

**FRANCHISE AGREEMENT**

This Franchise Agreement (the "Agreement") dated on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") is made between \_\_\_\_\_ (the "Franchisor") with an address of \_\_\_\_\_ and \_\_\_\_\_ (the "Franchisee"), with an address of \_\_\_\_\_, for the particular purpose of setting forth the exclusive terms and conditions by which the Franchisee desires to acquire the described Franchise from the Franchisor. f

In consideration of the mutual obligations specified in this Agreement, the parties, intending to be legally bound hereby, agree to the following:

**The Franchise.** The Franchisor has developed methods for establishing, operating, and promoting businesses engaged in the business of \_\_\_\_\_ using the service mark and related trade names and trademarks (the "Marks") and the Franchisor's proprietary methods of doing business (the "Licensed Methods"). The Franchisor grants the right to others to develop and operate a \_\_\_\_\_ franchise, under the Marks and pursuant to the Licensed Methods.

The Franchisee desires to establish \_\_\_\_\_ franchise at a location of \_\_\_\_\_, and the Franchisor wishes to grant the Franchisee the right to operate a \_\_\_\_\_] franchise at such location under the terms and conditions which are contained in this Agreement.

The Franchisor grants to the Franchisee and the Franchisee accepts from the Franchisor, the right to use the Marks and Licensed Methods in connection with the establishment and operation of a \_\_\_\_\_ franchise, at the above-referenced location. The Franchisee agrees to use the Marks and Licensed Methods, as they may be changed, improved, and further developed by the Franchisor from time to time, only in accordance with the terms and conditions of this Agreement.

The Franchisee agrees at all times to faithfully, honestly, and diligently perform the Franchisee's obligations hereunder, and to continuously exert best efforts to promote the \_\_\_\_\_ franchise. The Franchisee agrees to utilize the Marks and Licensed Methods to operate all aspects of the business franchised hereunder in accordance with the methods and systems developed and prescribed from time to time by the Franchisor, all of which are a part of the Licensed Methods.

The Franchisee will offer such products and services as the Franchisor shall designate and shall be restricted from manufacturing, offering, or selling any products or services not previously approved by the Franchisor in writing. The Franchisee's \_\_\_\_\_ must feature \_\_\_\_\_] brand items manufactured by the Franchisor or its designated suppliers and related non-primary items ("Items") approved by the Franchisor in writing.

**Franchise Fee.** The Franchisee agrees to pay the Franchisor an amount of \$ \_\_\_\_\_ as Franchise Fee. The payment of the franchise fee enables the Franchisee to enjoy the use of the Franchisor's system and name, as well as assistance for a limited time.

In consideration for the right to develop and operate one \_\_\_\_\_ franchise, the Franchisee agrees to pay to the Franchisor an initial franchise fee, which is due and payable as of the date of execution of this Agreement. The initial franchise fee represents payment for the initial grant of the rights to use the Marks and Licensed Methods, that the Franchisor has earned the initial franchise fee upon receipt thereof, and that the fee is non-refundable except as otherwise specifically set forth in this Agreement. This one-time non-refundable fee is \$ \_\_\_\_\_.

**Location & Designated Area.** The Franchisee is granted the right and franchise to own and operate one \_\_\_\_\_ franchise at \_\_\_\_\_  
\_\_\_\_\_  
("Franchised Location").

The rights that are granted to the Franchisee under this Agreement are for the specific Franchised Location and cannot be transferred to any other location without the prior written approval of the Franchisor. If the Franchisee has operated a \_\_\_\_\_ franchise for not less than 12 months and desires to relocate it to an alternative site, the Franchisee must set forth its reasons for requesting the relocation in writing to the Franchisor, along with a proposed new location. The Franchisor will have 30 days from receipt of the Franchisee's written request to respond.

If the Franchisor approves the relation and the proposed new location, and if the ownership of the Franchisee does not change in any respect from the ownership of the Franchisee before the relocation, then the Franchisee may move its franchise to the new approved location, provided that the Franchisee signs the Franchisor's then-current form of Franchise Agreement and opens the franchise at the new location within 12 months after the franchise closes at its former Franchised Location. In addition, the Franchisee will be required to pay a nonrefundable design fee of \$ \_\_\_\_\_ as a fee for the preparation of a design for Franchisee's new Franchised Location. A similar design fee will also apply if the Franchisee requests design assistance in remodeling its franchise at any time during the term of this Agreement.

**Training.** After the Franchisee executes a lease for the Franchised Location, the Franchisee or, if the Franchisee is not an individual, the person designated by the Franchisee to assume primary responsibility for the management of the \_\_\_\_\_ franchise ("General Manager") is required to attend and successfully complete the initial training program which is offered by the Franchisor at one of the Franchisor's designated training facilities.

The Franchisor's initial training program shall consist of \_\_\_\_\_ days of instruction at a location designated by the Franchisor; provided, however, that the Franchisor reserves the right to waive a portion of the Franchisor's training program or alter the training schedule if, in the Franchisor's sole discretion, the Franchisee or General Manager has sufficient prior experience or training. From time to time, the

Franchisor may present seminars, conventions, or continuing development programs or conduct meetings for the benefit of the Franchisee.

**Development Assistance.** In addition to the Franchisor's initial training, equipment list, design services, Operations Manual, and other pre-opening services described elsewhere in this Agreement, Franchisor will provide the Franchisee prior to opening with a list of approved and designated suppliers and an advertising plan and advertising copy for Franchisee's grand opening.

In addition to the other operational assistance and advice provided by the Franchisor pursuant to other provisions of this Agreement, at the opening of the Franchisee's location and for a period of \_\_\_\_ days thereafter, the Franchisor shall provide the on-site services of a representative to assist the Franchisee and provide further on-site training in connection with the operation of the Franchisee's location.

**Operations Manual.** The Franchisor agrees to loan to the Franchisee one or more manuals, technical bulletins, and other written materials (collectively referred to as the "Operations Manual") covering ordering of supplies, manufacturing, processing, and stocking and other operating and in-store marketing techniques.

The Franchisee agrees to use the Marks and Licensed Methods only as specified in the Operations Manual. The Operations Manual is the sole property of the Franchisor and shall be used by the Franchisee only during the term of this Agreement and in strict accordance with the terms and conditions hereof. The Franchisee shall not duplicate the Operations Manual or disclose its contents to persons other than its employees or officers who have signed the form of Confidentiality and Non-Disclosure Agreement. The Franchisee shall return the Operations Manual to the Franchisor upon the expiration, termination, or transfer of this Agreement. The Franchisor reserves the right to revise the Operations Manual from time to time as it deems necessary to update or change operating and marketing techniques, standards, and specifications for all components of the Licensed Methods. Promptly after receiving any update from the Franchisor, the Franchisee shall update his or her copy of the Operations Manual as instructed by the Franchisor and shall conform operations with the updated provisions within a reasonable time after receipt of such updated information.

The Franchisee shall at all times during the term of this Agreement own and control the \_\_\_\_\_ franchise authorized hereunder. The Franchisee shall not operate any other business or profession from or through the franchise location. If the Franchisee is an entity, the entity shall only operate the \_\_\_\_\_ franchise governed by this Agreement and no other business, unless the Franchisee receives the Franchisor's prior written approval. Upon request of the Franchisor, the Franchisee shall promptly provide to the Franchisor proof, reasonably acceptable to the Franchisor, of such ownership.

**Royalties.** Throughout the term of this Agreement, the Franchisee agrees to pay to the Franchisor a continuing monthly royalty ("Royalty") equal to 0 percent of its Gross Retail Sales generated from or through the \_\_\_\_\_ franchise.

“Gross Retail Sales” shall be defined as receipts and income of any kind from all products or services sold from or through the \_\_\_\_\_ franchise, including any such sale of products or services made for cash or upon credit, or partly for cash and partly for credit, regardless of collection of charges for which credit is given, fewer returns for which refunds are made, provided that the refund shall not exceed the sales price and exclusive of discounts, sales taxes, and other taxes, amounts received in settlement of a loss of merchandise, shipping expenses paid by the customer and discount sales to corporations or to charities for fund-raising purposes. “Gross Retail Sales” shall also include the fair market value of any services or products received by the Franchisee in barter or in exchange for his services and products.

The Franchisee agrees that Royalty payments shall be paid monthly and sent to the Franchisor, post-marked on the \_\_\_\_ of each month based on Gross Retail Sales for the immediately preceding month. Royalty payments shall be accompanied by monthly reports and standard transmittal forms containing information regarding the Franchisee’s Gross Retail Sales and such additional information as may be requested by the Franchisor.

**Advertising.** The Franchisee shall obtain the Franchisor’s prior written approval of all advertising or other marketing or promotional programs published by any method, including print, broadcast and electronic media, regarding the \_\_\_\_\_ franchise, including, without limitation, “Yellow Pages” advertising, newspaper ads, flyers, brochures, coupons, direct mail pieces, specialty and novelty items, radio, television, and Internet advertising. The Franchisee acknowledges and agrees that the Franchisor may disapprove of any advertising, marketing, or promotional programs submitted to the Franchisor for any reason in the Franchisor’s sole discretion. The Franchisee shall also obtain the Franchisor’s prior written approval of all promotional materials provided by vendors. The proposed written advertising or a description of the marketing or promotional program shall be submitted to the Franchisor before publication, broadcast, or use.

**Quality Control.** The Franchisee agrees to maintain and operate their \_\_\_\_\_ franchise strictly in compliance with this Agreement and the standards and specifications contained in the Operations Manual, as the same may be modified from time to time by the Franchisor in accordance with this Agreement. The Franchisee is prohibited from offering or selling any products or services not authorized by Franchisor.

If the Franchisee proposes to offer, conduct or utilize any products, services, materials, forms, items or supplies for use in connection with or sale through \_\_\_\_\_ which are not previously approved by the Franchisor as meeting its specifications, the Franchisee shall first notify the Franchisor in writing requesting approval. The Franchisor may, in its sole discretion, for any reason whatsoever, elect to withhold such approval. In order to make such determination, the Franchisor may require submission of specifications, information, or samples of such products, services, materials, forms, items, or supplies. The Franchisor will advise the Franchisee within a reasonable time whether such products, services, materials, forms, items, or supplies meet its specifications.

**Term and Termination.** This Agreement shall be effective on the date hereof and shall continue for a period of \_\_\_\_\_ ([month[s]/year[s]) or until the expressly agree upon date of the completion of the Services, unless it is earlier terminated in accordance with the terms of this Agreement (the “Term”). Either Party may terminate this Franchise Agreement upon thirty (30) days written notice or as required by law.

If either Party subject to this Agreement fails to follow through with their obligations under this Agreement, the non-breaching Party can terminate this Agreement by providing \_\_\_\_ day written notice to the breaching Party.

The Franchisor shall have the right, at its option, to terminate this Agreement and all rights granted the Franchisee hereunder, without affording the Franchisee any opportunity to cure any default (subject to any state laws to the contrary, where state law shall prevail), effective upon receipt of notice by the Franchisee, upon the occurrence of any of the following events:

- a. Abandonment. If the Franchisee ceases to operate the \_\_\_\_\_ franchise or otherwise abandons the \_\_\_\_\_ franchise for a period of \_\_\_\_ consecutive days, or any shorter period that indicates an intent by the Franchisee to discontinue operation of the \_\_\_\_\_ franchise, unless and only to the extent that full operation of the \_\_\_\_\_ franchise is suspended or terminated due to fire, flood, earthquake or other similar causes beyond the Franchisee’s control and not related to the availability of funds to the Franchisee;
- b. Insolvency; Assignments. If the Franchisee becomes insolvent or is adjudicated bankrupt; or any action is taken by the Franchisee, or by others against the Franchisee under any insolvency, bankruptcy or reorganization act, (this provision may not be enforceable under federal bankruptcy law), or if the Franchisee makes an assignment for the benefit of creditors, or a receiver is appointed by the Franchisee;
- c. Criminal Conviction. If the Franchisee is convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in the sole opinion of the Franchisor, to materially and unfavorably affect the Licensed Methods, Marks, goodwill or reputation thereof;
- d. Failure to Make Payments. If the Franchisee fails to pay any amounts due the Franchisor or affiliates, including any amounts which may be due as a result of any subleases or lease assignments between the Franchisee and the Franchisor, within 10 days after receiving notice that such fees or amounts are overdue;
- e. Misuse of Marks. If the Franchisee misuses or fails to follow the Franchisor’s directions and guidelines concerning use of the Franchisor’s Marks and fails to correct the misuse or failure within ten days after notification from the Franchisor;
- f. Unauthorized Disclosure. If the Franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of the Franchisor’s Operations Manual or any other trade secrets or confidential information of the Franchisor;
- g. Repeated Non-Compliance. If the Franchisee has received two previous notices of default from the Franchisor and is again in default of this Agreement at any time during the term

of this Agreement, regardless of whether the previous defaults were cured by the Franchisee.

Other: \_\_\_\_\_  
\_\_\_\_\_

**Restrictive Covenants.** The Franchisee acknowledges that, in addition to the license of the Marks hereunder, the Franchisor has also licensed commercially valuable information which comprises and is a part of the Licensed Methods, including without limitation, operations, marketing, advertising, and related information and materials and that the value of this information derives not only from the time, effort and money which went into its compilation, but from the usage of the same by all the franchisees of the Franchisor using the Marks and Licensed Methods. The Franchisee, therefore, agrees that other than the \_\_\_\_\_ franchise licensed herein, neither the Franchisee nor any of the Franchisee's officers, directors, shareholders or partners, nor any member of his or their immediate families, shall during the term of this Agreement have any direct or indirect controlling interest as a disclosed or beneficial owner in a "Competitive Business."

The Franchisee shall treat all information it receives which comprises or is a part of the Licensed Methods licensed hereunder as proprietary and confidential and will not use such information in an unauthorized manner or disclose the same to any unauthorized person without first obtaining the Franchisor's written consent. The Franchisee acknowledges that the Marks and the Licensed Methods have valuable goodwill attached to them, that the protection and maintenance thereof is essential to the Franchisor, and that any unauthorized use or disclosure of the Marks and Licensed Methods will result in irreparable harm to the Franchisor.

**Insurance.** The Franchisee shall procure, maintain, and provide evidence of:

- a. Comprehensive general liability insurance for the Franchised Location and its operations;
- b. Automobile liability insurance covering all employees of the \_\_\_\_\_ franchise with authority to operate a motor vehicle in an amount not less than any statutorily imposed minimum coverage;
- c. Unemployment and worker's compensation insurance with broad form all-states endorsement coverage sufficient to meet the requirements of the law.

All of the required policies of insurance shall name the Franchisor as an additional named insured and shall provide for a 30-day advance written notice to the Franchisor of cancellation.

The Franchisee will provide proof of insurance to the Franchisor prior to commencement of operations at the \_\_\_\_\_ franchise. This proof will show that the insurer has been authorized to inform the Franchisor in the event any policies lapse or are canceled. The Franchisor has the right to change the minimum amount of insurance the Franchisee is required to maintain by giving the Franchisee prior reasonable notice, giving due consideration to what is reasonable and customary in the similar business. The Franchisee's failure to comply with the insurance provisions set forth herein shall be

deemed a material breach of this Agreement. In the event of any lapse in insurance coverage, in addition to all other remedies, the Franchisor shall have the right to demand that the Franchisee cease operations of the \_\_\_\_\_ franchise until coverage is reinstated, or, in the alternative, pay any delinquencies in premium payments and charge the same back to the Franchisee.

**Dispute Resolution.** Parties to this Agreement shall first attempt to settle any dispute through good-faith negotiation. If the dispute cannot be settled between the parties via negotiation, either party may initiate mediation or binding arbitration in the State of \_\_\_\_\_.

If the parties do not wish to mediate or arbitrate the dispute and litigation is necessary, this Agreement will be interpreted based on the laws of the State of \_\_\_\_\_, without regard to the conflict of law provisions of such state. The Parties agree the dispute will be resolved in a court of competent jurisdiction in the State of \_\_\_\_\_.

**Governing Law.** This Agreement shall be governed in all respects by the laws of the State of \_\_\_\_\_ without regard to the conflict of law provisions of such state. This Agreement shall be binding upon the successors and assigns of the respective parties.

**Notice.** All notices or requests required or contemplated by this Agreement shall be in writing and such notice shall be delivered as follows:

(a) if from the Franchisor to the Franchisee shall be hand-delivered or mailed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address as the Franchisor shall specify in written notice to the Franchisee.

(b) if from the Franchisee to the Franchisor, shall be hand-delivered or mailed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address as the Franchisee shall specify in written notice to the Franchisor.

**No Right to Set Off.** The Franchisee shall not be allowed to set off amounts owed to the Franchisor for Royalties, fees, or other amounts due hereunder, against any monies owed to Franchisee, nor shall the Franchisee, in any event, withhold such amounts due to any alleged nonperformance by the Franchisor hereunder, which right of set-off is hereby expressly waived by the Franchisee.

**Payment of Taxes.** The Franchisee shall reimburse the Franchisor, or its affiliates and designees, promptly and when due, the amount of all sales taxes, use taxes, personal property taxes, and similar taxes imposed upon, required to be collected or paid by the Franchisor, or its affiliates or designees, on account of services or goods furnished by the Franchisor, its affiliates or designees, to the Franchisee through sale, lease or otherwise, or on account of collection by the Franchisor, its affiliates or designees, of the initial franchise fee, Royalties, Marketing and Promotion Fees or any other payments made by the Franchisee to the Franchisor required under the terms of this Agreement.

**Warranty.** The Franchisee shall provide its services and meet its obligations set forth in this Agreement in a timely and satisfactory workmanlike manner, using its knowledge and recommendations for performing its services which generally meets standards in the Franchisee's region and community, and agrees to provide a standard of care, equal or superior to care used by other professionals in the same profession.

The Franchisee shall perform the services in compliance with the terms and conditions of the Agreement.

**Legal Fees.** Should a dispute between the named Parties arise lead to legal action, the prevailing Party shall be entitled to any court costs, including, but not limited to reasonable attorneys' fees.

**No Assignment.** This Agreement shall be binding upon the undersigned and their respective heirs, representatives, successors and permitted assigns. This Agreement may not be assigned by either party without the prior written consent of the other party.

**Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Electronic Signatures.** This Agreement and related documents entered into in connection with this Agreement are signed when a party's signature is delivered electronically, and these signatures must be treated in all respects as having the same force and effect as original signatures.

**Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Captions for Convenience.** All captions herein are for convenience or reference only and do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

**No Waiver.** No waiver of or failure to act upon any of the provisions of this Agreement or any right or remedy arising under this Agreement shall be deemed or shall constitute a waiver of any other provisions, rights or remedies (whether similar or dissimilar).

**Amendment.** This Agreement may be amended only by a writing signed by all of the Parties hereto.

**Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings,

agreements, representations, and warranties, both written and oral, regarding such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

*[Signatures on Following Page]*

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IN WITNESS WHEREOF, the undersigned have executed this Franchise Agreement effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "*Effective Date*").

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Franchisor's Signature

\_\_\_\_\_  
Franchisee's Signature

\_\_\_\_\_  
Franchisor's Printed Name or Entity

\_\_\_\_\_  
Franchisee's Printed Name or Entity

**Franchisor's Contact Information:**

**Franchisee's Contact Information:**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Email Address: \_\_\_\_\_