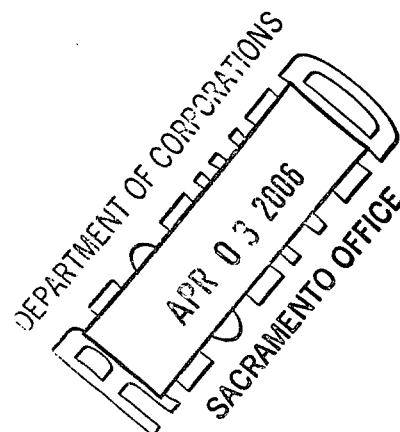
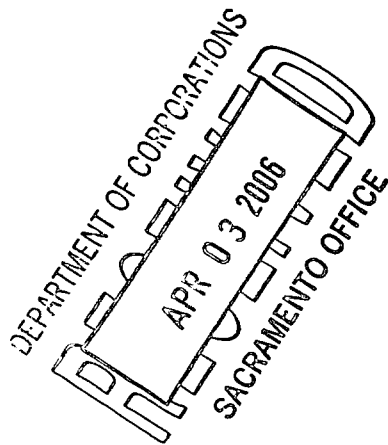


**EXHIBIT B**  
**FRANCHISE AGREEMENT**





~~KidzArt Texas~~ **KIDZART TEXAS, LLC**

## FRANCHISE AGREEMENT

This Franchise Agreement is entered into between KidzArt Texas, LLC, a Nevada limited liability company ("we," "us," or "our" or "~~KidzArt~~"), whose principal address is ~~1327 Dime Box Circle~~ 1902 E. Common Street, New Braunfels, Texas 78130, and you, the Franchisee as designated below ("you" or "your");

A. If you are an individual, \_\_\_\_\_  
[insert name] with his or her current residence at,

\_\_\_\_\_  
\_\_\_\_\_;

B. If the Franchisee is a partnership, \_\_\_\_\_  
[insert name] whose partners names and addresses are,

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

\_\_\_\_\_ with its principal place of  
business located at,

\_\_\_\_\_  
\_\_\_\_\_ and which partnership agreement is attached, certified by a partner as being a true  
and complete copy of the partnership agreement; and related information are identified on  
Exhibit B and whose principal business address is

\_\_\_\_\_  
\_\_\_\_\_; or

C. If the Franchisee is a corporation or limited liability company,

\_\_\_\_\_ a corporation or limited  
liability company organized under the laws of the State of  
\_\_\_\_\_, and duly qualified to do business in the State of  
\_\_\_\_\_, which corporation or limited liability company has its  
principal place of business located at  
\_\_\_\_\_ and which has  
attached its Certificate of Incorporation or Articles of Organization, Certificate of  
Good Standing, Certificate of Qualification to do business within the State of  
\_\_\_\_\_, if applicable, and its Corporate or Limited Liability  
Company Resolution authorizing the Corporation or Limited Liability Company  
to enter into this Franchise Agreement [insert name] a corporation or limited

liability company whose owners and related information are identified on Exhibit  
B and whose principal business address is

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### LET ALL PARTIES KNOW

~~KidzArt owns~~We own a unique system for opening and operating a facility designed to provide art instruction to children and adults through a uniform system which has high standards of service, uses quality products, operates under the business format we created and developed by ~~KidzArt~~, and which is known as the KidzArt® Franchise System (the "System");

The distinguishing characteristics of the System include the name "KidzArt®," workable and functional art systems, proprietary curriculum, confidential operating procedures, standards and specifications for equipment, services, products and management, and marketing programs. ~~All~~We may change, improve, and further develop all of these distinguishing characteristics ~~may be changed, improved, and further developed by KidzArt from time to time as we deem best.~~ They are known as "Trade Secrets" and are designated by and identified with the marks described in this Agreement;

~~KidzArt identifies KidzArt®~~We identify the System by means of certain trade names, service marks, logos, emblems, and indicia of origin, including the trademark "KidzArt®" and other trade names and service marks, ~~which are that we~~ now, or may in the future be, ~~designated by KidzArt~~designate in writing for use in connection with the System (the "Marks");

~~KidzArt continues~~We continue to use, develop, and control the use of the Marks in order to identify for the public the source of services and products marketed under the System, ~~and~~ which represent the System's high standards of quality, integrity and service;

You recognize the benefits to be derived from being identified with the System. You also recognize the value of the Marks and the continued uniformity of image to you, KidzArt<sup>us</sup>, and other ~~KidzArt® franchisees of KidzArt~~. You understand the importance to the System of ~~KidzArt's~~our high and uniform standards of quality, appearance, and service; and further recognize the necessity of opening and operating your KidzArt® Office (the "Office") in conformity with the System;

You recognize that, in order to enhance the value of the System and the goodwill associated with it, this Agreement places detailed obligations on you, including strict adherence to ~~KidzArt's~~our reasonable present and future requirements regarding the types of services offered, advertising, physical facilities, operational techniques, and related matters; and

You wish to be assisted, trained, and franchised to operate an Office pursuant to the provisions and at the location within the territory specified in this Agreement. You have ~~also~~ had an adequate opportunity to be advised thoroughly ~~advised of the~~this Agreement's terms and conditions ~~of this Agreement~~ by counsel of your own choosing.

**THEREFORE**, you and KidzArt Texas, LLC, intending to be legally bound and in consideration of mutual agreements, covenants and promises contained in this Agreement, agree as follows:

## **SECTION 1 -GRANT OF LICENSE**

1.1 Subject to the limitations contained in this Agreement, ~~KidzArt grants to~~ we hereby grant you, during the License Term, the right and license (the "License") to:

- A. Operate an Office (which may be home-based) upon the terms and conditions of this Agreement; in one (1) territorial area (the "Territory") and at one (1) location (the "Location") described in Exhibit A;
- B. Use the Marks at the Office; and
- C. Offer and market at the Office only KidzArt® approved services and products.

1.2 (a) (1) During the License Term, ~~KidzArt and except as provided in subparagraph (a)(2) below in connection with certain potential retail sites in the Territory, we will not operate or license others to operate another KidzArt® Office within your Territory described in Exhibit A as long as your Office's annual Gross Revenues (calculated each year during the License Term as provided in subparagraph (b) below) exceed a minimum level. If your Office fails to satisfy this minimum annual Gross Revenues requirement, we may elect (as we deem best), effective upon delivery of notice to you, either (a) to eliminate the exclusivity of your right to operate a KidzArt® Office within the Territory during this Agreement's remaining term, or (b) to reduce unilaterally the geographic scope of the Territory in which you will have the exclusive right to operate your KidzArt® Office. If we choose either of these options, which we are free to do, there will be no limitations at all upon the activities in which we (and our affiliates) thereafter may engage and allow others to engage during this Agreement's remaining term in the portion of the Territory in which you no longer have exclusive rights (which might be the entire Territory).~~

~~The Office's minimum annual Gross Revenues requirement is \$50,000 during the first year of the License Term. During each successive year of the License Term, the Office's minimum annual Gross Revenues requirement will be 110% of the Office's actual Gross Revenues during the immediately preceding year of the License Term. However, the minimum annual Gross Revenues requirement for a particular year during the License Term shall never be less than the sum of \$50,000 plus a 10% increment for each successive year during the License Term after the first year (regardless of the Office's actual Gross Revenues during the preceding year). (For example, the minimum Gross Revenues requirement for the second year of the License Term will be the greater of \$55,000 or 110% of the Office's actual Gross Revenues during the first year of the License Term; the minimum Gross Revenues requirement for the third year of the License Term will be the greater of \$60,500 or 110% of the Office's actual Gross Revenues during the second year of the License Term; the minimum Gross Revenues requirement for the fourth year of the License Term will be the greater of \$66,550 or 110% of the Office's actual Gross Revenues during the third year of the License Term; and so on.)~~

(2) Notwithstanding the provisions above, your Territory shall not be deemed to include, and shall always be deemed to exclude, any fixed retail site (not including a personal residence) located within the Territory at which KidzArt® classes, workshops, and camps will be

regularly offered to the public and conducted on a retail basis in association, combination, or conjunction with other types of family-style activities, services, and events — different from KidzArt® services — that likewise will be regularly offered and conducted at such fixed retail site. If we negotiate and develop the opportunity with the operator of such a fixed retail site to offer KidzArt® classes, workshops, and camps at such site in association, combination, or conjunction with other types of family-style activities, services, and events, we will offer you the first opportunity to provide such services at the fixed site as part of your License on such reasonable terms and conditions and for such consideration (including a separate fee) that we determine at that time to be appropriate (which may be based, in part, on terms dictated by the operator of the fixed retail site). If you are unable or choose not to provide KidzArt® services at the fixed retail site on the terms and conditions we offer, we may ourselves provide, or may allow another franchisee or licensee to provide, such services at the fixed retail site on such terms and conditions as we deem appropriate (as long as such terms are no better than those first offered to you).

(b) The Office's minimum annual Gross Revenues requirement is \$75,000 during each twelve (12) month period of the License Term, with the first such twelve (12) month period beginning with the thirteenth (13<sup>th</sup>) month after you complete initial training and running through the twenty-fourth (24<sup>th</sup>) month after you complete initial training. Each subsequent twelve (12) month period will run on a calendar year basis, with the first such subsequent twelve (12) month period ending on December 31 of the year in which the first twelve (12) month period specified above ends (that is, the year in which falls the twenty-fourth (24<sup>th</sup>) month after you complete initial training). *{As an example, if you complete initial training in June of a particular year, the first twelve (12) month period of the License Term during which you must satisfy the minimum annual Gross Revenues requirements would begin in July of the following year and end in June of the year after that. The second twelve (12) month period effectively begins in January of that same year and then ends on December 31. So, part of the second twelve (12) month period will include a portion of the first twelve (12) month period. All twelve (12) month periods after that remain on a January 1 through December 31 basis.}* We may increase the \$75,000 minimum Gross Revenues number each calendar year during the License Term, beginning with the second twelve (12) month period during which we calculate the Office's minimum Gross Revenues, based on increases in the Consumer Price Index ("CPI") from the beginning of the first calendar year during which we began to calculate the Office's minimum Gross Revenues for purposes of determining your right to retain territory exclusivity (subject to our rights described in subparagraph (a) above). The annual adjustment of the minimum Gross Revenues number will be applied on January 1 of each calendar year based on CPI increases since the previous January 1. "CPI" means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items, and Major Group Figures for all Urban Consumers (CPI-U 1982-84=100), or by a successor publication.

(c) Even while you retain your exclusive rights within the Territory, KidzArtwe may offer and sell to customers located in your Territory, through any distribution channels (including the Internet) other than a KidzArt® Office (except for those the right to which we retain in subparagraph (a) above), products and services bearing the Marks (or other trademarks) that are identical or similar to (or different from) the products and services offered by your Office.—You may not operate your Office or offer the services covered by the License outside the Territory.

(d) You may not provide the services authorized and covered by the License outside the Territory. You may provide services only at host sites and other locations within the Territory (although students at those locations may reside outside the Territory). You may not solicit clients or promote KidzArt® programs outside the Territory. You must reasonably restrict your Office's advertising, promotion, and marketing activities to the markets in your Territory. If you receive a request to provide services at a location in another franchisee's territory, you must refer the request to the other franchisee in the manner we specify. If you receive a request to provide services anywhere outside your Territory, but not within another franchisee's territory, you may not provide such services without our prior approval, which we may grant or deny as we deem best or on any conditions we deem appropriate.

## **SECTION 2 -LICENSE TERM AND EXTENSION PERIODSPERIOD**

This Agreement and the License granted will continue for a period of 10 years. You agree to operate your Office for the full 10-year term unless this Agreement is terminated pursuant to Section 18 below. This 10-year period will begin on the date we sign this Agreement-is executed by KidzArt and is subject to prior termination in accordance with the provisions of this Agreement. When the original 10-year period expires, you will have the option to renew your License for one (1) successive 10-year period.

~~KidzArt~~We may refuse to renew the License if you (or your owners) have:

- A. Failed to remedy any breach of this Agreement we have specified by KidzArt in a written notice to you; or
- B. Committed 2 or more breaches of this Agreement of a substantial nature in the preceding 24 months.

~~KidzArt~~We may also refuse to renew the License if you are not current in payment obligations to ~~KidzArt~~us and our affiliates and to all of your trade creditors.

You will execute a Renewal Franchise Agreement and all other legal agreements in the form we then ~~being used by KidzArt in granting use to grant~~ new franchises, any and all of the terms of which may differ materially from those contained in this Agreement, including, without limitation, higher Royalty Fees, higher Advertising Fees, a modified Territory (which may be smaller than the Territory granted under this Agreement), and a different minimum annual Gross Revenues requirement. ~~There will not be, however, another Initial Franchise Fee charged in the renewal. Failure by you~~Your failure to execute these renewal agreements within 30 days after their delivery to you will be deemed anyour election ~~by you~~ not to renew the KidzArt® Franchise.

As additional conditions to renewal, you (and your owners) will:

- C. Execute a general release of all claims you may have against ~~KidzArt, its~~us and our officers, directors, ~~shareholders~~owners, agents, and employees, whether in their corporate and/or individual capacities. This release will include all claims arising under any federal, state, or local law, rule, or ordinance or arising out of or concerning this

## KidzArt®

Agreement or our and your franchise relationship and will be in a form satisfactory to KidzArtus.

D. Make capital expenditures as may be reasonably required to modernize your services and your equipment so as to reflect the then-current image of KidzArt® Offices.

~~To encourage over all system compliance, if you have not received any violations or "Notices to Cure" during the last 2 years, you will not be charged a renewal fee. Otherwise, the renewal fee is \$2,500~~The renewal fee, which is payable to KidzArtus upon the signing of the renewal agreement, is equal to five percent (5%) of our then current initial franchise fee for the type and size of Territory you have.

You and KidzArt~~we~~ agree to give each other not less than 6 months' prior written notice of an election not to renew the License.

### SECTION 3 -INITIAL FRANCHISE FEE

3.1 Upon executing this Agreement, you will pay to ~~KidzArtus~~ an Initial Franchise Fee of ~~\$25,500-31,900~~. You also must pay KidzArtus ~~\$500~~800 when you sign the Franchise Agreement for an initial inventory of art and marketing materials needed to begin operating your Office.You will receive your supplies at initial training.

3.2 The Initial Franchise Fee is non-refundable under any conditions once you have paid ~~your Franchise Fee~~it.

3.3 If you wish to increase the size of your Territory, we currently will charge you ~~\$1,900~~between \$0.32 and \$0.35 for each additional ~~10,000 people (or less)~~qualifying household (meeting certain minimum household income thresholds) added to your Territory ~~(although we may increase this fee to \$2,500 at any time during this Agreement's term)~~. Our willingness to increase the size of your Territory's size will depend on how well you operate your Office in the Territory after completing training, where other ~~franchises~~franchisees operate, and what is in our and the System's best interests. However, at no time do we have any obligation to allow you to increase the size of your Territory's size.

### SECTION 4 -CONTINUING ROYALTIES

4.1 You shall, without notice ~~or invoice~~ from KidzArtus, pay KidzArtus a monthly Royalty Fee in the amount of ~~78%~~ of Gross Revenues. Gross Revenues are defined in Section 6. However, the minimum monthly royalty payment for the License is ~~\$200 during each month of the first year of the License Term, \$250 during each month of the second~~first year of the License Term, ~~\$350 during each month of the third and fourth years of the License Term, and \$400 during each month during the remainder of the License Term.~~ The Royalty Fee is due on the first day of each month, based on Gross Revenues during the preceding month, and will be considered late if not received by KidzArtus by the tenth day of the month. If, during a calendar year during the License Term, your Office's Gross Revenues for that calendar year have reached \$180,000, your monthly Royalty Fee for the remainder of that calendar year will be 6% of Gross Revenues

for the portion of your Gross Revenues in that calendar year exceeding \$180,000 (and still subject to the minimum monthly amounts specified above).

4.2 Each month's Royalty Fee payment ~~will~~must be accompanied by a statement of the previous month's Gross Revenues ~~on a form approved by KidzArt. You must also attach closing statements of each loan obtained during that month.~~

4.3 Before or after the Office begins operating, you agree to sign and deliver to us the documents we require to authorize us to debit your business checking account automatically for the Royalty Fee, Advertising Fund contributions (defined below), and other amounts due under this Agreement (the "EFT Account"). We will debit the EFT Account for these amounts on their due dates. You agree to ensure that funds are available in the EFT Account to cover our withdrawal and to report your Gross Revenues as we require.

If you fail to report the Office's Gross Revenues, we may debit the EFT Account for 120% of the last Royalty Fee and Advertising Fund contribution that we debited (together with the late fee noted in Section 7.3 below). If the amounts we debit from the EFT Account are less than the amounts you actually owe us (once we have determined the Office's actual Gross Revenues), we will debit the EFT Account for the balance on the day we specify. If the amounts we debit from the EFT Account are greater than the amounts you actually owe us, we will credit the excess against the amounts due during the following month.

We may require you to pay any amounts due to us under this Agreement (or otherwise) by means other than automatic debit whenever we deem appropriate, and you agree to comply with our payment instructions.

4.4 You agree that you will not withhold payment of any amounts owed to us on the grounds of our alleged nonperformance of any of our obligations under this Agreement or for any other reason. You specifically waive any right you may have at law or in equity to offset any funds you may owe us or to fail or refuse to perform any of your obligations under this Agreement.

## **SECTION 5 -ADVERTISING AND PROMOTION**

5.1 Except as provided below, you will advertise and promote the opening of the Office at your own expense; however ~~KidzArt, we~~ will recommend the type, manner, and time period.

5.2 ~~KidzArt~~We may make available to you advertising, promotion and marketing materials for the Office ~~which~~that are prepared by ~~its~~our advertising agency and used by ~~KidzArt~~us, ~~its~~our affiliates, and other franchisees. These materials will be accessible to you via Internet and can be sent directly to our printer once customized. You may occasionally create advertising materials that are consistent with our branding. However, ~~KidzArt~~we must approve or disapprove your advertising materials before you may use them and will do so in writing within 10 working days after receiving them from you.

5.3 Recognizing the value of advertising and marketing to the goodwill and public image of KidzArt® businesses, ~~KidzArt may establish~~we have established and may continue to maintain and administer an advertising fund (the "Advertising Fund") for the advertising, marketing, and public relations programs and materials ~~it deems~~we deem appropriate. You agree to contribute to



## KidzArt®

the Advertising Fund ~~two~~one percent (~~21~~1%) of the Office's monthly Gross Revenues, but not less than ~~thirty~~twenty-five dollars (\$~~3525~~25) per month, payable at the same time and in the same manner as the Royalty Fee. All Advertising Fund payments shall be paid separately from the Royalty Fee (~~e.g., by a separate check~~) in the manner KidzArt ~~designates~~we designate.

~~KidzArt~~We will direct all programs that the Advertising Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. The Advertising Fund may pay for preparing and producing video, audio, and written materials and electronic media; developing, implementing, and maintaining an electronic commerce website and/or related strategies (such as franchise system intranet or extranet); obtaining and maintaining toll-free numbers for the System; administering regional and multi-regional marketing and advertising programs, including, without limitation, purchasing trade journal, direct mail, and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; and supporting public relations, market research, and other advertising, promotion, and marketing activities. The Advertising Fund periodically will give you samples of advertising, marketing, and promotional formats and materials at no cost. ~~KidzArt~~We will sell you multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling, and storage charges.

~~KidzArt~~We will account for the Advertising Fund separately from ~~its~~our other funds and not use the Advertising Fund for any of ~~its~~our general operating expenses. However, ~~KidzArt~~we may use the Advertising Fund to pay the reasonable salaries and benefits of personnel who manage and administer the Advertising Fund, the Advertising Fund's other administrative costs, travel expenses of personnel while they are on Advertising Fund business, meeting costs, overhead relating to Advertising Fund business, and other expenses that ~~KidzArt incurs~~we incur in activities reasonably related to administering or directing the Advertising Fund and its programs, including, without limitation, conducting market research, public relations, preparing advertising, promotion, and marketing materials, and collecting and accounting for Advertising Fund contributions.

The Advertising Fund will not be ~~KidzArt's~~our asset. Although the Advertising Fund is not a trust, ~~KidzArt~~we will hold all Advertising Fund contributions for the benefit of the contributors and use contributions only for the purposes described in this Section. ~~KidzArt does~~We do not owe any fiduciary obligation to you for administering the Advertising Fund or any other reason. The Advertising Fund may spend in any fiscal year more or less than the total Advertising Fund contributions in that year, borrow from ~~KidzArt~~us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. ~~KidzArt~~We will use all interest earned on Advertising Fund contributions to pay costs before using the Advertising Fund's other assets.

~~KidzArt~~We will prepare an annual, unaudited statement of Advertising Fund collections and expenses and give you the statement upon written request. ~~KidzArt~~We may have the Advertising Fund audited annually, at the Advertising Fund's expense, by an independent certified public accountant. ~~KidzArt~~We may incorporate the Advertising Fund or operate it through a separate entity whenever ~~it deems~~we deem appropriate. The successor entity will have all of the rights and duties specified in this Section.

~~KidzArt intends~~We intend the Advertising Fund to maximize recognition of the Marks and patronage of KidzArt® businesses. Although ~~KidzArt~~we will try to use the Advertising Fund to

## KidzArt®

develop advertising and marketing materials and programs, and to place advertising and marketing, that will benefit all KidzArt® businesses, ~~KidzArt~~we need not ensure that Advertising Fund expenditures in or affecting any geographic area are proportionate or equivalent to Advertising Fund contributions by KidzArt® businesses operating in that geographic area or that any KidzArt® business benefits directly or in proportion to its Advertising Fund contribution from the development of advertising and marketing materials or the placement of advertising and marketing.

~~KidzArt~~We have the right, but no obligation, to use collection agents and institute legal proceedings to collect Advertising Fund contributions at the Advertising Fund's expense. ~~It~~We also may forgive, waive, settle, and compromise all claims by or against the Advertising Fund. Except as expressly provided in this Section, ~~KidzArt~~assumes~~we assume~~ no direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing, or administering the Advertising Fund.

~~KidzArt~~We may at any time defer or reduce contributions of a KidzArt® franchisee and, upon thirty (30) days' prior written notice to you, reduce or suspend Advertising Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Advertising Fund. If ~~KidzArt~~terminates~~we terminate~~ the Advertising Fund, ~~it~~we will distribute all unspent monies to franchisees in proportion to their respective Advertising Fund contributions during the preceding twelve (12) month period.

### SECTION 6 -GROSS REVENUES

6.1 No mention of services or products in this Section is intended to mean or imply that ~~KidzArt~~approves~~we approve~~ such services or products for sale at the Office.

6.2 For purposes of this Agreement, Gross Revenues include the total of all receipts derived from services performed and products sold by your Office, whether the receipts are evidenced by cash, credit, barter, checks, gift certificates, scrip, coupons (see Subsection 6.3B.), services, property or other means of exchange, even if you do not directly derive all such receipts. For example, to the extent you conduct classes at locations (including, but not limited to, recreation centers, YMCAs, and park districts) that deduct a portion of the amounts paid by participants in your classes in order to be compensated for your conducting classes at such locations or for other reasons, Gross Revenues on which the Royalty Fee is due shall be the total amounts paid by participants in your classes before any deduction by such locations.

6.3 Gross Revenues will not include:

- A. Sales taxes imposed by governmental authorities directly on sales and collected from customers, provided the taxes are added to the selling price and are in fact paid to the appropriate governmental authorities;
- B. Promotional or discount coupons to the extent that no revenue is realized;
- C. Service charges paid by you for credit card receipts; and

- D. Employee receipt of services or products, if free, or any portion not paid for by an employee.

Cash refunded and credit given to customers will be deducted in computing Gross Revenues to the extent that they were previously included in Gross Revenues on which a Royalty Fee was paid.

6.4 Gross Revenues will be deemed received by you at the time the services or products from which they were derived are delivered or rendered or at the time the relevant sale takes place, whichever occurs first, regardless of when or whether you actually receive payment for such services or products. Gross Revenues consisting of property or services will be valued at the retail prices of such property or services.

## **SECTION 7 -RECORDS AND AUDITS - LATE PAYMENT CHARGE**

7.1 You will prepare, on a current basis, complete and accurate records concerning all financial, marketing, and other operating aspects of the business conducted under this Agreement. You will maintain an accounting and computer-based management system, which accurately reflects all operational aspects of the Office, including uniform reports ~~as may be required by KidzArtwe require.~~ Your records will include tax returns, statements of Gross Revenues (to be prepared each month for the preceding month), and quarterly unaudited balance sheets and profit and loss statements. You will also submit to KidzArtus other reports ~~as KidzArt maywe~~ reasonably request, including your annual tax returns, within 15 days after our request. You must send us quarterly lists with the name and telephone number of, and the name of the contact person at, each host facility at which your Office teaches KidzArt® classes. **You will also make available your sales records and files you use by way of an internet connection upon request.** ~~AllWe may use all financial, statistical, and operational data with respect to your business that is required will be for KidzArt's own use, will be kept confidential and will not be made available to other franchisees, prospective franchisees, or other third parties except to the extent that KidzArt decides, or is required to, make an "earnings claim" under the franchise disclosure lawswe require you to submit or to which we have access as we deem best.~~ The records required under this Subsection pertain only to your operation of the Office. ~~KidzArt hasWe have~~ no right to inspect, audit, or copy the records of any unrelated business activity you may have (although, as noted above, ~~it doeswe do~~ have the right to receive a copy of your annual tax returns).

7.2 From the date you and KidzArtwe sign this Agreement until 3 years after the end of the term of this Agreement including renewals, KidzArtwe or our authorized agent will have the right to request, receive, inspect, and audit any of the records referred to above wherever they may be located. ~~KidzArt agreesWe agree~~ to do inspections and audits at reasonable times. You agree to keep all records and reports for 6 years from the date they originated. Should any inspection or audit disclose a deficiency in the payment of any Royalty Fee, or other amounts required to be paid under this Agreement, you will immediately pay the deficiency to KidzArtus, provided the deficiency exceeds \$50.00, without prejudice to any other remedy of KidzArtwe have under this Agreement. In addition, if the deficiency for any audit period equals or exceeds 2% of the correct amount of any Royalty Fee, Advertising FeeFund contribution or other amounts due, you will also must immediately pay to KidzArtus the entire cost of the inspection or audit, including travel, lodging, meals, salaries and other expenses of the inspecting or

auditing personnel. For the purposes of this Subsection, an audit period will be each fiscal year. Should the audit disclose an overpayment of any Royalty Fee, Advertising FeesFund contribution, or other amounts due, KidzArtwe will promptly pay the amount of the overpayment to you provided that the amount exceeds \$50.00.

7.3 You agree to pay KidzArtus a late fee equal to the greater of fifteen percent (15%) of the amount due or twenty-five dollars (\$25) for each required payment ~~not made on or before its original due date~~ that is considered to be late. The late fee is not interest or a penalty but compensates KidzArtus for increased administrative and management costs due to your late payment. You also must pay us seventy-five dollars (\$75) for each dishonored or NSF check and for each attempted debit from the EFT Account that is not honored due to insufficient funds or other actions you have taken to impede the automatic debiting process. In addition, all amounts that you owe KidzArtus for any reason, if more than seven (7) days late, will bear interest accruing as of their original due date at one and one-half percent (1½%) per month or the highest commercial contract interest rate applicable law allows, whichever is less. Each failure to pay Royalty Fees, Advertising FeesFund contributions, and other amounts payable to KidzArtus when due is a material breach of this Agreement.

## **SECTION 8 -SERVICES AND ASSISTANCE PROVIDED BY THE FRANCHISOR**

8.1 The Initial Franchise Fee and Royalty Fees are paid for the License, which includes the use of the Marks of KidzArt and ~~for certain services rendered by KidzArtwe render.~~

8.2 KidzArtWe will offer you initial and continuing services as ~~it deemswe deem~~ necessary or advisable in furthering your franchised business and the business of the System as a whole and in connection with protecting the Marks and goodwill of KidzArt®. ~~Failure of KidzArtOur failure~~ to provide any particular service, either initial or continuing, will not excuse you from paying the Initial Franchise Fee or the continuing Royalty Fees.

8.3 ~~Currently, initial~~ Initial and continuing services ~~provided by KidzArt are: we provide may include the following:~~

- A. Designating your exclusive Territory as stipulated in Section 1.
- B. Furnishing you with specifications for all initial and replacement equipment, inventory, and art supplies required for the operation of your home-based Office.
- C. Providing you with an initial training program. You willor your Managing Owner (defined in Section 9) must attend and satisfactorily complete the initial training program in Texas ~~prior tobefore~~ opening the franchised Office. ~~The initial training program will commence prior to the opening of your business (see below for a description of certain training fees).~~ You must arrange for the training of your certified instructors after you return from the initial training program. Your certified instructors will be trained by an authorized trainer. You must pay a fee for each certified instructor receiving training and must pay all expenses (including travel, hotel, food, and related expenses) incurred in having this training take place. You must pay for the trainer's expenses of traveling to

your Territory to conduct the training, or you must arrange for your certified instructors to travel to the trainer's site for training.

D. Providing you with proprietary field-tested KidzArt® curriculum (at such times and intervals as we deem appropriate).

E. Assisting with respect to pre-opening and opening activities as we reasonably ~~determined by KidzArt and just prior to and including the first week of operation of your Office~~ determine.

F. Formulating advertising and promotional programs as further stipulated in Section 5.

G. ~~KidzArt may engage in the development of~~ Developing new products and service methods as ~~deemed we deem~~ beneficial in the sole discretion of KidzArt for the System's successful operation ~~of the System~~. You will be informed of any new product or service methods.

H. ~~You will be loaned~~ Giving you access to one (1) copy of KidzArt's Confidential Operating Manual (the "Manual") containing mandatory and suggested specifications, standards, operating procedures and rules ~~prescribed~~ we prescribe from time to time ~~by KidzArt~~, as further stipulated in Section 11.

I. ~~KidzArt may implement~~ Implementing a centralized purchasing system ~~that you will be able to benefit from KidzArt~~. We may negotiate favorable prices and terms with major suppliers and allow you to utilize the centralized purchasing system.

J. Providing and maintaining a website with your location and contact information. We may establish one or more websites to advertise, market, and promote KidzArt® Offices, the services and products they offer and sell, and/or the KidzArt® franchise opportunity (each a "Franchise System Website"). If we establish a Franchise System Website, we may provide you with a webpage on the Franchise System Website that references the Office. You must give us the information and materials we request to develop, update, and modify your webpage. By providing the information and materials to us, you will be representing that they are accurate and not misleading and do not infringe any third party's rights. However, we will own all intellectual property and other rights in the Franchise System Website, your webpage, and all information they contain (including, without limitation, the domain name or URL for your webpage, the log of "hits" by visitors, and any personal or business data that visitors supply).

K. ~~KidzArt may provide to you a website link, for a fee.~~

We will maintain the Franchise System Website, including your webpage, and may use the Advertising Fund's assets to develop, maintain, and update the Franchise System Website. We periodically may update and modify the Franchise System Website (including your webpage). At your request, we will update the information on your webpage or add information that we approve. You must notify us whenever any information on your webpage changes or is not accurate. You must pay our then current

fee to be on the Franchise System Website or to update or modify your webpage (to the extent the Advertising Fund does not cover these costs). We have final approval rights over all information on the Franchise System Website. We may implement and periodically modify System standards, specifications, and operating procedures relating to the Franchise System Website.

We will maintain your webpage on the Franchise System Website, if any, only while you are in full compliance with this Agreement and all System standards, specifications, and operating procedures (including, without limitation, those relating to the Franchise System Website). If you are in default of any obligation under this Agreement or System standards, specifications, and operating procedures, then we may, in addition to our other remedies, temporarily remove your webpage from the Franchise System Website until you fully cure the default. We will permanently remove your webpage from the Franchise System Website upon this Agreement's expiration or termination.

K. ~~L.~~ KidzArt may provide to Providing you an information database.

L. ~~M.~~ KidzArt may provide to you Providing visits by our field representative at our discretion.

~~KidzArt~~ We will provide lunches at training. You will be responsible for personal traveling and living expenses incurred by yourself and any of you, your Managing Owner, your employees or, and your independent contractors that participate in incur during the training program.

The initial training and orientation program will be held at our corporate headquarters and will be conducted for a 4-day (32 hour) period. Training will consist of a discussion of the System, techniques, procedures, methods of operation, hiring employees, customer service, ordering, sales, procedures, accounting, support procedures, and instructions on quality standards and practical experience in the operation of a KidzArt® Office. ~~KidzArt trains one person. We train two (2) people~~ for no additional fee. ~~If you want your spouse to attend training with you, you must pay KidzArt an additional \$2,000. If you are a legal entity and another owner (besides your spouse) wishes to attend training, you must pay KidzArt an additional \$3,500 for each person. KidzArt currently charges~~ You must pay us \$3,500 for each additional person attending the full initial training program. We currently charge \$250 for a one-day certified instructor training program at ~~its~~ our office (space permitting) for an employee of yours. ~~It~~ We may increase this fee periodically. (This is for certified instructor training that needs to be provided for each certified instructor you hire.)

Four months after you complete initial training, we may require you to send us a one-hour video of you teaching a KidzArt® class (for evaluation). If we do not believe that you are conducting the class properly, we may require you to return to our principal training location for 1 to 2 days of additional training.

Six months after you complete initial training, we will require you to send us another video of you teaching a KidzArt® class to determine if you are qualified to teach certified instructor training. If you are not yet qualified to do so, all of your prospective certified instructors must be trained by us or our designated trainers (including existing franchisees) at our then current training fee. If you are so qualified, you may train your own certified instructors. If you fail to

satisfy our qualification requirements at the six-month period noted above, you may ask us to re-evaluate you after one year.

~~KidzArt~~We may hold annual conferences to discuss on-going changes in the industry, sales techniques, personnel training, bookkeeping, accounting, inventory control, performance standards, advertising programs, merchandising procedures, and curriculum development. You must attend ~~KidzArt's~~our annual conference. There is a conference fee to offset cost of conferences, and you must pay this fee whether or not you attend the conference (even though you are obligated to attend). You also will be responsible for your travel and living expenses. These conferences are held at our corporate headquarters or at an alternate location ~~chosen by KidzArt~~. ~~KidzArt~~we choose. We also may require you to be available for business coaching sessions. If you request or require assistance, guidance, or training beyond that which ~~KidzArt~~we typically ~~makes~~make available to franchisees, ~~KidzArt~~we may require you to pay ~~its~~our then applicable charge for such assistance plus ~~its~~our related costs and expenses.

### **SECTION 9 -LOCATION OF OFFICE; DESIGNATION OF MANAGING OWNER; AND OPENING FOR BUSINESS**

9.1 No Office may be opened until such time as ~~KidzArt~~ reasonably ~~agrees~~we confirm that all class preparation items have been satisfactorily completed, you or your Managing Owner (defined below) have been trained, the Location (home-based or leased) is ready for opening in all other respects, and the Initial Franchise Fee has been paid in full. You acknowledge that any opening for business prior to satisfaction of all of the above conditions will be seriously detrimental to the financial prospects of the Office and will cause irreparable damage to KidzArt® goodwill and reputation. Subject to these conditions, you agree to begin operating the Office within thirty (30) days after you or your Managing Owner successfully completes initial training.

9.2 If you are a legal entity (the "Entity"), you must appoint and maintain throughout this Agreement's term a shareholder, member, or partner, depending on the Entity, to be your "Managing Owner," responsible for overseeing and supervising the Office's operation. You must identify for us the Managing Owner as of the effective date of this Agreement and may not change the Managing Owner without our prior written approval, which we may condition on, among other things, that person's attending and satisfactorily completing our franchisee training program at your expense. You must fully and accurately provide information about the Entity in Exhibit B.

9.3 You are not obligated to establish or maintain a commercial office for your KidzArt® franchise. However, if you choose to do so, you must (a) locate a site for the Office within the Territory and obtain our prior written approval of the site, (b) obtain our prior written approval of any lease or purchase agreement for the site, (c) conform the site to applicable building code requirements and our specifications, (d) secure all permits and licenses for the site, (e) obtain our prior written approval of any construction and other plans for the site (and any deviations) so that we can ensure that the site's appearance meets our desired standards for KidzArt® locations, and (f) obtain our prior written approval of any outdoor sign and its proposed installation (see below). You may not change your commercial office design or appearance without our prior written consent and must, at your own expense, maintain and periodically renovate the Office's interior

and exterior as we prescribe in order to maintain our System's design and appearance requirements. You agree to buy or lease, and to display at your commercial site (whether attached to a building or free-standing), only signs, emblems, logos, lettering, and other materials that comply with our specifications. We periodically may revise these specifications, and you must comply with these revisions at your own expense.

## **SECTION 10 -UPGRADING YOUR PROGRAM**

10.1 Subject to the terms of this Section and particularly Subsection 10.2, you will at all times comply with all KidzArt® standards, specifications, processes, procedures, requirements, and instructions regarding the services ~~provided by you provide~~.

10.2 You ~~will~~must periodically upgrade the art supplies or equipment at your cost in accordance with KidzArt® ~~reasonable standards~~ and, at our request, at any renewal of this Agreement. You ~~will also~~ must pay the cost of adding equipment and altering the equipment for required services or products ~~which KidzArt requires that we require~~ you to market pursuant to Subsection 12.5. **YOU ACKNOWLEDGE THAT AN ADDITIONAL INVESTMENT MAY BE REQUIRED RELATED TO THIS SUBSECTION.**

10.3 ~~KidzArt agrees that it will~~We agree not to require upgrading according to standards that exceed those applied to other Offices in the market nearest your Office. The Offices in the nearest market will be considered as a whole, and you may not avoid your obligations under this Section by comparing your Office to any single Office in the nearest market.

## **SECTION 11 -CONFIDENTIAL OPERATING MANUAL**

11.1 You will acknowledge receipt of a copy of the KidzArt® Confidential Operating Manual (the "Manual") and New Curriculum. The Manual, which may include audiotapes, videotapes, compact disks, computer software, other electronic media, and/or written materials, will at all times remain ~~the~~our sole property of KidzArt. You agree to immediately return the Manual to KidzArt ~~at the expiration or sooner termination of us when~~ this Agreement expires or is terminated.

11.2 You ~~will at all times treat the contents of the Manual as confidential and will not copy or otherwise reproduce it in whole or in part, or in any way make the contents of the Manual available to any person other than those persons employed by you to whom disclosure is necessary to enable you to operate the Office under the terms of this Agreement.~~agree to keep your copy of the Manual current and in a secure location at the Office. If there is a dispute over its contents, our master copy of the Manual controls. You agree that the Manual's contents are confidential and that you will not disclose the Manual to any person other than Office employees and instructors who need to know its contents to perform their duties. You may not at any time copy, duplicate, record, or otherwise reproduce any part of the Manual. If your copy of the Manual is lost, destroyed, or significantly damaged, you agree to obtain a replacement copy at our then applicable charge.

At our option, we may post some or all of the Manual on the Franchise System Website or extranet to which you will have access. If we do so, you agree to monitor and access the Franchise System Website or extranet for any updates to the Manual or System standards.



specifications, and operating procedures. Any passwords or other digital identifications necessary to access the Manual on a Franchise System Website or extranet will be deemed to be part of our confidential information. We may require you to return a portion or the entire copy of the Manual given to you in paper or other tangible form after we post the Manual on a restricted Franchise System Website or extranet.

11.3 ~~KidzArt~~We may revise the Manual. The revisions we presently contemplated ~~by KidzArt~~contemplate include, but will not be limited to, changes with respect to:

- A. Advertising and promotions;
- B. Equipment and supplies;
- C. Advisory ~~Bulletins~~bulletins;
- D. Accounting and reporting systems and forms;
- E. Insurance requirements;
- F. Operating procedures;
- G. New services; and
- H. New products; and
- I. Maximum prices you may charge your customers for the services you provide.

11.4 You agree to operate the Office in accordance with the Manual and to be responsible for assuring strict compliance with the standards, specifications, requirements, and instructions presently set forth in the Manual and any subsequent amendments and supplements. We may modify the Manual periodically to reflect changes in System standards, specifications, and operating procedures. Failure to comply with the standards set forth in the Manual will constitute a material breach of this Agreement.

## **SECTION 12 -FRANCHISEE'S DUTIES AND OBLIGATIONS**

12.1 You will, consistent with ~~the terms of this Agreement's terms,~~ diligently develop the Office's business of the Office and use your best efforts to market and promote the required services and products.

12.2 Subject to ~~the terms of this Agreement, during the License Term's terms,~~ you will strictly comply during the License Term with all present and future KidzArt® standards, specifications, processes, procedures, requirements, and instructions of KidzArt® regarding the operation of the business, including the following requirements:

- A. You, or a fully trained and qualified operating manager, or your Managing Owner must devote sufficient effort to the management and operation of the Office full-time effort to the Office's management and operation, including being available during normal and peak business periods, participating in developing and implementing management

and operational policies, and training and supervising employees and independent contractors to make sure our System is followed.

B. You ~~or your Managing Owner~~ must attend and complete all training programs at locations KidzArt reasonably ~~requires~~ we designate, and you ~~will~~ must pay all salary and other expenses of persons attending. ~~KidzArt will provide you with an training.~~ Your or your Managing Owner's attendance at, and satisfactory completion of, the initial training program. Attendance by you is compulsory and ~~must be satisfactorily completed prior to the opening of~~ before your Office may commence operations. You ~~or your Managing Owner also~~ must attend annual conferences and required business coaching sessions.

C. Any additional required services or products ~~introduced~~ we introduce into the System ~~by KidzArt~~ must be offered for sale by the Office on a continuing basis at the Office ~~at the time and in the manner we required by KidzArt.~~

D. No service ~~and/or~~ product, except approved services or products, may be offered for sale at or from the Office.

E. Only signs, advertising and promotional material, services, equipment, supplies, and curriculum that meet KidzArt® standards and specifications ~~will~~ may be used at the Office. You may not use any curriculum other than our proprietary and copyrighted curriculum.

F. ~~All~~ You must acquire, install, and use all equipment, products, supplies, and other items necessary to add new required services or products ~~must be acquired, installed and utilized,~~ and the marketing of new services and products must begin at the Office as we reasonably required by KidzArt require.

G. Equipment, services, supplies, and other items must be added, eliminated, substituted, and modified as soon as practicable in accordance with changes in KidzArt® specifications and requirements. You must have a digital camera and a video camera with a tripod, ~~and KidzArt.~~ We may recommend or require a scanner and color copier that you must obtain. ~~You also must obtain and maintain the computer system necessary to operate the computer software KidzArt requires you to use.~~

You agree to obtain and use any integrated computer hardware and/or software we specify, including hardware components, dedicated telephone and power lines, modems, printers, and other computer-related accessories and peripheral equipment (the "Computer System"). We may modify specifications for and components of the Computer System. You also agree to maintain a functioning e-mail address. Our modification of specifications for the Computer System, and/or other technological developments or events, might require you to purchase, lease, and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System. Although we cannot estimate the future costs of the Computer System or required service or support, and although these costs might not be fully amortizable over this Agreement's remaining term, you agree to incur the costs of obtaining the computer hardware and software comprising the Computer System (or additions and modifications) and required service or support. Within thirty (30) days after you receive notice from us, you agree to

obtain the Computer System components we designate and to ensure that your Computer System, as modified, is functioning properly. We have no obligation to reimburse you for any Computer System costs.

You agree that we may condition any license of proprietary software to you, your use of technology that we develop or maintain (whether on our own or by working with third parties), and your use of required software and computer programs for the Office on your signing the software license agreement or similar document that we prescribe to regulate your use of, and our, a designated third party's, and your respective rights and responsibilities with respect to, the software or technology. We may charge you fees, whether payable to us or third parties we designate, for any software or technology that we license, or arrange to be licensed, to you and for other maintenance and support services provided during this Agreement's term.

Despite the fact that you agree to buy, use, and maintain the Computer System according to our standards and specifications, you have sole and complete responsibility for: (1) acquisition, operation, maintenance, and upgrading of the Computer System; (2) the manner in which your Computer System interfaces with our and any third party's computer system; and (3) any and all consequences if the Computer System is not properly operated, maintained, and upgraded. The Computer System must permit unlimited electronic communications between you and us, including your access to the Internet and our then current intranet or extranet (if applicable) and our independent access to such information and records regarding the Office's operation that we specify.

H. No alterations of the services provided by you materially affecting the image of KidzArt® may be made except at our request or upon our approval.

I. The businessOffice must comply with all applicable laws, ordinances, rules, regulations, and other requirements and secure all required licenses.

J. ~~Advertising~~Any advertising materials, which are provided by KidzArt for use by you, we give you may be used only in the manner and during the period ~~specified by KidzArt~~we specify. You may not create or maintain your own website. Your Office will be included on ~~KidzArt's Website~~our Franchise System Website on the conditions described in Subsection 8.3.J above.

K. All debts and taxes arising in connection with the Office's business, except those duly contested in a bona fide dispute, must be paid when due, including debts payable to your landlord, ~~KidzArtus~~, and our affiliates.

L. All necessary and appropriate measures must be taken to avoid any negative rating at any time from any governmental agency or authority, and any conditions or practices disapproved by any such agency or authority must be promptly corrected, except that, with our prior approval, you may contest the action as being arbitrary, capricious, or unfair.

M. All ~~dealing~~dealings and transactions with customers and suppliers must be fair and honest.

N. You ~~will be~~are responsible for recruiting new customers through advertising, marketing, and business networking.

O. You are responsible for keeping up ~~to~~date on competitors' pricing in sales and service and changing and revising pricing and specials. You must comply with any maximum prices we specify for your services and may not charge your customers more than those maximum prices.

P. You must provide customer service training to your employees and independent contractors.

Q. At least one KidzArt® Certified Instructor must be present when children are present. No class may be left unattended or unsupervised.

R. You are required to obtain the insurance ~~as identified~~specified in Section 14.

S. It is your responsibility to perform a background check on any and all employees and/or independent contractors that will be working with children.

T. You ~~will provide KidzArt with~~must send us a video of your class and your Certified Instructor's class(es) once per year on or before the anniversary date of your initial franchise training or more often ~~if at our~~requested by KidzArt (as provided in Subsection 8.3 above).

U. You must limit your teaching to the curriculum ~~provided by KidzArt~~we provide.

V. You must secure adequate telephone service for the Office (meeting our minimum requirements, including a dedicated telephone number for the Office) and maintain an answering machine for the Office during both business and non-business hours.

12.3 In prescribing standards, specifications, processes, procedures, requirements, or instructions under Subsection 12.2 or any other provision of this Agreement, ~~KidzArt~~we will assist in local market research and provide guidance in determining the prices ~~charged by for you to charge for your services or~~and products of any kind. ~~KidzArt~~We may specify the maximum prices you may charge customers for your services. ~~KidzArt~~We will not have control over the ~~Office's day-to-day managerial operations of the Office.~~

12.4 We and our representatives will have the right during business hours to enter and inspect the Office (even if home-based) and all other facilities used for service or storage, sale, and transportation of any approved products. We and our representatives will have the right to discuss with you or ~~other people~~others you may designate all matters ~~that may pertain~~relating to compliance with this Agreement and with KidzArt® standards, specifications, requirements, instructions, and procedures and to take photographs of the Office. We and our representatives will have the right to have any KidzArt® required services rendered by any employee at your Office. You ~~will in all respects cooperate with our rights under this Subsection, provided that our exercise of these rights~~must cooperate with us when we conduct any inspection, but any

inspection we conduct will not unreasonably interfere with conduct of your business, your Office's operation. You must reimburse our actual out-of-pocket costs for all inspections of the Office we conduct after we determine that you have failed to comply with this Agreement (including a first inspection to determine the extent of your non-compliance or whether you have corrected a non-compliance of which we previously notified you). You also must reimburse our (or our designated third party's) actual out-of-pocket costs if you fail to perform any of your obligations under this Agreement and we (or our designated third party, which may be another KidzArt® franchisee) perform those obligations for you in order to protect the KidzArt® brand.

12.5 On advance notice of at least 30 days, ~~KidzArtwe~~ may specify a new service or product as a required service or product. ~~The new service or product will not be deemed a required service or product if you demonstrate to our reasonable satisfaction that:~~

A. ~~A substantial capital improvement not contemplated by this Agreement or in the Manual is required, thereby resulting in a material hardship to you; and~~

B. ~~A material reduction in sales or profitability would result therefrom.~~

12.6 ~~KidzArt agrees not to require compliance with the provisions of Section 12.5 to the extent that it does not require such compliance by all~~ However, we agree not to require compliance if we do not require compliance by all KidzArt® Offices, taken as a whole, operating in the market nearest the Office, your Office.

~~12.6 12.7~~ You agree that, during the License Term and for one year after the expiration and termination of this Agreement, you will supply to KidzArt us your home address and business addresses and telephone ~~number~~ numbers, which KidzArt ~~is~~ we are required by law to include in ~~its~~ our franchise offering circular.

~~12.7 12.8~~ If you are an individual, you or a manager trained in the KidzArt® System must directly supervise the franchised business. If you are a corporation, or if you have, in our sole judgment, insufficient experience in a business similar to the KidzArt® franchise or experience in business management in general, then you will nominate an operating partner or manager having required experience who ~~will~~ an Entity, your Managing Owner must have direct responsibility for ~~all the Office's operations of the Office.~~ Any proposed change in the operating partner or manager ~~will be~~ Managing Owner is subject to our approval, as provided in Section 9.2 above. The ~~operating partner~~ Managing Owner or manager will be the correspondent referred ~~to~~ referenced in Subsection 22.9.

12.8 We have the right to develop, operate, and change the System in any manner not specifically prohibited by this Agreement. Whenever we have reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant you the right to take or omit an action, we may, except as otherwise specifically provided in this Agreement, make our decision or exercise our rights based on information readily available to us and our judgment of what is in the best interests of us, KidzArt® Office franchisees generally, or the System at the time our decision is made, without regard to whether we could have made other reasonable or even

arguably preferable alternative decisions or whether our decision promotes our financial or other individual interest.

12.9 Because complete and detailed uniformity under many varying conditions might not be possible or practical, you acknowledge that we specifically reserve the right and privilege, as we deem best (but subject to Subsection 12.5 above), to vary System standards, specifications, and operating procedures for any franchisee based upon the peculiarities of any condition or factors that we consider important to that franchisee's successful operation. You have no right to require us to grant you a similar variation or accommodation.

### **SECTION 13 -PURCHASE OF EQUIPMENT, INVENTORY, AND SUPPLIES**

13.1 You will have the right to utilize any approved supplier or other vendor of supplies or other services required for the operation of the Office except the art curriculum and other art products that are Except for the art curriculum (which may be obtained only from us), other art products required of all franchises. The names and addresses of KidzArt® approved lenders or vendors are in the Manual. (which we may require you to obtain from designated sources), and the Computer System (which we also may require you to obtain from a designated source), you currently may use any supplier or other vendor of supplies or other services required for the operation of the Office as long as we approve that supplier or that supplier's products or services satisfy required KidzArt® standards and specifications. However, at any time during the License Term we may require you on a going-forward basis to obtain products and services that previously could be obtained from any approved or other available supplier only from sources we designate (including and/or limited to us and/or our affiliates). We will communicate to you the identities of designated and approved suppliers as well as any supplier approval procedures we establish. We and our affiliates have the right to receive payments from suppliers on account of their actual or prospective dealings with you and to use these monies for any purposes we and our affiliates deem appropriate (subject to any agreement with the suppliers).

### **SECTION 14 -INSURANCE AND INDEMNIFICATION**

14.1 You will must, upon commencement of the License Term, purchase and at all times maintain in full force and effect:

- A. If you have employees, workers' compensation insurance in amounts prescribed by law; and
- B. Comprehensive general liability insurance and product liability insurance coverage in such amounts and upon such terms as may from time to time be customary for art schools and similar operations located in your Territory, but not less than \$1,000,000.00, 1 million, insuring both you and KidzArt<sup>us</sup> against all claims, suits, obligations, liabilities, and damages, including attorneys' fees, based upon or arising out of from actual or alleged personal injuries or property damage relating to the use or condition of the Office or your operation of the business-Office;

The liability insurance afforded by the policy or policies will not be limited in any way by reason of any insurance that may be maintained by KidzArt.

C. Automobile liability insurance (for owned, non-owned, and hired vehicles) with a \$500,000 combined single limit or a \$250,000/\$500,000 split limit; and

D. If you maintain a commercial office, insurance on the office, equipment, materials, and supplies for loss or damage by fire, flood, or other risks usually insured against by the owners or lessors of similar property. The insurance must be for at least 90% of the property's replacement cost. If your Office sustains loss or damage, you must repair, restore, or rebuild it within 60 days after the date of the loss or damage.

We may increase or modify the insurance limits noted above and require additional types of insurance. Your insurance policies must name us as an additional insured; require the insurer to defend each person or entity if there is a claim; contain no provision that limits or reduces coverage if there is a claim by one or more additional insureds or because of any insurance we maintain; and provide coverage for your indemnification obligation below.

14.2 All required policies of insurance ~~required under this Section will~~must be with responsible companies qualified to do business and in good standing in the state where the Office is located; and ~~will be in a form reasonably satisfactory to KidzArt. Prior to opening for business, you will furnish to KidzArtus. Before your Office commences operation, you must send us~~ certificates issued by each of your insurers indicating that all premiums due have been paid, ~~that all required insurance is in full force and effect, and that the insurance will not be terminated, not renewed, or changed without at least 30 days' prior written notice from the insurer to KidzArtus. New certificates evidencing renewal of insurance will~~must be furnished at least 30 days ~~prior to before~~ the date of expiration date of each policy. Within 5 days after ~~anyour~~ request by KidzArt, you ~~will~~must deliver a copy of all insurance policies to KidzArtus for examination.

14.3 If you fail to obtain or maintain adequate insurance, ~~KidzArtwe~~ may, at its ~~election and sole discretion~~our option, obtain insurance for and in your name. Within 5 days after ~~anyour~~ written request by KidzArt, you ~~will pay all~~must reimburse our costs of obtaining adequate insurance for you.

14.4 You agree to indemnify, defend, and hold harmless ~~KidzArtus, its~~our affiliates, and our ~~and their respective shareholders~~owners, directors, officers, employees, agents, successors, and assignees (the "Indemnified Parties") against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the operation of your Office, the business you conduct under this Agreement, or your breach of this Agreement, including, without limitation, those alleged to be caused by the Indemnified Party's negligence or willful misconduct, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by the Indemnified Party's gross negligence or willful misconduct in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction.

For purposes of this indemnification, "claims" include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, reasonable accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is

commenced. Each Indemnified Party may defend any claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions.

This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you under this subparagraph. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this subparagraph.

~~14.5 All fixtures, equipment, signs, merchandise, supplies, and other property on or about the Office will be at your sole risk and hazard, and if they are destroyed or damaged in any way, no part of the loss or damage is to be paid by KidzArt except to the extent caused by KidzArt's gross negligence or willful acts.~~

## **SECTION 15 -TRADEMARKS AND TRADE SECRETS**

15.1 Your right to use the Marks is derived only from this Agreement and is limited to your operating the Office according to this Agreement and all standards, specifications, and operating procedures we prescribe during its term. Your unauthorized use of the Marks is a breach of this Agreement and infringes our rights in the Marks. You acknowledge and agree that your use of the Marks and any goodwill established by that use are exclusively for our benefit and that this Agreement does not confer any goodwill or other interests in the Marks upon you (other than the right to operate the Office under this Agreement). All provisions of this Agreement relating to the Marks apply to any additional proprietary trade and service marks we authorize you to use. You may not at any time during or after this Agreement's term contest or assist any other person in contesting the validity, or our ownership, of the Marks. You agree to use the Marks as the Office's sole identification, except that you agree to identify yourself as its independent owner in the manner we prescribe. You may not use any Mark (~~4a~~) as part of any corporate or legal business name, (~~2b~~) with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos we have licensed to you), (~~3c~~) in selling any unauthorized services or products, (~~4d~~) as part of any domain name, homepage, electronic address, or otherwise in connection with a Website (unless it is a Franchise System Website), or (~~5e~~) in any other manner that we have not expressly authorized in writing. If we discover your unauthorized use of the Marks, we may require you to destroy all offending items reflecting such unauthorized use.

15.2 You may not use any Mark in advertising the transfer, sale, or other disposition of the Office or an ownership interest in you without our prior written consent, which we will not unreasonably withhold. You agree to display the Marks prominently as we prescribe on forms, advertising, supplies, and other materials we designate. You agree to give the notices of trade and service mark registrations that we specify and to obtain any fictitious or assumed name registrations required under applicable law.

15.3 You agree to notify us immediately of any apparent infringement or challenge to your use of any Mark, or of any person's claim of any rights in any Mark, and not to communicate with any person other than us and our attorneys, and your attorneys, regarding any infringement, challenge, or claim. We may take the action we deem appropriate (including no action) and



control exclusively any litigation, U.S. Patent and Trademark Office proceeding, or other administrative proceeding arising from any infringement, challenge, or claim or otherwise concerning any Mark. You agree to sign any documents and take any other reasonable action that, in the opinion of our attorneys, are necessary or advisable to protect and maintain our interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain our interests in the Marks. We will reimburse you for your costs of taking any action that we have asked you to take.

15.4 If it becomes advisable at any time for us and/or you to modify, discontinue using, and/or replace any Mark and/or to use one or more additional, substitute, or replacement trade or service marks together with or in lieu of any previously designated Mark, you agree to comply with our directions within a reasonable time after receiving notice. We need not reimburse you for your direct expenses of changing the Office's signs, for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute trademark or service mark. These rights apply to any and all of the Marks (and any portion of any Mark) that we authorize you to use in this Agreement. We may exercise these rights at any time and for any reason, business or otherwise, that we think best. You acknowledge both our right to take this action and your obligation to comply with our directions.

15.5 We agree to reimburse you for all damages and expenses that you incur in any trademark infringement proceeding disputing your authorized use of any Mark under this Agreement if you have timely notified us of, and comply with our directions in responding to, the proceeding. At our option, we may defend and control the defense of any proceeding arising from your use of any Mark under this Agreement.

15.6 You agree to use only our existing or future Marks, and related practices, systems, curriculum, procedures and methods, in connection with the promotion and operation of the Office, and only in accordance with the procedures ~~established by KidzArt~~ we establish.

15.7 You will cause KidzArt® Marks to be reproduced exactly and accurately.

15.8 You ~~will~~ must immediately inform KidzArt ~~of us about~~ any suspected, known, or threatened infringement, piracy, or challenge to the Marks, Trade Secrets, methods, and procedures used in the System. You ~~will agree to~~ assist and cooperate with KidzArt ~~in taking action~~ us, at our expense, ~~as in taking the action~~ we deem appropriate to protect the System.

15.9 Immediately upon the expiration or sooner termination of this Agreement, you ~~will~~ must:

- A. Cease and forever abstain from using any of the Marks and/or Curriculum; ~~our proprietary and copyrighted curriculum; and~~
- B. Take all actions necessary to cancel any ~~d/b/a~~ assumed or fictitious name registration containing any of the Marks; ~~and~~
- C. ~~Furnish KidzArt with evidence satisfactory to KidzArt of compliance with the foregoing obligations within 30 days after any expiration or sooner termination.~~