or Designated Brands IP.

- 5.4. **Indemnification of Franchisee.** Franchisor shall indemnify Franchisee for all damages for which it is held liable pursuant a final, binding, and nonappealable judgment against Franchisee entered in connection with any litigation or proceeding due solely to its use of any Proprietary Property. Franchisor need do so only if:
- Franchisee's use of the Proprietary Property was in strict accordance with this Agreement;
  - Franchisee timely notified Franchisor of such litigation or proceeding and the underlying claim in accordance with Section 5.3;
  - Franchisee gives Franchisor sole control of the defense and settlement of the action in accordance with Section 5.3; and
  - Franchisee has complied with all other provisions in this Agreement.
- 5.5. **Franchisor's Right to Modify the Proprietary Marks.** If, at any time, in Franchisor's discretion, it becomes advisable to modify or discontinue the use of any Proprietary Mark or use one or more additional or substitute names or marks—for reasons including the rejection of any pending application for registration or revocation of any existing registration of any of the Proprietary Marks, or the existence of superior rights of senior users—Franchisee shall do so at its sole expense within 360 days of Franchisor's request (such period, the "Interim Period"). Franchisor may shorten the Interim Period if, in its discretion, it becomes advisable to do so for reasons including those set forth in the previous sentence. During the Interim Period, Franchisee may use any existing inventory that includes the unmodified or discontinued Proprietary Marks, but shall not obtain any additional inventory that includes, or make new uses of, such Proprietary Marks. In such event, Franchisor is liable solely to reimburse Franchisee for its reasonable direct printing expenses incurred to modify or discontinue the use of the Proprietary Mark and substitute a different Proprietary Mark. Such reimbursable expenses do not include any expenditures Franchisee makes to promote a modified or substitute Proprietary Mark.
- 5.6. **Franchisor's Reservation of Rights.**
- The license of the Proprietary Marks granted to Franchisee is non-exclusive. In addition to Franchisor's right to use and grant others the right to use the Proprietary Marks outside the Protected Territory (regardless how closely located to the Premises), all rights not expressly granted in this Agreement to Franchisee concerning the Proprietary Marks or other matters are reserved by Franchisor, including the rights set forth in Section 5.6.b and the right to establish, develop, and license or franchise other systems, different from the System licensed by this Agreement, within or outside the Protected Territory, without offering or providing Franchisee any rights in, to, or under such other systems.
  - If Franchisor acquires a Competitive Cosmetology School and the physical building containing the educational facility of any such Competitive Cosmetology School is within Franchisee's Protected Territory, Franchisor has one year from the date of closing on acquiring the Competitive Cosmetology School to sell or close such location without being in default under this Agreement.
- 5.7. **Ownership; Inurement Solely to Franchisor.** Except as expressly granted in this Agreement, Franchisee has no ownership or other rights in the Proprietary Property. Franchisor is the owner, or authorized licensee, of the Proprietary Property. All goodwill associated with the Franchised Business inures directly and exclusively to Franchisor's or its licensor's benefit. Such goodwill is Franchisor's exclusive property, except to the extent it results from the profit received from the operation or possible permitted sale of the Franchised Business during the Term. If, in any jurisdiction, Franchisee secures any rights whatsoever to any Proprietary Mark (or any other Proprietary Property) not expressly granted under this Agreement, whether during or after the Term, Franchisee shall immediately notify Franchisor and assign all of Franchisee's right, title and interest to the Proprietary Marks (or any other Proprietary Property) not expressly granted under this Agreement to Franchisor.

## ARTICLE 6.

### MANUALS AND OTHER CONFIDENTIAL INFORMATION

- 6.1. ***In General.*** To protect the reputation and goodwill of Franchisor, and to maintain uniform standards of operation under the Proprietary Marks, Franchisee shall conduct its Franchised Business in accordance with the Manuals (which may be in paper or electronic format). The Manuals are an integral part of this Agreement and have the same force and effect as if fully set forth herein.
- 6.2. ***Confidential Use.*** At all times, Franchisee shall treat and maintain the Confidential Information as confidential and trade secrets of Franchisor. At all times, Franchisee shall keep the Manuals in a secure area within the Premises. Franchisee shall strictly limit access to the Confidential Information to its employees to the extent they have a “need to know” in order to perform their jobs. Franchisee shall report the theft, loss, or destruction of the Manuals, or any portion thereof, immediately to Franchisor. Without Franchisor’s prior consent, Franchisee shall not, at any time, during or after the Term, copy, record, or otherwise reproduce any of the Confidential Information, in whole or in part. Each Restricted Party, and all persons to whom Franchisee grants access to the Manuals or any other Confidential Information, must first be required by Franchisee to sign Franchisor’s form of confidentiality agreement. Promptly after execution of all such confidentiality agreements Franchisee shall deliver copies thereof to Franchisor.
- 6.3. ***Periodic Revisions.*** Franchisor may periodically revise and change the contents of the Manuals; provided, that such changes will not modify the Royalty Fee. Beginning on the 30th day (or such longer time as specified by Franchisor) after delivery of notice from Franchisor, Franchisee shall comply with each new or changed provision. Franchisor may notify the Franchisee of updates by posting them on its intranet, or in any other manner that Franchisor elects. Revisions to the Manuals must be based on what Franchisor, in its discretion, deems in the best interests of the System, including promoting quality, enhancing goodwill, increasing efficiency, decreasing administrative burdens, or improving profitability of Franchisor or its franchisees. Because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor may, in its discretion and as it may deem in the best interests of all concerned in any specific instance, vary standards for any franchisee based upon the peculiarities of the particular site or circumstances, density of population, business potential, population of trade area, existing business practices, or any condition that Franchisor deems important to the successful operation of such franchisee’s franchised business. Franchisee is not entitled to require Franchisor to grant to Franchisee a like or similar variation under this Agreement. Franchisee shall at all times ensure that its copy of the Manuals contains all updates Franchisor delivers. In the event of any dispute as to the contents of the Manuals, the terms contained in the master copy of each of the Manuals Franchisor maintains at Franchisor’s home office are controlling.
- 6.4. ***Prior Information.*** All Confidential Information received before the Agreement Date was unknown to Franchisee except through disclosure by Franchisor in connection with the grant of a Franchise. The marketing practices and operating procedures developed by Franchisor and franchised to Franchisee for operating the Franchised Business are important for the success of the System. To the extent Franchisee receives any Confidential Information after the Agreement Date, and, within 30 days thereafter, Franchisee does not object in writing to Franchisor that any or all of the information comprising the Confidential Information should not be considered Confidential Information, then Franchisee is deemed to have irrevocably waived its right to make any such objection.

## ARTICLE 7.

### ADVERTISING

- 7.1. ***Local Advertising by Franchisee.***
  - a. Except as set forth below, Franchisor does not currently require Franchisee to spend any minimum amount on Local Advertising (although it encourages Franchisee to conduct Local Advertising). On the first day of each calendar quarter, beginning with the first day of the first full calendar quarter

following the AgreementOpening Date, Franchisee shall determine the average Student Capacity for the immediately previous calendar quarter. If such average Student Capacity for the immediately previous calendar quarter is less than the applicable Capacity Percentage, then for each of the months of such calendar quarter Franchisee shall, during or within 30 days of the end of such month, spend a minimum of 2% of such month's Gross Revenues on Local Advertising. "Student Capacity" means, for any month, the fraction, expressed as a percentage, the numerator of which is the number of enrolled students in the Franchised Business as of the last day of such month, and the denominator of which is the maximum student capacity of the Franchised Business as of the last day of such month. "Capacity Percentage" means: (i) 80% if the date of determination is during the first five years of the Term; and (ii) 85% if the date of determination is during the sixth and subsequent years of the Term. By way of example, if the AgreementOpening Date is July 1, 2013, and as of July 1, 2014, the Student Capacities for April, May and June 2014 were 81%, 80% and 76%, respectively, then the average Student Capacity for such quarter is 79%, and in the months of July, August and September 2014, Franchisee shall spend a minimum of 2% of each of those month's Gross Revenues on Local Advertising. Franchisee shall substantiate its compliance with the foregoing requirement in such manner and form as Franchisor may require from time to time.

- b. Before production, publication or airing, Franchisee shall provide to Franchisor for its approval all materials to be used for Local Advertising (or for any other advertising, promotional, or marketing activities it may conduct), unless they have already been approved or consist solely of materials provided by Franchisor. Without limiting the foregoing, Franchisee shall not copy or otherwise use the Proprietary Property or Designated Brands IP in any manner other than for internal operational documents in accordance with this Agreement, unless Franchisee has received consent for such use from Franchisor. If, within 10 days from the date Franchisor receives materials submitted for approval, Franchisee does not receive Franchisor's approval thereof, they are considered disapproved. All materials on which the Proprietary Marks are used must include the applicable designation service mark SM, trademark ™, registered ®, copyright ©, or such other designation as Franchisor may specify. If, in Franchisor's judgment, such materials or advertising may injure or harm the System, Franchisor may notify Franchisee to withdraw or discontinue the use of any promotional materials or advertising, even if previously approved. Within five days after delivery of such notice, Franchisee must withdraw and discontinue use of the relevant promotional materials and advertising. Notwithstanding anything in this Agreement to the contrary, Franchisee may not use any advertising, promotional, or marketing materials that have not been approved in writing by Franchisor.

7.2. **Marketing Fund.** Franchisor does not currently maintain a marketing fund for the benefit of all franchisees and Company-Owned Units that contribute to it. However, it retains the right to create, maintain and administer such a marketing fund. If it does so, it may require Franchisee to contribute to the fund; provided, that Franchisor will not require Franchisee to contribute greater than 2% of monthly Gross Revenues to the fund; provided, further, if Franchisor requires Franchisee to contribute 2% of monthly Gross Revenues to the fund, it will decrease any applicable Local Advertising spending requirements to 1% of monthly Gross Revenues.

### 7.3. **Internet Advertising.**

- a. Except as provided in Section 7.3.b., with respect to any aspect of the System, Chain, or Franchised Business (including the use of the Proprietary Marks), Franchisor retains the sole right to advertise on the Internet, create or operate a website or sites, and use the Proprietary Marks as part of any domain name. Franchisor exclusively owns all rights in such domain names and such other domain names as Franchisor designates in the Manuals. Franchisee unconditionally disclaims any ownership interests in such domain names and any domain names that may be confusingly similar. Without limiting Franchisee's other obligations under this Agreement, Franchisee shall not, either during or after the Term, register any domain name in any class or category that contains the words SPEC, The Salon

Professional Academy, Academy for Salon Mastery, or Elevate Salon Institute or any abbreviation, acronym or other colorable imitation of any of the foregoing.

- b. Franchisor shall maintain a website that provides general information about the System. In addition, Franchisor's designated supplier shall establish and maintain a microsite for the Franchised Business. Franchisee shall have the option to choose the content of its microsite from the content options offered by such designated supplier from time to time. Franchisee shall pay such designated supplier its initial fee to establish such microsite as in effect from time to time (which initial fee is currently \$4,000) as well as its monthly website fee may be in effect from time to time (which fee is currently \$240 per month). Franchisee may request customizations to the microsite that are not included in such offered content and are approved by Franchisor in advance, but Franchisee will be solely responsible to pay such designated supplier's then current charges for customized microsite work. Franchisee shall also have the right advertise, market, and otherwise promote the Franchised Business on the Internet and through social media, provided that it complies with Franchisor's website and internet policies in effect from time to time. For administrative purposes, Franchisor may require Franchisee to pay the monthly website fee directly to Franchisor instead of the third party supplier. Franchisor may use the monthly website fee to reimburse it for expenses to third parties and to provide Franchisor with an administrative fee that Franchisor designates in connection therewith. Franchisor may periodically increase the monthly website fee if Franchisor incurs more fees or costs in connection with providing web site services; provided, that, Franchisor will not increase the maximum amount it is permitted to charge by an average of more than 20% per year in any consecutive five-year period.
- c. Except as provided in Section 7.3.b, without Franchisor's prior written consent, Franchisee shall not, during or after the Term, develop, establish, operate, own, license, use or participate in a website on which the Proprietary Marks appear or otherwise use any of the Proprietary Marks on or in connection with the Internet, including (i) in domain names (including top level or country code domain names and folder extensions in domain names), (ii) in metatags in Franchisee's website, (iii) in social media user names, (iv) by publishing, linking or deeplinking to any of Franchisor's websites in connection with social media websites, or (v) in sponsored advertising programs.

## ARTICLE 8.

### ACCOUNTING AND RECORDS

- 8.1. **Books and Records.** Franchisee shall maintain complete and accurate books and records for the Franchised Business's operations and shall do so in such manner and form as Franchisor may prescribe in writing from time to time. Such books and records must not contain information not relating to the Franchise, and must be preserved for at least six years (including the period after this Agreement expires or is sooner terminated) from the dates they were prepared.
- 8.2. **Reports and Statements.** By the 10<sup>th</sup> day of each month during the Term, Franchisee shall submit to Franchisor accurate records reflecting the preceding month's Gross Revenues, and such other information as Franchisor requires from time to time. Such records, reports and information must be in the forms Franchisor prescribes from time to time. Within 90 days after the end of each fiscal year, Franchisee shall submit an audited year-end balance sheet and audited annual income statement prepared in accordance with generally accepted accounting principles consistently applied. Within 30 days after the end of each of its fiscal quarters, Franchisee shall submit to Franchisor an interim quarterly balance sheet and income statement prepared in accordance with generally accepted accounting principles consistently applied. Promptly upon the request of Franchisor, Franchisee shall also provide Franchisor with copies of its federal- and state-income tax returns. The financial statements described above must be signed by Franchisee or by Franchisee's treasurer or chief financial officer attesting that the financial statements are true and correct and fairly present Franchisee's financial position as at and for the times indicated. In addition, the

financial statements and other periodic reports described above must segregate the Franchised Business's income and related expenses from those of any other business that Franchisee may conduct.

### 8.3. **Review and Audit by Franchisor.**

- a. At any reasonable times during the Term, and during the three-year period beginning on the expiration or sooner termination of this Agreement, and at Franchisor's expense, Franchisor and its representatives may examine and copy Franchisee's books and records, as well as inspect all cash-control devices and systems and conduct a physical inventory. At any time, Franchisor may access, and retrieve any information it desires from, Franchisee's Computer System to determine, among other things, sales activity, and Gross Revenues. At any time, Franchisor may also have an independent audit made of Franchisee's books and records. The provisions of this Section 8.3 survive the expiration or sooner termination of this Agreement.
- b. If an inspection reveals that any financial information reported to Franchisor (such as Gross Revenues or payments owed to Franchisor) has been understated in any report, Franchisee, upon demand, shall immediately pay Franchisor the amount to which it is actually entitled but has not been paid because of such understatement, as well as interest thereon. Such interest accrues at the Contract Interest Rate commencing from the time the required payment was due.
- c. In addition to the amounts described in Section 8.3.b, if any inspection discloses that Franchisee has for any period understated the amount of the Royalty Fee (or any other amount) actually due Franchisor for such period by 3% or more, Franchisee must reimburse Franchisor for the costs and expenses connected with the inspection (including reasonable accounting and attorneys' fees and costs). Furthermore, at such time if it has not already done so, Franchisor may require all Franchisee's future year-end financial statements to be audited and prepared and certified, at Franchisee's expense, by an independent certified public accountant designated by Franchisor. The remedies in this Section 8.3 are in addition to any other remedies Franchisor may have under this Agreement or under applicable law. If an audit discloses an overpayment of any amount paid by Franchisee to Franchisor, Franchisor will promptly pay Franchisee the amount of such overpayment or offset such overpayment against any amounts owed to Franchisor.

## ARTICLE 9.

### INSURANCE

- 9.1. **Types and Amounts of Coverage.** Throughout the Term, Franchisee shall maintain such types of insurance in such amounts as Franchisor may require. Such insurance is in addition to any other insurance that may be required by applicable law, Franchisee's landlord, or otherwise. Such policies must be written by an insurance company reasonably satisfactory to Franchisor with a Best rating of "A" or better, and to the extent legally permissible, must name Franchisor and L'Oréal (or any other brands manufacturers that Franchisor designates) as additional insured. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to Franchisor. At a minimum, such policies include the following:
- a. commercial general liability insurance of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, and \$1,000,000 personnel and advertising injury limits. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract;
  - b. workers' compensation coverage in the amounts required by statute or rule of the state in which the Franchised Business is located;
  - c. beauty school professional liability insurance in the amount of at least \$1,000,000 for each accident. Where applicable, professional services shall include permanent cosmetics, manicures, beautician,

wax removal, eyebrow/eyelash tinting and enhancement, massage, facials (including peels), microdermabrasion, airbrush tanning and tanning;

- d. license bond, if required by applicable law; and
- e. such other insurance, in such amounts, as Franchisor reasonably requires for its own and Franchisee's protection.

At any time, Franchisor may adjust the amounts of coverage required under such insurance policies and require different or additional kinds of insurance, including excess liability insurance. It may do so to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other changes in circumstances or factors that Franchisor considers relevant.

- 9.2. **Evidence of Insurance.** No later than the earliest of the dates set forth below, an approved insurance company must issue a certificate of insurance showing compliance with the insurance requirements in Section 9.1, and Franchisee must furnish Franchisor with a paid receipt showing the certificate number: (a) five days before beginning construction of the Premises; (b) if the Premises are constructed and presently owned or leased by Franchisee, 30 days from the Agreement Date; or (c) if the Premises are not presently owned or leased, 30 days after ownership of the Premises is conveyed to Franchisee or a lease of the Premises is signed. The certificate of insurance must include a statement by the insurer that the policy or policies must not be canceled, subject to non-renewal, or materially altered without at least 30 days' prior notice to Franchisor. Upon Franchisor's request, Franchisee must supply it with copies of all insurance policies and proof of payment. Every year, Franchisee must send current certificates of insurance to Franchisor (along with a paid receipt showing the certificate number).
- 9.3. **Franchisor's Right to Participate in Claims Procedure.** Franchisor, or its insurer, may participate in discussions with Franchisee's insurance company or any claimant (in conjunction with Franchisee's insurance company) regarding any claim.
- 9.4. **Waiver of Subrogation.** To the extent this Section 9.4 may be effective without invalidating, or making it impossible to secure, insurance coverage from responsible insurance companies doing business in the state in which the Franchised Business is located (even though an extra premium may result), with respect to any loss covered by insurance Franchisee then carries, Franchisee's insurance company does not have any right of subrogation against Franchisor or its insurance companies.
- 9.5. **Effect of Franchisor's Insurance.** The insurance maintained by Franchisor does not in any way limit or affect Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified in this ARTICLE 9. Franchisor's performance of Franchisee's obligations shall not relieve Franchisee of liability under the indemnity provisions set forth in this Agreement.
- 9.6. **Franchisee's Failure to Maintain Insurance.** If, for any reason, Franchisee fails to procure or maintain the insurance required by this Agreement (as revised from time to time by Franchisor), Franchisor has the right (but not the duty) to immediately procure such insurance. If it does so, Franchisor may charge the cost of such insurance to Franchisee, plus interest at the Contract Interest Rate. Upon demand, Franchisee shall immediately pay Franchisor such charges, together with a reasonable fee for Franchisor's expenses in so acting.

## ARTICLE 10. TRANSFERS

- 10.1. **Transfer by Franchisor.** Without Franchisee's consent, Franchisor has the absolute right to transfer or delegate any or all of its rights or obligations under this Agreement to any person. If Franchisor's transferee or delegatee assumes Franchisor's obligations under this Agreement, within seven days of Franchisor's delivery of notice thereof, Franchisee shall execute and deliver to Franchisor a written release of Franchisor. Without Franchisee's consent, Franchisor may also transfer its stock, engage in public and

private securities offerings, merge, consolidate, reorganize, acquire other businesses (including competing businesses), sell all or substantially all of its assets, borrow money (with or without providing collateral), and otherwise deal in its assets or operate its business.

#### 10.2. **Transfer by Franchisee.**

- a. **Personal Rights.** The rights and duties set forth in this Agreement are personal to Franchisee. Franchisor grants the Franchise in reliance on Franchisee's, and its owners' (if any), business and personal skill, reputation, aptitude, and financial capacity. Accordingly, unless otherwise expressly permitted by this Agreement, without Franchisor's prior consent, Franchisee may not sell, assign, convey, or otherwise dispose of—voluntarily, involuntarily, directly or indirectly, by operation of law or otherwise—this Agreement or any direct or indirect interest in this Agreement. (For the purposes of this Section 10.2, the term “transfer” refers to any of the preceding actions.) Notwithstanding the foregoing, Franchisor will not unreasonably withhold its consent to a transfer if all of the conditions of Section 10.2.d are satisfied.
- b. **Entity Franchisees.** Except as set forth in Section 10.4, if Franchisee is a corporation, partnership, limited liability company, or other entity, a transfer of 25% or more of such voting or ownership interests—individually or in the aggregate, directly or indirectly—is considered a transfer of an interest in this Agreement by Franchisee, as is a transfer of a material portion of Franchisee's assets. Any purported or attempted transfer by Franchisee—by operation of law or otherwise—in violation of this Agreement is null and void, and a material breach of this Agreement.
- c. **No Encumbrances.** Except as set forth in Section 3.7, neither Franchisee nor its owners (or their respective owners) may create, permit, or suffer a lien against, nor pledge, mortgage, hypothecate, grant a security interest in, or in any manner encumber this Agreement (or any interest herein) or 25% or more of Franchisee's other assets or any 25% or more of the voting or ownership interests in Franchisee (or in any owner of Franchisee). Any of the acts described in the foregoing sentence is considered a transfer of an interest in this Agreement Franchisee.
- d. **Permitted Transfer.** Unless Franchisee satisfies all the following conditions—any of which Franchisor, in its discretion, may waive—Franchisor need not consent to a transfer of any interest in this Agreement:
  - i. Franchisee has complied with its obligations under Section 10.5 and Franchisor has not exercised its right of first refusal;
  - ii. all Franchisee's accrued monetary obligations and all other outstanding obligations to Franchisor have been satisfied;
  - iii. Franchisee is not in default under any provision of this Agreement or any other agreement between Franchisee and Franchisor or its affiliates;
  - iv. Franchisee has executed a general release of all claims against Franchisor, its affiliates, and their respective officers, directors, owners, managers, employees and representatives (in their corporate and individual capacities) in form and substance satisfactory to Franchisor;
  - v. the transferee enters an assumption agreement, in form and substance satisfactory to Franchisor, under which it assumes all of the transferor's obligations under this Agreement; or, if Franchisor requests, the transferee enters the form of franchise agreement Franchisor then offers to new franchisees (for a term equal to the then remaining Term of this Agreement) and such other ancillary agreements as Franchisor may require for the Franchised Business; the terms of which may significantly differ from the terms of this Agreement, including—a smaller Protected Territory, higher Royalty Fees, or a higher Technology Fee;

- vi. the transferor pays Franchisor a transfer fee of \$20,000 (the “Transfer Fee”) for expenses that Franchisor incurs in connection with such transfer, including providing training to the transferee; if Franchisor requires the transferee to enter a new franchise agreement, the transferee need not pay any initial franchise fee due thereunder, the Transfer Fee being in lieu thereof;
- vii. the transferee has been interviewed at Franchisor’s principal office, without expense to Franchisor, and has demonstrated to Franchisor’s satisfaction that the transferee has the business and personal skills, reputation, and financial capacity Franchisor requires;
- viii. the transferee has satisfactorily completed Franchisor’s application procedures for new franchisees;
- ix. If any Designated Brands Manufacturer Agreement requires the consent of the applicable Designated Brands Manufacturer, such Designated Brands Manufacturer has provided such consent and transferee and Franchise have executed all documentation required by such Designated Brands Manufacturer.
- x. the transferee agrees to renovate, at its expense and within the time Franchisor reasonably specifies, the Franchised Business to conform to the Trade Dress and operating or design concepts then used in the System;
- xi. the transferee has demonstrated to Franchisor’s sole satisfaction that it, he, or she has properly assumed, and will be able to comply with, all of its, his, or her obligations in connection with the Franchised Business—if the Premises are leased, the foregoing includes the transferee assuming the lease; notwithstanding such assumption, Franchisee remains liable for all obligations to Franchisor in connection with the Franchised Business arising before the effective date of the transfer;
- xii. Franchisor is reasonably satisfied that the proposed sale terms and other factors involved in the transfer do not materially reduce the transferee’s ability to assume and carry out its obligations effectively; Franchisor, however, has no duty to consider such factors; and
- xiii. Franchisee and the transferee timely satisfy any other conditions Franchisor reasonably imposes.

Franchisor’s approval of a proposed transfer is not an expression of its opinion concerning the appropriateness or fairness of the terms of the transfer or the likelihood of the transferee’s success. If Franchisor disapproves of the transfer because all the transfer conditions contained in this Section 10.2.d or elsewhere in this Agreement have not been satisfied (or for any other reason), it has no liability of any nature to Franchisee or the transferee in connection therewith. Notwithstanding anything in this Agreement to the contrary, Franchisee may not make, permit, or suffer any transfer of this Agreement or any interest herein if it, or any of its direct or indirect owners, is the subject of either a voluntary or involuntary bankruptcy proceeding. For the purposes of the foregoing sentence, a debtor’s or trustee-in-bankruptcy’s assumption of this Agreement under Section 365 of the Bankruptcy Act (11 U.S.C. §365), or any other Section thereof, is considered a transfer of this Agreement by Franchisee.

Franchisor’s consent to a transfer does not constitute a waiver of (1) any claims it may have against Franchisee (or any other transferor) or (2) Franchisor’s right to demand the transferee’s exact compliance with all the terms of this Agreement. Without limiting the foregoing, even if Franchisor approves the transfer, no transfer releases Franchisee (or any other transferor) of liability for its conduct prior to the transfer, including conduct in breach of this Agreement. Franchisee (or other transferor) shall execute any agreements or documents that Franchisor may request to evidence continuing liability for such conduct prior to the transfer.

10.3. **Death; Disability.** If a Franchise Owner is serving as the Operations Director and he or she dies, or is disabled from any cause and, as a result thereof, for a continuous period of more than three consecutive months is unable to perform his or her obligations under this Agreement; then, within six months thereafter, Franchisee (or its legal representative) shall hire and maintain a replacement in accordance with Section 4.11. If a satisfactory replacement is not hired within such six-month period, such Franchise Owner (or its legal representative) must transfer his or her interests in Franchisee (or in any of Franchisee's owners) or in this Agreement in accordance with the terms of Section 10.2 within an additional six months.

10.4. **Transfers to Related Parties.**

- a. If Franchisee is a corporation, partnership, limited liability company, or other entity, upon 30 days' prior notice to Franchisor, any owner of Franchisee may transfer all or any part of its interest in Franchisee to one of the other owners of Franchisee. In addition, if Franchisee is one or more individuals, upon 30 days' prior notice to Franchisor, each individual Franchisee will have the right to transfer or assign this Agreement to any member of such individual's immediate family or trust(s) or family limited partnerships for such individual's immediate family. Any transfer pursuant to this Section 10.4.a may be made without the consent of Franchisor and without any additional payment to Franchisor; provided, that all transferees complete all required training to Franchisor's satisfaction and the transferee enters an assumption agreement in form and substance satisfactory to Franchisor, under which it assumes all of the transferor's obligations under this Agreement.
- b. Franchisee, if one or more individuals, will have the right to transfer or assign this Agreement to a corporation, limited liability company or a partnership, wholly owned by that individual or individuals, without any additional payment to Franchisor; subject, however, to satisfaction of all of the following conditions—any of which Franchisor, in its discretion, may waive:
  - i. that the individual or individuals constituting Franchisee collectively own all of the issued and outstanding equity of such entity, that a list of owners be delivered to Franchisor and that each such owner delivers a certificate to Franchisor, in form and substance satisfactory to Franchisor, that he or she has no interest in any Competitive Cosmetology School and that he or she agrees that no additional equity will be issued at any time without Franchisor's consent;
  - ii. that the corporation unconditionally assumes all of the obligations of Franchisee under this Agreement;
  - iii. that the individual or individuals constituting Franchisee unconditionally guaranty all of the obligations of Franchisee under this Agreement;
  - iv. that Franchisee pays to Franchisor all amounts then payable by it to Franchisor pursuant to this Agreement;
  - v. that all corporate documentation requirements provided for within Section 18.8 of this Agreement be delivered to Franchisor; and
  - vi. that a document or documents reflecting the foregoing provisions and acceptable to Franchisor be signed and delivered to Franchisor by the assigning Franchisee, the new corporate Franchisee and Franchisor.

10.5. **Franchisor's Right of First Refusal.**

- a. If, at any time:
  - i. one or more Franchise Owners receives one or more arm's length written offers from an independent third party or parties to purchase an amount of such parties' ownership interests in Franchisee that, if one or more such offers are accepted and consummated, would result in such third party or parties owning at least 50% of the then voting power of the owners of Franchisee

or 50% of the value of the then outstanding profits interests in Franchisee (such interest, or the part thereof, subject to the offer referred to as the “Interest,” and such offer referred to as the “Interest Offer”); or

- ii. Franchisee receives an arm’s length written offer from an independent third party to purchase Franchisee’s interests under this Agreement or, outside the ordinary course of business, a material part or all of the Franchised Business’s operating assets, including the Premises if owned by Franchisee or an affiliate (such interests and assets subject to the offer referred to as the “Assets,” and such offer referred to as the “Asset Offer”);

and such person receiving the Interest Offer, or Franchisee receiving the Asset Offer, as the case may be (in either case the person receiving such third-party’s offer referred to as the “Offeror”), desires to accept such offer, then such party must first offer to sell Franchisor the Interest or the Assets for the consideration and on the terms set forth in such third party’s written offer. The Offeror’s Interest Offer or Asset Offer (in either case, the “Offer”) must be made by notice to Franchisor setting forth the name and address of the prospective purchaser and the price and terms of the Offer. The notice must also include a franchise application completed by the prospective purchaser, as well as any other information Franchisor reasonably requests to evaluate the Offer. Such information may include, among other things, any purchase and sale and related agreements executed, or proposed to be executed, by Franchisee or the third party. Franchisor has a first-priority option to purchase the Interest or the Assets that is superior to any third-party’s right to purchase the Interest or Assets. Franchisor may exercise such option by delivering notice of acceptance of the Offer (“Notice of Exercise”) to the Offeror within 30 days after receipt thereof (including all information Franchisor requests pertaining thereto).

- b. If Franchisor accepts the Offer, the Offeror shall sell the Interest or the Assets to Franchisor—and Franchisor shall purchase the Interest or the Assets from the Offeror—for the consideration and upon the terms set forth in the Offer, less any broker’s commission that would have been due if Franchisor had not exercised its right of first refusal and the sale made instead to the proposed third-party purchaser. Franchisor’s creditworthiness must be deemed at least equal to the proposed purchaser’s creditworthiness.
- c. If an independent third party’s written offer (and the Offeror’s corresponding Offer to Franchisor) provides for the purchaser’s payment of a Unique Consideration, then Franchisor may, in lieu thereof, substitute a cash consideration. If Franchisor elects to do so, it must inform the Offeror of such election in its Notice of Exercise. Within 15 days after Franchisor delivers its Notice of Exercise, the Offeror and Franchisor shall agree on the amount of the cash to be substituted for the Unique Consideration. If the parties cannot conclude an agreement within such time, an independent appraiser Franchisor selects must determine the amount of cash. “Unique Consideration” is any noncash consideration that is of such a nature that Franchisor cannot reasonably duplicate it.
- d. If the proposed sale includes assets of the Offeror not related to operating the Franchised Business, Franchisor may, at its option, elect to purchase only the assets related to operating Franchised Business. In such event, Franchisor, exercising reasonable discretion, must determine an equitable purchase price for such operating assets, which it must allocate to each asset included in the proposed sale.
- e. Unless the Offeror and Franchisor agree otherwise, the closing of the purchase of the Interest or the Assets must be held at Franchisor’s then principal office, or any other location Franchisor designates, no later than the 30th day after it delivers its Notice of Exercise to the Offeror. Notwithstanding the foregoing, the closing of any such purchase for which the amount of the cash is determined by an appraiser in accordance with Section 10.5.c must be held on the 15th day after such amount is finally determined. At any such closing, the Offeror shall deliver to Franchisor an assignment and any other

documents Franchisor reasonably requests to evidence and document the transfer of ownership of the Interest or the Assets (such assignment and other documents, collectively, the “Transfer Documents.”). The Transfer Documents must evidence and document that the transfer is free and clear of all liens, claims, pledges, security interests, options, restrictions, charges, and encumbrances, and that Franchisor shall determine the tax allocations related to the transfer. The Transfer Documents must be in proper form for transfer (if they are negotiable securities or documents or like instruments) and be accompanied by evidence of payment of all applicable transfer taxes by the Offeror. Simultaneously therewith, after setting off any amounts the Offeror owes Franchisor against the amount due the Offeror, Franchisor shall pay the consideration due Franchisee for the Interest or the Assets, as the case may be, by delivery of a cashier’s check or certified check drawn on a bank or thrift institution doing business in the county of its principal place of business. The remaining terms of such purchase and sale are those set forth in the Offer.

- f. If Franchisor does not accept the Offer (or is deemed under this Agreement to have waived its right to do so because it did not timely deliver a Notice of Exercise) as provided above, for a period of 60 days after Franchisor elected not to exercise its option (or is deemed to have waived its right to do so), the Offeror may sell the Interest or the Assets to the independent third party for the consideration and upon the terms specified in such third party’s written offer. Such sale is, however, subject to Franchisor’s prior approval and must strictly comply with all the provisions of this Agreement relating to transfers, including those set forth in Section 10.5.c. As a condition precedent to any sale of an Interest or Assets to an independent third party, such party must deliver to Franchisor a written acknowledgement that the Interest it is purchasing is subject to all the terms of this Agreement. Without limiting the generality of the foregoing, the written acknowledgment must also contain the third party’s agreement to be bound by all the terms of this ARTICLE with respect to the transfer of the Interest or Assets, as the case may be, in the same manner as the Offeror. If, within the aforesaid 60-day period, the Offeror does not sell the Interest or the Assets as provided above, any transfer by him or her of the Interest or the Assets is again subject to the restrictions set forth in this Agreement.

#### ARTICLE 11.

#### DEFAULT AND TERMINATION

##### 11.1. *Termination by Franchisor—Without Notice.*

- a. Subject to applicable law, upon the occurrence of any of following events, Franchisor may immediately terminate this Agreement:
  - i. Franchisee becomes insolvent or makes a general assignment for the benefit of creditors;
  - ii. a petition in bankruptcy is filed by Franchisee or such a petition is filed against or consented to by Franchisee and such petition is not dismissed within 45 days;
  - iii. Franchisee is adjudicated as bankrupt;
  - iv. a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee’s business or assets is filed and consented to by Franchisee;
  - v. a receiver or other custodian (permanent or temporary) of Franchisee’s business or assets is appointed by any court of competent jurisdiction;
  - vi. proceedings for a composition with creditors under Federal or any state law is instituted by or against Franchisee;
  - vii. a final judgment against Franchisee in excess of \$15,000 remains unsatisfied or of record for 30 days or longer (unless a supersedeas bond is filed);

viii. execution is levied against Franchisee's operation or property, or suit to foreclose any lien or mortgage against the Premises or its other assets is instituted against Franchisee and not dismissed within 45 days; or

ix. a substantial portion of Franchisee's real or personal property used in the Franchised Business is sold after levy thereupon by any sheriff, marshal, or constable.

b. Each of the foregoing events in Section 11.1.a is a "Material Default" under this Agreement. If Franchisor elects to terminate this Agreement due to a Material Default, it need not provide Franchisee with any notice or opportunity to cure. Within three days of the occurrence of a Material Default, Franchisee shall provide notice thereof to Franchisor.

11.2. **Termination by Franchisor—After Notice.** Upon the occurrence of any of the following events, without providing Franchisee with any opportunity to cure, Franchisor may, by written notice, immediately terminate this Agreement:

a. Franchisee fails to satisfy any of the conditions in Section 4.4 pertaining to opening the Franchised Business—or is not otherwise prepared to open for business—by the Opening Date Deadline;

b. Franchisee fails to pay Franchisor or any affiliate any amount due under this Agreement or any other Agreement within 10 days after Franchisor or its representative delivers notice of nonpayment;

c. Franchisee or any of its owners made any material misrepresentation in obtaining the Franchise, including in any franchise application submitted to Franchisor;

d. Franchisee abandons the Franchised Business or, for more than seven consecutive days or 14 days in any calendar year, Franchisee ceases to conduct the Franchised Business at the Premises; Franchisee, after the expiration of all redemption periods, loses the right to possess the Premises; or Franchisee otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Business is located;

e. a serious or imminent threat or danger to public health or safety results from constructing, maintaining, or operating the Franchised Business and such threat or danger remains uncorrected for five days after Franchisor or any governmental authority delivers written notice thereof (or such shorter cure period as the governmental authority may require)—unless a cure cannot be reasonably completed in such time, in which event Franchisee shall immediately begin to take all reasonable steps to cure, and such cure is not completed within 30 days after delivery of such written notice (or such shorter cure period as the governmental authority may require);

f. Franchisee fails or refuses to comply with any mandatory specification, standard or operating procedure Franchisor prescribes in this Agreement, in the Manuals, or otherwise in writing, relating to the cleanliness or sanitation of the Franchised Business or violates any health, safety, or sanitation law, ordinance, or regulation and does not correct such failure or refusal within 10 days after Franchisor or any governmental authority delivers written notice thereof (or such shorter cure period as the governmental authority may require)—unless a cure cannot be reasonably completed in such time, in which event Franchisee shall immediately begin to take all reasonable steps to cure, and such cure is not completed within 30 days after delivery of such written notice (or such shorter cure period as the governmental authority may require);

g. Franchisee, or any of its officers, directors, owners or managerial employees is convicted of, or pleads nolo contendere to, a felony, a crime of moral turpitude or any other crime or offense that Franchisor believes is likely to have a material adverse effect on the System, the Proprietary Property, the goodwill associated with the Proprietary Marks, or Franchisor's interest in any of the Proprietary Property ~~unless Franchisee promptly and legally terminates such individual as an officer, director, owner, or employee of Franchisee;~~

- h. Franchisee denies Franchisor the right—or otherwise interferes with, impedes, or impairs Franchisor’s exercise of its right—to inspect the Franchised Business or to audit the sales and accounting records of the Franchised Business or to access or retrieve information from the Computer System;
- i. Franchisee engages in conduct that is harmful to, or reflects unfavorably on, Franchisee, Franchisor, or the System; or Franchisee engages in conduct that exhibits a reckless disregard for the physical or mental well-being of employees, customers, students, Franchisor’s representatives, or the public at large—such conduct includes battery, assault, sexual harassment or discrimination, racial harassment or discrimination, alcohol or drug abuse, or other forms of threatening, outrageous, or unacceptable behavior;
- j. except as expressly permitted hereunder, any person attempts or purports to transfer any rights or obligations under this Agreement without Franchisor’s prior consent or otherwise breaches any of the provisions of ARTICLE 10;
- k. any breach occurs under ARTICLE 6 or Section 13.1, or any other provisions related to Confidential Information or noncompetition;
- l. Franchisee knowingly maintains false books or records, or knowingly submits any false reports to Franchisor;
- m. Franchisee misuses or makes any unauthorized use of the Proprietary Property (or the proprietary property of any Designated Brands Manufacturer) or otherwise engages in conduct that may materially impair the goodwill associated with the Proprietary Property or Franchisor’s rights in the Proprietary Property (or the proprietary property of any Designated Brands Manufacturer or the Designated Brands Manufacturer’s rights therein);
- n. Franchisee fails to procure or maintain any insurance required by this Agreement;
- o. during any 12-consecutive-month period, Franchisee receives from Franchisor three or more Notices of Default—whether for the same or different defaults—notwithstanding that such defaults might have been cured;
- p. Franchisee fails to obtain an Accreditation within four years of the Opening Date;
- q. Franchisee or any of its affiliates defaults under any other agreement with Franchisor or any of its affiliates (including any other franchise agreement) and Franchisor or any of its affiliates terminates such agreement on account thereof; or
- r. Franchisee or any of its affiliates defaults under any agreement with a Designated Brands Manufacturer and fails to cure such breach within any permitted cure period.

11.3. **Termination by Franchisor—After Notice and Right to Cure.** In addition to the defaults specified in Sections 11.1 and 11.2, Franchisee is in default under this Agreement if it fails to comply with any other obligation or requirement imposed by this Agreement, as it may from time to time be revised or supplemented by the Manuals. Except as otherwise provided in Sections 11.1 and 11.2, or elsewhere in this Agreement, Franchisee has 30 days after Franchisor delivers a notice of default (a “Notice of Default”) to cure any default described therein and provide evidence of cure satisfactory to Franchisor. A Notice of Default must briefly describe the nature of the default. Except as otherwise provided in Sections 11.1 and 11.2, or elsewhere in this Agreement, if any default described in a Notice of Default is not cured within such 30-day period—or such longer period as applicable law may require—without any further notice to Franchisee, Franchisor may immediately terminate this Agreement. To the extent a cure is permitted under this Agreement, Franchisee has the burden of proving it properly and timely cured any default.

## ARTICLE 12.

### OBLIGATIONS OF FRANCHISEE UPON TERMINATION OR EXPIRATION

Upon the expiration or sooner termination of this Agreement, all rights granted under this Agreement to Franchisee terminate immediately, and the Sections of this ARTICLE 12 apply to the rights and obligations of the parties. The provisions of this ARTICLE 12 contemplate and are intended, among other things, to enable Franchisor, if it so chooses, to immediately, without any interruption, take over and continue to operate the Franchised Business under its ownership upon the expiration or sooner termination of this Agreement (subject to any applicable federal, state or local law).

12.1. **Cease Operations.** Franchisee shall immediately cease operating the Franchised Business. Franchisee shall not, directly or indirectly: (a) use any of the Proprietary Property; (b) represent itself as a present or former franchisee of Franchisor (except to the extent required by federal or state franchise-registration and -disclosure laws); or (c) in any other way affiliate or associate itself with the System. Franchisee shall immediately cease using all stationery, signage, and any other materials containing the Proprietary Marks. Franchisee shall also immediately cease using any telephone and internet listings and any related numbers or contact information for the Franchised Business used at any time before such expiration or termination. To ensure that Franchisee has ceased such use, and Franchisor may continue using them or transferring them to another user, Franchisee authorizes Franchisor to take whatever actions are necessary to comply with the foregoing in accordance with the Limited Power of Attorney to Transfer Telephone and Internet Listings, which Franchisee is executing concurrently with this Agreement, in substantially the same form as Exhibit 12.1. However, nothing in the Limited Power of Attorney may be construed as authority for Franchisee to obtain internet listings or engage in Internet advertising or promotion unless this Agreement otherwise so authorizes.

12.2. **Payment of Outstanding Amounts.** Franchisor may retain all fees paid under this Agreement. In addition, within 10 days after the effective date of termination or expiration (or such later date(s) as it is determined that amounts are due to Franchisor), Franchisee shall pay Franchisor all Royalty Fees, Technology Fees, amounts owed for products or services Franchisee purchased from Franchisor or its affiliates, and all other unpaid amounts Franchisee owes to Franchisor or its affiliates.

12.3. **Assignment of Lease of Premises.** If the Premises are leased from a third party and if Franchisor requests, Franchisee shall immediately assign its interest in its lease to Franchisor or its designee and immediately surrender possession of the Premises to Franchisor or its designee. Franchisee is and remains liable for all of its obligations accruing up to the effective date of any lease assignment.

12.4. **Distinguishing Operations.**

- a. If Franchisor does not exercise its rights under Section 12.3 and Franchisee desires to operate a business at the Premises, it may do so as long as (i) such operation is not a breach of Section 12.5, Section 13.1 or any other noncompete obligations of Franchisee, and (ii) it makes such modifications or alterations to the Premises that may be needed to distinguish the appearance of the Premises from that of other franchised units and Company-Owned units under the System. Franchisee shall make all such modifications and alterations immediately upon termination or expiration of this Agreement. At such time, Franchisee shall also make such specific additional changes to the Premises as Franchisor reasonably requests for that purpose—including, changing the use of the Premises. Franchisee shall not take any action that impairs the goodwill of its customers or potential customers toward Franchisor, its franchisees, or any other aspect of the System.
- b. In the manner Franchisor specifies, Franchisee shall immediately remove all identifying architectural superstructure and signage on or about the Premises bearing any of the Proprietary Marks or other intellectual property of Franchisor or its affiliates, or of the Designated Brands Manufacturers, or any colorable imitation of any of the foregoing. Upon request, Franchisee shall hold for delivery to Franchisor, at the latter's expense, all such property belonging to Franchisor. Until the time of their

removal, Franchisee shall completely cover any signage that Franchisee cannot remove within one business day of the expiration or termination of this Agreement.

- c. Until all modifications and alterations required by this Section 12.4 are completed, Franchisee shall:
  - (i) maintain a conspicuous sign, in the form Franchisor specifies, at the Premises stating that Franchisee's facilities are no longer associated with Franchisor; and
  - (ii) advise all customers or prospective customers telephoning Franchisee's business that Franchisee and its business are no longer associated with Franchisor.
- d. If Franchisee fails or refuses to comply with the requirements of this Section 12.4, Franchisor may enter upon the Premises to make, or cause to be made, the required modifications, alterations, and changes. It does so at Franchisee's sole risk and expense, without responsibility for any actual or consequential damages to the property of Franchisee or others, and without liability for trespass or other tort or criminal act. Franchisee's failure to make such modifications, alterations, or changes will cause irreparable injury to Franchisor.

12.5. **Unfair Competition.** If Franchisee, or any of its owners, continues to operate, or subsequently begins to operate, any other business, it may not, in connection with such business or the promotion thereof, use any reproduction or colorable imitation of the Proprietary Marks, imitate any methods of operation, or undertake any other conduct that is likely to cause confusion, mistake, or deception, or that is likely to dilute Franchisor's rights in and to the Proprietary Marks. In addition, neither Franchisee nor any of its owners shall use any designation of origin or description or representation that falsely suggests or represents an association or connection with the System or Franchisor, or any of its affiliates. Any such action undertaken by Franchisee or any of its owners is considered unfair competition. This Section 12.5 does not, directly or indirectly, discharge Franchisee's obligations under ARTICLE 13.

12.6. **Return of Materials; Cooperation.** At its expense, Franchisee shall immediately deliver to Franchisor at its then current headquarters all tangible and intangible Proprietary Property (together with all copies and any other forms of reproductions of such materials) in Franchisee's possession or control. All such Proprietary Property, as well as all copies and reproductions thereof, are Franchisor's exclusive property. At Franchisor's request, Franchisee shall execute a certification that it has complied with this Section 12.6 and has not directly or indirectly retained copies of any such Proprietary Property (including any electronic copies). Without limiting Franchisor's other rights, Franchisee shall cooperate with Franchisor as it may request to inspect the Premises, interview employees, and review books and records, to ensure Franchisee's compliance with all of its obligations following expiration or sooner termination of this Agreement.

12.7. **Remove Internet References.** Not later than 30 days after the expiration or sooner termination of this Agreement, Franchisee shall remove, or cause to remove, as the case may be, all references existing on the Internet—whether direct or indirect or human-readable or machine-readable only—to the Franchised Business, the System (including the Proprietary Marks), or Franchisor or its owners, officers, or employees (collectively "Internet References"). Such references include or may appear on or be embedded in: (a) websites, Webpages, URLs; (b) metatags; (c) links from one website or page to another in which the Internet Reference exists; (d) search-engine optimization arrangements; and (e) social media, including Facebook, Twitter, Pinterest and YouTube. Nothing in this section entitles Franchisee to have Internet References, but to the extent it does it must comply with the terms of this Section.

12.8. **Liquidated Damages for Premature Termination.** If Franchisor terminates this Agreement in accordance with ARTICLE 11, Franchisee shall pay Franchisor a lump-sum payment equal to the total of all Royalty Fees for a period determined as follows:

- a. if the Franchised Business has been operating for 24 months or more and at the time of termination there are 24 months or more remaining in the Term had it naturally expired and not been terminated, the 24 months of operating the Franchised Business preceding Franchisee's default;

- b. if the Franchised Business has been operating for 24 months or more and at the time of termination there are less than 24 months remaining in the Term had it naturally expired and not been terminated (the number of such remaining months, the “Remaining Months”), the period of months (and any portion thereof) ~~the Franchised Business has been operating preceding Franchisee’s default~~ equal to the number of Remaining Months; or
- c. if the Franchised Business has been operating for less than 24 months, ~~the period of time the Franchised Business has been operating preceding the default, projected on a 24-month basis or never started operating, an amount equal to 24 times the greater of (i) the average monthly Royalty Fee then required to have been paid through the date of termination, or (ii) the Minimum Royalty Fee.~~

This payment constitutes liquidated damages for causing the premature termination of this Agreement and not a penalty. A precise calculation of the full extent of damages that Franchisor will incur if this Agreement terminates because Franchisee defaults cannot be reasonably determined. Nevertheless, the lump-sum payment provided under this Section 12.8 is reasonable in light of the damages for premature termination that Franchisor may reasonably be expected to incur in such event.

This sum is not a penalty and is intended by the parties only as a compensatory remedy for past breaches and not as a preventative remedy to deter future breaches. Nor does this sum represent a price for the privilege of not performing or its payment represent an alternative manner of performance. Accordingly, as a purely liquidated damage provision, this Section 12.8 does not preclude, nor is inconsistent with, a court granting Franchisor specific performance or any other equitable remedies, such as an injunction, to prevent future breaches. Franchisor’s rights to liquidated damages and specific performance or any other equitable relief are not mutually exclusive.

#### ARTICLE 13.

#### INDEPENDENT COVENANTS OF THE FRANCHISEE

##### 13.1. ***Diversion of Business; Competition and Interference With Franchisor.***

- a. Franchisor would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among franchisees in the Chain if franchisees were permitted to hold interests in any Competitive Cosmetology School. Accordingly, during the Term, neither Franchisee nor any of its owners, officers, managers or directors or any of their respective spouses (Franchisee and such other persons, collectively, the “Restricted Parties” and, individually, a “Restricted Party”) may, directly or indirectly:
  - i. solicit or otherwise attempt to induce (by combining or conspiring with, or attempting to do so), or influence in any other manner any of Franchisor’s Business Affiliates to terminate or modify his, her, or its business relationship with Franchisor or to compete against Franchisor;
  - ii. as owner, officer, director, manager, employee, agent, lender, lessor, broker, consultant, franchisee, or in any other similar capacity whatsoever be connected in any manner with the ownership, management, operation or control, or conduct of a Competitive Cosmetology School anywhere; or
  - iii. in any manner interfere with, disturb, disrupt, impair, diminish, or otherwise jeopardize the business of Franchisor or any of its other franchisees.
- b. Furthermore, during the 24-month period after the expiration or sooner termination of this Agreement, neither Franchisee nor any of the other Restricted Parties may, directly or indirectly:
  - i. solicit or otherwise attempt to induce (by combining or conspiring with, or attempting to do so), or influence in any other manner any of Franchisor’s Business Affiliates to terminate or modify his, her, or its business relationship with Franchisor or to compete against Franchisor;

- ii. as owner, officer, director, manager, employee, agent, lender, lessor, broker, consultant, franchisee, or in any other similar capacity whatsoever be connected in any manner with the ownership, management, operation or control, or conduct of a Competitive Cosmetology School within 50 miles of the Premises or the premises of any other cosmetology school then in operation or under construction that is authorized to use the Selected Trademark; or
- iii. in any manner interfere with, disturb, disrupt, impair, diminish, or otherwise jeopardize the business of Franchisor or any of its other franchisees.

13.2. **Reasonableness of Provisions.** Franchisee, for itself and each of the other Restricted Parties acknowledges and confirms that the scope of activities prohibited in Section 13.1, as well as the length of the term and geographical restrictions contained therein, are necessary to protect Franchisor's legitimate business interests and are fair and reasonable and not the result of overreaching, duress, or coercion of any kind. Franchisee's and each of the other Restricted Parties' full, uninhibited, and faithful observance of each of the covenants contained in this Section will not cause any undue hardship, financial or otherwise. Enforcement of each of the covenants contained in Section 13.1 will not impair Franchisee's or any of the other Restricted Parties' ability to obtain employment commensurate with its abilities and on terms fully acceptable to it or otherwise to obtain income required for the comfortable support of itself and its family, and the satisfaction of the needs of its creditors. Franchisee's and the other Restricted Parties' special knowledge of Franchisor's System for operating a cosmetology school (and anyone acquiring such knowledge through Franchisee or the other Restricted Parties) is such as would cause Franchisor and its franchisees serious injury and loss if it (or anyone acquiring such knowledge through Franchisee or the other Restricted Parties) were to use such knowledge to the benefit of a competitor or were to compete with Franchisor or any of its franchisees.

13.3. **Severability.** If any court finally holds that the time or territory for or to which Section 13.1 applies or the scope of activities prohibited thereunder—or that any provision stated in this ARTICLE 13—constitutes an unreasonable restriction upon Franchisee or the other Restricted Parties, the provisions of this Agreement are not thereby rendered void, but apply as to time and territory or to such other extent as such court finally concludes or indicates is a reasonable restriction under the circumstances. The time periods set forth in Section 13.1 are suspended during any period in which Franchisee or any of the other Restricted Parties is breaching any of its terms or involved in a legal action or proceeding challenging the validity or enforceability thereof.

13.4. **Reduction of Scope.** Without Franchisee's or the other Restricted Parties' consent, Franchisor, in its discretion, may reduce the scope of any covenants set forth in this ARTICLE 13. Any such reduction is effective immediately upon Franchisor's delivery of written notice. Franchisee and the other Restricted Parties shall comply immediately with any covenant as so modified. Such modified covenant is fully enforceable to the extent permitted by applicable law.

13.5. **Agreement.** All Franchisee's owners and all its employees shall sign Franchisor's standard form of noncompetition and confidentiality agreement containing provisions similar to those contained in this ARTICLE 13 prior to acquiring their ownership interest or beginning employment. Promptly after execution of all such agreements, Franchisee shall deliver copies thereof to Franchisor.

13.6. **Independent Covenants.** The foregoing covenants in this ARTICLE 13 is to be construed as independent of any other covenant or provision of this Agreement. The existence of any claim Franchisee or any other Restricted Party may have against Franchisor or any of its affiliates (regardless of whether arising from this Agreement) is not a defense to the enforcement of the foregoing covenants against Franchisee or any of the other Restricted Parties.

#### ARTICLE 14.

##### **INDEPENDENT CONTRACTOR; INDEMNIFICATION**

- 14.1. **Independent Status.** This Agreement does not create a fiduciary relationship between the parties to this Agreement. Franchisee is an independent contractor. Unless expressly provided to the contrary, nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, affiliate or servant of the other party for any purpose whatsoever. Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Franchisor's behalf. Franchisee shall not incur any debt or other obligation in Franchisor's name. Franchisee shall take such affirmative action as Franchisor requests to disclose to the public that Franchisee is an independent contractor. Such actions may include placing and maintaining a plaque in a conspicuous place within the Premises and a notice on all stationery, menus, business cards, sales literature, contracts, and similar documents that states that the Franchised Business is independently owned and operated by Franchisee. The content of such plaque and notice is subject to the prior written approval of Franchisor.
- 14.2. **Indemnification.** Franchisee shall indemnify and hold harmless Franchisor, its affiliates, each Designated Brands Manufacturer, and their respective officers, directors, owners, employees, managers and representatives (collectively, the "Indemnified Parties," and each, an "Indemnified Party") from any and all actions, judgments, damages, liabilities, losses, costs, and expenses (including reasonable attorney's fees and costs, even if incident to appellate, postjudgment, or bankruptcy proceedings) to which any Indemnified Party becomes subject or that it incurs arising from or relating in any manner to Franchisee's ownership or operation of the Franchised Business, except as provided in Section 5.4. In no event, however, need Franchisee indemnify Franchisor for any matter caused directly by Franchisor's intentional misconduct. Notwithstanding the expiration or sooner termination of this Agreement, this indemnity continues in full force and effect.

#### ARTICLE 15.

##### **ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES**

- 15.1. **No Reliance.** Except as expressly provided to the contrary in this Agreement, Franchisor makes no representations, warranties, or guarantees upon which Franchisee may rely. Franchisor does not assume any liability or obligation to Franchisee by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement; or by reason of any neglect, delay, or denial of any request therefor unless such conduct would otherwise constitute a breach of an express obligation of Franchisor under this Agreement.
- 15.2. **True Copies.** Franchisee represents and warrants that copies of all documents it furnishes to Franchisor in connection with obtaining the Franchise, and as required in the future, have been and will be true and complete copies of such documents (including all amendments or modifications thereof) and contain no misleading or incorrect statements or material omissions.
- 15.3. **Receipt of FDD.** Franchisee acknowledges that it received from Franchisor an FDD for the state where the Franchised Business will be located and, if different, the state where Franchisee resides (with all exhibits and supplements thereto), at least 14 calendar days before signing this Agreement or any other binding agreement with, or making any payment to, Franchisor or an affiliate in connection with the sale of the Franchise.
- 15.4. **Receipt of Completed Franchise Agreement.** Franchisee acknowledges that it received from Franchisor a completed copy of this Agreement and all related agreements, containing all material terms, with all blanks filled in (except for the date, signatures and any minor matters not material to the agreements) at least seven calendar days before signing this Agreement.
- 15.5. **Acknowledgement of Risk.** Franchisee acknowledges and agrees to the following:

- a. FRANCHISEE'S SUCCESS IN OWNING AND OPERATING THE FRANCHISED BUSINESS IS SPECULATIVE AND WILL DEPEND ON MANY FACTORS. SUCH FACTORS INCLUDE, TO A LARGE EXTENT, FRANCHISEE'S INDEPENDENT BUSINESS ABILITY. EXCEPT AS SPECIFICALLY INCLUDED IN THIS AGREEMENT, NO REPRESENTATIONS OR PROMISES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY FRANCHISOR OR ANY EMPLOYEE, BROKER, OR REPRESENTATIVE OF FRANCHISOR, TO INDUCE FRANCHISEE TO ENTER INTO THIS AGREEMENT. FRANCHISEE UNDERSTANDS THAT NO EMPLOYEE, OFFICER, DIRECTOR, BROKER OR REPRESENTATIVE IS AUTHORIZED TO DO OTHERWISE.
- b. FRANCHISEE ACKNOWLEDGES THAT, IN ALL OF ITS DEALINGS WITH FRANCHISOR'S OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AND REPRESENTATIVES, SUCH INDIVIDUALS ACT ONLY IN THEIR REPRESENTATIVE CAPACITY AND NOT IN AN INDIVIDUAL CAPACITY. FRANCHISEE FURTHER ACKNOWLEDGES THAT THIS AGREEMENT AND ALL BUSINESS DEALINGS BETWEEN FRANCHISEE AND SUCH INDIVIDUALS AS A RESULT OF THIS AGREEMENT ARE SOLELY BETWEEN FRANCHISEE AND FRANCHISOR. NOTWITHSTANDING THE FOREGOING, IF FRANCHISOR ENGAGES ANY BROKER, SUCH BROKER SHALL BE SOLELY LIABLE FOR ITS CONDUCT IN CONNECTION WITH FRANCHISEE EXCEPT THAT FRANCHISOR SHALL REMAIN LIABLE FOR THE BROKER'S CONDUCT SOLELY TO THE EXTENT OF FRANCHISOR'S OWN CRIMINAL, INTENTIONAL OR GROSSLY NEGLIGENT CONDUCT REGARDING ENGAGING SUCH BROKER.
- c. IN ADDITION, FRANCHISOR MAKES NO WARRANTY AS TO FRANCHISEE'S ABILITY TO OPERATE THE FRANCHISED BUSINESS IN THE JURISDICTION IN WHICH THE FRANCHISED BUSINESS IS TO BE OPERATED. FRANCHISEE ITSELF MUST SEEK OR OBTAIN ADVICE OF COUNSEL SPECIFICALLY WITH RESPECT TO THIS ISSUE. IF LEGISLATION ENACTED, OR REGULATION PROMULGATED, BY ANY GOVERNMENTAL BODY PREVENTS FRANCHISEE FROM OPERATING THE FRANCHISED BUSINESS, FRANCHISOR IS NOT LIABLE FOR DAMAGES NOR REQUIRED TO INDEMNIFY FRANCHISEE IN ANY MANNER WHATSOEVER OR TO RETURN ANY MONIES RECEIVED FROM FRANCHISEE.

15.6. **Business Opportunity Disclaimers.** Franchisor makes no representation, warranty, or guaranty—express or implied—concerning any of the following matters:

- a. that it will purchase any products made, produced, fabricated, or modified by Franchisee using supplies or services sold to Franchisee; or
- b. that Franchisee may or will earn a profit or derive income from the Franchise that exceeds the price paid for it;
- c. that Franchisor will refund all or part of the purchase price for the Franchise, or
- d. that Franchisor will repurchase any of the products, equipment, or supplies provided by Franchisor if Franchisee is unsatisfied with the Franchise.

15.7. **Antiterrorism Laws.** Franchisee acknowledges that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the government of the United States has adopted and may in the future adopt other anti-terrorism measures. Franchisor therefore requires certain representations and covenants that the parties with whom it deals are not directly or indirectly involved in terrorism. Therefore, Franchisee represents and covenants that neither Franchisee nor any of its employees, agents, representatives or, as applicable, Franchisee's principals, members, officers or directors, nor any other person or entity associated with Franchisee (each, individually, a "Party" and collectively, the "Parties") is a person or entity listed in the Annex to the Executive Order; or a person or entity otherwise determined pursuant to the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism (such a person or entity and those persons and entities listed in the Annex to the Executive Order are referred to herein as "Terrorists"); or a person or entity who assists, sponsors or who supports Terrorists or acts of terrorism ("Sponsors of Terrorism"); or owned or controlled by Terrorists or Sponsors

of Terrorism. Furthermore, Franchisee represents and covenants that neither Franchisee nor any Party will, during the term of this Agreement, become a person or entity described above.

#### ARTICLE 16.

##### TERM

- 16.1. **Term.** Unless sooner terminated under ARTICLE 11, the Term of this Agreement commences on the Agreement Date and expires 10 years thereafter. Upon the expiration of the Term, Franchisee may extend its Franchisor franchise for one additional ten-year term as provided in Section 16.2.
- 16.2. **Option to Obtain Successor Franchise Agreement.** Upon the expiration (but not the sooner termination) of the Term, Franchisee may enter a Successor Franchise Agreement with a ten-year successor term. Franchisee may do so only if the following conditions are satisfied at the time the option is exercised (unless another time is specifically set forth below) and remain satisfied at all times thereafter:
- a. not less than 9 months nor more than 12 months before the end of the Term, Franchisee shall give Franchisor notice of its intention to exercise the option to obtain a Successor Franchise Agreement by submitting its application for a Successor Franchise Agreement;
  - b. if Franchisor, in its discretion, chooses to inspect the Franchised Business at least 6 months prior to the expiration of the Term, and gives notice to Franchisee of any required maintenance, refurbishing, renovating, and upgrading, Franchisee shall, to Franchisor's satisfaction, complete all such required maintenance, refurbishing, renovating, and upgrading no later than 90 days prior to expiration of the Term;
  - c. Franchisee shall satisfy all its monetary obligations owed to Franchisor and its affiliates;
  - d. Franchisee shall not be in default of any provision of (and shall not have received more than three notices of default under—whether for the same or different defaults—notwithstanding that such defaults might have been cured) this Agreement or any other agreement between Franchisee and Franchisor or its affiliates;
  - e. within 30 days before Term expires, Franchisee shall execute, and deliver to Franchisor, a Successor Franchise Agreement, the terms of which may significantly differ from the terms of this Agreement, including a smaller Protected Territory, higher Royalty Fees, or a higher Technology Fee;
  - f. Franchisee reimburses Franchisor for all expenses not exceeding \$5,000 that Franchisor incurs in connection with extending the franchise—this reimbursement is in lieu of any initial franchise fee due under the Successor Franchise Agreement;
  - g. Franchisee shall execute a general release of all claims against Franchisor and its affiliates, and their respective officers, directors, owners, agents, and employees, managers and representatives in form and substance satisfactory to Franchisor; and
  - h. Franchisee is lawfully entitled to continue to occupy the Premises for the entire following successor term.
- 16.3. **Reinstatements and Extensions.** If termination or expiration of the Term would violate any applicable law, Franchisor may reinstate or extend the Term to comply with such laws. Franchisor may do so by written notice to Franchisee. Such reinstatement or extension is for the period set forth in the notice. Such reinstatement or extension does not waive any of Franchisor's rights under this Agreement or otherwise modify it.

#### ARTICLE 17.

##### DEFINITIONS

- 17.1. **Definitions.** For the purposes of this Agreement, the following terms have the following meanings:

**“Accreditation”** has the meaning set forth in Section 4.13.a.

**“Accrediting Agency”** means any educational institution accrediting agency approved by Franchisor in the Manuals or otherwise in writing (which currently include the National Accrediting Commission of Career Arts and Sciences and the Accrediting Commission of Career Schools and Colleges).

**“Affiliate,”** or **“affiliate,”** means, with respect to a corporation or other business entity, any person controlling, controlled by, or under common control with that corporation or business entity. With respect to an individual, affiliate means that individual’s immediate family members, as well as such immediate family members’ spouses, and the corporations or other business entities such individual and his or her family members, directly or indirectly, control. For the purposes of this definition, “control” means the ownership of more than 50% of the outstanding ownership or voting interests in an entity.

**“Agreement”** means this Franchise Agreement, as it may be amended, supplemented, or otherwise modified in accordance with Section 18.2.

**“Agreement Date”** means the date this Agreement was entered, which is set forth in the first paragraph hereof.

**“Business Affiliate”** means any of Franchisor’s employees, officers, directors, agents, consultants, representatives, contractors, suppliers, distributors, franchisees or other business contacts.

**“Chain”** means the group of Company-Owned Units and franchised units that are entitled to operate a cosmetology school using any of the Proprietary Marks.

**“Company-Owned Unit”** means a cosmetology school that is entitled to be operated using any of the Proprietary Marks and that is owned by Franchisor or any of its affiliates.

**“Competitive Cosmetology School”** means a school offering training in hairstyling, nails, massage, aesthetician or other cosmetology services (regardless of whether it is a business with a student salon area).

**“Computer System”** means the computer hardware, Software, peripherals, web-based applications and related services (including high-speed Internet service) that Franchisee must purchase and use in accordance with Franchisor’s specifications contained in the Manuals or otherwise specified in writing by Franchisor.

**“Confidential Information”** means any knowledge, know-how, technologies, processes, techniques, and any other information that Franchisor designates as confidential, proprietary, or trade secrets or that is not readily available in the public domain. Confidential Information includes the Manuals, training materials, and any customer list Franchisee may create and maintain.

**“Consumer Price Index”** means the Consumer Price Index – All Items – Urban Consumers (CPI-U) (December 2012 = 100), or its successor, as published by the U.S. Government.

**“Contract Interest Rate”** has the meaning set forth in Section 3.5.

**“Delegatee”** means one or more of Franchisor’s representatives who are independent contractors and appointed by Franchisor to perform certain of its duties under this Agreement.

**“Design Specifications”** has the meaning set forth in Section 2.3.

**“Designated Brands”** has the meaning set forth in Section 4.12.c.ii.

**“Designated Brands IP”** has the meaning set forth in Section 4.12.c.iii.

**“Designated Brands Manufacturer”** has the meaning set forth in Section 4.12.c.i.

**“Designated Brands Manufacturer Agreement”** has the meaning set forth in Section 4.12.c.v.

**“Dispute”** means any dispute, claim, or controversy arising under or relating to this Agreement or any agreement entered by the parties in connection with this Agreement (including any dispute relating to Franchisor’s offer, sale, or negotiation of a cosmetology school franchise or the relationship of the parties arising therefrom or from

entering this Agreement or any claim that this Agreement, or any part thereof, is invalid, illegal, or otherwise voidable or void).

**"FDD"** means Franchisor's Franchise Disclosure Document and all exhibits and supplements thereto current at the time delivered to Franchisee.

**"Franchise"** means the rights granted to Franchisee under this Agreement.

**"Franchised Business"** means the cosmetology school business that Franchisee is authorized to establish and operate at the Premises under this Agreement.

**"Franchisee"** means all persons signing the signature page of this Agreement as Franchisee, jointly and individually.

**"Franchise Owner"** means: (a) if Franchisee is one or more individuals, each such individual; (b) if Franchisee is an entity, each individual that, directly or indirectly, owns any ownership or voting interests in such entity.

**"Gross Revenues"** means all Franchisee's revenues (actually received and net of actual refunds, which must be documented to Franchisor's reasonable satisfaction) arising out of the ownership or operation of the Franchised Business or any other business at or about the Premises. Gross Revenues may be evidenced by cash, credit card charges, collected accounts receivable, checks, and the cash value of property or services that the Franchisee received for providing goods or services. Gross Revenues consisting of goods or services that the Franchisee received are valued at the prices applicable, at the time of Franchisee's receipt, for the products or services that Franchisee provided therefor. The proceeds of Franchisee's business-interruption insurance are included in Gross Revenues. Gross Revenues exclude, however, the amount of any sales taxes that Franchisee collected and actually paid to the taxing authority. For purposes of clarity, Gross Revenues include revenues received as a result of education services provided by Franchisee, including tuition paid, registration fees and over contract fees (but excluding revenues from the sale of student start-up kits), student salon service revenue and product sales.

**"Initial Franchise Fee"** has the meaning set forth in Section 3.1.a.

**"Initial Franchise Training"** has the meaning set forth in Section 2.5.

**"Local Advertising"** means advertising and promotion undertaken by Franchisee in media directed primarily at Franchisee's local market area including television, Internet, radio, newspapers, magazines, billboards, posters, handbills, direct mail, collateral promotional and novelty items (e.g., matchbooks, pens and pencils, bumper stickers, calendars) that prominently display a Proprietary Mark, and advertising on public vehicles such as taxis and buses. Local Advertising also includes the cost of producing materials necessary to participate in these media, agency commissions related to the production of such advertising, and amounts paid to a merchant's association for advertising of which the Franchisee is a member. Local Advertising does not include payments in connection with permanent on-premises signs, lighting, purchasing or maintaining vehicles (even if such vehicles display in some manner a Proprietary Mark), contributions or sponsorships (unless Franchisor's Proprietary Marks are prominently displayed by the group or activity receiving the contribution or sponsorship), premium or similar offers (e.g. discounts, price reductions, special offers, free offers and sweepstakes offers—except that the media costs associated with promoting the premium offers are included); employee-incentive programs, and other similar payments that Franchisor, in its discretion, determines should not be included in determining whether Franchisee has met its obligations for Local Advertising.

**"L'Oréal"** has the meaning set forth in Section 4.12.c.i.

**"Manuals"** means all manuals, and any revisions thereto, prepared for the internal use of the Franchised Business currently or subsequently produced by, or for the benefit of, Franchisor.

**"Opening Date"** means the date on which the Franchised Business is first opened for business to the general public.

**“Opening Date Deadline”** has the meaning set forth in Section 4.4.

**“Operations Director”** has the meaning set forth in Section 4.11.

**“Payment System”** has the meaning set forth in Section 3.3.

**“Post-Opening Training”** has the meaning set forth in Section 2.7.

**“Premises”** has the meaning set forth in Section 1.2.

**“Proprietary Marks”** means the service marks **SPEC** (word mark and logos), **The Salon Professional Academy** (word mark and logos), **Growing Salon Leaders One Student at a Time**, **Academy for Salon Mastery**, **Elevate Salon Institute**, Trade Dress, and all other trademarks, service marks, trade names, logos and commercial symbols that Franchisor authorizes as part of the System.

**“Proprietary Property”** means the Proprietary Marks, Confidential Information, and copyrighted (or copyrightable) information of Franchisor or its affiliates that Franchisor authorizes as part of the System.

**“Protected Territory”** has the meaning set forth in Section 1.3.

**“Reserved Area”** means the area described in Schedule 1.2 in which Franchisee will conduct its Site-selection process to identify and submit proposed Sites for Franchisor’s approval in accordance with its Site-approval process. The Reserved Area does not include any protected territory pertaining to a Company-Owned Unit or another franchisee within the Chain who already has a Franchised Business in operation or to be operated in the Reserved Area under the Selected Mark.

**“Restricted Party”** has the meaning set forth in Section 13.1.

**“Royalty Fee”** has the meaning set forth in Section 3.1.b.

**“Selected Trademark”** means one of the following cosmetology school brands that Franchisee selects: **The Salon Professional Academy**, **Academy for Salon Mastery**, or **Elevate Salon Institute**. They are sometimes referred to as “TSPA,” “ASM,” or “ESI,” respectively.

**“Site”** has the meaning set forth in Section 4.1.

**“Site-Selection Criteria”** means Franchisor’s minimum standards, if any, for or concerning demographic characteristics, traffic patterns, parking, predominant character of the neighborhood, competition from other businesses providing similar services within the area, proximity to other businesses and the nature of such businesses, the size, appearance, and other physical characteristics of a Site, and any other factors that Franchisor may consider relevant to approving or disapproving a Site.

**“Software”** means the computer software that Franchisor designates as part of the Computer System. Such software may be proprietary or produced or provided by third parties. Some or all of the Software may be online programs or applications that Franchisee may access on Franchisor’s or a third party’s website, including a cloud based customer relationship management system.

**“Successor Franchise Agreement”** means a successor franchise agreement that is the then-current form of franchise agreement for new franchisees at the time Franchisee enters into such agreement in accordance with Section 16.2.

**“System”** means Franchisor’s system for operating a cosmetology school. The system includes specific standards and procedures and Proprietary Property—all of which may be improved, further developed, or otherwise modified as well as those features described in this Agreement.

**“Term”** has the meaning set forth in Section 16.1.

**“Trade Dress”** means the business design and image developed and owned by Franchisor or its affiliates for a cosmetology school as may, from time to time, be revised and further developed by Franchisor. The Trade Dress currently emphasizes a unified color scheme throughout the Franchised Business and includes the following

features: all signage, whether inside or outside of the facilities; uniform interior graphics package; banners; floor design; and uniforms and dress code.

“**Trainee**” has the meaning set forth in Section 2.5.a.

“**Training Fees**” means, as of any date, Franchisor’s then prevailing fees for Initial Franchise Training.

“**Transfer Fee**” means the fee described in Section 10.2.d.vi.

~~“**Tuition Revenues**” means revenues received as a result of education services provided by Franchisee, including tuition paid, registration fees and over contract fees (but excluding revenues related to student start-up kits).~~

#### 17.2. **Other Definitional Provisions.**

- a. “Including (include)” means “including (include), without limitation.” “Or,” as in “A or B,” means “A or B or both.” “Herein,” “hereunder,” and “hereof” refer to this Agreement, and not to the specific section in which that term occurs.
- b. The term “person” includes any corporation, partnership, limited liability company, estate, trust, association, branch, bureau, subdivision, venture, associated group, individual, government, institution, instrumentality, and other entity, enterprise, association, or endeavor of every nature and kind.

### ARTICLE 18.

#### GENERAL PROVISIONS

18.1. **Release of Prior Claims.** By executing this Agreement, Franchisee, on behalf of itself and ~~each of its successors under this Agreement~~owners, and their respective officers, directors, managers, employees, agents, contractors and representatives, forever releases and discharges Franchisor and its affiliates, its Delegates, franchise sales brokers, if any, and other agents, and their respective owners, officers, directors, ~~representatives~~managers, employees ~~and~~, agents, contractors and representatives, from any and all claims of any kind, in law or in equity, that may exist as of the Agreement Date relating to this Agreement or any other agreement between the parties, or relating in any other way to the conduct of Franchisor, its affiliates, its Delegates, franchise sales brokers, if any, or other agents, and their respective officers, directors, representatives, employees and agents before the Agreement Date, including any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, business opportunity, securities, antitrust or other laws of the United States, any state or locality. Nothing in the foregoing release is intended to disclaim, or require Franchisee to waive reliance on, any representation made in the FDD that Franchisor has provided it, except with respect to specific contract terms and conditions set forth in the FDD that Franchisee has voluntarily waived during the course of franchise-sale negotiations. If California law applies to the terms hereof, each of the parties hereby expressly, voluntarily and knowingly waives, relinquishes and abandons each and every right, protection and benefit to which it, he, she or they would be entitled, now or at any time hereafter under Section 1542 of the Civil Code of the State of California, as well as under any other statutes or common law principles of similar effect to said Section 1542, whether now or hereinafter existing under the laws of California or any other applicable federal and state law with jurisdiction over the parties’ relationship. Each of the parties hereby acknowledges that Section 1542 of the Civil Code of the State of California provides as follows: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”

18.2. **Amendments.** The provisions of this Agreement may be amended, supplemented, waived or changed only by a written document signed by the party as to whom enforcement of any such amendment, supplement, waiver, or modification is sought and making specific reference to this Agreement. With respect to Franchisor, only the President of Franchisor has the authority to execute any amendment on behalf of

Franchisor. None of Franchisor's other officers, employees, or agents have authority to execute any amendment. This Section is subject to the terms of Sections 6.3, 13.1, and 18.3.

18.3. **Modification of the System.** FROM TIME TO TIME AFTER THE AGREEMENT DATE, FRANCHISOR MAY CHANGE OR MODIFY THE SYSTEM (INCLUDING THE TYPES OF GOODS AND SERVICES OFFERED BY THE FRANCHISED BUSINESS). FRANCHISEE SHALL ACCEPT, AND IS BOUND BY, SUCH CHANGES TO AND MODIFICATIONS OF THE SYSTEM AS IF THEY WERE PART OF THIS AGREEMENT AT THE TIME IT WAS EXECUTED. FRANCHISEE SHALL MAKE ALL SUCH EXPENDITURES AS FRANCHISOR MAY REASONABLY REQUIRE TO TIMELY AND EXPEDITIOUSLY IMPLEMENT AND COMPLY WITH SUCH CHANGES OR MODIFICATIONS.

18.4. **Binding Effect.** All of the terms and provisions of this Agreement, whether so expressed or not, are binding upon, inure to the benefit of, and are enforceable by the parties and their respective personal representatives, legal representatives, heirs, successors, and permitted assigns.

18.5. **Notices.** All notices, requests, approvals, demands, consents and other communications required or permitted under this Agreement must be in writing and must be (as elected by the person giving such notice) hand delivered by messenger or courier service, mailed by registered or certified mail (postage prepaid), return receipt requested, or sent by facsimile or email (provided that the sender confirms the facsimile or email by delivering an original confirmation copy by mail or expedited delivery service, in accordance with this Section 18.5, within three days after transmission), addressed to the appropriate party at its address set forth below or to such other address as that party may designate by notice complying with the terms of this Section 18.5. Each such notice is deemed delivered: (a) on the date delivered if by personal delivery; (b) on the date of transmission (provided confirmation is sent as described above), if by facsimile or email; or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities or courier service as not deliverable, as the case may be, if mailed or couriered.

Franchisor's address is SPEC, 4377 15th Avenue South, Fargo, ND 58103, Attention: Jodi Ellingson, President; Facsimile: 701-461-9180; Email: jellingson@specfranchise.com.

Franchisee's address is \_\_\_\_\_; Facsimile: \_\_\_\_\_; Email: \_\_\_\_\_.

18.6. **Headings.** The headings and subheadings contained in this Agreement are for convenience of reference only. They must not be considered a part of this Agreement and do not limit or otherwise affect, in any way, the meaning or interpretation of this Agreement.

18.7. **Severability.**

- a. If any provision of this Agreement, or any other agreement entered into under this Agreement, is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision is inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder of this Agreement is not invalidated thereby and must be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision has the meaning that renders it valid and enforceable.
- b. If any applicable law of any jurisdiction requires greater prior notice of termination, or nonrenewal, of this Agreement than is required hereunder, or the taking of some action not required under this Agreement, the greater prior notice or other action required by such law must be substituted for its counterpart under this Agreement. If, under any applicable law of any jurisdiction, any provision of this Agreement or any requirement prescribed by Franchisor is invalid or unenforceable, Franchisor may, in its discretion, modify such invalid or unenforceable requirement to the extent required to be valid and enforceable. Unless Franchisor elects to give them greater applicability, the foregoing substitutions and modifications to this Agreement are effective only in the jurisdiction in which they

are required. In all other jurisdictions, this Agreement must be enforced as originally made and entered.

- 18.8. **Entity Franchisee.** If Franchisee is a corporation, limited liability company, partnership or other entity, it shall, at or prior to its execution of this Franchise Agreement, provide to Franchisor the following: (a) formation documents filed with the state of its formation certified to be true and correct by the appropriate official of such state and a “good standing” certificate as to Franchisee from such appropriate official, (b) a list of owners together with each owner’s corresponding ownership interest, (c) a certificate from each owner stating that it (and its owners) has no interest in any Competitive Cosmetology School, (d) a certificate of incumbency of managers, officers and directors, as applicable, and (e) minutes or written consent authorizing the execution of this Franchise Agreement, certified to be true and correct by the secretary of Franchisee. The owners of all the issued and outstanding voting equity of the entity as certified by an authorized officer shall be and remain, at all times, parties, individually, to this Franchise Agreement and jointly and severally liable for all of the obligations and undertakings of Franchisee hereunder.
- 18.9. **Waivers.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, does not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. A waiver by any party of any breach of any provision of this Agreement must not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any case, of itself, entitles such party to any other or further notice or demand in similar or other circumstances.
- 18.10. **Governing Law.** Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051 et seq.), this Agreement and any other agreement relating thereto, and all transactions contemplated thereby, as well as Franchisor’s offer, sale, or negotiation of a cosmetology school franchise or the relationship of the parties arising therefrom or from entering this Agreement, are governed by, and must be construed and enforced in accordance with, the internal laws of North Dakota, without regard to its conflict-of-laws principles. NOTWITHSTANDING THE FOREGOING, ANY STATUTES IN THE FOREGOING JURISDICTION REGULATING THE OFFER OR SALE OF FRANCHISES, BUSINESS OPPORTUNITIES, OR SIMILAR INTERESTS OR GOVERNING THE RELATIONSHIP BETWEEN THE PARTIES TO THIS AGREEMENT, OR BETWEEN FRANCHISOR AND FRANCHISEE’S GUARANTORS AND OWNERS, IF ANY, DO NOT APPLY UNLESS THEIR RESPECTIVE JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SECTION.
- 18.11. **Jurisdiction and Venue.** Each of the parties irrevocably and unconditionally: (a) agrees that any suit, action or legal proceeding arising out of or relating to any Dispute must be brought only in the courts of record of the State of North Dakota in Cass County or the District Court of the United States, District of North Dakota; (b) consents to the jurisdiction of each such court in any suit, action, or proceeding; (c) waives any objection that he, she or it may have to the laying of venue of any such suit, action, or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in the State of North Dakota.
- 18.12. **Waiver of Punitive, Consequential and Exemplary Damages Claims.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES MUTUALLY AND WILLINGLY WAIVE ANY RIGHT TO, OR CLAIM FOR, ANY PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES AGAINST THE OTHER (INCLUDING LOSS OF REVENUE, INCOME OR PROFITS). IN THE EVENT OF A DISPUTE BETWEEN THE PARTIES, EACH IS LIMITED TO RECOVERING ONLY THE ACTUAL DAMAGES IT SUSTAINS.
- 18.13. **Waiver of Jury Trial.** THE PARTIES MUTUALLY AND WILLINGLY WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY AND ALL CLAIMS MADE BETWEEN THEM WHETHER NOW EXISTING OR ARISING IN THE FUTURE— INCLUDING ANY AND ALL CLAIMS, DEFENSES, COUNTERCLAIMS, CROSS CLAIMS, THIRD-PARTY CLAIMS

AND INTERVENOR'S CLAIMS—WHETHER ARISING FROM OR RELATED TO THE SALE, NEGOTIATION, EXECUTION, OR PERFORMANCE OF THE TRANSACTIONS TO WHICH THIS AGREEMENT RELATES.

- 18.14. **Equitable Relief.** The Franchised Business is intended to be one of a large number of businesses identified by the Proprietary Marks selling the public the products and services associated with the Proprietary Marks. Consequently, a single franchisee's failure to comply with the terms of its franchise agreement is likely to cause irreparable damage to Franchisor, and damages at law would, therefore, be an inadequate remedy. Accordingly, in the event of a breach or threatened breach of any of the terms of the Agreement by Franchisee, Franchisor may seek an injunction restraining such breach or a decree of specific performance (together with recovery of reasonable attorneys' fees and costs incurred in obtaining such equitable relief). It may do so without demonstrating or proving any irreparable damage. Moreover, Franchisor may seek such relief without posting any bond or security (but if a court of competent jurisdiction requires a bond or security, a bond or security of \$1,000 will be adequate). The foregoing equitable remedies are in addition to all other rights or remedies to which Franchisor may otherwise be entitled because of any breach of this Agreement by Franchisee. Notwithstanding anything in this Agreement to the contrary, Franchisor may seek equitable and injunctive relief in any jurisdiction that has jurisdiction over Franchisee or any Restricted Party.
- 18.15. **Enforcement Costs.** If any legal action, or other proceeding (is instituted for the enforcement of this Agreement or to resolve any other Dispute, the successful or prevailing party or parties is entitled to recover reasonable attorneys' fees (including reasonable pre-institution and post-institution attorneys' fees), court costs and all expenses even if not taxable as court costs (including all such fees, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings), incurred in connection with such action or proceeding, in addition to any other relief to which such party or parties may be entitled. If Franchisor is required to engage legal counsel or other professionals in connection with any failure by Franchisee to pay when due any monies owed under this Agreement or submit when due any reports, information or supporting records, or in connection with any failure otherwise to comply with this Agreement, Franchisee shall reimburse Franchisor on demand for all of the above-listed costs and expenses it incurs, whether or not a legal action or other proceeding is initiated.
- 18.16. **Remedies Cumulative.** Except as otherwise expressly provided in this Agreement, no remedy in this Agreement conferred upon any party is intended to be exclusive of any other remedy. Each and every such remedy is cumulative and is in addition to every other remedy given under this Agreement or, subject to any choice of law provided in this Agreement, now or later existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy under this Agreement precludes any other or further exercise of such right, power, or remedy.
- 18.17. **Effectiveness; Counterparts.** This Agreement is not effective or binding or enforceable against Franchisor until it is executed by an authorized officer of Franchisor. This Agreement may be executed in two or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. Confirmation of execution by facsimile, or scanned and emailed, signature page is binding upon any party to such confirmation.
- 18.18. **Consents, Authorization, Approvals or Other Satisfaction.** Whenever Franchisor's consent, authorization, approval, or other satisfaction (collectively, "Approval") is required under this Agreement, unless such Approval is in writing and signed by a duly authorized executive officer, such Approval is not binding upon Franchisor. No other officer, employee, or agent of Franchisor has authority to execute Approval on behalf of Franchisor. Franchisor's Approval, whenever required, may be withheld if any default by Franchisee exists under this Agreement. Unless the Agreement expressly states otherwise, any Approval of Franchisor under or arising out of this Agreement shall be granted or withheld in its discretion and judgment. Further, any Approval provided by Franchisor under or arising out of this Agreement (including the approval of a Site or the approval of suppliers) is not, directly or indirectly, a representation or warranty (including whether the Franchised Business will be profitable or whether Franchisee's sales

will attain any predetermined levels) relating to the subject of such Approval. Such Approval is an expression only that Franchisor's minimum requirements for Franchisor to grant it have been met, or waived, in Franchisor's discretion. Additionally, Franchisee shall not claim that the provision or withholding of any Approval by Franchisor imposes any liability on Franchisor.

- 18.19. **Interpretation.** Each of the parties has been or has had the opportunity to have been represented by their own counsel throughout the negotiations, as well as at the execution of this Agreement and all the other documents executed incidental to this Agreement. Therefore, while this Agreement is effective as well as after its expiration or sooner termination, none of the parties may claim or assert that any provision of this Agreement or of the other documents should be construed against the drafter thereof.
- 18.20. **Entire Agreement.** This Agreement (together with its exhibits and schedules, and all other written agreements related to this Agreement that are expressly referenced herein) represents the entire understanding and agreement between the parties with respect to the subject matter of this Agreement, and supersedes all other negotiations, understandings, and representations, if any, made by and between the parties. No representation, inducement, promise, or agreement, oral or otherwise, if any, not embodied in this Agreement, its exhibits or schedules, or any other written agreement related to this Agreement and expressly referenced herein is of any force and effect. Nothing in this Section 18.20 is intended to disclaim, or require Franchisee to waive reliance on, any representation made in the FDD that Franchisor has provided it, except with respect to specific contract terms and conditions set forth in the FDD that Franchisee has voluntarily waived during the course of franchise-sale negotiations.
- 18.21. **Survival.** All Franchisor's and Franchisee's respective obligations that expressly or by their nature survive the expiration or sooner termination of this Agreement continue in full force and effect subsequent to and notwithstanding its expiration or termination, including but not limited to Franchisee's obligations under ARTICLE 15 and ARTICLE 18. Such obligations continue in full force and effect until they are satisfied or by their nature expire.
- 18.22. **Force Majeure.** Neither party is liable for loss or damage, or deemed in breach of this Agreement, if its failure to perform its obligations results from any of the following causes: (a) telecommunications and utilities interruptions (including loss of Internet and electrical service), computer malfunctions (including malfunctioning computer hardware and software and peripherals), extreme weather and climatic conditions (including hurricanes, cyclones, and flooding), transportation shortages or inadequate supply of equipment, merchandise, labor, material, or energy; (b) compliance with any applicable law; (c) war, acts of terrorism, strikes, natural disaster, or acts of God; or (d) any cause beyond its control. Any delay in a party's performance resulting from any of said causes extends the time for performance accordingly or excuses performance, in whole or in part, as may be reasonable. Without limiting the generality of the foregoing, Franchisee acknowledges that services involving, or depending upon, computers or the Internet may be unreliable and that service interruptions thus will occur even in the exercise of the greatest care. Accordingly, Franchisor disclaims any representations, warranties, and covenants—express or implied—that the services it is obligated to perform that involve, or depend upon, using computers, software, or the Internet will be provided free from interruption or malfunction.
- 18.23. **Third Parties.** Except as provided in this Agreement to the contrary with respect to any affiliates of Franchisor, nothing in this Agreement, whether express or implied, confers any rights or remedies under or by reason of this Agreement on any persons other than the parties and their respective personal or legal representatives, heirs, successors, and permitted assigns. Further, except as provided in this Agreement to the contrary with respect to any Delegatee of Franchisor, nothing in this Agreement relieves or discharges the obligation or liability of any third persons to any party to this Agreement. No provision of this Agreement shall give any third persons any right of subrogation or action over or against any party to this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties agree that: (a) each of their respective owners, officers, directors, managers, employees, agents, attorneys and other representatives are third-party beneficiaries of the provisions of Sections 15.5, 18.10, 18.11, 18.12,

18.13, 18.14, and 18.15; and (b) L'Oréal is a third party beneficiary of Sections 4.12.c, 14.2, 18.10, 18.11, 18.12, 18.13, 18.14, as well as any other provisions that relate to the Designated Brands Manufacturer or the Designated Brands IP, and may independently enforce in its own name Franchisee's obligations with respect thereto.

- 18.24. **Right of Parties.** If Franchisee defaults in performing any of its obligations under this Agreement, Franchisor has the right (but not the duty) to perform Franchisee's obligations. If it does, Franchisee shall immediately reimburse Franchisor for the actual costs of so performing. Interest accrues on all amounts due Franchisor under this Section 18.24 at the Contract Interest Rate commencing on the 10th day after Franchisor's demand for reimbursement.
- 18.25. **Cost of Living Adjustment.** The Technology Fee, if any, the Transfer Fee, and any other monies due Franchisor under this Agreement the amount of which are not based upon a percentage of Gross Revenues ~~or Tuition Revenues~~, are subject to annual adjustment based upon increases (but not decreases) in the Consumer Price Index. Such dollar amounts must be adjusted annually on the first and each subsequent anniversary of the Agreement Date during the Term (the "Adjustment Date") to reflect increases in the Consumer Price Index. If the latest Consumer Price Index published immediately prior to the Adjustment Date (the "Adjustment Date Level") is at a level higher than the level at which such Consumer Price Index was as published immediately prior to the Agreement Date (the "Agreement Date Level"), then those dollar amounts that are subject to adjustment as specified above must be amended and adjusted as of the Adjustment Date by multiplying said amounts by a factor that is determined by dividing the Adjustment Date Level by the Agreement Date Level. From time to time, Franchisor may, in its discretion, waive or defer the adjustments required in this Section 18.25, provided that such waiver or deferral is subject to the terms of Section 18.9. Unless Franchisor otherwise agrees, any failure of Franchisor to timely make or require the adjustments required under this Agreement is deemed a deferral of such adjustments until such time as Franchisor may specify that such adjustments are necessary or have been waived for any particular year or years. If the Consumer Price Index is discontinued, Franchisor must substitute a comparable index reflecting changes in the cost of living or the purchasing power of money, published or recognized as being reliable by the U.S. Government.
- 18.26. **Joinder.** If Franchisee is an entity, all Franchisee's legal and beneficial owners shall enter the Joinder set forth below. Likewise, all Restricted Parties other than Franchisee and its owners shall enter the Restricted Party Joinder set forth below. A default by any such owner or Restricted Party of its obligations under any such joinder is considered a default of Franchisee under this Agreement.

***[Remainder of Page Intentionally Left Blank]***

This Agreement is dated \_\_\_\_\_.

This Selected Trademark is: \_\_\_\_\_.

**FRANCHISOR:**

SPEC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**JOINDER**

The parties signing below constitute all Franchisee’s beneficial and legal owners. The Franchisee and such parties are jointly and severally liable for their respective obligations under this Agreement, as it may be modified from time to time (with or without that party’s consent), and each owner is bound by the Agreement as if he or she were Franchisee thereunder (as well as bound by all the provisions of the Agreement applicable to Restricted Parties under Section 13.1).

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Ownership Percentage: \_\_\_\_\_ %

**RESTRICTED PARTY JOINDER**

Each of the parties signing below, being a “Restricted Party” under Section 13.1 of the Franchise Agreement, agrees that he or she is bound by the terms of ARTICLE 13, and by all other provisions in the Franchise Agreement pertaining to preserving Franchisor’s confidential information and trade secrets, including those in ARTICLE 6.

\_\_\_\_\_  
(signature)  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
(signature)  
Print Name: \_\_\_\_\_

**Schedule 1.2**  
**The Premises and Reserved Area**

The Premises are \_\_\_\_\_  
\_\_\_\_\_ .

The Reserved Area is \_\_\_\_\_ .

**Schedule 1.3**  
**The Protected Territory**

The Protected Territory is \_\_\_\_\_  
\_\_\_\_\_.

**Exhibit 4.1.b**  
**Agreement With Landlord**

**THIS AGREEMENT** (this “Agreement”) dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ among **SPEC** (“Franchisor”), a ~~Minnesota~~North Dakota limited liability company, with principal offices located at 4377 15<sup>th</sup> Avenue South, Fargo, ND 58103, \_\_\_\_\_ (“Landlord”) a \_\_\_\_\_ with principal offices located at \_\_\_\_\_, and \_\_\_\_\_ (“Tenant”), a \_\_\_\_\_ with principal offices located at \_\_\_\_\_.

- A. On \_\_\_\_\_, Tenant and Franchisor entered a Franchise Agreement (the “Franchise Agreement”). Under the Franchise Agreement, Franchisor granted Tenant the right—and Tenant undertook the duty—to operate a cosmetology school franchised business (the “Franchised Business”) at a location that must be approved by, and acceptable to, Franchisor.
- B. Concurrently with entering this Agreement, Landlord and Tenant are entering a lease agreement (the “Lease”). Under the Lease, Tenant leases the premises described known as \_\_\_\_\_ (the “Premises”).
- C. To ensure that a cosmetology school continues to operate at the Premises and to protect Franchisor’s rights and interests under the Franchise Agreement, Landlord grants certain rights to Franchisor under the Lease as set forth below.

The parties, therefore, agree as follows:

1. **Consideration.** As consideration for Landlord’s entering this Agreement, Tenant must pay Landlord \$250 when Tenant signs this Agreement. Landlord hereby acknowledges receipt of the aforesaid \$250 and further acknowledges that its entering this Agreement has induced Franchisor to consent to Tenant’s operating the Franchised Business at the Premises, which Franchisor would not have done but for, and in reliance upon, Landlord’s entering this Agreement.
2. **Lease Incorporation.** This Agreement is considered an integral part of the Lease and, as such, is binding upon Landlord’s heirs, successors, and assigns as if originally made part of and integrated into the Lease.
3. **Use of Premises.** During the term of the Franchise Agreement, Tenant must use the Premises to operate the Franchised Business. It may not use the Premises for any other purpose.
4. **Proprietary Marks.** Landlord permits Tenant to use and display all proprietary marks, signs, décor items, color schemes, graphic packages, trade dress, and related components of Franchisor’s franchise system that Franchisor may from time to time prescribe for the Franchised Business.
5. **Notices.** At the same time such notices are sent to Tenant, Landlord must provide Franchisor with copies of all written notices it sends to Tenant (including, without limitation, all notices of default). Landlord must send such copies by first-class mail, postage prepaid, to Franchisor at its address set forth above or such other address as Franchisor may notify Landlord in writing.
6. **Right to Cure.** If Tenant defaults under the Lease, Franchisor has the right (but not the duty) to cure such default within 30 days after it receives written notice thereof from Landlord (or such longer period of time if the default cannot reasonably be cured within 30 days and Franchisor diligently proceeds to cure the default). Furthermore, in such event, without Landlord’s consent, Franchisor may immediately commence occupancy of the Premises as the tenant under the Lease. Franchisor may thereafter assign the Lease to another cosmetology school franchisee or company-owned unit that operates under any brand that Franchisor then authorizes. If it does, Franchisor must first obtain Landlord’s written approval of the assignee. Landlord, however, must neither unreasonably withhold nor delay its approval thereof. No

assignment permitted under this Section ARTICLE 6 is subject to any assignment or similar fee. Nor will such an assignment cause any rental acceleration.

7. **Right to Assign.** At any time (including, without limitation, upon the expiration or sooner termination of the Franchise Agreement) without Landlord's prior consent, Tenant may assign the Lease to Franchisor. In such event, Franchisor may thereafter assign the Lease to another cosmetology school franchisee or company-owned unit that operates under any brand that Franchisor then authorizes. If it does, Franchisor must first obtain Landlord's written approval of the assignee. Landlord, however, must neither unreasonably withhold nor delay its approval thereof. No assignment permitted under this Section 7 is subject to any assignment or similar fee. Such an assignment will not cause any rental acceleration.
8. **Acknowledgement of Rights.** Landlord acknowledges Franchisor's rights under the Franchise Agreement to enter the Premises to take such actions as needed to protect its rights and interests under the Franchise Agreement. Such actions include, without limitation, altering the Premises, removing any signs and other items displaying Franchisor's proprietary marks, and curing defaults under the Franchise Agreement and the Lease.
9. **Modification of Lease.** Without Franchisor's prior written consent, neither Landlord nor Tenant may modify, supplement, terminate, renew or extend the Lease. Except as expressly provided otherwise in this Agreement, without Franchisor's prior written consent, Landlord may not consent to any transfer of the Lease by Tenant.
10. **Miscellaneous.** In the event of any inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement control. All of the terms of this Agreement, whether so expressed or not, are binding upon, inure to the benefit of, and are enforceable by the parties and their respective legal representatives, heirs, successors and permitted assigns. The provisions of this Agreement may be amended, supplemented, waived or changed only by a written document signed by all the parties to this Agreement and making specific reference to this Agreement. This Agreement may be executed in two or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. Confirmation of execution by facsimile, or scanned and emailed, signature page is binding upon any party to such confirmation.

This Agreement has been executed the date and year first above written.

FRANCHISOR:

LANDLORD:

SPEC

\_\_\_\_\_

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

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

Print Name:

Print Name:

Its:

Its:

TENANT:

\_\_\_\_\_

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

Print Name:

Its:

**Exhibit 12.1**

**Limited Power of Attorney to Transfer Telephone and Internet Listings**

THE UNDERSIGNED, having one or more telephone and internet listings and related telephone numbers or other contact information with any telephone company or other service provider hereby authorizes any officer of SPEC (the "Franchisor") as attorney-in-fact, to transfer such listings and contact information to Franchisor as it requests, including the execution of all documents necessary to accomplish the transfer. A copy of this document may be relied on to the same extent as an original.

FRANCHISEE:

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

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, who represented himself/herself to be \_\_\_\_\_ of \_\_\_\_\_, Inc., a \_\_\_\_\_, on behalf of the \_\_\_\_\_. He or she personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and \_\_\_\_\_ (did/did not) take an oath.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC:

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

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_