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**EXHIBIT H**

**AREA DEVELOPMENT AGREEMENT**



**DALE CARNEGIE & ASSOCIATES, INC.**  
**UNITED STATES OF AMERICA AREA DEVELOPMENT AGREEMENT**

AREA DEVELOPER BUSINESS NAME: \_\_\_\_\_

AREA DEVELOPER BUSINESS ADDRESS: \_\_\_\_\_

DEVELOPMENT TERRITORY: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

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**DALE CARNEGIE & ASSOCIATES, INC.**

**AREA DEVELOPMENT AGREEMENT**

THIS AREA DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Effective Date"), between DALE CARNEGIE & ASSOCIATES, INC., a New York corporation with its principal office at 290 Motor Parkway, Hauppauge, New York 11788 ("DC&A," "we", or "us"), and \_\_\_\_\_, whose principal address is \_\_\_\_\_ ("Area Developer" or "you").

**1. BACKGROUND**

**1.1 Carnegie Businesses, Carnegie Programs and the Carnegie System**

We have developed a proprietary system (the "Carnegie System" or the "System") for developing, opening and operating businesses ("Carnegie Businesses") specializing in the offer, sale and teaching of certain of DC&A's proprietary instructional programs and related services, including, but not limited to, consulting services, organizational development products and services, needs assessments, evaluations, interviews and executive summary sessions (the "Carnegie Programs"), and other related merchandise from and at training centers (each, a "Carnegie Center"). We have expended time, skill, effort and money in developing, obtaining and acquiring knowledge about the conduct of the Carnegie Businesses. The Carnegie System includes methods and techniques used in connection with the operation of Carnegie Businesses and for the maintenance of a common identity and reputation of the Carnegie Businesses in the internationally franchised network. The Carnegie System and Carnegie Programs continue to evolve. As used in this Agreement, Carnegie Programs are limited to those specified in the Franchise Agreements (as hereinafter defined).

**1.2 The Marks**

We own the trademarks, service marks and trade names "DALE CARNEGIE" and "DALE CARNEGIE TRAINING" and other trademarks, service marks and trade names, logotypes, emblems, designs, labels, signs, and symbols, copyrighted materials and other intellectual property used in connection with the offer, sale, promotion and presentation of the Carnegie Programs (collectively, the "Marks"). The Marks constitute an integral part of the Carnegie System.

**2. GRANT OF AREA DEVELOPMENT RIGHTS; TERRITORY**

**2.1 Grant of Area Development Rights**

You desire to obtain the exclusive right and obligation to establish and operate multiple Carnegie Businesses using the Marks and the Carnegie System in certain geographical territories. We desire to grant to you such exclusive right and obligation on the terms and subject to the conditions of this Agreement. We grant to you, and you accept, the exclusive right and obligation to establish and operate multiple Carnegie Businesses (the "Businesses"): (i) in the territories (the "Franchise Territories") set forth in Exhibit A annexed hereto in the geographical area (the "Development Territory") specified in Section 2.2 and set forth in Exhibit B annexed hereto and (ii) pursuant to a development schedule (the "Development Schedule") as described in Section 5.1 and set forth in Exhibit A annexed hereto; subject to the terms and conditions of this Agreement and the terms of each Franchise Agreement entered into with respect to each Franchise Territory (hereinafter referred to individually as a "Franchise Agreement" and collectively as the "Franchise Agreements") entered into between us and you, and all documents

ancillary thereto. Your rights in the Development Territory described in Section 2.2 are limited by Section 2.4 and the terms of the Franchise Agreements. This Agreement does not give you any rights to use and display the Marks, to use the Carnegie System and to operate Businesses, any and all such rights being granted by, limited to and governed by the terms of each of the Franchise Agreements.

## **2.2 Territorial Grant**

Your right to establish and operate the Businesses is restricted to the Development Territory described in Exhibit B by a map or written description and you hereby undertake to own and operate the Businesses within the Development Territory pursuant to the Franchise Agreements which this Agreement contemplates will be entered into by us and you. Your rights to offer, sell and conduct Carnegie Programs and to promote, advertise and publicize such Carnegie Programs are all restricted solely to the Franchise Territories as set forth in the applicable Franchise Agreement.

## **2.3 DC&A Restrictions**

Within the Development Territory, we will not operate or allow another to operate a Carnegie Business or enter into any other agreement granting rights to own, develop or operate a Carnegie Business, except as provided in Section 2.4 and as set forth in the Franchise Agreements. These restrictions will terminate immediately upon the expiration or termination of this Agreement or, with respect to the individual Franchise Territories, the applicable Franchise Agreement, for whatever reason.

## **2.4 Rights Reserved By DC&A**

We reserve all rights not specifically granted to you in this Agreement and the Franchise Agreements. These include but are not necessarily limited to the following:

A. To own and operate, and authorize others to own and operate, Carnegie Centers and/or Carnegie Businesses at any location outside the Development Territory, including those which may be situated immediately proximate to, adjacent to or abutting the boundary of the Development Territory.

B. Except as limited by this Agreement and the Franchise Agreements, to use or license the Marks within or outside the Development Territory for the purposes of offering or selling any service or product whatsoever, whether or not such services or products are competitive with the Businesses or the Carnegie System, including without limitation, to offer, sell, organize and conduct (either ourselves or through franchises, licenses, joint ventures or any other business combination): any proprietary instructional programs, systems, teaching and management techniques, educational programs, consulting, surveys and/or programs developed by us or third parties, whether through direct in-person modes of training or through "channels and methods of distribution and presentation other than a direct in-person mode of training" (as defined below), to any person wherever situated, including situated within the Development Territory and including proximate to your "Center(s)" and/or "Training Facilities" established under the terms of the Franchise Agreements and without regard to the impact therefrom on the revenues, profitability and/or viability of the Businesses; provided, however, that we will not offer, sell and/or conduct Carnegie Programs (as defined in Section 1.1) in your Development Territory; and provided further, that you acknowledge and we specifically reserve the right to offer, sell and/or conduct any proprietary instructional program, system, teaching and management technique, educational program, consulting, survey and/or program developed by us or third parties, which include less than all of the modules of a Carnegie Program or is based on less than all of the content of a Carnegie Program. We will share our gross revenues received from the activities set forth in this Subsection with you and with our other franchisees, but only to the extent provided in the Franchise Agreements.



Other “channels and methods of distribution and presentation other than a direct in-person mode of training” may include, without limitation, electronic presentations via computer networks (including, without limitation, the World Wide Web, other areas of the Internet and/or other on-line networks); satellite broadcasts; private cable hookups; audio tapes, videotapes; CD-ROMs; computer programs; conference calls; catalogues; direct mail; and other communications methods now or hereafter devised of any nature whatsoever, other than a direct in-person mode of training.

C. To purchase, merge, acquire, be acquired by or affiliate with any other business organization, including one that provides training or instruction that is competitive with Carnegie Programs, whether or not the other business organization provides training services in the Development Territory; provided, however, that any facility of such business organization situated within the Development Territory will not be permitted to operate under the Marks until the termination or expiration of this Agreement and/or the Franchise Agreement applicable to the affected Franchise Territory, but will be permitted to continue operation under any other name or mark.

D. Upon the termination or expiration of this Agreement and/or the Franchise Agreement applicable to the affected Franchise Territory, within the Development Territory, to establish Carnegie Businesses (either ourselves or through franchises, licenses, joint ventures or any other business combination) which will establish Carnegie Centers and offer and sell those products and services which this Agreement contemplates you will offer and sell.

The essence of this Section 2.4 is that the specific terms and limitations of this Agreement, the Franchise Agreements and the Businesses to be established thereunder, and the boundaries of the Development Territory conferred under this Agreement, are to be deemed for all purposes strict terms, limitations and boundaries not subject to further judicial or other construction, implication or attempts to expand same, directly or indirectly, and outside of which (or within which, to the extent provided above) we may engage in any business activity whatsoever.

### **3. TERM**

#### **3.1 Term**

The term (“Term”) of this Agreement shall be for a period commencing on the Effective Date and extending until the later of either the actual or scheduled Date of Execution of the last Franchise Agreement executed pursuant to this Agreement and specified in Section 5.1 hereof, unless sooner terminated in accordance with the provisions of this Agreement.

#### **3.2 Notice of Expiration**

If applicable law requires us to give notice of expiration to you at a specified time prior to the expiration of the Term of this Agreement, and we have not done so, then the Term of this Agreement will be extended on a month-to-month basis until we have given you the required notice of expiration, and the required period before the expiration of the Agreement becomes effective shall have expired.

#### **3.3 No Renewal**

This Agreement shall not be subject to renewal.

#### **4. AREA DEVELOPMENT FEE**

In consideration of the execution of this Agreement by us, you will pay us an "Area Development Fee" calculated by multiplying the aggregate number of franchised Businesses which you are required to establish and operate pursuant to Section 5.1 hereof by our Initial Franchise Fee (as such term is defined in the First Franchise Agreement (as defined in Article 6 hereof)), as applicable. The Area Development Fee will be applied by us to the Initial Franchise Fees otherwise due and payable to us upon the signing of each Franchise Agreement. The Area Development Fee is payable in full upon execution of this Agreement by you, will be deemed fully earned when paid, and will not be refundable (in whole or in part) under any circumstance.

#### **5. DEVELOPMENT SCHEDULE**

##### **5.1 Development Schedule**

For so long as this Agreement is in effect and you are not in default under the terms of this Agreement or any Franchise Agreement, you shall have the right and obligation to execute Franchise Agreements for and commence operations of Businesses in accordance with the provisions set forth in such Franchise Agreements pursuant to the Development Schedule. Acknowledging that time is of the essence, the Development Schedule sets forth the date on which you must execute the Franchise Agreement for each such Business (the "Date of Execution") and the date no later than which you must commence operations of each such Business under each such Franchise Agreement (the "Commencement of Operations Date").

It is understood and agreed that a Business shall be considered developed if: (i) the Franchise Agreement with respect thereto has been executed, and (ii) the Business has commenced operations in accordance with the Franchise Agreement governing the Business.

##### **5.2 Failure to Fulfill Development Obligations**

A. Except as provided in Section 5.2.B or Article 17 below, should you fail to adhere to the Development Schedule set forth in Section 5.1 by either: (1) failing to execute the Franchise Agreement for each Business on or before the Date of Execution specified above, or (2) failing to commence operations of each Business on or before the applicable Commencement of Operations Date specified above, then such failure shall constitute a material breach of this Agreement, which, unless cured by you as provided in Section 14.3 of this Agreement, shall result in this Agreement being terminated immediately in accordance therewith. Such termination of this Agreement shall not constructively or otherwise be deemed to constitute a termination of any Franchise Agreement(s) entered into by us and you pursuant to which you have already commenced the operation of the Business(es) covered by said Franchise Agreement(s) so long as you shall have fully performed and otherwise been in compliance with all of your obligations under said Franchise Agreement(s). The undeveloped balance of your Development Territory shall revert to us, and we may ourselves operate or franchise others to operate Carnegie Businesses within such undeveloped balance of the Development Territory without in any way being in violation of this Agreement. Our remedy as provided for herein shall be in addition to whatever other remedies we may have at law or in equity.

B. In addition to our rights under Sections 5.2.A and 14.3, should you fail to adhere to the Development Schedule set forth in Section 5.1 by either: (1) failing to execute the Franchise Agreement for each Business on or before the Date of Execution specified above, or (2) failing to commence

operations of each Business on or before the applicable Commencement of Operations Date specified above, in our sole discretion we may instead:

(i) reduce the number of Franchise Territories in which you have the exclusive right and obligation to establish Businesses; and/or

(ii) terminate the territorial exclusivity of the Development Territory granted to you under this Agreement, or reduce the area of such territorial exclusivity, provided that such termination or reduction shall not affect the territorial exclusivity under an effective Franchise Agreement with respect to an individual Franchise Territory.

## **6. EXECUTION OF FRANCHISE AGREEMENTS**

Contemporaneously with the execution of this Agreement, we and you shall execute a Franchise Agreement for the first Franchise Territory, a copy of which is annexed hereto as Exhibit C (the "First Franchise Agreement"). Thereafter, we and you shall execute a Franchise Agreement with respect to each Business provided for in the Development Schedule, in the form and on the same terms and conditions as the First Franchise Agreement, except for (each as defined in the First Franchise Agreement) the Territory, Guaranteed Minimum Production and Territory Revenue Potential. The Guaranteed Minimum Production and Territory Revenue Potential for each Franchise Agreement to be executed is set forth on Exhibit D annexed hereto. Each such Franchise Agreement shall be executed according to the following procedure:

A. Not less than sixty (60) days before the scheduled Date of Execution of the Franchise Agreement for the franchise to be conveyed, we shall deliver to you a copy of our applicable Uniform Franchise Offering Circular, including the applicable Franchise Agreement (collectively referred to hereinafter as the "Offering Circular").

B. Promptly upon receipt of the Offering Circular, you will acknowledge such receipt by executing the Acknowledgment of Receipt form prescribed in the Offering Circular and promptly returning same to us.

C. No sooner than ten (10) business days but no later than twenty (20) business days after you receive our Offering Circular, you will, by written notice, notify us as to whether or not you elect to execute the applicable Franchise Agreement with respect to the applicable Business.

D. Promptly upon receipt of notice of your election to execute the applicable Franchise Agreement, we will deliver to you three (3) copies of said Franchise Agreement. Promptly upon receipt thereof, you will execute the three (3) copies and return same to us.

## **7. DUTIES OF DC&A**

### **7.1 Duties of DC&A**

So long as you are not in default of this Agreement or any of the Franchise Agreements, we will grant to you the right and obligation to acquire and operate Businesses in the Development Territory and pursuant to the Development Schedule upon the terms and subject to the provisions of this Agreement and the terms of each Franchise Agreement entered into between us and you, and all documents ancillary thereto, and to use solely and in connection therewith the Carnegie System as it may be changed, improved, modified or further developed from time to time, in the Development Territory as defined in

this Agreement and upon the terms and subject to the provisions of this Agreement and the terms of each Franchise Agreement, and all ancillary documents thereto.

Pursuant to the Franchise Agreements and under the terms thereof, we shall offer and perform such training, instruction, assistance and other activities as the Franchise Agreements provide.

## **8. DUTIES OF AREA DEVELOPER**

### **8.1 Payments to DC&A**

A. In addition to all other payments provided for herein, you will pay to us or our affiliates, subsidiaries or designees (together, our "Affiliates") promptly when due:

(1) The amount of all sales taxes, value added taxes, and similar taxes (except income taxes or levy) whatsoever - however denominated - imposed upon, required to be collected, or paid by us on account of collection by us of the Area Development Fee called for by this Agreement; and

(2) All amounts advanced by us, or which we have paid, or for which we have become obligated to pay on your behalf for any reason whatsoever.

B. Each and every payment due to us hereunder will be made in freely transferable United States Dollars and will be tendered by electronic funds transfer or other wire transfer.

### **8.2 Late Charges**

A. You will pay to us (or our Affiliates) interest on any amounts overdue to us (or our Affiliates) under this Agreement, from the date due until paid, at the rate which is the lesser of eighteen percent (18%) per annum or the highest contract rate of interest allowed by the law of the state or foreign jurisdiction where your Development Territory is located.

B. In the event that we receive your monthly report the month after the end of the month in which it was due, you will pay to us (or our Affiliates) a 10% penalty on the royalty that was generated from that report.

You acknowledge that this Section 8.2 will not constitute agreement by us or our Affiliates to accept any payments after they are due, or a commitment by us or our Affiliates to extend credit to you or otherwise finance any of the Businesses.

### **8.3 Compliance with Franchise Agreement and Laws, Rules and Regulations**

You will abide by and faithfully adhere to the terms of each Franchise Agreement executed pursuant hereto and will develop and operate the franchised Businesses in strict compliance with all applicable laws, rules and regulations of all governmental authorities; will comply with all applicable wage, hour and other laws and regulations of all governmental authorities; will prepare and file all necessary tax returns; will pay all taxes imposed upon you related to the Businesses; and, will obtain and keep in good standing all necessary licenses, permits and other required forms of governmental approval required of you.

## 8.4 Indemnification

You hereby agree that you will at all times defend at your sole cost, and indemnify and hold harmless to the fullest extent permitted by law, DC&A and our Affiliates, the successors, assigns and designees of each, and the respective directors, officers, employees, agents, shareholders, designees, contractors, representatives and attorneys of each (DC&A and all others collectively referred to as the "Indemnitees") from all losses and expenses (as defined below) incurred in connection with any action, suit, proceeding, claim, demand, investigation, formal or informal inquiry (regardless of whether reduced to judgment) or any settlement thereof which actually or allegedly, directly or indirectly arises out of, is based upon, is a result of or is related to any of the following: any claims by your creditors; claims of any type or nature advanced by or against you or any of your officers, directors, management, employees, agents, servants, contractors, shareholders, partners, proprietors, affiliates or representatives of any of them (or any third party acting on your behalf or at your direction), or between or among themselves; your alleged or actual infringement or violation of any patent, mark or copyright or other proprietary right owned or controlled by third parties; your alleged or actual violation or breach of any contract, federal, state, local, foreign or other law, regulation, ruling, standard or directive, whether within or outside the Development Territory, or of any industry standard; libel, slander or any other form of defamation by you; your alleged or actual violation or breach of any warranty, representation, agreement or obligation set forth in this Agreement; any of your acts, errors, neglects or omissions, and/or of your officers, directors, management, employees, agents, servants, contractors, shareholders, partners, proprietors, affiliates or representatives of yours or any of them (or any third party acting on your behalf or at your direction); and, any damage to our property or any property of our Affiliates, and/or our and their officers, directors, management, agents, employees and contractors or any third party.

For the purpose of this Section 8.4, the term "losses and expenses" includes all claims; causes of action; fines; penalties; liabilities; losses; compensatory, exemplary, statutory or punitive damages or liabilities; costs of investigation; court costs and expenses; lost profits; reasonable attorneys' and experts' fees and disbursements; settlement amounts; judgments; costs of or resulting from delays; travel, food, lodging and other living expenses necessitated by the need or desire to appear before (or witness the proceedings of) courts or tribunals, or governmental or quasi-governmental entities (including those of Indemnitees' attorneys and/or experts); and, all expenses of refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

You must give us written notice of any such action, suit, proceeding, claim, demand, inquiry or investigation within five days of your actual or constructive knowledge of it. At your expense and risk, we may elect to assume (but under no circumstance will be obligated to undertake) the defense and/or settlement of the action, suit, proceeding, claim, demand, inquiry or investigation. However, we will seek your advice and counsel and keep you informed with regard to any such defense or contemplated settlements. Our undertaking of defense and/or settlement will in no way diminish your obligation to indemnify us and the other Indemnitees and to hold us and them harmless.

In order to protect persons or property, our reputation or goodwill, or the reputation or goodwill of others, we may, at any time as we deem appropriate, offer, order, consent or agree to settlements or take any other remedial or corrective actions we deem expedient with respect to the action, suit, proceeding, claim, demand, inquiry or investigation if, in our sole judgment, there are reasonable grounds to do so.

All losses and expenses incurred under this Section 8.4 will be chargeable to and paid by you pursuant to your indemnity obligations under this Section, regardless of any actions, activity or defense undertaken by us or the subsequent success or failure of the actions, activity or defense.

Indemnitees assume no liability for acts, errors, or omissions of those with whom you may contract, regardless of the purpose. You will hold harmless and indemnify Indemnitees for all losses and expenses which may arise out of any acts, errors or omissions of these third parties.

Under no circumstances will Indemnitees be required to seek recovery from third parties or otherwise mitigate their losses to maintain a claim against you. You agree that any failure to pursue recovery from third parties or mitigate loss will in no way reduce the amounts recoverable by Indemnitees from you.

Specifically excluded from this indemnity is any liability arising from the negligence or intentional willful misconduct of Indemnitees, except to the extent that joint liability is involved, in which event the indemnification provided by this Section 8.4 will extend to any finding of comparative negligence or contributory negligence attributable to Area Developer or any of the Indemnitees, as the case may be.

### **8.5 Entity Area Developer Requirements; Records**

A. Area Developer, if a corporation, partnership, limited partnership, limited liability company or any other entity, and any transferee which is an entity, will comply with the following requirements:

(1) Furnish to us, upon execution of this Agreement, a completed Exhibit H hereof. You will thereafter promptly advise us of any change in the information contained in Exhibit H and promptly furnish to us an updated Exhibit H when requested by us. You warrant, represent, and covenant to us that all of the information furnished in the completed Exhibit H is true and correct as of the Effective Date of this Agreement, and when subsequently furnished to us.

(2) Appoint an individual to act as the entity's principal representative (the "Area Developer Principal") in such entity's contacts with us under this Agreement, as provided in Exhibit H hereof. The appointment of the Area Developer Principal (and any successor Area Developer Principal) must receive our prior written approval. Upon the death or disability of the Area Developer Principal, or the termination of the Area Developer Principal's status as Area Developer Principal, you must notify us and designate a successor Area Developer Principal no later than ten (10) days following any such death, disability or termination. You agree that we will be entitled to conclusively presume that the Area Developer Principal has the requisite authority to act on your behalf and bind you.

(3) Furnish us with any organizational or similar documents which we may reasonably request.

(4) Confine its activities solely to the operation of the business contemplated by this Agreement and the Businesses under the Franchise Agreements, and in its governing documents provide that its activities are confined exclusively to the operation of the business contemplated by this Agreement and the Businesses under the Franchise Agreements.

(5) No shares of stock, general or limited partnership interests, membership interests or any other type of equity or voting interest in the entity Area Developer may be sold or transferred without our prior written consent.

B. If you are a limited partnership, the provisions set forth in subsection (A) above will apply to your corporate general partner.

## **8.6 Area Developer Participation in Area Development**

You must devote your best efforts, adequate capital resources and the amount of your time that is necessary, to comply with your obligations and to perform your duties hereunder, and to cooperate with us in accomplishing the purposes of this Agreement.

## **9. COVENANTS NOT TO COMPETE**

### **9.1 In-Term Covenant Not to Compete**

You will not, during the Term of this Agreement, directly or indirectly engage in any other business (a "Competitive Business"): which is similar to any of your Businesses; which engages in any of the activities which this Agreement or the Franchise Agreements contemplate that you will engage in; or, which offers or sells any other service, product or component which now or in the future is part of the Carnegie System, or any confusingly similar service, product or component.

You are prohibited from engaging in any Competitive Business as a proprietor, partner, investor, shareholder, member, director, officer, manager, employee, principal, agent, adviser, or consultant. In addition, you will not divert any business that should be handled by any of your Businesses to any other person or entity. It is the intention of these provisions to preclude not only direct competition but also all forms of indirect competition, such as consultation for Competitive Businesses, service as an independent contractor for Competitive Businesses, or any assistance or transmission of information of any kind which would be of any material assistance to a Competitive Business.

Further, during the Term of this Agreement, neither you nor we will hire or offer to hire the personnel of the other or of any of our other franchisees, sponsors, or area developers without written permission.

You will cause your Area Developer Principal, shareholders, directors, officers, general partners (and shareholders, officers, directors and supervisory employees of the general partners), limited partners, members, proprietors and all beneficial owners (all as applicable), managers, supervisory employees and sales personnel to refrain from any of the competitive activities described above in any manner. Your agreement to procure execution of the Confidentiality/Non-Competition Agreement by these persons is set forth in Section 9.5 below.

### **9.2 Post-Term Covenant Not to Compete**

You will not, for a period of one (1) year immediately following the expiration or termination of this Agreement for any reason, directly or indirectly engage in any Competitive Business.

You are prohibited from engaging in any Competitive Business as a proprietor, partner, investor, shareholder, member, director, officer, manager, employee, principal, agent, adviser, or consultant, if the other business is located within the Development Territory, within fifty (50) miles of the perimeter of the Development Territory, or within any Carnegie Business development territory or franchise territory (whether company-owned (including a DC&A Center of Excellence), franchised, licensed or otherwise established and operated) or within fifty (50) miles of the perimeter thereof. It is the intention of these provisions to preclude not only direct competition but also all forms of indirect competition, such as consultation for Competitive Businesses, service as an independent contractor for Competitive Businesses, or any assistance or transmission of information of any kind which would be of any material assistance to a Competitive Business. In addition, within such two (2) year period, you will not solicit

clients and/or Carnegie Program participants of yours, ours, our Affiliates, or of any of our other franchisees, sponsors, or area developers.

Further, for one (1) year after the termination or expiration of this Agreement for any reason, you will not hire our personnel or personnel of our Affiliates or of any of our other franchisees, sponsors, or area developers without our written permission.

You will cause your Area Developer Principal, shareholders, directors, officers, general partners (and shareholders, officers, directors and supervisory employees of the general partners), limited partners, members, proprietors and all beneficial owners (all as applicable), managers, supervisory employees and sales personnel to refrain from any of the competitive activities described above in any manner. Your agreement to procure execution of the Confidentiality/Non-Competition Agreement by these persons is set forth in Section 9.5 below.

### **9.3 Lesser Included Covenants Enforceable At Law**

If all or any portion of the covenants not to compete set forth in this Article 9 are held unreasonable, void, vague or illegal by any court or agency with competent jurisdiction over the parties and subject matter, the court or agency will be empowered to revise and/or construe the covenants to fall within permissible legal limits, and will not by necessity invalidate the entirety of the covenants. You expressly agree to be bound by any lesser covenant subsumed within the terms of this Article 9 as if the resulting covenants were separately stated in and made a part of this Agreement.

### **9.4 Enforcement of Covenants Not To Compete**

You acknowledge that violation of the covenants not to compete contained in this Agreement would result in immediate and irreparable injury to us for which no adequate remedy at law will be available. Accordingly, you consent to the entry of an injunction prohibiting any conduct by you in violation of the terms of the covenants not to compete set forth in this Agreement. You expressly agree that it may conclusively be presumed that any violation of the terms of the covenants not to compete was accomplished by and through your unlawful use of our Confidential Information (as defined in Section 10.1). Further, you expressly agree that any claims you may have against us, whether or not arising from this Agreement or any other agreement between you and us, will not constitute a defense to our enforcement of the covenants not to compete set forth in this Agreement. You will pay all costs and expenses, including reasonable attorneys' and experts' fees and disbursements, incurred by us in connection with the enforcement of the covenants not to compete set forth in this Agreement. Notwithstanding the foregoing, we will be entitled to any other remedies available at law or in equity.

### **9.5 Procurement of Additional Covenants**

You will require and obtain the execution of a Confidentiality/Non-Competition Agreement in the form annexed hereto as Exhibit E (the "Confidentiality/Non-Competition Agreement") from all of the following persons: (i) before employment or any promotion, all managers, any personnel employed by you who have received or will receive training from us or from you (except "Trainers" and "Trainer Candidates" as such terms are defined in the Franchise Agreements, as to which you will receive executed "Trainer Candidate Contracts" containing certain confidentiality and non-competition restrictions and covenants as set forth in the Operations Manual and Business Model (as defined in Section 10.1 hereof) ("Trainer Confidentiality/Non-Competition Provisions")), sales personnel, and all your other management or supervisory employees; and (ii) if you are an entity Area Developer, the persons set forth in (i) and the Area Developer Principal, all officers, directors, general partners, managers and members, and all shareholders or limited partners who own more than ten percent (10%) of your equity, and all at the same



time as the execution of this Agreement (or at such later time as they assume such status); and (iii) all of the persons enumerated in the covenants not to compete set forth in this Agreement as intended to be embraced by them. You will furnish us with copies of all executed Confidentiality/Non-Competition Agreements within ten (10) days following their execution and transmit to us electronically a copy of each Trainer Candidate Contract upon execution.

#### **9.6 Area Developer's Enforcement of Confidentiality/Non-Competition Agreements and Trainer Candidate Contracts**

You will vigorously and vigilantly prosecute breaches of any Confidentiality/Non-Competition Agreement and/or the Trainer Confidentiality/Non-Competition Provisions of any Trainer Candidate Contract executed by any of the individuals referenced in Section 9.5, and further acknowledge our right and will require those individuals referenced in Section 9.5 to acknowledge our right, to ourselves enforce (although we have no obligation to do so) the terms of each such executed Confidentiality/Non-Competition Agreement and/or the Trainer Confidentiality/Non-Competition Provisions of each such executed Trainer Candidate Contract, including, without limitation, our right to bring civil actions to enforce its terms. You will prosecute such actions to the fullest extent permitted by law. Moreover, if provisions of the Confidentiality/Non-Competition Agreement and/or the Trainer Confidentiality/Non-Competition Provisions have been breached by an individual employed, engaged or otherwise serving you in connection with this Agreement or any of your Businesses, but who has not executed a Confidentiality/Non-Competition Agreement or Trainer Candidate Contract, you will nevertheless vigorously and vigilantly prosecute such conduct to the fullest extent permitted by law.

#### **9.7 Priority of Payments to DC&A After Transfer**

If you purchased your rights under this Agreement through a transfer from an existing DC&A area developer, sponsor or franchisee, then you agree that our right to receive the payments from you required under this Agreement shall be superior to the right of such transferor area developer, sponsor or franchisee to receive any payments from you in satisfaction of any amounts owed by you to such transferor as a result of the transfer.

### **10. CONFIDENTIAL INFORMATION**

#### **10.1 Ownership and Restriction on Use of Confidential Information**

##### **A. Ownership**

We represent to you that all Confidential Information (as defined below) is our exclusive property, with the exception of the Customer Lists (as defined in each of the Franchise Agreements) of each of the Businesses, which you must permanently license to us under each applicable Franchise Agreement. We retain all rights to use such Confidential Information in any manner whatsoever in our sole discretion.

##### **B. Restrictions on Use**

You may use and permit the use of our Confidential Information solely in connection with your area development activities hereunder and in the operation of your Businesses pursuant to the Franchise Agreements. You further will not – during the Term of this Agreement, or at any time after this Agreement expires or terminates or your rights hereunder are assigned – divulge or use any Confidential Information for the benefit of any other person, corporation, partnership, association or other entity, nor will you directly or indirectly permit the disclosure of, imitate or aid any such third party to imitate any of

the Confidential Information; provided, however, that you may (i) disclose Confidential Information to a bona fide prospective purchaser of your rights under this Agreement if such purchaser agrees in writing (in a form acceptable to us) to maintain the confidentiality of such Confidential Information; (ii) sell, assign or transfer the rights to the use of Confidential Information granted to you hereunder in connection with the sale, transfer or assignment of your rights under this Agreement; and (iii) disclose Confidential Information as necessary to members of your Board of Directors or like body if you are an entity Area Developer, and as necessary to your attorney, accountant, tax advisor and banker.

“Confidential Information” means knowledge, trade secrets or know-how concerning the systems of operation, services, products, programs or practices of ours, the Carnegie System, and/or any of the Businesses; all proprietary Materials and all works copyrighted by us or any of our Affiliates; the Carnegie Programs; our confidential Franchise Operations Manual and Business Model, including all additions, deletions, modifications and revisions (the "Operations Manual and Business Model"); all services, programs and products which now comprise or in the future may comprise a part of the Carnegie System; our and any of the Businesses’ computer network Web sites (if any), and all information posted at any such Web sites; the Businesses’ Customer Lists; all information concerning Strategic/Global Accounts; and all information, knowledge, know-how, techniques and information which we, our Affiliates, or our officers, directors, contractors, employees and/or designees, designate as confidential.

Except as authorized in this Agreement or the Franchise Agreements, you agree never to copy, duplicate, record or otherwise reproduce any of the Confidential Information or material containing the Confidential Information in whole or in part; store it in a computer, database or other electronic format; or, otherwise make it available to any third party by sale, transfer, assignment or any other means whatsoever. Upon the expiration or termination of this Agreement, you will return to us (or, upon our request, destroy and certify such destruction to us) all Confidential Information then in your possession, except that which relates to the continued operation of a Business by you under an effective Franchise Agreement.

You and your officers, directors, shareholders, management, Trainers, Trainer Candidates, sales personnel and employees may only use and divulge only such Confidential Information as is necessary to perform your obligations hereunder and to operate your Businesses, and then only on a “need to know” basis, to those of your officers, directors, shareholders, sales personnel, employees, management personnel, Trainers, Trainer Candidates, agents, professional advisers, bankers or independent contractors who need access to it for this purpose. You will take all necessary precautions to ensure that these individuals, as well as all persons listed in Section 9.5, retain the Confidential Information in confidence and comply with the restrictions of this Section 10.1 or in accordance with the Trainer Confidentiality/Non-Competition Provisions, as applicable. Your agreement to procure execution of the Confidentiality/Non-Competition Agreement or the Trainer Candidate Contract from most of these individuals is set forth in Section 9.5.

## **10.2 Enforcement of Restrictions on Use of Confidential Information**

You acknowledge that violation of the obligations set forth in Section 10.1 would result in immediate and irreparable injury to us for which no adequate remedy at law will be available. Accordingly, you consent to the entry of an injunction prohibiting any conduct by you in violation of the terms of Section 10.1. You expressly agree that any claims you may have against us, whether or not arising from this Agreement, will not constitute a defense to the enforcement by us of the obligations set forth in Section 10.1. You will pay all costs and expenses, including reasonable attorneys’ and experts’ fees and disbursements, incurred by us in connection with the enforcement of the obligations set forth in Section 10.1. Notwithstanding the foregoing, we will be entitled to any other remedies available at law or in equity.

## 11. TRANSFER; RIGHT OF FIRST REFUSAL

### 11.1 Transfer By Area Developer – General

Your obligations under this Agreement are personal, and we have entered into this Agreement in reliance on and in consideration of your or your representative's singular personal skills and qualifications, and the trust and confidentiality that we repose in you. Therefore, except as provided below, neither you nor any immediate or remote successor to any part of your interest in this Agreement, nor any individual, partnership, corporation, limited liability company, or other legal entity which directly or indirectly owns any interest in Area Developer shall assign, sell, transfer, convey, give away, pledge, encumber, merge, sublicense, or divide (collectively, "transfer") this Agreement, any direct or indirect interest in this Agreement, in Area Developer, or in all or substantially all of the assets of the Businesses, in any manner, without obtaining our prior written consent in accordance with this Article 11. Any actual or attempted transfer not having our prior written consent shall be null and void and shall constitute a material breach of this Agreement, for which we may immediately terminate without opportunity to cure pursuant to Section 14.2.D of this Agreement.

Your death or Disability (as defined below) (or that of a principal owner, partner or member of an entity Area Developer) is also a transfer, and your executor, heir or legal representative (or the entity Area Developer) must apply within sixty (60) days of such death or Disability for our consent to a transfer and satisfy all of the other conditions applicable to a transfer. "Disability" means any physical, emotional or mental injury, illness or incapacity which prevents or will prevent a person from performing the obligations set forth in this Agreement for at least ninety (90) consecutive days.

### 11.2 Transfer By Area Developer – Requirements

A. Dale Carnegie reserves its right to deny but will not unreasonably withhold our consent to a transfer, and we may, in our sole discretion, require any or all of the following as conditions of such consent:

- (1) That you comply with the right of first refusal provisions of Section 11.3.
- (2) That the proposed transferee (or the principal representative(s) of an entity transferee) demonstrates that he/she has the skills, qualifications, ethics, moral values and economic resources necessary, in our reasonable judgment, to perform your obligations under this Agreement and any Franchise Agreement(s) proposed to be transferred and to conduct the Businesses contemplated thereunder, and to fulfill his/her obligations to the transferor.
- (3) That, if the transfer, alone or together with other previous, simultaneous, or proposed transfers would have the effect of transferring this Agreement, a controlling interest in an entity Area Developer, or substantially all of the assets of the Businesses, the proposed transferee and any other person that we require each attend and successfully complete any training that we reasonably require, at the transferee's expense (which will include a training fee and the cost of the trainees' transportation to any training, lodging, food and other living expenses).
- (4) That, as of the date of the transfer, the transferor has (a) cured any existing defaults under any provision of this Agreement, the Franchise Agreements and any other agreement with us or our Affiliates and (b) has fully satisfied all of its accrued monetary and other obligations to us and our Affiliates under this Agreement, the Franchise Agreements and any other agreement with us or our Affiliates.

(5) That, if the Agreement is being assigned, the transferee assumes this Agreement.

(6) That, if the transfer, alone or together with other previous, simultaneous, or proposed transfers, would result in the proposed transferee owning a ten percent (10%) interest or more in an entity Area Developer, then the proposed transferee executes a Guarantee (in the form of Exhibit F).

(7) That the transferor executes a General Release in the form of Exhibit G ("General Release-Assignment").

(8) That, if the transfer, alone or together with other previous, simultaneous, or proposed transfers would have the effect of transferring this Agreement, a controlling interest in an entity Area Developer, or substantially all of the assets of the Businesses, then the transferee pays us a Transfer Fee of \$10,000.

(9) That if the transferee is an entity, all of the applicable requirements set forth above under Sections 8.5, 9.5 and 11.3 and this Section 11.2 are complied with, including the procurement of Guarantees executed by shareholders, general partners, members and proprietors (as applicable) of the transferor as may be required pursuant to Article 25.

(10) That you submit to us at least sixty (60) days before any proposed transfer, a copy of the proposed contract of transfer (and any related agreements) and any additional information that we reasonably request and, promptly following execution, a copy of the executed contract of transfer (and any related agreements).

(11) That the transferor remain liable for all the obligations to us arising out of or related to this Agreement before the effective date of the transfer, and execute all instruments reasonably requested by us to evidence this liability.

(12) That the transferor complies with the terms of the post-term covenant not to compete set forth in Section 9.2, commencing on the effective date of the transfer.

(13) That, if we so require, all of your interest and obligations in any Franchise Agreement(s) then in effect and any other agreements between us and you be transferred to the same transferee.

(14) That you agree that our right to receive from the transferee all payments required under this Agreement shall be superior to your right to receive payments from the transferee in satisfaction of any amounts owed to you by the transferee as a result of the transfer, and that you execute such documents as may be required by us to evidence the superiority of our right to receive such payments.

B. Our consent to a transfer will not constitute our consent to the transfer of any Franchise Agreement(s) then in effect or of any other agreement between us and you.

C. You will defend at your own cost and indemnify and hold harmless us, our parent (if any), and the corporate subsidiaries, affiliates, successors, assigns and designees of either entity, and the respective directors, officers, employees, agents, attorneys, shareholders, designees and representatives of each, from and against any and all losses, costs, expenses (including attorneys' and experts' fees and disbursements), court costs, travel and lodging costs, personnel costs, claims, demands, damages, liabilities, however caused (whether or not any of the same are reduced to judgment), resulting directly or

indirectly from or pertaining to any statements, representations or warranties that may be given by you or any transferor to any proposed transferee, or any claim that you or the transferor engaged in fraud, deceit, violation of franchise or license laws or other illegality in connection with the negotiations leading to the consummation of the transfer.

### **11.3 Right of First Refusal**

Your right (and the right of any party holding any direct or indirect interest in this Agreement, in an entity Area Developer, or in all or substantially all of the assets of the Businesses) to make any transfer will be subject to our right of first refusal as follows:

A. Our right of first refusal will only apply if the transfer, either alone or together with other previous, simultaneous, or proposed transfers would have the effect of transferring this Agreement, a controlling interest in an entity Area Developer, or substantially all of the assets of the Businesses.

B. As required by Section 11.2.A(10), you will deliver to us a true and complete copy of the proposed transferee's offer (the "Offer Notice") at least sixty (60) days before the proposed transfer date and furnish to us any additional information concerning the proposed transaction and the proposed transferee that we reasonably request.

C. Within forty (40) days after our receipt of the Offer Notice (or, if we request additional information, within forty (40) days after receipt of the additional information), we may either consent or withhold our consent to the transfer, in accordance with this Article, or at our option, accept the transfer to ourselves or to our nominee, on the terms and conditions specified in the Offer Notice (but we will be entitled to all of the customary representations and warranties given by the seller of assets of a business, including (without limitation) representations and warranties as to ownership, condition of and title to assets, liens and encumbrances on the assets, validity of contracts and agreements, and your contingent and other liabilities affecting the assets). We also may meet and negotiate with you and the proposed transferee during this period without impairing our right of first refusal.

D. Our credit will be deemed equal to the credit of any proposed transferee. We may substitute cash in the fair market value (to be determined by appraisal if we cannot agree) of any non-cash consideration offered by the transferee.

E. We will be given at least sixty (60) days after notifying you of our election to exercise our right of first refusal to prepare for closing.

F. If we elect not to exercise our right of first refusal and consent to the proposed transfer, then the transferor will, subject to the provisions of this Article 11, be free to make a transfer to the proposed transferee on the terms and conditions specified in the Offer Notice. If, however, the terms are changed, the changed terms will be deemed a new offer, and we will have a right of first refusal with respect to this new offer.

G. Our election not to exercise our right of first refusal with regard to any offer will not affect our right of first refusal with regard to any later or modified offer. If we do not exercise our right of first refusal, this will not constitute approval of the proposed transferee or the transaction itself. You and any proposed transferee must comply with all the criteria and procedures for transfers specified in this Article and elsewhere in this Agreement.

#### **11.4 No Encumbrance**

You (and any party holding an ownership interest in an entity Area Developer) will have no right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement, any Franchise Agreement, any Business, or you if you are an entity Area Developer, in any manner without our prior written permission.

#### **11.5 Compliance with Law**

You understand that offers and sales of your rights and obligations under this Agreement, any Franchise Agreement or any Business may be regulated by federal, state and/or foreign laws, rules and regulations (including, for example, laws that require you to deliver a franchise offering circular or other disclosure document to a potential transferee) and that you must comply with all such laws, rules and regulations and any procedures concerning such compliance set forth in the Operations Manual and Business Model.

#### **11.6 Transfer By DC&A**

We may transfer our interests, rights and/or obligations in and under this Agreement at our discretion. You agree that we may sell ourselves, our assets, our Marks and/or the Carnegie System to a third party; may go public; may engage in a private placement of some or all of our securities; may merge with or acquire other corporations or entities, or be acquired by another corporation or entity; and/or may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of our name, Marks (or any variation thereof) and the Carnegie System and/or the loss of association with or identification of "Dale Carnegie & Associates, Inc." as area franchisor under this Agreement and as franchisor and/or licensor under the Franchise Agreements. You also expressly and specifically waive any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing.

### **12. PROPRIETARY MARKS**

#### **12.1 Not a License of the Proprietary Marks**

You acknowledge and agree that nothing contained in this Agreement shall be deemed to constitute a license to you to use or display any of the Marks in any manner. You will acquire a non-exclusive license to use the Marks only pursuant to, and to the extent that such rights are granted by, Franchise Agreements executed by us and you pursuant to this Agreement. You acknowledge that our rights in the Marks are not limited to the specific presentation or configuration of any of them, but rather extend to all combinations and displays of the words and/or design elements thereof and extend to all translations thereof in any language. Further, you acknowledge and agree that our rights in and to the Marks are not limited to such rights as may be conferred by registrations thereof or by applications for registrations but, instead, include extensive common law and other rights in the Marks vested in us as a result of our use and use by other authorized parties.

## **12.2 Non-Use of Trade Name**

If you are an entity Area Developer, you may not use our Marks or any confusingly similar words or symbols in your entity name. In particular you may not use the words "Dale Carnegie", "Dale Carnegie & Associates, Inc.," or any variant of same as part of your entity name.

## **13. RELATIONSHIP OF THE PARTIES**

### **13.1 Independent Contractor**

You understand and agree that you are and will be our independent contractor under this Agreement and all Franchise Agreements. Nothing in this Agreement or any Franchise Agreement may be construed to create a partnership, joint venture, agency, employment or fiduciary relationship of any kind. No employee of yours will be deemed to be an employee of ours. Neither you nor any of your employees whose compensation for services is paid by you may, in any way, directly or indirectly, expressly or by implication, be construed to be our employee for any purpose, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any local, city, state, federal or foreign governmental agency. We will not have the power to hire or fire your employees.

You may not, without our prior written approval, obligate us for any expenses, liabilities or other obligations. We may not control or have access to your funds or the expenditure of your funds, or in any other way exercise dominion or control over your business or any of the Businesses. Neither party will make any express or implied agreements, warranties, guarantees or representations or incur any debt in the name of or on behalf of the other party, or, except as set forth in the Franchise Agreements, represent that the relationship between us is other than that of area franchisor and area franchisee. We do not assume any liability, and will not be deemed liable, for any agreements, representations or warranties made by you. We will not be obligated for any damages to any person or property which directly or indirectly arise from or relate to the operation of your business or any of your Businesses.

You will conspicuously identify yourself in all dealings with clients, contractors, suppliers, public officials and others, as our independent area franchisee. The Franchise Agreements set forth specific terms of such identification in connection with your operation of the Businesses.

## **14. DEFAULT AND TERMINATION**

### **14.1 Termination By DC&A – Automatic Termination Without Notice**

You will be in default of this Agreement, and all rights granted in this Agreement will immediately and automatically terminate and revert to us without notice to you, if: you or any of the Businesses are adjudicated as bankrupt or insolvent; all or a substantial part of the assets thereof are assigned to or for the benefit of any creditor; a petition in bankruptcy is filed by or against you or any of the Businesses and is not immediately contested and/or dismissed within sixty (60) days from filing; a bill in equity or other proceeding for the appointment of a receiver or other custodian of you, any of the Businesses or assets thereof is filed and consented to by you; a receiver or other custodian (permanent or temporary) of all or part of your assets or property is appointed by any court of competent jurisdiction; proceedings for a composition with creditors under any state, federal or foreign law are instituted by or against you or any of the Businesses or property thereof; you are dissolved; or, the real or personal property of any of the Businesses is sold after levy thereon by any governmental body.

#### **14.2 Termination By DC&A Upon Notice – No Opportunity To Cure**

You will have materially breached this Agreement and we may, at our option, terminate this Agreement and all rights granted under this Agreement, without affording you any opportunity to cure the breach, effective immediately upon your effective receipt of notice pursuant to Article 22 upon the occurrence of any of the following events:

- A. You abandon this Agreement.
- B. You omitted or misrepresented any material fact in the information you furnished to us in connection with our decision to enter into this Agreement.
- C. You (or, if you are an entity Area Developer, any principal of yours) is convicted of a felony, fraud, crime involving moral turpitude, or any other crime or offense which is related to your development business hereunder, or is likely to have an adverse effect on the Carnegie System, the Marks, the goodwill associated with the Marks or our interest in the Carnegie System or Marks.
- D. You (or, if you are an entity Area Developer, any principal of yours) purport to transfer this Agreement or any rights or obligations under this Agreement, or any interest in you (if you are an entity Area Developer), to any third party in violation of the terms of this Agreement.
- E. Any Franchise Agreement is terminated for any reason whatsoever.
- F. You repeatedly fail to comply with one (1) or more requirements of this Agreement, whether or not corrected after Notice of Default hereunder, or, after curing a default pursuant to Sections 14.3 or 14.4 hereof, commit the same act of default again within six (6) months of the first act of default.
- G. You make a willful misrepresentation or do not make a material disclosure required by any governmental authority regarding any matter involving or affecting your obligations under this Agreement.
- H. You do not comply, take action to comply or challenge, for a period of ten (10) days after notification by either us or any governmental authority of non-compliance, with any federal, state, local or other law or regulation applicable to the performance of your obligations hereunder.
- I. You make any use of the Marks not authorized under the Franchise Agreements (this Agreement not giving you any rights to use the Marks) if we believe such use will cause harm to the goodwill of the Marks, the Carnegie System or the Carnegie Programs, it being understood that we may also take action against you based upon any such use pursuant to Article 19 or applicable law and that any unauthorized use of the Marks which does not cause harm to the goodwill of the Marks, the Carnegie System or the Carnegie Programs may still be the basis for our termination of this Agreement pursuant to Section 14.4.
- J. You do not cure any default under this Agreement which materially impairs the goodwill associated with our Marks, the Carnegie System and/or the Carnegie Programs following delivery of written notice to cure at least seventy-two hours (72) in advance.

#### **14.3 Termination by DC&A – Ten Days to Cure**

You will have ten (10) calendar days after the effective receipt (pursuant to Article 22) of a written notice of default (a "Notice of Default") to remedy any of the defaults set forth in this Subsection



14.3, and to provide evidence showing such remedy. Except as provided in Section 5.2.B with respect to our discretion regarding your failure to meet the Development Schedule, if the default described in such notice is not cured within that time or any longer period that applicable law may require, this Agreement will terminate immediately upon expiration of the ten (10) day period, or any longer period required by applicable law.

A. You fail to execute any of the Franchise Agreements on or before the date scheduled for the execution of same pursuant to Section 5.1.

B. You fail to commence operation of any of the Businesses by the date scheduled for the opening of such Business pursuant to Section 5.1.

C. You violate the restrictions pertaining to the use of Confidential Information.

#### **14.4 Termination by DC&A – Failure to Achieve Guaranteed Minimum Production**

If you default in your obligation to achieve your Guaranteed Minimum Production in any Fiscal Year (as defined in Section 9.10 of the Franchise Agreement) and such default is not cured in accordance with a Notice of Default pursuant to Subsections A and B immediately following, then this Agreement will terminate immediately upon expiration of the cure period set forth in such Notice of Default, or any longer period required by applicable law.

A. You will receive our Notice of Default within sixty (60) days after the end of our Fiscal Year, if it is determined that you are in default. It will clearly state the conditions and the period of time for satisfaction of the cure as conditions for reinstatement.

B. Conditions for reinstatement must include full payment of the royalty due for any GMP shortage experienced in the concluding Fiscal year, as well as all or some of the following conditions which will be determined solely at the discretion of Dale Carnegie, but based on the particular issues related to this default and will be clearly stated in the Notice of Default, as follows: Satisfaction of all past due balances due Dale Carnegie. Submission and presentation, in Hauppauge, New York, or your revised business plan indicating a reasonable and clear sales, financial and operational road map describing the steps you will take for growing the franchise to reach or exceed Guaranteed Minimum Production levels; be up to date in all areas of data reporting and submission of current financial statements of the franchised business.

#### **14.5 Termination by DC&A and Area Developer – Thirty Days to Cure**

Except as otherwise provided in this Agreement, we and you will have thirty (30) calendar days after the effective receipt (pursuant to Article 22) of a Notice of Default to remedy any default under this Agreement (or, if the default cannot reasonably be cured within this period, to initiate action to cure the default within that time), and to provide evidence showing such remedy (or initiation of action to remedy). If the default described in such Notice is not cured within that time (or, if appropriate, action to cure the default is not initiated within that time) or any longer period that applicable law may require, this Agreement will terminate immediately upon expiration of the thirty (30) day period, or any longer period required by applicable law.

You will be in default of this Agreement for any failure to substantially comply with any of the requirements imposed upon you by this Agreement. These defaults include, without limitation, your failure to maintain any of the standards or follow any of the procedures prescribed by us in this Agreement or written notice, or your failure to comply with any other lawful provision or requirement of

this Agreement or any specification, standard or operating procedure prescribed by us pursuant to this Agreement or written notice.

We will be in default of this Agreement if we commit any intentional, repeated or continuous breach of this Agreement.

#### **14.6 Notice Required By Law**

If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement or the parties to this Agreement requires that our rights of termination under this Agreement be limited or requires longer notice or cure periods than those set forth above, then this Agreement will be deemed modified to conform to the minimum notice, cure periods or restrictions upon termination required by such laws and regulations. We will not, however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, proceeding, hearing or dispute relating to this Agreement or the termination of this Agreement.

### **15. FURTHER OBLIGATIONS AND RIGHTS OF THE PARTIES UPON TERMINATION OR EXPIRATION**

The termination of this Agreement upon breach of your development obligations, as set forth in Section 5.1 above, or for any other reason, shall not terminate any of the Franchise Agreements executed by you prior to the effective date of termination of this Agreement and for which you have already commenced the operations of the Business(es) covered by such Franchise Agreement(s), but after the effective date of such termination, unless we have allowed otherwise pursuant to Section 5.2.B, you shall have no right to enter into any additional Franchise Agreements and develop or operate any additional Carnegie Business without our express prior written consent, which may be withheld without cause, in our sole and exclusive discretion.

If this Agreement expires or terminates for any reason, or is assigned by you (including to us), you will cease to be our authorized Area Developer and all rights under this Agreement and any goodwill (including "local goodwill") attributed to your conduct of the Businesses, except as you may continue to have under executed Franchise Agreements which remain in effect following the expiration, termination or assignment of this Agreement, will revert to us.

Upon expiration or earlier termination of this Agreement for whatever reason, or upon transfer of this Agreement, you must:

- A. Pay all sums due and owing to us or our Affiliates, plus interest thereon (if applicable), and all sums due and owing to any third parties related to this Agreement or any of the Franchise Agreements or Businesses.
- B. Discontinue use of the marks and not operate or do business under any name or in any manner which might tend to give the general public the impression that you are operating a Carnegie Business (except under an effective Franchise Agreement or another valid agreement with us).
- C. Not publicize in any educational or business activity your previous relationship with us, the Carnegie System and/or the Carnegie Programs, except in a resume used specifically for the purpose of obtaining full or part-time personal employment (but not in furtherance of your own business).
- D. Promptly cancel any assumed name or equivalent registration owned or used by you or the Business which contains the Marks "DALE CARNEGIE" and/or "DALE CARNEGIE TRAINING",

or any of our other Marks or variants thereof. If you fail or refuse to do so, we may, in your name, on your behalf and at your expense, execute all documents necessary to cause such cancellation and discontinuance and you irrevocably appoint us as your attorney-in-fact to do so.

E. Promptly deliver to us all training or other manuals we furnished to you (including the Operations Manual and Business Model), computer software and database material, client lists, customer lists, lists of attendees at your Carnegie Programs, lists of Trainers, lists of past and present Trainer Candidates, records and files, documents, instructions, display items, advertising and promotional material, any and all materials, signs and related items which bear our Marks or slogans or insignias or designs, advertising contracts, forms and our other materials or property, and any copies of them in your possession which relate to the operation of the Business. You may retain no copy or record of any of these items, except for your copy of this Agreement, any correspondence between us and any other documents which you reasonably need for compliance with any provision of law. You agree that the foregoing items, materials, lists, files, software and other similar items will be deemed to be our property for all purposes. We shall purchase from you, at their then-current market price (as we will determine) less ten percent (10%), all unused, packaged and currently usable or saleable Materials (as defined in the Franchise Agreements, and if any) in your possession that you purchased from us. The foregoing requirements, restrictions and agreements shall not be applicable to any of the foregoing items which you may require for use in the continued operation of a Business under an effective Franchise Agreement.

F. Promptly execute all agreements necessary to effectuate the termination.

G. Cease using the telephone numbers you used in the operation of the development business contemplated by this Agreement (unless you are using such telephone numbers in the continuing operation of a Business under an effective Franchise Agreement), or at our option, direct the telephone company to transfer those telephone numbers to us or to any other person and location that we direct. If you do not promptly direct the telephone company to do so, you irrevocably appoint us as your attorney-in-fact to direct the telephone company to do so.

H. Strictly comply with the post-termination/post-expiration covenants not to compete set forth in Article 9 of this Agreement.

I. Continue to abide by those restrictions pertaining to the use of our Confidential Information set forth in Article 10 of this Agreement.

J. Except as necessary for you to continue to operate a Business pursuant to an effective Franchise Agreement: (i) surrender to us all computer software, data storage disks or tapes and other electronic media used in the operation of the business contemplated by this Agreement containing Confidential Information, and printouts, and other information pertaining to computer operations, codes, procedures and programming containing Confidential Information; (ii) not destroy, damage, hide or take any steps to prevent us from obtaining any information which you had stored in your computer system; and (iii) not retain any printouts, disks or tapes containing any of the programs or data stored in the computer system which contain Confidential Information.

K. Irrevocably assign and transfer to DC&A or its designee any and all interests you may have in any Web site(s) maintained by you in connection with the Businesses and/or your operations under this Agreement and in the domain name(s), home page address(es), and URL(s) related to such Web site(s). You shall execute any documents and perform any other actions required by DC&A to effectuate such assignment and transfer and otherwise ensure that all rights in such Web site(s) revert to DC&A or its designee. At any time after the expiration or termination of this Agreement for whatever reason, or upon transfer of this Agreement, you may not identify yourself on any Web site as a former

Area Developer of DC&A, and you may not establish any Web site using a domain name, home page address, and/or URL confusingly similar to the domain name(s), home page address(es), or URL(s) related to the Web site(s) maintained by you in connection with the Businesses and/or your operations under this Agreement.

L. Cooperate with us and any successor area developer of ours in effectuating the foregoing.

The expiration or termination of this Agreement will be without prejudice to either party's rights against the other, and will not relieve either party of any of its obligations to the other at the time of expiration or termination, or terminate either party's obligations which by their nature survive the expiration or termination of this Agreement.

## **16. WAIVER AND DELAY**

No forbearance, neglect, indulgence, waiver or delay in either party's enforcement of any breach of any term, covenant or condition of this Agreement will be construed as a waiver by that party of any other breach, or any other term, covenant or condition of this Agreement. Without limiting any of the foregoing, the acceptance of any payment specified to be paid by you under this Agreement will not be, nor be construed to be, a waiver of any breach of any term, covenant or condition of this Agreement.

## **17. FORCE MAJEURE; UNAVOIDABLE DELAYS**

Delays in our or your performance of any duties hereunder which are not our or your fault or within our or your reasonable control (including, but not limited to, delays caused by fire, flood, natural disasters, Acts of God, delays in deliveries by common carriers and/or the U.S. Postal Service or foreign postal services, governmental acts or orders, late deliveries of or failure to deliver goods or services by third-party vendors, war or civil disorders, or acts of terrorism) shall not cause a default hereunder by us or you, as applicable, and the time for performance of such duties shall be extended for the period of such delay or for such other longer, reasonable period of time as you and DC&A shall agree to in writing; provided, however, that the party affected by such delay shall have notified the other in writing promptly of the occurrence of any such force majeure.

## **18. PROCEDURE FOR OBTAINING DC&A'S PRIOR WRITTEN APPROVAL; DC&A'S WITHHOLDING OF CONSENT -- AREA DEVELOPER'S EXCLUSIVE REMEDY**

A. In any case where you are required to obtain our approval to perform an act under this Agreement, you will follow the procedures for obtaining that approval as will be set forth in the Operations Manual and Business Model.

B. In no event may you make any claim for money damages based on any claim or assertion that we have unreasonably withheld or delayed any consent or approval to a proposed act by you under the terms of this Agreement. Your sole remedy for any such claim or assertion will be an action or proceeding to enforce the provisions of this Agreement, for specific performance or for declaratory judgment.

## **19. INJUNCTION**

You explicitly affirm and recognize the unique value and secondary meaning attached to the Carnegie System and the Marks. Accordingly, you agree that any unauthorized or improper use of the Carnegie System or the Marks will cause irreparable damage to us and our other area developers, franchisees, and sponsors. You therefore agree that if you engage in unauthorized and/or improper use of

the Carnegie System or the Marks, during or after the Term of this Agreement, we will be entitled to both temporary and permanent injunctive relief against you from any court of competent jurisdiction, in addition to all other remedies which we may have at law or in equity. You consent to the entry of these temporary and permanent injunctions.

## 20. INTEGRATION OF AGREEMENT

This Agreement, any Franchise Agreement entered into by we and you, and all ancillary agreements executed contemporaneously herewith, constitute the entire agreement between the parties with reference to the subject matter hereof and supercede all prior negotiations, understandings, representations and agreements, if any.

## 21. NO ORAL MODIFICATION

This Agreement and the Franchise Agreements may not be amended orally, but may be amended only by a written instrument signed by the parties. You expressly acknowledge that no oral promises or declarations were made to you and that our obligations are confined exclusively to the terms in this Agreement and the Franchise Agreements. You understand and assume the business risks inherent in this enterprise.

## 22. NOTICES

A. Any notice required or permitted to be given under this Agreement will be (i) in writing in the English language, (ii) delivered to the other party personally, by registered or certified mail (return receipt requested, postage prepaid) or by documented overnight delivery with a reputable carrier, and (iii) deemed given and effective in each such case upon the earlier of (1) the date that delivery is documented to have been first attempted and (2) (A) upon receipt if personally delivered, (B) on the fifth day after the date of mailing as set forth on the receipt of certified or registered mailing, if sent by certified or registered mail, or (C) on the date delivered by a reputable overnight carrier service as set forth on its record of delivery, if sent by overnight delivery service.

B. Any notice to DC&A will be addressed to us at:

Dale Carnegie & Associates, Inc.  
290 Motor Parkway  
Hauppauge, New York 11788  
Facsimile No. (631) 415-9358  
Attention: Chief Operating Officer

With a copy to:

McCarter & English, LLP  
245 Park Avenue – 27<sup>th</sup> Floor  
New York, NY 10167  
Facsimile No. (212) 609-6921  
Attention: Eugene R. Scheiman, Esq.

C. Any notice to Area Developer will be addressed to you at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Either party to this Agreement may, in writing, on ten (10) days' notice, inform the other of a new or changed address or addressee(s) to which or whom notices under this Agreement should be sent.

### 23. MISCELLANEOUS

#### 23.1 English Language

All documents and information required or permitted to be sent to us by you under this Agreement will be in the English language.

#### 23.2 Electronic Communications

All documents and information required to be electronically transmitted to us by you under this Agreement will be transmitted via such means as may be specified in this Agreement or the Operations Manual and Business Model.

#### 23.3 Construction and Interpretation; Further Acts

The titles and subtitles of the various articles and sections of this Agreement are inserted for convenience and will not affect the meaning or construction of any of the terms, provisions, covenants and conditions of this Agreement. This Agreement is a plain expression of the commitments made by each of us, and the language of this Agreement will in all cases be construed simply according to its fair and plain meaning and not strictly for or against us or you. It is agreed that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision will have the meaning which renders it valid. Since the words "Area Developer" or "you" in this Agreement may be applicable to one or more parties, the singular will include the plural, the neuter will include the masculine and feminine, and the masculine will include the feminine and neuter. If more than one party or person is referred to as "Area Developer" or "you" under this Agreement, then their obligations and liabilities under this Agreement will be joint and several. The parties agree to execute all other documents and perform all further acts necessary or desirable to carry out the purposes of this Agreement.

#### 23.4 Severability

Nothing contained in this Agreement may be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provision of this Agreement and any present or future statute, law, ordinance or regulation required to be made applicable to this Agreement, the latter will prevail, but the affected provision of this Agreement will be curtailed and limited only to the extent necessary to bring it within the requirement of the law. If any article, section, sentence or clause of this Agreement is held to be indefinite, invalid or otherwise unenforceable, the entire Agreement will not fail for this reason, and the balance of the Agreement will continue in full force and effect. If any court of competent jurisdiction deems any provision of this Agreement (other than for the payment of money) so