

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

If all or any portion of the covenants not to compete set forth in this Article 14 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 14 as if the resulting covenants were separately stated in and made a part of this Agreement.

### **14.4 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. 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.

### **14.5 Procurement of Additional Covenants**

You will require and obtain the execution of a Confidentiality/Non-Competition Agreement (Exhibit B) 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 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 ("Trainer Confidentiality/Non-Competition Provisions")), sales personnel, and all your other management or supervisory employees; and (ii) if you are an entity Franchisee, the persons set forth in (i) and the Franchisee 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.

### **14.6 Franchisee'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 14.5, and further acknowledge our right and will require those individuals referenced in Section 14.5 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 the Business, 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.

## **15. TRANSFER; RIGHT OF FIRST REFUSAL**

### **15.1 Transfer By Franchisee -- 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 Franchisee or in the Business 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 Franchisee, or in all or substantially all of the assets of the Business, in any manner, without obtaining our prior written consent in accordance with this Article 15. 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 18.2.5 of this Agreement.

Your death or Disability (as defined below) (or that of a principal owner, partner or member of an entity Franchisee) is also a transfer, and your executor, heir or legal representative (or the entity Franchisee) 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.

### **15.2 Transfer By Franchisee -- 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 15.3.
2. 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 Franchisee, or substantially all of the assets of the Business, then you agree to sell your Customer List in a useable form (as set forth in the Operations Manual and Business Model) to the transferee.
3. 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 conduct the Business contemplated by this Agreement, and to fulfill his/her obligations to the transferor.
4. 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 Franchisee, or substantially all of the assets of the Business, the proposed transferee and any other person

that we require each attend and successfully complete our Initial Training Program before the transfer, and any other 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).

5. That, as of the date of the transfer, the transferor has (a) cured any existing defaults under any provision of this Agreement 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 and any other agreement with us or our Affiliates.

6. 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 Franchisee, or substantially all of the assets of the Business, then the transferee either:

(a) assumes this Agreement with the following modification: the Initial Term of this Agreement will be modified to be either five (5) years or the unexpired portion of the Initial Term at the date of the proposed transfer, whichever is less; or

(b) executes a separate Franchise Agreement in the form and on the terms and conditions we offer to prospective franchisees who are similarly situated at the date of the proposed transfer.

The initial franchise fee due under the new Franchise Agreement described in (b) above will be waived upon payment by the transferee of the Transfer Fee described in Section 15.2.A.9 hereof, and the terms of the new Franchise Agreement may differ entirely from the terms of this Agreement, including, without limitation, such material terms as the boundaries of the Territory; the Guaranteed Minimum Production; the Minimum Royalty; the Monthly Royalty; the Marketing Contribution; other fees; the Minimum Territory Development Expenditure; and the rights, duties, limitations and responsibilities afforded or imposed under said new Franchise Agreement. The execution of the new Franchise Agreement will terminate this Agreement, except for the post-termination, post-expiration, and indemnification provisions under this Agreement and any other provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration of this Agreement.

7. 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 Franchisee, then the proposed transferee executes a Guarantee in the form of Exhibit D.

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

9. 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 Franchisee, or substantially all of the assets of the Business, then the transferee pays us a Transfer Fee of: (a) \$10,000 if the transfer proceeds under Section 15.2.A.6(a) hereof; or (b) \$25,000 if the transfer proceeds under Section 15.2.A.6(b). Notwithstanding the provisions of the previous sentence, 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 Franchisee, or substantially all of the assets of the Business, and the transferee already holds an ownership interest in such entity Franchisee: (a) of less than ten percent (10%), then the transferee shall pay us a Transfer Fee of \$25,000; or (b) equal

to or greater than ten percent (10%), then the transferee shall pay us a Transfer Fee of \$10,000. In any event, the transferee shall pay only one Transfer Fee under this Section 15.2.A.9.

10. That if the transferee is an entity, all of the applicable requirements set forth above under Sections 9.20, 14.5, 15.3 and this Section 15.2 are complied with, including the procurement of Guarantees executed by shareholders, general partners, members and proprietors (as applicable) of the transferee as may be required pursuant to Article 27.

11. 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).

12. That you, at your expense, upgrade the Center(s) and Training Facilities so as to be in a condition acceptable to us.

13. 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.

14. That the transferor complies with the terms of the post-term covenant not to compete set forth in Section 14.2, commencing on the effective date of the transfer.

15. That, if we so require, all of your interest in any other agreement(s) between us and you be transferred to the same transferee.

16. That you agree that our right to receive from the transferee all Monthly Royalty and Minimum Royalty payments, Marketing Contributions, payments for Materials, and any other payments required under this Agreement (if assigned to the transferee) or under any new Franchise Agreement executed by the transferee in connection with the transfer 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 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.

### **15.3 Right of First Refusal**

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

1. 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 Franchisee, or substantially all of the assets of the Business.

2. As required by Section 15.2.A.11, 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.

3. 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.

4. 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.

5. 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.

6. 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 15, 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.

7. 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, any other transferor, and any proposed transferee must comply with all the criteria and procedures for transfers specified in this Article and elsewhere in this Agreement.

### **15.4 No Encumbrance**

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

## **15.5 Compliance with Law**

You understand that offers and sales of your Business may be regulated by federal and/or state 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.

## **15.6 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 franchisor and/or licensor under this Agreement. 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.

## **16. THE MARKS**

### **16.1 Franchisee's Non-Ownership of the Marks**

Nothing in this Agreement will give you any right, title or interest in or to any of our Marks (or that of our Affiliates) except as a privilege and license, during the term of this Agreement, to display and use the Marks according to the limitations set forth in this Agreement. The license to use the Marks granted by this Agreement applies only to the Marks we designate and do not subsequently withdraw from use, together with those which we may hereafter designate in writing. You may not represent in any manner that you have acquired any ownership or equitable rights in any of our Marks by virtue of the license granted under this Agreement, or by virtue of your use of any of the Marks. All uses of the Marks by you, whether as a trademark, service mark, trade name or trade style, will inure to our benefit. Following the expiration or termination of this Agreement, no monetary amount will be attributable to any goodwill associated with your use of the Marks or operation of the Business, including any "local goodwill."

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.

## **16.2 Acts in Derogation of the Marks**

We represent that the Marks are our exclusive property (or that of our Affiliates). You assert and will in the future assert no claim to any goodwill, reputation or ownership of the Marks by virtue of your licensed use of the Marks, or for any other reason. You will not do or permit any act or thing to be done in derogation of any of our rights or our Affiliates' rights in connection with the Marks, either during or after the term of this Agreement. You will not apply for or obtain any trademark or service mark registration of any of the Marks or any confusingly similar marks. You will use the Marks only for the uses and in the manner licensed under this Agreement and as provided in this Agreement. You will not, during or after the term of this Agreement, in any way dispute or impugn the validity of the Marks, our rights (or rights of our Affiliates) to the Marks, and our rights and the rights of our Affiliates, our other franchisees, or other third parties to whom or which we have licensed the Marks, to use the Marks.

## **16.3 Use and Display of the Marks**

A. You will not use, and will not permit or cause another to use, the Marks except in the manner and to the extent specifically licensed to you under this Agreement. You agree that each such use of any Mark will accurately portray the Mark and the Mark will not be used or portrayed in a manner which jeopardizes the goodwill associated with the Mark or the Carnegie System. You will use the Marks in full compliance with rules we prescribe from time to time in the Operations Manual and Business Model. You are prohibited (except as expressly provided in this Agreement) from using any Mark with any prefix, suffix, or other modifying words, terms, designs or symbols (other than logos we license to you). You may not use any Mark in connection with the sale of any unauthorized service, product or program or in any other manner not explicitly authorized in writing by us. You may use the Marks only for the operation of the Business or in advertising for the Business.

B. You may not use the Marks in any way which will incur any obligation or indebtedness on our behalf. You will comply with our instructions in filing and maintaining all requisite trade name or fictitious name registrations, and in executing any documents deemed necessary by us or our counsel to obtain protection for the Marks or to maintain their continued validity and enforceability. You will sign registered user agreements or their equivalent, where required by law.

C. You will affix our Marks on the Center(s) and Training Facilities (as applicable), and the equipment, fixtures, signs, stationery, advertising, sales/promotional materials and other objects, in the manner we designate in the Operations Manual and Business Model. You also will display the Marks and relevant trademark and copyright notices pursuant to the requirements set forth in the Operations Manual and Business Model. Except as expressly provided in the Operations Manual and Business Model, you may not erect or display in or on the Center(s), any Training Facility and/or any other facility from which your Business is conducted and/or at which Carnegie Programs are offered and/or conducted, stationery, advertising, sales or promotional materials or any other objects bearing any other trademarks, logotypes, symbols or service marks. You may not use any names, marks or logotypes other than the Marks in connection with the Business without our prior written approval.

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

If you are an entity Franchisee, 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.

## **16.5 Required Means of DC&A Identification**

You will conduct your Business under the assumed business name as indicated in Appendix E or such other name as we shall approve. You will, at your expense, perform all filings and procure all required or necessary governmental approvals or registrations required to do business under that assumed business name. You will identify yourself as our franchisee, but not our agent, in accordance with Section 17.1 hereof.

## **16.6 Defense of the Marks and Confidential Information by DC&A**

If you learn of any claim, suit or demand against you on account of any alleged infringement, unfair competition or similar matter relating to the use of the Marks or any of our Confidential Information (each, a "Claim"), you will promptly notify us. We will then promptly take any action we may consider necessary to protect and defend you against the Claim and indemnify you against any loss, cost or expense incurred in connection with the Claim, to the extent that the Claim is based on any alleged infringement, unfair competition, or similar matter relating to the use of the Marks or Confidential Information. You may not settle or compromise a Claim by a third party without our prior written consent. We will have the right to defend, compromise and settle a Claim at our expense, using our own counsel. You and we will cooperate fully with each other in connection with the defense of a Claim. You grant irrevocable authority to us, and appoint us as your attorney in fact, to defend and/or settle all Claims of this type. You may participate at your own expense in the defense or settlement, but our decisions with regard to the settlement will be final. We will have no obligation to defend or indemnify you pursuant to this Section 16.6 if a Claim arises out of or relates to your use of any of the Marks or Confidential Information in violation of the terms of this Agreement or law.

## **16.7 Prosecution of Infringers**

If you learn that any third party which you believe is not authorized to use the Marks, any variant of the Marks or Confidential Information is doing so, then you will promptly notify us. We will then determine whether or not we wish to take any action against the third party on account of the alleged infringement. You will have no right to make any demand or to prosecute any claim against any alleged infringer of our Marks or Confidential Information for or on account of an alleged infringement.

## **16.8 Discontinuance or Substitution of the Marks**

If it becomes advisable at any time, in our discretion, to modify or discontinue use of any Mark and/or to adopt or use one or more additional or substitute Marks, then you will comply with any such instruction by us. Our sole obligation in this event will be to reimburse you for your documented expenses of compliance, such as changing signs, stationery, etc. You waive any other claim arising from or relating to any Mark change, modification or substitution. We will not be liable to you for any expenses, losses or damages sustained by you as a result of any Mark addition, modification, substitution or discontinuation except as provided herein. You covenant not to commence or join in any litigation or other proceeding against us for any of these expenses, losses or damages.

# **17. RELATIONSHIP OF THE PARTIES**

## **17.1 Independent Contractor**

You understand and agree that you are and will be our independent contractor under this Agreement. Nothing in this 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 or federal 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. 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 represent that the relationship between us is other than that of franchisor/licensor/vendor and franchisee/licensee/vendee. 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.

On all marketing, sales, advertising and promotional materials, you will identify yourself as indicated in Appendix E or such other name as we shall approve, include the phrase "An Independently-owned Franchise", provide the address and telephone number of your Carnegie Center(s) and comply with all standards and restrictions set forth in the Operations Manual and Business Model. These items would include, but not be limited to, business cards, brochures, flyers, proposals, any media advertising placed and mailing pieces used within your Territory.

Using the phrase "An Independently-owned Franchise", you will identify yourself, your Center(s) and all Training Facilities as our independent franchisee/licensee for any and all transactions and documents which legally obligate you or your Business, such as leases, training contracts, purchase orders or employment agreements. You will also place this notice of independent ownership on a wall plaque meeting the standards set forth in the Operations Manual and Business Model in your Center(s) and on all your accounting and banking documentation, including, but not limited to, invoices, monthly client statements and business checks. You will not expressly or impliedly represent that any Carnegie Program that is promoted, offered, organized or conducted by you is promoted, offered, organized or conducted by us.

## **18. DEFAULT AND TERMINATION**

### **18.1 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 your Business is 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 your Business 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, your Business or assets of either 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 your Business; you are dissolved; or, the real or personal property of your Business is sold after levy thereon by any governmental body.

## **18.2 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 24 upon the occurrence of any of the following events:

1. You do not achieve Commencement of Operation of the Business within one hundred twenty (120) days following the Effective Date in accordance with Section 9.1, or you abandon this Agreement or your Business.

2. You omitted or misrepresented any material fact in the information you furnished to us in connection with our decision to enter into this Agreement.

3. You do not pay any Monthly Royalty, Minimum Royalty, Marketing Contribution, software support fee, payment for Materials or other amounts due to us or our Affiliates, within ten (10) days following receipt by you of notice that the fees or payments are overdue.

4. You (or, if you are an entity Franchisee, 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 operation of the Business, 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.

5. You (or, if you are an entity Franchisee, any principal of yours) purports to transfer this Agreement, any rights or obligations under this Agreement, or any interest in you (if you are an entity Franchisee) or the Business to any third party in violation of the terms of this Agreement.

6. We determine, in our sole discretion, that you (and/or those persons set forth in the Operations Manual and Business Model) have failed to attend or successfully complete our Initial Training Program.

7. You conceal revenues; knowingly maintain false books or records; falsify information or otherwise defraud or make false representations to us; or, knowingly submit any substantially false report to us.

8. We cause an audit to be made for any period and the Gross Revenues as shown by your monthly statements submitted to us are found to be understated by an amount greater than three percent (3%) for any three month period within the period of examination and/or for the entire period of examination.

9. You refuse us permission to inspect and/or to conduct an operational and/or financial audit of the Business, Centers, Training Facilities, any other facilities from which the Business is conducted and/or Carnegie Programs are offered or conducted, or books, records, and other documents pursuant to our right to do so set forth in Sections 9.19 and 12.2.

10. You repeatedly fail to comply with one (1) or more requirements of this Agreement, whether or not corrected after Notice of Default; or, after curing a default pursuant to Sections 18.3.1 through 18.3.5 or pursuant to Section 18.5, you commit the same act of default again within six (6) months of the first act of default.

11. You make a willful misrepresentation or do not make a material disclosure required by any governmental authority regarding any matter involving or affecting the operation of the

Business or any of your Centers or Training Facilities or other facilities at which you conduct Carnegie Programs.

12. 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 operation of the Business or any of your Centers or Training Facilities or other facilities at which you conduct Carnegie Programs.

13. You make any use of the Marks not authorized under this Agreement 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 22 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 18.5.

14. 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 (72) hours in advance.

15. You commit a default pursuant to Section 18.3.6 and, whether or not such default was corrected, you commit the same act of default again at any time during the Initial Term of this Agreement.

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

You will have ten (10) calendar days after the effective receipt (pursuant to Article 24) of a written notice of default (a “Notice of Default”) to remedy any of the defaults set forth in this Subsection 18.3, and to provide evidence showing such remedy. 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.

1. You violate the restrictions pertaining to the use of Confidential Information.
2. You permit any person to conduct a Carnegie Program when we have not authorized such person to conduct the Carnegie Program in question.
3. You do not comply with the recordation requirements and/or do not maintain the financial and other records required by Section 12.2.
4. You offer or sell as part of the Business any unapproved service, product or program.
5. You do not purchase or maintain any insurance required by this Agreement and/or by any federal, state, local or other laws, rules, regulations or requirements regarding insurance (or otherwise do not comply with such laws, rules, regulations or requirements).
6. You fail to comply with any of the provisions of Section 3.1 hereof.

#### **18.4 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 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 breach.

B. Conditions for reinstatement will include full payment of the royalty due for any GMP shortage experienced in the concluding Fiscal year, including but not limited to all of the following conditions, which will be determined solely at our discretion. The conditions will be based on the particular issues related to this default and will be clearly stated in the Notice of Default, as follows:

1. Satisfaction of all past due balances due Dale Carnegie.
2. Submission and presentation, in Hauppauge, New York, of 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 Productions levels.
3. In subsequent years be up to date in all areas of data reporting and submission of current financial statements of the franchised business.

#### **18.5 Termination by DC&A and Franchisee 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 24) 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, as it may from time to time be supplemented by the Operations Manual and Business Model. 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, the Operations Manual and Business Model or other 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, the Operations Manual and Business Model or other written notice.

If you violate the covenant not to compete set forth in Section 14.1 during the term of this Agreement, and whether or not you cure such violation, you will pay us twelve percent (12%) of the gross revenues you receive from the business you conduct in violation of Section 14.1.

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

breach of this Agreement.

#### **18.6 Voluntary Termination By Franchisee**

Upon one (1) years' notice to us of your election to do so, you may voluntarily terminate this Agreement for any reason. One (1) year after our effective receipt of such a notice, this Agreement will terminate, subject to the provisions of this Agreement which by their nature survive termination, including, without limitation, the post-termination, post-expiration and indemnification provisions hereof. During the one (1) year period between the time you give us a notice pursuant to this Section and the termination of this Agreement pursuant thereto, all of the terms and conditions of this Agreement will remain in full force and effect.

#### **18.7 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.

### **19. FURTHER OBLIGATIONS AND RIGHTS OF THE PARTIES ON TERMINATION OR EXPIRATION**

**19.1** If this Agreement expires or terminates for any reason, or is assigned by you, you will cease to be our authorized franchisee/licensee and all rights under this Agreement to the use of our Marks, the Carnegie System, all Confidential Information and know-how owned by us and any goodwill (including "local goodwill") engendered by the use of our Marks and/or attributed to your conduct of the Business reverts to us.

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

1. 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 the Business or this Agreement.
2. 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 another valid Agreement with us).
3. 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.

4. You will 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).

5. 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 (if any) in your possession that you purchased from us.

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

7. Cease using the telephone numbers you used in the operation of the Business 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.

8. Strictly comply with the post-termination/post-expiration covenants not to compete set forth in Article 14 of this Agreement.

9. Continue to abide by those restrictions pertaining to the use of our Confidential Information set forth in Article 13 of this Agreement.

10. Surrender to us all computer software, data storage disks or tapes and other electronic media used in the operation of the Business containing Confidential Information, and printouts, and other information pertaining to computer operations, codes, procedures and programming containing Confidential Information. You will not destroy, damage, hide or take any steps to prevent us from obtaining any information which you had stored in the computer system of the Business. You will not retain any printouts, disks or tapes containing any of the programs or data stored in the computer system which contain Confidential Information.

11. 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 Business 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 franchisee 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 Business.

12. Cooperate with us and any successor franchisee of ours in effectuating the foregoing.

19.2 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.

## **20. 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.

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

21.1 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.

21.2 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.

## **22. 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 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.

## **23. NO ORAL MODIFICATION**

This Agreement 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. You understand and assume the business risks inherent in this enterprise.

## 24. NOTICES

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. 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, New York 10167  
Facsimile No. 212-609-6921  
Attention: Eugene R. Scheiman, Esq.

Any notice to Franchisee 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.

## 25. MISCELLANEOUS

### 25.1 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.

### 25.2 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.



### **25.3 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 "Franchisee" 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 "Franchisee" 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.

### **25.4 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 unreasonable as to be unenforceable as a matter of law, the court may declare a reasonable modification of this Agreement and this Agreement will be valid and enforceable, and the parties will be bound by and perform this Agreement as so modified.

### **25.5 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.

## **26. COSTS OF ENFORCEMENT OR DEFENSE; ATTORNEYS' FEES; GOVERNING LAW; VENUE; PUNITIVE AND OTHER DAMAGES**

### **26.1 Costs of Enforcement or Defense**

The prevailing party will be entitled to recover from the other its reasonable attorneys' and experts' fees and disbursements, court costs and all other expenses of litigation, in any action instituted to secure or protect its rights under this Agreement, or to enforce the terms of this Agreement.

## **26.2 Attorneys' Fees**

If we become a party to any action or proceeding arising out of or relating to this Agreement, any and all related agreements, the Business, the Center(s), any Training Facility or any other facilities from which any aspect of the Business is conducted or at which you conduct any Carnegie Programs, as a result of any claimed or actual act, error or omission of yours (and/or any of your officers, directors, shareholders, management, employees, contractors and/or representatives) or the Business, Center(s), any Training Facility or any other facilities from which any aspect of the Business is conducted or at which you conduct any Carnegie Programs; by virtue of statutory, "vicarious," "principal/agent" or other liabilities imposed on us as a result of our status as your franchisor or licensor; or if we become a party to any litigation or any insolvency proceeding involving you pursuant to any bankruptcy or insolvency code (including any adversary proceedings in conjunction with bankruptcy or insolvency proceedings), then you will be liable to, and will promptly reimburse us for, the reasonable attorneys' and experts' fees and disbursements, court costs, travel and lodging costs and all other expenses incurred by us in such action or proceeding regardless of whether such action or proceeding proceeds to judgment. In addition, we will be entitled to add all costs of collection, interest, attorneys' and experts' fees and disbursements to our proof of claim in any insolvency or bankruptcy proceeding.

## **26.3 Governing Law**

This Agreement; all relations between the parties; and, any and all disputes between the parties, whether statutory claims or claims sounding in contract, tort, or otherwise, are to be exclusively construed in accordance with and/or governed by (as applicable) the law of the State of New York without recourse to New York (or any other) choice of law or conflicts of law principles. If, however, any provision of this Agreement would not be enforceable under the law of the State of New York, and if the Business is located outside of New York and the provision would be enforceable under the laws of the state or country in which the Business is located, then the provision (and only that provision) will be interpreted and construed under the laws of that state or country. Nothing in this Section 26.3 is intended to invoke the application of any franchise, business opportunity, antitrust, "implied covenant," unfair competition, fiduciary or any other doctrine of law of the State of New York or any other state, which would not otherwise be required to apply.

## **26.4 Venue**

Any litigation arising out of or related to this Agreement; any breach of this Agreement; all relations between the parties; and, any and all disputes between the parties, whether statutory claims or claims sounding in contract, tort, or otherwise, shall be instituted exclusively in (i) any federal court of competent jurisdiction if there will be any basis for subject matter jurisdiction, or (ii) any state court should the federal court not have such jurisdiction; in the case of either (i) or (ii) such court situated within the boundaries of either the Southern or Eastern Districts of the State of New York. You hereby irrevocably consent to the personal jurisdiction of all such courts. You agree that any dispute as to the venue for this litigation will be submitted to and resolved exclusively by any federal or state court of competent jurisdiction situated within the boundaries of either the Southern or Eastern Districts of the State of New York. You hereby waive and covenant never to assert or claim that said venue is for any reason improper, inconvenient, prejudicial or otherwise inappropriate (including, without limitation, any claim under the judicial doctrine of forum non conveniens).

## **26.5 Punitive and Other Damages**

In no event will we be liable to you in any action or proceeding arising out of or relating to this Agreement, including any breach, termination, cancellation or non-renewal of this Agreement or, in any other action or proceeding whatsoever between the parties to this Agreement and/or any of their affiliates,

for punitive damages or damages allegedly arising out of the loss of prospective profits. You hereby waive and covenant never to advance any such claim for damages.

## **27. GUARANTEE**

If you are an entity Franchisee, the Franchisee Principal and each of the following persons will, concurrently with the execution of this Agreement, execute a Guarantee (Exhibit D), pursuant to which these individuals guarantee all of your obligations and duties: all shareholders, members, general partners of a partnership, limited partners and any other person, in each case who or which hold ten percent (10%) or more of the ownership or voting interest in such entity Franchisee, and, if the entity Franchisee is a limited partnership, the general partner and all persons holding a ten percent (10%) or greater ownership or voting interest in the general partner, in each case at the same time as the execution of this Agreement or at such later time as they assume such status.

If you are in breach or default under this Agreement, we may proceed directly against each such individual and/or entity without first proceeding against you and without proceeding against or naming in the suit any other such individuals and/or entities. The obligations of you and each such individual and/or entity will be joint and several. Notice to or demand upon one such individual and/or entity will be deemed notice to or demand upon you and all such individuals and/or entities, and no notice or demand need be made to or upon any such individuals and/or entities. The cessation of or release from liability of you or any such individual and/or entity will not relieve any other individual and/or entity from liability under this Agreement, except to the extent that the breach or default has been remedied or money owed has been paid.

## **28. SURVIVAL**

**28.1** Any provision of this Agreement which imposes an obligation following the termination or expiration of this Agreement will survive such termination or expiration and will continue to be binding upon and inure to the benefit of the parties to this Agreement.

**28.2** This Agreement will be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

## **29. ACKNOWLEDGMENTS**

You acknowledge, warrant and represent to us that:

1. No representation has been made by us (or any of our employees, agents or salespersons) and relied on by you as to the future or past income, expenses, sales volume or potential profitability, earnings or income of the Business, or any other Carnegie Business, other than the information (if any) provided in Item 19 of our Offering Circular.

2. No representation or statement has been made by us (or any of our employees, agents or salespersons) and relied on by you regarding our anticipated income, earnings and growth or that of the Carnegie System, or the viability of the business opportunity being offered under this Agreement.

3. Before executing this Agreement, you have had the opportunity to contact our existing franchisees.

4. You have had the opportunity to independently investigate, analyze and construe both the business opportunity being offered under this Agreement, and the terms and provisions of this Agreement, using the services of legal counsel, accountants or other advisers (if you so elect) of your own choosing. You have been advised to consult with your own advisers with respect to the legal, financial and other aspects of this Agreement, the Business, and the prospects for that Business. You have either

consulted with these advisors or have deliberately declined to do so.

5. You have received from us a copy of our Offering Circular, together with a copy of all proposed agreements relating to the sale of the franchise, at least ten (10) business days before the execution of this Agreement or at least ten (10) business days before the payment by you to us of any consideration in connection with the sale or proposed sale of the franchise granted by this Agreement.

6. No representation or statement has been made by us (or any of our employees, agents or salespersons) and relied on by you regarding your ability to procure any required license or permit that may be necessary to the offering of one or more of the services or products contemplated to be offered by the Business.

7. The covenants not to compete set forth in Article 14 are fair and reasonable, and will not impose any undue hardship on you, since you have other considerable skills, experience and education which afford you the opportunity to derive income from other endeavors.

8. You affirm that all information set forth in all applications, financial statements and submissions to us is true, complete and accurate in all respects, and you expressly acknowledge that we are relying on the truthfulness, completeness and accuracy of this information.

9. You acknowledge that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 (the "Order"), we are prohibited from engaging in any transaction with any person engaged in acts of terrorism (as defined in the Order) or with any person aiding any person engaged in acts of terrorism. Accordingly, you represent and warrant to us that, as of the Effective Date of this Agreement, neither you nor any person controlling, controlled by, or under common control with, you is designated under the Order as a person with whom business may not be transacted by us, and that you (1) do not, and hereafter shall not, engage in any terrorist activity; (2) are not affiliated with and do not support any individual or entity engaged in, contemplating, or supporting terrorist activity; and (3) are not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

### **30. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer. This Agreement will become effective only upon the execution of this Agreement by us and you.

**THIS AGREEMENT SHALL NOT BE BINDING ON DC&A UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY AN AUTHORIZED OFFICER OF DC&A.**

**FRANCHISEE ACKNOWLEDGES THAT NO REPRESENTATIONS OR PROMISES WERE MADE TO IT OTHER THAN THOSE SET FORTH IN DC&A'S UNIFORM FRANCHISE OFFERING CIRCULAR, IF ANY, OR THAT IF ANY OTHER REPRESENTATIONS OR PROMISES WERE MADE TO FRANCHISEE, FRANCHISEE IS NOT RELYING ON THEM.**

FRANCHISEE HAS READ ALL OF THE FOREGOING AGREEMENT AND HEREBY ACCEPTS AND AGREES TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS THEREOF.

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

Witness:

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

**FRANCHISEE**

If an individual:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Attest:

If a corporation, partnership or limited liability company:

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

\_\_\_\_\_  
(Name of corporation, partnership or limited liability company)

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

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Print Name)

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

Attest:

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

**DALE CARNEGIE & ASSOCIATES, INC.**

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

Its: Senior Vice President - Franchising

\_\_\_\_\_  
Joseph Garcia

## **APPENDIX A**

### **Carnegie Programs**

Dale Carnegie Program  
Sales Advantage  
Leadership Training for Managers  
High Impact Presentations  
World Class Customer Service  
High Performance Teams  
Leadership Advantage  
People Side of Process Improvement  
Generation Next  
New Start

## **APPENDIX B**

### **Territory**

**APPENDIX C**

**Continuing License Fee**





APPENDIX D

**Guaranteed Minimum Production  
And Territory Revenue Potential**

Period	TRP \$	GMP \$

For Fiscal years starting with and after \_\_\_\_\_, the TRP calculations will be based on the percentage of increase or decrease in our classification of training as published by the Training Magazine index.

**FRANCHISEE**

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

Witness: \_\_\_\_\_

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

\_\_\_\_\_

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

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_

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

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_

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

Attest:

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

**DALE CARNEGIE & ASSOCIATES, INC.**

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

Its: Senior Vice President - Franchising  
(Title)  
Joseph Garcia

**APPENDIX E**

**Designated Trade Name**



**EXHIBIT A**

**GENERAL RELEASE  
(TO BE COMPLETED UPON RENEWAL)**

To all to whom these Presents shall come or may Concern, Know That \_\_\_\_\_ (a \_\_\_\_\_ (corporation, partnership, limited partnership, limited liability company, other entity) organized under the laws of the State of \_\_\_\_\_) (an individual domiciled in the State of \_\_\_\_\_) as RELEASOR, in consideration of the execution by DALE CARNEGIE & ASSOCIATES, INC. ("DC&A") of a Renewal Agreement renewing the franchise between RELEASOR and DC&A (the "Franchise Agreement"), and other good and valuable consideration, hereby releases and discharges DC&A, DC&A's corporate parents, subsidiaries and affiliates and the respective officers, directors, shareholders, agents, attorneys, contractors and employees of each of the foregoing entities (in their corporate and individual capacities), and the heirs, executors, administrators, successors and assigns of DC&A and each of the foregoing (DC&A and all such persons and entities, each a "RELEASEE"), from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law, admiralty or equity, which against any RELEASEE, the RELEASOR and RELEASOR'S heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may have, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE arising out of or related to the Franchise Agreement, including, without limitation, claims arising under federal, state, local and foreign laws, rules and ordinances; *provided, however*, that this RELEASE shall not purport to release any RELEASEE from any future claims arising out of or related to any Renewal Agreement entered into between DC&A and RELEASOR, that all liabilities arising under Indiana Code Sec. 23-2-2.7 are excluded from this RELEASE, and that all rights enjoyed by RELEASOR under said Franchise Agreement and any causes of action arising in his, her or its favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law, Sections 687.4 and 687.5 be satisfied. If RELEASOR is domiciled or has his or her principal place of business in the State of California, then RELEASOR hereby expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

**IN WITNESS WHEREOF**, the RELEASOR (if an individual) has executed this RELEASE, and (if a corporation, partnership, limited partnership, limited liability company, other entity) has caused this RELEASE to be executed by a duly authorized officer and its corporate or other seal (if applicable) to be hereunto affixed, on \_\_\_\_\_, \_\_\_\_\_.

RELEASOR

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

**ACKNOWLEDGMENT FOR ENTITY RELEASOR**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_\_ before me personally appeared \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that deponent resides at \_\_\_\_\_, that deponent is the \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ (corporation, partnership, limited partnership, limited liability company, other entity) described in the foregoing RELEASE, and which executed said RELEASE, and that deponent signed said RELEASE by order of the \_\_\_\_\_ (board of directors or other) of the corporation, partnership, limited partnership, limited liability company or other entity.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public

(NOTARIAL SEAL)

My Commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT FOR INDIVIDUAL RELEASOR**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, and known to me to be the same person whose name is signed to the foregoing RELEASE, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public

(NOTARIAL SEAL)

My Commission expires: \_\_\_\_\_

**EXHIBIT B**  
**DALE CARNEGIE & ASSOCIATES, INC.**  
**CONFIDENTIALITY/NON-COMPETITION AGREEMENT**

INDIVIDUAL NAME: \_\_\_\_\_

FRANCHISEE: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

HOME TELEPHONE: \_\_\_\_\_

CLASSIFICATION: \_\_\_\_\_

(Franchisee Principal, Shareholder, General Partner, Limited Partner, Member, Owner, Officer, Director, Manager, Sales Personnel, Management or Supervisory Employee, Etc.)

\_\_\_\_\_ (“Franchisee”) is a franchisee of Dale Carnegie & Associates, Inc. (“DC&A”) pursuant to a Franchise Agreement entered into by Franchisee and DC&A dated \_\_\_\_\_ (the “Franchise Agreement”). I agree that, unless otherwise specified, all terms in this Confidentiality/Non-Competition Agreement (the “Agreement”) have those meanings ascribed to them in the Franchise Agreement.

I hereby agree that during the term of my employment by, ownership participation in, association with and/or service to Franchisee, I will only use and divulge Confidential Information (as defined below) as is necessary to operate the Business (and only divulge same on a need to know basis to principals, employees and agents of DC&A who need access thereto for the purpose of operating the Business), and that, during such term and at any time thereafter, I will not communicate, divulge or use for the benefit of any other person, persons, partnership, proprietorship, association, corporation, or other entity, any Confidential Information which may be communicated to me, nor will I directly or indirectly permit the disclosure of, imitate or aid any such third party to imitate any of the Confidential Information.

“Confidential Information” means knowledge, trade secrets or know-how concerning the systems of operation, services, products, programs or practices of DC&A, the Carnegie System, and/or the Business; all proprietary Materials and all works copyrighted by DC&A or any of DC&A’s Affiliates; the Carnegie Programs; 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; DC&A’s and Franchisee’s computer network Web Sites (if any), and all information posted at any such Web Sites; the Customer Lists; all information concerning Strategic/Global Accounts; and all other information, knowledge, know-how, techniques and information which DC&A, DC&A’s Affiliates, or DC&A’s officers, directors, contractors, employees and/or designees, designate as confidential.

Except as Franchisee is authorized in the Franchise Agreement, I will at no time copy, duplicate, record or otherwise reproduce any of the Confidential Information or material containing it, in whole or in part, store it in a computer, data base or other electronic format; nor otherwise make it available to any unauthorized person or to any third party by sale, transfer, assignment or any other means whatsoever. Upon the expiration or other termination for any reason of my employment by, association with, service to and/or ownership participation in Franchisee, I agree to return to DC&A or Franchisee (as the case may be) all Confidential Information then in my possession (or, upon DC&A’s or Franchisee’s request, destroy such Confidential Information and certify such destruction to DC&A).

I acknowledge and agree that all Confidential Information is the exclusive property of DC&A, with the exception of the Customer Lists, which Franchisee has permanently licensed to DC&A under the Franchise Agreement, and that therefore DC&A retains all rights to use and sell such Confidential Information in any manner whatsoever in its sole discretion.

I further agree that during the term of my employment by, service to, association with and/or ownership participation in Franchisee, I will not, directly or indirectly engage in any other business (a "Competitive Business"): which is similar to the Business; which engages in any of the activities which the Franchise Agreement contemplates that Franchisee 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. I understand and agree that I am prohibited from engaging in any Competitive Business as a proprietor, partner, investor, shareholder, member, director, officer, manager, employee, principal, agent, advisor, or consultant. 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. I agree not to divert any business that should be handled by the Business to any other person or entity. I further agree that during the term of my employment by, service to, association with and/or ownership participation in Franchisee, I will not hire personnel of DC&A, its Affiliates, Franchisee, or of any other franchisee or sponsor of DC&A without written permission from DC&A.

I understand and agree that for a period of one (1) year immediately following the expiration or termination of my employment by, service to, association with and/or ownership participation in Franchisee, I am 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 Competitive Business is located within Franchisee's Territory, within fifty (50) miles of the perimeter of Franchisee's Territory, or within fifty (50) miles of the perimeter of (or within) any Carnegie Business territory (whether owned by DC&A (including a DC&A Center of Excellence), franchised, licensed or otherwise established and operated). 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, for one (1) year after the expiration or termination of my employment by, service to, association with and/or ownership participation in Franchisee, I agree (i) not to hire personnel of DC&A, its Affiliates, Franchisee or of any other franchisee or sponsor of DC&A without written permission from DC&A; (ii) not to solicit clients and/or Carnegie Program participants of Franchisee, DC&A, its Affiliates, or of any other franchisee or sponsor of DC&A; and (iii) not to publicize in any educational or business activity my previous relationship with Franchisee, DC&A, 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 my own business).

I expressly agree that (i) DC&A is a third-party beneficiary of this Agreement and my obligations hereunder and (ii) DC&A has the right (but not the obligation), to be exercised in its sole judgment, to enforce the terms of this Agreement, including, without limitation, the right to bring civil actions to enforce its terms.

If all or any portion of the covenants set forth in this Agreement 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. I expressly agree to be bound by any lesser covenant subsumed within the terms of this Agreement as if the resulting covenants were separately stated in and made a part of this Agreement.

I acknowledge that violation of the covenants contained in this Agreement would result in immediate and irreparable injury to DC&A and Franchisee for which no adequate remedy at law will be available. Accordingly, I consent to the entry of an injunction procured by DC&A or Franchisee (or both) prohibiting any conduct by me in violation of the terms of the covenants set forth in this Agreement. I



expressly agree that it may conclusively be presumed that any violation of the terms of the covenants not to compete contained in this Agreement was accomplished by and through my unlawful use of Confidential Information. Further, I expressly agree that any claims I may have against DC&A, Franchisee or any other party, whether or not arising from this Agreement or any other agreement, will not constitute a defense to the enforcement of the covenants set forth in this Agreement. I agree to pay all costs and expenses, including reasonable attorneys' and experts' fees and disbursements, incurred by DC&A in connection with any action instituted against me to secure or protect DC&A's rights under this Agreement, or to enforce the terms of this Agreement, or in any action commenced or joined in by me against DC&A. Notwithstanding the foregoing, DC&A will be entitled to any other remedies available at law or in equity.

This Agreement; all relations between me and DC&A; and, any and all disputes between us, whether statutory claims or claims sounding in contract, tort, or otherwise, are to be exclusively construed in accordance with and/or governed by (as applicable) the law of the State of New York without recourse to New York (or any other) choice of law or conflicts of law principles. If, however, any provision of this Agreement would not be enforceable under the laws of New York, and if the Business is located and/or I am domiciled outside of New York and the provision would be enforceable under the laws of the state in which the Business is located and/or I am domiciled, then that provision (and only that provision) will be interpreted and construed under the laws of that state.

Any litigation arising out of or related to this Agreement; any breach of this Agreement; all relations between me and DC&A; and, any and all disputes between us, whether statutory claims or claims sounding in contract, tort, or otherwise, shall be instituted exclusively in (i) any federal court of competent jurisdiction if there shall be any basis for subject matter jurisdiction, or (ii) any state court should the federal court not have such jurisdiction; in the case of either (i) or (ii) such court situated within the boundaries of either the Southern or Eastern Districts of the State of New York. I hereby irrevocably consent to the personal jurisdiction of all such courts. I agree that any dispute as to the venue for this litigation will be submitted to and resolved exclusively by any federal or state court of competent jurisdiction situated within the boundaries of either the Southern or Eastern Districts of the State of New York. I hereby waive and covenant never to assert or claim that said venue is for any reason improper, inconvenient, prejudicial or otherwise inappropriate (including, without limitation, any claim under the judicial doctrine of forum non conveniens).

**IN WITNESS WHEREOF**, the undersigned has duly executed this Agreement as of the date set forth below.

Witnessed By:

\_\_\_\_\_

\_\_\_\_\_  
(Print Individual Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**ACKNOWLEDGED BY FRANCHISEE**

Witnessed By:

\_\_\_\_\_

\_\_\_\_\_  
(Name of Franchisee)

\_\_\_\_\_  
(Print Name and Title of Person Signing on behalf of Franchisee)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)



**EXHIBIT C**

**DALE CARNEGIE & ASSOCIATES, INC.**

**SOFTWARE LICENSE AGREEMENT**

**THIS SOFTWARE LICENSE AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between DALE CARNEGIE & ASSOCIATES, INC., a New York corporation with its principal office at 290 Motor Parkway, Hauppauge, New York 11788 ("Licensor") and \_\_\_\_\_ whose principal address is \_\_\_\_\_ ("Licensee").

**WITNESSETH:**

WHEREAS, Licensor has the right and authority to grant the license granted by this Agreement; and

WHEREAS, Licensee desires to acquire the license granted by this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereby agree as follows:

**I. GRANT OF LICENSE**

**1.01 Grant of License to Dale Carnegie Software**

Licensor hereby grants to Licensee a nontransferable, nonexclusive single-site license for the use of those various computer programs, system documentation manuals and other materials comprising Dale Carnegie's proprietary DCT Client Builder™ system (collectively referred to as "Dale Carnegie Software") supplied by Licensor to Licensee, subject to the terms and conditions of this Agreement.

**1.02 Grant of Sublicense to Lotus Notes**

Licensor represents that, as of the date of this Agreement, it has the non-exclusive right to sublicense the software program Lotus Notes to Licensee for a one-year period ending on \_\_\_\_\_ which period is generally renewed annually. Notwithstanding anything contained herein to the contrary, Licensor's rights to sublicense Lotus Notes is specifically subject to the IBM International Program License Agreement. Subject to the terms and conditions of this Agreement, the IBM International Program License Agreement and Licensor's rights to sublicense Lotus Notes, Licensor hereby grants to Licensee a non-exclusive sublicense to use Lotus Notes on one (1) personal computer. In the event that there is a conflict between this Agreement and the IBM International Program License Agreement, the IBM International Program License Agreement shall prevail.

**1.03 Rights of Licensor**

Licensee recognizes that the Dale Carnegie Software and all additional materials and information, including but not limited to all processes, ideas, data and printed material, are supplied to Licensee subject to the proprietary rights of Licensor and/or its third party Licensors. Licensee agrees with Licensor that the Dale Carnegie Software, and all information and/or data supplied by Licensor in any form, including but not limited to object, machine-readable and/or printed form, are trade secrets of Licensor and/or its third party Licensors, are protected by civil and criminal law, and by the law of copyright, are very valuable to Licensor and/or its third party Licensors, and that their use and disclosure must be carefully and continuously controlled.

#### **1.04 Title**

Licensor or its third party Licensors retains title to the Dale Carnegie Software and additional materials and information furnished by Licensor in any form (including but not limited to object, machine-readable and/or printed form). Licensee agrees to keep each and every item to which Licensor or its third party Licensors retains title free and clear of all claims, liens and encumbrances except those of Licensor or its third party Licensors, and any act of Licensee, voluntary or involuntary, purporting to create a claim, lien or encumbrance on such an item will be void.

### **II. PAYMENTS TO LICENSOR**

#### **2.01 Payment for Dale Carnegie Software**

Licensee hereby agrees to pay Licensor: (a) Four Hundred Ninety-Five Dollars (\$495), upon execution of this Agreement, for the license granted herein to use the Dale Carnegie Software; and (b) an annual fee of Four Hundred Ninety-Five Dollars (\$495) for the continued license to use the Dale Carnegie Software, any updates to such Software, access to Licensor's DCT Client Builder™ help desk and any DCT Client Builder™ training that Licensor may provide, payable fifteen (15) days after the first anniversary of the date of this Agreement and annually thereafter during the term of this Agreement.

#### **2.02 Payment for Lotus Notes**

For the sublicense granted herein to use Lotus Notes, Licensee hereby agrees to pay Licensor: (a) Forty Dollars (\$40) upon execution of this Agreement and (b) Forty Dollars (\$40) per year per user of Lotus Notes, payable upon January 15th of every year in which this Agreement is in effect.

### **III. TERM**

**3.01** Subject to Section 3.02, this Agreement is effective from the date of this Agreement and will remain in full force so long as Licensee remains a Franchisee in good standing under and pursuant to that Franchise Agreement entered into by and between DALE CARNEGIE & ASSOCIATES, INC. and Licensee, dated \_\_\_\_\_, (the "Franchise Agreement") which said Franchise Agreement is, by this reference, incorporated in this Agreement as though set forth in full. Terms used herein but not otherwise defined will have the meanings ascribed thereto in the Franchise Agreement.

**3.02** In the event that Licensor's rights to sublicense Lotus Notes are terminated, expired or not renewed for any reason, then Licensor's sublicense of Lotus Notes to Licensee pursuant to this Agreement will expire. In such event, Licensor will have no liability whatsoever to Licensee.

### **IV. RESTRICTIONS ON LICENSEE**

#### **4.01 Copies**

Licensee agrees that while this license is in effect, or while Licensee has custody or possession of any property of Licensor, it will not (1) copy or duplicate, or permit anyone else to copy or duplicate, any physical or magnetic version of the Dale Carnegie Software or other information furnished by Licensor in any form (including but not limited to object, machine-readable and/or printed form); (2) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source

programs or any part thereof from the object program or from any other information made available under this license or otherwise (whether oral, written, tangible or intangible).

The foregoing notwithstanding, except for Lotus Notes, any Dale Carnegie Software or additional material which is provided by Licensor in any form (including but not limited to object, machine-readable and/or printed form) to Licensee may be copied, in whole or in part, solely for the use by the Licensee at Licensee's above-said address, for archive or emergency restart purposes, to replace a worn copy, or to understand the contents of such machine-readable material, provided, however, that no more than three (3) printed copies and three (3) object or machine-readable copies will be in existence under this license at any one time without prior written consent from Licensor. The original, and any copies, in whole or in part, of Dale Carnegie Software and/or additional materials supplied to Licensee by Licensor, which are made under this Agreement, will be the property of Licensor or its third party Licensors.

Licensee shall keep any such copies and the original at Licensee's above-said address, except that the Licensee may transport or transmit a copy or the original of any licensed program to another location for back-up use when required by CPU malfunction, provided the copy or original is destroyed or returned to Licensee's above-said address when the malfunction is corrected.

All programs, documentation and materials in any form (including but not limited to object, machine-readable and/or printed form) supplied under this license must be kept in a secure place, under access and use restrictions satisfactory to Licensor, and not less strict than those applied to Licensee's most valuable and sensitive programs.

#### **4.02 Modification**

Licensee agrees that while this license is in effect, or while Licensee has custody or possession of any property of Licensor, it will not modify, translate or enhance the Dale Carnegie Software.

#### **4.03 Transfer of Software**

If Licensee transfers possession of any copy, modification, translation or merged portion of the Dale Carnegie Software to another party in violation of the terms of this Agreement, such attempt at transfer will be deemed void and this license will be automatically terminated.

### **V. PROTECTION AND SECURITY**

#### **5.01 Non-Disclosure**

Licensee may not disclose, publish, translate, release, transfer or otherwise make available the Dale Carnegie Software, or any part thereof, or any other materials furnished by Licensor, in any form, to any person, without the written consent of Licensor, which may be withheld with or without cause, in Licensor's sole and exclusive discretion. Licensee agrees that it will take all necessary action including, but not necessarily limited to, instructing and entering into agreements with all of Licensee's employees, agents, representatives, affiliates, subsidiaries, and/or other third persons/entities associated with Licensee to protect the copyright and trade secrets of Licensor or its third party Licensors in and to those materials licensed under this Agreement and to assure Licensee's compliance with its obligations under this Agreement. The provisions of this Section 4.01 will survive the termination of this Agreement.

Licensee understands and agrees that Licensor may from time to time adopt such mechanical or other electronic methods that Licensor deems necessary (in its sole and exclusive discretion) to prevent the unauthorized use and/or distribution of the Dale Carnegie Software.

## **5.02 Off-Site Communications Lines**

Licensee may not permit the computer programs licensed under this Agreement to be transmitted over any off-site communications lines for any purpose.

## **VI. UNAUTHORIZED ACTS**

**6.01** Licensee agrees to notify Licensor immediately of the unauthorized possession, use or knowledge of any item supplied through this license and of other information made available to Licensee under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Licensee agrees to promptly furnish full details of such possession, use or knowledge to Licensor, to assist in preventing the recurrence of such possession, use or knowledge, and to cooperate with Licensor in any litigation against third parties deemed necessary by Licensor or its third party Licensors to protect its proprietary rights. Licensee's compliance with this paragraph will not be construed in any way as a waiver of Licensor's rights to recover damages or obtain other relief against Licensee for its negligent or intentional harm to Licensor's proprietary rights, or for breach of contractual rights.

## **VII. INSPECTION**

**7.01** To assist Licensor and its third party Licensors in the protection of its proprietary rights, Licensee agrees to permit representatives of Licensor to inspect at all reasonable times any location at which items supplied under this Agreement are being used or kept.

## **VIII. ASSIGNMENT OF LICENSE RIGHTS**

### **8.01 Assignment by Licensor**

Licensor will have the right to assign this Agreement, and all of its rights and privileges under this Agreement, to any person, firm, corporation or other entity provided that, if the assignment results in the performance by the assignee of the functions of Licensor under this Agreement: (i) the assignee shall, at the time of such assignment, be financially responsible and economically capable of performing the obligations of Licensor under this Agreement, and (ii) the assignee must expressly assume and agree to perform such obligations.

### **8.02 Assignment by Licensee**

With respect to Licensee's obligations under this Agreement, this Agreement is personal, being entered into in reliance upon and in consideration of the singular personal skill and qualifications of Licensee, and the trust and confidentiality reposed in Licensee by Licensor. Therefore, neither Licensee's interest in this Agreement, nor any of its rights or privileges under this Agreement, may be assigned, sold, transferred, shared, redeemed, sublicensed or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner, without the prior written consent of Licensor. Any actual or attempted assignment, transfer or sale of this Agreement, or any interest therein, made or accomplished in violation of the terms of this Article VIII will be null and void and will constitute a material and incurable breach of this Agreement by Licensee, and, in that event, this Agreement will automatically terminate without further notice.

## **IX. INJUNCTION**

**9.01** Licensee acknowledges that if Licensee uses, copies, modifies, licenses, or conveys the items supplied by Licensor under this Agreement, in a manner contrary to the terms of this Agreement or in competition with Licensor or in derogation of Licensor's and/or its third party Licensors' proprietary rights, whether these rights are explicitly stated in this Agreement, determined by law or otherwise, it will result in immediate and irreparable injury to Licensor for which no adequate remedy at law will be available. Accordingly, Licensee consents to the entry of an injunction prohibiting any such conduct by Licensee. Licensee expressly agrees that any claims it may have against Licensor, whether or not arising from this Agreement, will not constitute a defense to the enforcement by Licensor or its third party Licensors of Licensee's obligation not to engage in such conduct. Licensee agrees to pay all costs and expenses, including reasonable attorneys' and experts' fees and disbursements, incurred by Licensor or its third party Licensors in connection with the enforcement by Licensor or its third party Licensors of Licensee's obligation not to engage in such conduct. Notwithstanding the foregoing, Licensor and its third party Licensors shall be entitled to any other remedies available at law or in equity.

## **X. DEFAULT AND TERMINATION**

### **10.01 Termination**

Licensor reserves the right to immediately terminate this Agreement, at Licensor's sole and exclusive discretion, should Licensee breach any term of this Agreement or if Licensor should terminate the Franchise Agreement pursuant to the termination provisions thereof. Said termination will be without prejudice to any right or claims Licensor or its third party licensors may have, and all rights granted under this Agreement will forthwith revert to Licensor, and Licensee agrees to immediately thereafter return to Licensor all property of and/or materials supplied by Licensor.

The termination or expiration of this Agreement or of the Franchise Agreement for any reason whatsoever will not relieve Licensee of its obligations of confidentiality, protection and security under this Agreement, or of the restriction on copying and use as provided in this Agreement, with respect to the Dale Carnegie Software. Any provision of this Agreement which imposes an obligation following the termination or expiration of this Agreement will survive the termination or expiration and will continue to be binding upon the parties to this Agreement.

Upon termination or expiration of this Agreement or of the Franchise Agreement for any reason, Licensee agrees to immediately return to Licensor the Dale Carnegie Software, including, without limitation, all computer software, disks, tapes and other magnetic storage media (and any future technological substitutions therefor) in good condition (allowing for normal wear and tear).

## **XI. BINDING EFFECT**

**11.01** Licensee agrees that this Agreement binds the named Licensee and each of Licensee's employees, agents, representatives and persons associated with it. This Agreement further binds each affiliated and subsidiary firm, corporation, or other organization and any person, firm, corporation or other organization with which the Licensee may enter a joint venture or other cooperative enterprise.

## **XII. SECURITY INTEREST**

**12.01** Licensee gives to Licensor a security interest in and to the Dale Carnegie Software and other materials furnished under this Agreement as security for the performance by the Licensee of all of its obligations under this Agreement, together with the right, without liability, to repossess said Dale Carnegie Software and other materials, with or without notice, in the event of default in any such obligation.

## **XIII. WAIVER OR DELAY; AMENDMENT**

### **13.01 Waiver or Delay**

No 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 such party of any preceding or succeeding 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 Licensee 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.

### **13.02 Amendment**

This Agreement may not be amended orally, but may be amended only by a written instrument signed by the parties hereto. Licensee expressly acknowledges that no oral promises or declarations were made to it and that the obligations of Licensor are confined exclusively to the terms of this Agreement.

## **XIV. DISCLAIMER**

**14.01 LICENSOR WARRANTS AND REPRESENTS THAT IT HAS THE AUTHORITY TO EXTEND THE RIGHTS GRANTED TO LICENSEE HEREIN. THIS EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE, OF QUALITY OR PRODUCTIVENESS OR CAPACITY. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT THE LICENSE, DALE CARNEGIE SOFTWARE, LOTUS NOTES AND OTHER INFORMATION MADE AVAILABLE HEREUNDER BY LICENSOR ARE MADE AVAILABLE ON AN "AS-IS" BASIS. LICENSOR OR ITS THIRD PARTY LICENSORS SHALL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT, OR OTHERWISE) TO LICENSEE, THIRD PARTIES, OR ANY OTHER PERSON CLAIMING THROUGH OR UNDER LICENSEE, FOR ANY DAMAGES OR EXPENSES, INCLUDING BUT NOT LIMITED TO, ANY CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, LOST PROFITS AND/OR LOST BUSINESS ARISING OUT OF OR IN CONNECTION WITH ANY USE, OR INABILITY TO USE, ANY OF THE LICENSED DALE CARNEGIE SOFTWARE, LOTUS NOTES, MATERIALS OR INFORMATION FURNISHED, WHETHER CAUSED BY DEFECT, NEGLIGENCE, BREACH OF WARRANTY, DELAY IN DELIVERY OR OTHERWISE, EVEN IF LICENSOR OR ITS THIRD PARTY LICENSORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EXPENSES. FURTHER, NO OBLIGATION OR LIABILITY SHALL ARISE OR FLOW OUT OF LICENSOR'S RENDERING OF TECHNICAL OR OTHER ADVICE IN CONNECTION WITH THE DALE CARNEGIE SOFTWARE, LOTUS NOTES OR ANY EQUIPMENT USED THEREWITH.**



## **XV. LIMITATION OF LIABILITY**

**15.01** Licensor's liability for damages under this Agreement, regardless of the form of action, will not exceed the cost of replacement of the software licensed under this Agreement. This will be Licensee's sole and exclusive remedy. No action, regardless of form, arising out of any party's obligations under this Agreement may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for nonpayment may be brought within one year of the date of last payment.

## **XVI. SEVERABILITY**

**16.01** 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 unreasonable as to be unenforceable as a matter of law, the court may declare a reasonable modification of this Agreement and this Agreement will be valid and enforceable, and the parties agree to be bound by and perform this Agreement as so modified.

## **XVII. GOVERNING LAW; VENUE**

### **17.01 Governing Law**

This Agreement; all relations between the parties; and, any and all disputes between the parties, whether sounding in contract, tort, or otherwise, is to be exclusively construed in accordance with and/or governed by (as applicable) the law of the State of New York without recourse to New York (or any other) choice of law or conflicts of law principles. If, however, any provision of this Agreement would not be enforceable under the laws of New York, and if the Business is located outside of New York and the provision would be enforceable under the laws of the state in which the Business is located, then the provision (and only that provision) will be interpreted and construed under the laws of that state.

### **17.02 Venue**

Any litigation arising out of or related to this Agreement; any breach of this Agreement; the relations between the parties; and, any and all disputes between the parties, whether sounding in contract, tort, or otherwise, shall be instituted exclusively in (i) any federal court of competent jurisdiction if there shall be any basis for subject matter jurisdiction, or (ii) any state court should the federal court not have such jurisdiction; in the case of either (i) or (ii) such court sitting in either the Southern or Eastern Districts of the State of New York. Licensee hereby irrevocably consents to the personal jurisdiction of all such courts. Licensee agrees that any dispute as to the venue for this litigation will be submitted to and resolved exclusively by any federal or state court of competent jurisdiction situated in either the Southern or Eastern Districts of the State of New York. Licensee hereby waives and covenants never to assert or claim that said venue is for any reason improper, inconvenient, prejudicial or otherwise inappropriate (including, without limitation, any claim under the judicial doctrine of forum non conveniens).

**XVIII.**  
**COSTS OF ENFORCEMENT OR DEFENSE; ATTORNEYS' FEES**

**18.01 Costs of Enforcement or Defense**

Licensor will be entitled to recover from Licensee reasonable attorneys' and experts' fees and disbursements, court costs and all other expenses of litigation, if Licensor prevails in any action instituted against Licensee to secure or protect Licensor's rights under this Agreement, or to enforce the terms of this Agreement, or in any action commenced or joined in by Licensee against Licensor.

**18.02 Attorneys' Fees**

If Licensor becomes a party to any action or proceeding arising out of or relating to this Agreement as a result of any claimed or actual act, error or omission of Licensee (and/or any of its officers, directors, shareholders, management, employees, contractors and/or representatives); by virtue of statutory, "vicarious", "principal/agent" or other liabilities imposed on Licensor as a result of its status as a licensor of Licensee; or if Licensor becomes a party to any litigation or any insolvency proceeding involving Licensee pursuant to any bankruptcy or insolvency code (including any adversary proceedings in conjunction with bankruptcy or insolvency proceedings), then Licensee will be liable to, and will promptly reimburse Licensor for, the reasonable attorneys' and experts' fees and disbursements, court costs, travel and lodging costs and all other expenses incurred by Licensor in such action or proceeding regardless of whether such action or proceeding proceeds to judgment. In addition, Licensor will be entitled to add all costs of collection, interest, attorneys' and experts' fees and disbursements to its proof of claim in any insolvency or bankruptcy proceeding filed by Licensee.

**XIX. SUBMISSION OF AGREEMENT**

**19.01** The submission of this Agreement does not constitute an offer. This Agreement will become effective only upon the execution of this Agreement by Licensor and Licensee. The date of execution by the Licensor will be considered the date of execution of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

THIS AGREEMENT SHALL NOT BE BINDING ON LICENSOR UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY AN AUTHORIZED OFFICER OF LICENSOR. LICENSEE HAS READ ALL OF THE FOREGOING AGREEMENT AND HEREBY ACCEPTS AND AGREES TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS THEREOF.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

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

Attest:

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

Witness:

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

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

Attest:

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

**FRANCHISEE:**

If an entity:

\_\_\_\_\_  
(Name of Entity)

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

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Print Name)

If an individual:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**FRANCHISOR:**

**DALE CARNEGIE & ASSOCIATES, INC.**

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

Its: Senior Vice President - Franchising

\_\_\_\_\_  
Joseph Garcia

## EXHIBIT D

### PERSONAL GUARANTEE

#### OF DALE CARNEGIE & ASSOCIATES, INC. FRANCHISE AGREEMENT

In consideration of the execution by Dale Carnegie & Associates, Inc. ("DC&A") of the Dale Carnegie & Associates, Inc. Franchise Agreement (the "Franchise Agreement") dated the \_\_\_\_ day of \_\_\_\_\_, between DC&A and \_\_\_\_\_ ("Franchisee") and for other good and valuable consideration, each of the undersigned, for themselves, their heirs, successors, and assigns, do jointly, individually and severally hereby absolutely and unconditionally guarantee the payment of all amounts and the performance of all of the covenants, terms, conditions, agreements and undertakings contained and set forth in said Franchise Agreement and in any other agreement(s) by and between Franchisee and DC&A.

If more than one (1) person has executed this Guarantee, the term "the undersigned," as used herein, shall refer to each such person, and the liability of each of the undersigned hereunder shall be joint and several and primary as sureties.

The undersigned, individually and jointly, hereby agree to be personally bound by each and every covenant, term, condition, agreement and undertaking contained and set forth in said Franchise Agreement and any other agreement(s) by and between Franchisee and DC&A, and agree that this Guarantee shall be construed as though the undersigned and each of them executed agreement(s) containing the identical terms and conditions of the Franchise Agreement and any other agreement(s) by and between Franchisee and DC&A.

The undersigned hereby agree, furthermore, that without the consent of or notice to any of the undersigned and without affecting any of the obligations of the undersigned hereunder: (a) any term, covenant or condition of the Franchise Agreement may be amended, compromised, released or otherwise altered by DC&A and Franchisee, and the undersigned do guarantee and promise to perform all the obligations of Franchisee under the Franchise Agreement as so amended, compromised, released or altered; (b) any guarantor of or party to the Franchise Agreement may be released, substituted or added; (c) any right or remedy under the Franchise Agreement, this Guarantee or any other instrument or agreement between DC&A and Franchisee may be exercised, not exercised, impaired, modified, limited, destroyed or suspended; and, (d) DC&A or any other person may deal in any manner with Franchisee, any of the undersigned, any party to the Franchise Agreement or any other person.

Should Franchisee be in breach or default under the Franchise Agreement or any other agreement(s) by and between Franchisee and DC&A, DC&A may proceed directly against any or each of the undersigned without first proceeding against Franchisee and without proceeding against or naming in such suit any other franchisee, signatory to the Franchise Agreement or any others of the undersigned.

Notice to or demand upon Franchisee or any of the undersigned shall be deemed notice to or demand upon Franchisee and all of the undersigned, and no notice or demand need be made to or upon any or all of the undersigned. The cessation of or release from liability of Franchisee or any of the undersigned shall not relieve any others of the undersigned from liability hereunder, under the Franchise Agreement, or under any other agreement(s) between DC&A and Franchisee, except to the extent that the breach or default has been remedied or moneys owed have been paid.

Any waiver, extension of time or other indulgence granted by DC&A or its agents, successors or assigns, with respect to the Franchise Agreement or any other agreement(s) by and between Franchisee and DC&A, shall in no way modify or amend this Guarantee, which shall be continuing, absolute, unconditional and irrevocable.

It is understood and agreed by the undersigned that the provisions, covenants and conditions of this Guarantee shall inure to the benefit of DC&A, its successors and assigns. This Guarantee may be assigned by DC&A voluntarily or by operation of law without reducing or modifying the liability of the undersigned hereunder. Nothing contained in this Guarantee may be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provision of this Guarantee and any present or future statute, law, ordinance or regulation required to be made applicable to this Guarantee, the latter will prevail, but the affected provision of this Guarantee will be curtailed and limited only to the extent necessary to bring it within the requirement of the law. If any provision, sentence or clause of this Guarantee is held to be indefinite, invalid or otherwise unenforceable, the entire Guarantee will not fail for this reason, and the balance of the Guarantee will continue in full force and effect. If any court of competent jurisdiction deems any provision, sentence or clause of this Guarantee so unreasonable as to be unenforceable as a matter of law, the court may declare a reasonable modification of this Guarantee and this Guarantee will be valid and enforceable, and the undersigned agree to be bound by and perform this Guarantee as so modified.

DC&A will be entitled to recover from the undersigned reasonable attorneys' and experts' fees and disbursements, court costs and all other expenses of litigation, if DC&A prevails in any action instituted against the undersigned to secure or protect DC&A's rights under this Guarantee, or to enforce the terms of this Guarantee, or in any action commenced or joined in by the undersigned against DC&A.

This Guarantee; all relations between the undersigned and DC&A; and, any and all disputes between the parties, whether statutory claims or claims sounding in contract, tort, or otherwise, are to be exclusively construed in accordance with and/or governed by (as applicable) the law of the State of New York without recourse to New York (or any other) choice of law or conflicts of law principles. If, however, any provision of this Guarantee would not be enforceable under the laws of New York, and if the Business (as defined in the Franchise Agreement) is located and/or the undersigned is/are domiciled outside of New York and the provision would be enforceable under the laws of the state in which the Business is located and/or the undersigned is/are domiciled, then that provision (and only that provision) will be interpreted and construed under the laws of that state. Nothing in this paragraph is intended to invoke the application of any franchise, business opportunity, antitrust, "implied covenant," unfair competition, fiduciary or any other doctrine of law of the State of New York or any other state, which would not otherwise be required to apply.

Any litigation arising out of or related to this Guarantee; any breach of this Guarantee; all relations between the undersigned and DC&A; and, any and all disputes between the parties, whether statutory claims or claims sounding in contract, tort, or otherwise, shall be instituted exclusively in (i) any federal court of competent jurisdiction if there shall be any basis for subject matter jurisdiction, or (ii) any state court should the federal court not have such jurisdiction; in the case of either (i) or (ii) such court situated within the boundaries of either the Southern or Eastern Districts of the State of New York. The undersigned hereby irrevocably consent to the personal jurisdiction of all such courts. The undersigned agree that any dispute as to the venue for this litigation will be submitted to and resolved exclusively by any federal or state court of competent jurisdiction situated within the boundaries of either the Southern or Eastern Districts of the State of New York. The undersigned hereby waive and covenant never to assert or claim that said venue is for any reason improper, inconvenient, prejudicial or otherwise inappropriate (including, without limitation, any claim under the judicial doctrine of forum non conveniens).

**IN WITNESS WHEREOF**, each of the undersigned has executed this Guarantee effective as of the date of the Franchise Agreement.

Witness:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

Witness:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

Witness:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

**EXHIBIT E**

**GENERAL RELEASE  
(TO BE COMPLETED UPON ASSIGNMENT)**

To all to whom these Presents shall come or may Concern, Know That

\_\_\_\_\_ (a \_\_\_\_\_ (corporation, partnership, limited partnership, limited liability company, other entity) organized under the laws of the State of \_\_\_\_\_) (an individual domiciled in the State of \_\_\_\_\_) as RELEASOR, in consideration of the consent of DALE CARNEGIE & ASSOCIATES, INC. ("DC&A") to the assignment of the Franchise Agreement dated \_\_\_\_\_, for the territory listed below, between RELEASOR and DC&A (the "Franchise Agreement") and other good and valuable consideration, hereby releases and discharges DC&A, DC&A's corporate parents, subsidiaries and affiliates and the respective officers, directors, shareholders, agents, attorneys, contractors and employees of each of the foregoing entities (in their corporate and individual capacities), and the heirs, executors, administrators, successors and assigns of DC&A and each of the foregoing (DC&A and all such persons and entities, each a "RELEASEE"), from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law, admiralty or equity, which against any RELEASEE, the RELEASOR and RELEASOR'S heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may have, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE, including, without limitation, claims arising under federal, state, local and foreign laws, rules and ordinances; *provided, however,* that all liabilities arising under Indiana Code Sec. 23-2-2.7 are excluded from this RELEASE, and that all rights enjoyed by RELEASOR under said Franchise Agreement and any causes of action arising in his, her or its favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law, Sections 687.4 and 687.5 be satisfied. If RELEASOR is domiciled or has his or her principal place of business in the State of California, then RELEASOR hereby expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

**IN WITNESS WHEREOF**, the RELEASOR (if an individual) has executed this RELEASE, and (if a corporation, partnership, limited partnership, limited liability company, other entity) has caused this RELEASE to be executed by a duly authorized officer and its corporate or other seal (if applicable) to be hereunto affixed, on \_\_\_\_\_, \_\_\_\_\_.

RELEASOR

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

ACKNOWLEDGMENT FOR ENTITY RELEASOR

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_\_ before me personally appeared \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that deponent resides at \_\_\_\_\_, that deponent is the \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ (corporation, partnership, limited partnership, limited liability company, other entity) described in the foregoing RELEASE, and which executed said RELEASE, and that deponent signed said RELEASE by order of the \_\_\_\_\_ (board of directors or other) of the corporation, partnership, limited partnership, limited liability company or other entity.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public

\_\_\_\_\_

My Commission expires: \_\_\_\_\_

(NOTARIAL SEAL)

ACKNOWLEDGMENT FOR INDIVIDUAL RELEASOR

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, and known to me to be the same person whose name is signed to the foregoing RELEASE, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public

\_\_\_\_\_

My Commission expires: \_\_\_\_\_

(NOTARIAL SEAL)



## EXHIBIT F

### TRANSLATION AGREEMENT

AGREEMENT made as of this \_\_\_\_\_ between DALE CARNEGIE & ASSOCIATES, INC., the copyright owner, a New York corporation having its principal place of business at 290 Motor Parkway, Hauppauge, New York 11788 (hereinafter called the "COMPANY") and \_\_\_\_\_ having a principal place of business at \_\_\_\_\_ (hereinafter called the "TRANSLATOR").

WHEREAS, the COMPANY owns the entire right, title and interest in and to the copyrights covering the works of Dale Carnegie & Associates, Inc. and other written works and materials hereinafter designated in Exhibit A attached to this Agreement and made a part hereof (all of which are hereinafter called the "material"); and

WHEREAS, the COMPANY wishes to have the material translated into the \_\_\_\_\_ language and wishes to employ the TRANSLATOR to assist in making such translation under the direction, supervision and control of the COMPANY; and

WHEREAS, the TRANSLATOR wishes to enter into such employment and assist in making such translation under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein and other valuable consideration, the parties agree as follows:

1. The COMPANY hires the TRANSLATOR and the TRANSLATOR hereby accepts said hiring to translate the material (which translated material shall be referred to as the TRANSLATED MATERIAL) into the \_\_\_\_\_ language. The content, form and style of the TRANSLATED MATERIAL shall be subject to the COMPANY's complete control, satisfaction and approval. It will be delivered by the TRANSLATOR to the COMPANY in complete and final form satisfactory to, and approved by, the COMPANY no later than a date mutually agreed to as the need arises. The TRANSLATOR will read and correct all proofs of the TRANSLATED MATERIAL and furnish any special matter of materials needed or appropriate for publication of the TRANSLATED MATERIAL. The TRANSLATOR agrees that the COMPANY will have the complete right and authority to direct, supervise and control the manner in which the TRANSLATOR's services will be performed under this Agreement and the TRANSLATED MATERIAL is to be written and prepared by the TRANSLATOR. After delivery of the TRANSLATED MATERIAL to the COMPANY, the TRANSLATOR, at no compensation in addition to that provided for in paragraph 3 of this Agreement, will promptly make whatever changes, modifications, alternations or additions to the TRANSLATED MATERIAL which the COMPANY directs the TRANSLATOR to make. The parties agree that additional materials from time to time may be added to Exhibit A by Letter Agreement between the parties in which event the terms of this Agreement will also apply to such additional materials.

2. TRANSLATOR acknowledges and agrees that he/she will not receive credit nor in any way be identified as the translator of the TRANSLATED MATERIAL whether the material is published or not. The TRANSLATOR further agrees that he/she will not use or refer to the name "Dale Carnegie" at any time in the future.

3. The entire compensation for the services of the TRANSLATOR to be performed under this Agreement shall be Ten and 00/100 (\$10.00) Dollars and such other sums as may be agreed upon between the parties hereto, to be payable in the following manner: upon completion, submission and final approval by the COMPANY. It is further agreed that all costs of creating the TRANSLATED MATERIAL shall be borne by the TRANSLATOR.

4. TRANSLATOR acknowledges that all rights and interests of any nature whatsoever throughout the world, including without limitation all copyrights, and all rights of renewal of copyrights and all extensions thereof, in the material are owned by COMPANY.

5. (A) The parties agree that TRANSLATOR has been specially ordered and commissioned by COMPANY to translate the material and that the TRANSLATED MATERIAL and all preparatory manuscripts, notes and other materials of the TRANSLATOR (hereinafter called the "PREPARATORY MATERIAL") are works made for hire as contemplated by the United States of America Copyright Act. The parties further agree that all rights and interests of any nature whatsoever throughout the world in the TRANSLATED MATERIAL and PREPARATORY MATERIAL, including without limitation all copyrights and all rights of renewal of copyrights and all extensions thereof, shall be exclusively in the COMPANY. The rights of the COMPANY to use the TRANSLATED MATERIAL and PREPARATORY MATERIAL shall include (a) the rights to use the same in all possible ways including without limitation book, magazine, adaptation, condensation, extract rights, radio, television, motion picture, microfilm, dramatic and public reading, display and performance rights, rights to reproduce and prepare derivative works based upon any of the foregoing, mechanical rights of all kinds such as records, cassettes, wire and tape recordings, and all means and methods of information storage, reproduction and retrieval including microfilm and computer programs and data banks; and (b) the right to revise, rearrange, change, or incorporate with other matter or materials, any of the aforesaid. Such rights shall be exclusive in the COMPANY and shall not be subject to any limitations or restrictions whatsoever. To confirm COMPANY's exclusive ownership of all said rights and interests in the TRANSLATED MATERIAL and PREPARATORY MATERIAL throughout the world (including without limitation any countries whose laws may not recognize the United States copyright law concept of works made for hire) (i) TRANSLATOR shall be deemed to have transferred and assigned, and TRANSLATOR does hereby transfer and assign, to COMPANY as of the date of the creation of the TRANSLATED MATERIAL and PREPARATORY MATERIAL all rights and interests throughout the world, whether now known or hereafter recognized, including copyrights, and any and all renewals and extensions thereof, in the TRANSLATED MATERIAL and PREPARATORY MATERIAL; and (ii) if and to the extent that such transfer and assignment to COMPANY is not legally effective or possible under the laws of any particular country or countries, TRANSLATOR shall be deemed to have granted, or does hereby grant, to COMPANY as of the date of the creation of the TRANSLATED MATERIAL and PREPARATORY MATERIAL an irrevocable, exclusive, royalty-free license in perpetuity in such country or countries throughout the world covering all rights and interests, whether now known or hereafter recognized, including copyrights, and any and all renewals and extensions thereof, in the TRANSLATED MATERIAL and PREPARATORY MATERIAL; and (ii) if and to the extent that such transfer and assignment to COMPANY is not legally effective or possible under the laws of any particular country or countries, TRANSLATOR shall be deemed to have granted, or does hereby grant, to COMPANY as of the date of the creation of the TRANSLATED MATERIAL and PREPARATORY MATERIAL an irrevocable, exclusive, royalty-free license in perpetuity in such country or countries throughout the world covering all rights and interest, whether now known hereafter recognized, including copyrights in the TRANSLATED MATERIAL and PREPARATORY MATERIAL, including without limitation book, magazine, adaptation, condensation, extract rights, radio, television, motion picture, microfilm, dramatic and public reading, display and performance rights, rights to reproduce and prepare derivative works based upon any of the foregoing, mechanical rights of all kinds such as records, cassettes, wire and tape recordings, and all means and methods of information storage, reproduction and

retrieval including microfilm and computer programs and data banks; and the right to revise, rearrange, change, or incorporate with other matter or materials, any of the aforesaid. Such license shall include the right in COMPANY to grant exclusive or nonexclusive sublicenses, to assign its rights as licensee, and to sue in its own name for infringement thereof and, in any such infringement actions, TRANSLATOR agrees to cooperate with COMPANY and to bring suit in its own name if and when requested to do so by the COMPANY.

(B) Any persons engaged by the TRANSLATOR to make or assist in making the translation of the material to produce the TRANSLATED MATERIAL and PREPARATORY MATERIAL shall execute a written agreement in the form annexed thereto as Exhibit B, prior to the commencement of such person's services, which agreement shall be delivered to the COMPANY'S agent hereinafter designated at his address hereinafter designated within ten (10) days after said person is so engaged by the TRANSLATOR.

6. In the event TRANSLATOR wishes to incorporate any contents in the TRANSLATED MATERIAL which are not contained in the material given to him/her for translation nor are original with TRANSLATOR, TRANSLATOR shall obtain written permission in form satisfactory to COMPANY from the owner of such contents for the right to include same in the TRANSLATED MATERIAL, and shall deliver such permission to the COMPANY prior to the time such contents are incorporated into the TRANSLATED MATERIAL.

7. The TRANSLATOR represents and warrants to the COMPANY that (a) he/she has the right to enter into this Agreement and to perform the services he/she is to perform hereunder; and (b) except for material of other authors incorporated in the TRANSLATED MATERIAL with the consent of the COMPANY where permission for such use from such other authors has been obtained as set forth above, the TRANSLATED MATERIAL will be entirely original with the TRANSLATOR and that the use thereof in any manner will not infringe or violate in any manner the rights of any nature including, without limitation, copyrights, of any other person. The TRANSLATOR agrees to indemnify the COMPANY and to hold it harmless from and against any liability, loss, damages, suits or claims that: (a) the TRANSLATED MATERIAL (or any part thereof) violates the rights of any nature whatsoever, including without limitation copyrights, of any person; and (b) any other person is entitled to any compensation or payments in connection with the TRANSLATED MATERIAL. The warranties and indemnities herein shall survive the final approval by COMPANY of the TRANSLATED MATERIAL or earlier termination of this Agreement.

8. The translation of the materials into \_\_\_\_\_ to produce the TRANSLATED MATERIAL shall be made faithfully, accurately and at the sole expense of the TRANSLATOR. No change of title or abbreviation, alteration, change or modification of or addition to, or deletion from the text of the material shall be made without the prior written consent of the COMPANY.

9. This Agreement may be terminated by COMPANY at any time prior to the final approval by COMPANY of the TRANSLATED MATERIAL if:

(a) TRANSLATOR fails to comply with any term or obligation of this Agreement on his/her part to be performed and said breach has not been remedied by TRANSLATOR within one month following notification from the COMPANY to him/her of such failure to comply; or

(b) TRANSLATOR dies or suffers mental or physical incapacity, or is convicted of a felony, or is convicted of a crime other than a felony that involves moral turpitude; or

(c) TRANSLATOR is adjudged bankrupt or files a voluntary petition in bankruptcy, or an involuntary petition in bankruptcy if filed against TRANSLATOR, or a receiver of TRANSLATOR'S property is appointed, or TRANSLATOR makes an assignment for the benefit of creditors; or

(d) COMPANY notifies TRANSLATOR that in COMPANY'S opinion TRANSLATOR'S work is unsatisfactory.

Upon final approval by COMPANY of the TRANSLATED MATERIAL or upon earlier termination of this Agreement as provided above:

(a) All materials of whatever nature in regard to the TRANSLATED MATERIAL in the actual or constructive possession of the TRANSLATOR shall become the property of the COMPANY which shall be entitled to possession thereof; and

(b) TRANSLATOR will not make any further use in any manner whatsoever of all or any part of the material of the TRANSLATED MATERIAL.

10. Upon the final approval by COMPANY of the TRANSLATED MATERIAL or the earlier termination of this Agreement, all the PREPARATORY MATERIAL and any manuscripts, notes or other materials theretofore given to or prepared by TRANSLATOR shall be the exclusive property of COMPANY which shall have the right to complete the TRANSLATED MATERIAL and to make any changes, modifications, alterations, or additions to the said manuscripts or materials as COMPANY deems necessary or appropriate in order to complete the TRANSLATED MATERIAL. TRANSLATOR may not make any copies of the aforesaid manuscripts, notes or other materials, or of the TRANSLATED MATERIAL, without the prior consent of COMPANY.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and representatives. This Agreement may be assigned by COMPANY, and any such assignment shall be binding on the assignee, but TRANSLATOR may not assign this Agreement nor delegate the performance of his/her obligations hereunder.

12. All questions concerning the interpretation, construction, validity and effect of, and the rights and obligations under this Agreement, shall be determined in accordance with and be governed by the internal law of the State of New York, except such questions as are properly determinable under the Copyright Law of the United States of America.

13. This Agreement represents the entire agreement and understanding between the parties and supersedes and replaces any and all other agreements regarding the translation of material between them, and it may be amended only by a writing duly executed by each party in the manner as this Agreement is executed.

14. COMPANY hereby designates as its agent, subject to change at will, ARNOLD J. GITOMER, 350 Fifth Avenue, Room 609, New York, New York 10118. The said agent or his successor is hereby fully authorized and empowered to act in behalf of the COMPANY in any matters arising out of this Agreement.

15. TRANSLATOR agrees to execute, acknowledge and deliver to COMPANY any and all documents deemed necessary by COMPANY to confirm COMPANY'S rights in the TRANSLATED MATERIAL in any and all jurisdictions, and TRANSLATOR hereby irrevocably appoints COMPANY as TRANSLATOR'S attorney-in-fact to execute and acknowledge any such documents which TRANSLATOR fails or refuses to so do.

16. All notices and other communications provided for herein or relating to this Agreement shall be deemed validly given and effective if they are in writing and are delivered personally or sent by airmail, postage prepaid, addressed to the parties at their respective addresses set forth above. If the notice is delivered by mail, the date on which the notice is sent shall be deemed the date of giving of the notice.

17. If any of the foregoing provisions shall become or be held invalid, ineffective or unenforceable, all other provisions shall remain in full force and effect. The invalid, in effective or unenforceable provision shall be deemed to be automatically suspended and replaced, without the necessity of further action by the parties hereto, in such form and substance as shall be valid, effective and enforceable and as shall accomplish as near as possible the purpose and intent of the invalid, ineffective or unenforceable provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**DALE CARNEGIE & ASSOCIATES, INC.**

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

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

Title: \_\_\_\_\_

\_\_\_\_\_  
NAME  
(TRANSLATOR)

**EXHIBIT G**

**OWNERSHIP INTERESTS/DESIGNATION OF FRANCHISEE PRINCIPAL**

Dale Carnegie & Associates, Inc. ("DC&A") and \_\_\_\_\_ ("Franchisee") have entered into a Franchise Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "Franchise Agreement") for the opening and operating of a franchised Business (as defined in the Franchise Agreement).

1. Franchisee warrants, represents, and covenants that the following information is true, correct, and complete as of the date given below:

A. Franchisee is:

- \_\_\_\_\_ a corporation (complete B and C, below); or
- \_\_\_\_\_ a partnership (complete B and D, below); or
- \_\_\_\_\_ a limited liability company (complete B and E, below).

B.

\_\_\_\_\_  
(Name of Franchisee: Corporation, Partnership, or Limited Liability Company)

\_\_\_\_\_  
(Street Address) (City, State, Zip Code)

\_\_\_\_\_  
(Country) (Phone)

C. If Franchisee is a corporation, Franchisee shall complete this Section C.

1. Franchisee is a corporation duly organized and existing under the laws of \_\_\_\_\_.

2. The corporation was organized on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

3. The names, addresses and percentages of shares issued to each shareholder having a direct or indirect ownership interest in Franchisee is as follows:

Name	Address	Percentage of Issued Shares
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

D. If Franchisee is a partnership, Franchisee shall complete this Section D.

1. Franchisee is a partnership duly organized and existing under the laws of \_\_\_\_\_.

2. The partnership was formed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

3. The names, addresses and ownership percentages of each partner having a direct or indirect ownership interest in Franchisee is as follows:

Name	Address	Ownership Percentage
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. If Franchisee is a limited liability company, Franchisee shall complete this Section E.

1. Franchisee is a limited liability company duly organized and existing under the laws of \_\_\_\_\_.

2. The limited liability company was organized on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

3. The names, addresses and ownership percentages of each member having a direct or indirect ownership interest in Franchisee is as follows:

Name	Address	Ownership Percentage
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. In accordance with Section 9.20.A. of the Franchise Agreement, Franchisee hereby appoints \_\_\_\_\_, an individual, to act as Franchisee's principal representative (the "Franchisee Principal") in Franchisee's contacts with DC&A under the Franchise Agreement, and DC&A hereby approves Franchisee's appointment of such individual to act as Franchisee Principal.

3. Each of the undersigned individuals having an ownership interest in Franchisee consents to and approves Franchisee's appointment of \_\_\_\_\_ as Franchisee Principal.

**IN WITNESS WHEREOF**, the parties hereto have caused this Exhibit G to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Attest:

\_\_\_\_\_

\_\_\_\_\_  
Signature (Franchisee shareholder/partner/member)

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

\_\_\_\_\_  
Signature (Franchisee shareholder/partner/member)

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

Attest:

\_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
(Name of Entity)

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

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature (Franchisee shareholder/partner/member)

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

\_\_\_\_\_  
Signature (Franchisee shareholder/partner/member)

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

**DALE CARNEGIE & ASSOCIATES, INC.**

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

Its: Senior Vice President – Franchising

Joseph Garcia